

Internal Revenue Service

District Director

Date: SEP. 06 1996

[REDACTED]
[REDACTED]
[REDACTED]

Department of the Treasury
QRS - Stop 516-D
401 West Peachtree Street, N.W.
Atlanta, GA 30365

Employer Identification Number:

[REDACTED]
Case Number:

[REDACTED]
Person to Contact:

[REDACTED]
Telephone Number:

CERTIFIED MAIL - RECEIPT REQUESTED

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code. For the reasons stated below, we have concluded that you do not qualify for tax exemption under this Code section. Your protest rights are also explained below.

You were incorporated on a nonprofit basis under the laws of [REDACTED] on [REDACTED]. The Fourth Article of your incorporating document states that your purpose "is to promote reserved seating family entertainment along the Grand Strand". Your By-Laws states additional purposes, "to increase community interest in family entertainment related tourism, and to apply for and administer grants from available agencies and to obtain any other available funds for the purpose of promoting tourism and family entertainment along the Grand Strand".

In your exemption application on Form 1024, you state that [REDACTED] percent of your resources and time are devoted to promotion of the area as an entertainment-based tourism destination. Members support and invest in [REDACTED], a magazine published by you. Members are entitled to place an advertisement in the publication.

Presently, you have [REDACTED] members representing accommodations, attractions, golf, retail, amusements, entertainment and general travel and tourism. Members pay annual dues of [REDACTED]. Approximately [REDACTED] percent of membership dues if allocated for advertising.

In an application to the [REDACTED], you indicated that [REDACTED] percent of your budget will be used for direct promotional advertising. You indicated you will advertise via newspapers, magazines, television, and direct mail literature. Other information in this application indicated the idea to pool resources came about after private enterprise (in the form of area theaters) determined that millions of dollars were spent to persuade tourists to fill their seats. You, further, stated that progressive entertainment marketers like [REDACTED], [REDACTED], [REDACTED], and soon to be, [REDACTED], decided to pool their resources in hopes of

accomplishing a singular goal. From these entertainment entrepreneurs and strong leadership from [REDACTED], the chambers of commerce, and the accommodations and amusement industries, [REDACTED] was born.

In addition to explaining how the idea to publish [REDACTED], you included information in the application explaining how the magazine has and will be distributed by your organization. You indicated that your organization has compiled and published [REDACTED] 12-page fulfillment booklets. These fulfillment booklets are distributed to highly qualified travel agencies. You, also, indicated that the fulfillment booklets and the [REDACTED] magazine are one and the same.

As a supplement to your application, you included two publications of [REDACTED]. On the cover of these magazines, you named member organizations. Inside the magazines, there are two page advertisements for [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Many other hotels, resorts, and theaters have individual one-page advertisements. [REDACTED] pages of this [REDACTED]-page publication consists of general advertising. Therefore, [REDACTED] percent of these publications is devoted to individual advertisements placed by members of your organization; and in these advertisements, you make known to the public the services provided by each member.

In supplements to the application, you state [REDACTED] is typical of other non-profit organizations before it that have been created to help ensure the economic health of the region. Like trade associations and chambers of commerce, [REDACTED] pools resources for the common promotion of an industry that, under normal circumstances, probably could not afford those activities. It is an excellent example of private enterprise "casting aside individuals identities" to promote an entire destination and economic subsegment. However, in the magazine [REDACTED] members are entitled to place individual advertisements.

Section 501(c)(6) of the Internal Revenue Code provides for the exemption from Federal income tax of business leagues, chambers of commerce, real estate boards, or professional football leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Revenue Ruling 68-365, 1968-2 C.B. 265 provides that an activity that serves as a convenience or economy to members in the operation of their businesses is a particular service.

Revenue Ruling 65-14, 1965-1 C.B. 236 provides that an organization formed to promote the tourist industry in its area and whose principal activity is the publication of a yearbook consisting largely of paid advertisements for its members is not entitled to exemption from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c)(6).

Revenue Ruling 64-315, 1964-2 C.B. 147 provides that an association of merchants whose businesses constitute a shopping center expends its funds and engages exclusively in advertising in various newspapers and on television and radio in order to attract customers to the shopping center. This advertising contains the names of member merchants and their merchandise. The organization is not entitled to exemption from Federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code of 1954.

Revenue Ruling 55-444, 1955-2 C.B. 258 provides that an organization formed to promote the business of a particular industry and which carries out its purposes primarily by conducting a general advertising campaign to encourage the use of products and services of the industry as a whole is entitled to exemption from federal income tax as a business league under IRC 501(c)(6).

Unlike the organization described in revenue ruling 55-444, your organization has not primarily conducted advertising promoting an industry. The magazines published by you focus, primarily, on individual advertisements directed toward improving the individual businesses of your members. Consequently, the advertising activities carried on by your organization constitute particular services to individuals.

Although the industry as a whole may benefit from your promotional activities, the advertisements included in [REDACTED] consists primarily of advertisements placed by your members. Though, you have not established a set fee or charge for the individual advertisements placed by your members, you have indicated that [REDACTED] percent of the annual membership dues is spent on advertising. Therefore, your organization is providing particular services. There is little distinction between your organization and the organization described in Revenue Ruling 65-14, as your primary activity consists of advertising where members place individuals advertisements.

Accordingly, based on the information furnished by you in the application, we conclude that you do not qualify for recognition of exemption from Federal income tax under section 501(c)(6) of the Code. Therefore, you are required to file federal income tax returns.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Because this letter could help resolve any questions about your exempt status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



District Director

Internal Revenue Service
Midstates Region

Department of the Treasury
Appeals Office
4050 Alpha Road, 5th Floor
Dallas, TX 75244-4203

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

Dear [REDACTED]:

Thank you for your supplemental letter dated [REDACTED], in response to discussions during our telephone conference regarding [REDACTED]. I am sorry for the delay in making a determination on this matter.

I have reviewed your supplement as well as all the information that is contained in the administrative file. In my opinion, based on the facts presented, the organization does not qualify for exemption under section 501(c)(6) of the Internal Revenue Code. I have assessed the hazards of litigation based on the precedent available to me, and have determined in my opinion few hazards exist for the Government. As this is an "all or nothing" determination, I feel that I must sustain the District Director's proposed denial.

The issue for resolution is whether the activities of the organization primarily constitute the performance of particular services for individual members. Approximately [REDACTED] percent of your budget is directed towards promotional advertising. About [REDACTED] of this budgeted amount is targeted for the entertainment brochures with [REDACTED] being targeted for other forms of media advertising. You maintain that this advertising activity promotes the industry as a whole thus qualifying the organization for exemption.

In analyzing your advertising, the [REDACTED] brochures are [REDACTED] pages in length and are made up almost exclusively of member advertising of accommodations, entertainment theaters, area attractions, and special shows. The advertising consists of dates, packages, rates, and phone numbers. The brochures are targeted primarily at travel agents who book accommodations into [REDACTED]. Your other advertising, which you provided samples of in your [REDACTED] correspondence, is similar to the front page of your brochure. Every sample contained the names of the [REDACTED] or [REDACTED] major entertainment theaters included in your membership.

[REDACTED]

In Revenue Ruling 55-444, 1955-2 C.B. 258, an organization formed to promote the business of a particular industry, which carried out this purpose primarily through advertising, was determined to be exempt under section 501(c)(6). The ruling stated that none of the advertising, with the exception of one newspaper advertisement and a listing in the classified telephone directory, contained the names of individual members. This was determined to be a minor portion of the total advertising, and while it did constitute the performance of particular services, it was regarded as incidental to the primary purpose of the organization.

In Washington State Apples Inc., (1942) 46 BTA 64, no brand name or grower was mentioned in the advertisements, but only the varieties of apples grown in Washington. This type of advertisement did not replace individual advertising, but only increased the demand for Washington apples. The members and other growers benefited indirectly only by the increased demand for Washington apples.

The same was true in American Plywood Assn. v. U.S., (1967, DC WA) 19 AFTR 2d 615. In all of the organization's advertising, including television, no individual members were mentioned. The court stated that while such members undoubtedly benefited from the increased demand for plywood, no particular individual benefit or service was received by any particular member.

This is certainly not the case with [REDACTED] no matter what arguments you put forth regarding who is mentioned in the advertising. The fact remains that all of the organization's advertising, which is its primary activity, contains the names of its members. I do not think the fact that all members are not mentioned in all advertising has any bearing on whether particular services exist. I would also suggest that if polled, most of the members do very little other advertising, as it appears the organization's methods have proved to be very effective in capturing a segment of the tourism market.

In my opinion the organization is similar to the organization described in Revenue Ruling 65-14, 1965-1 C.B. 236. The organization's principal activity in this ruling consisted of publishing a yearly tourist guidebook comprised largely of members' advertising. It also conducted a program of advertising in newspapers and other media designed to attract tourists to the various vacation spots located in the trade territory of its members.

The determination was made in this ruling that the publication of advertising matter containing listings of the names of individual members constituted advertising for the individuals so advertised. It was considered to be the

[REDACTED]

performance of particular services for such individuals rather than an activity aimed at the improvement of general business conditions.

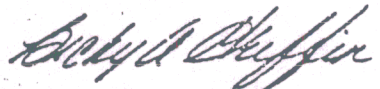
In MIB, Inc. v. Comm., 734 F. 2nd 71 (1st Cir. 1984), the court held that an insurance industry organization which collected and exchanged confidential underwriting information about applicants among member companies did not qualify for exemption under section 501(c)(6). Even though the organization's activities provided incidental benefits to the industry as a whole it provided particular services for individual member companies. According to the court, a business league must not only improve the conditions of a line of business, but must do so in a way different from simply supplying products or services to its individual members.

Based on the precedent available, it is my opinion that the Government's position should be sustained. The interpretations by the courts as well as the Service's interpretations in revenue rulings favor denial of the organization's exemption under section 501(c)(6). In my opinion the organization has been unable to show that the advertising is not primarily benefiting each member. While there is certainly industry benefit from this advertising, it is the result of particular services provided to the members.

Please feel free to contact me should you have any questions regarding my decision. I plan to close this case as I have stated within the next week. I am faxing you a copy of this letter and will put the original in the mail today.

Thank you for your cooperation in this matter and I am sorry it was not possible to resolve this case more favorably for the taxpayer.

Sincerely,



-Becky A. Griffin -
Appeals Officer