

INTERNAL REVENUE SERVICE
District Director
McCaslin Industrial Park
2 Cupania Circle
Monterey Park, CA 91755

DEPARTMENT OF THE TREASURY

CERTIFIED MAIL

Date: January 20, 1998

[REDACTED]
[REDACTED]
[REDACTED] Employer Identification Number:

[REDACTED]
[REDACTED] Case Number:

[REDACTED]
[REDACTED] Person to Contact

[REDACTED]
[REDACTED] Telephone Number:

[REDACTED]
[REDACTED] Refer Reply to:

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(5) of the Internal Revenue Code (Code). Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

FACTS:

The information submitted discloses that you were incorporated under [REDACTED]. Neither your organization's articles of incorporation or the By-Laws state a specific purpose.

Your application Form 1024 discloses that the primary purposes of your organization are:

1. To provide small part-time or full-time farmers and producers of value-added agricultural products with facilities, sites and services that will enable them collectively to promote and market their agricultural and produced products directly to the public.
2. To educate the public about agricultural commodities and offer consumers a special market wherein they may obtain quality fresh produce and unique products directly from the grower/producer.
3. To provide members a forum for gathering and disseminating information that will educate and assist them in developing agricultural and marketing expertise.
4. To support activities intended for the general betterment of agriculture in [REDACTED].

Funds generated by the association are dedicated to the operation and promotion of the [REDACTED]. Funds are generated by the collection of membership dues and fees based on the amount of goods sold by the vendor at each market day.

The primary activity of your organization is the operation of a [REDACTED] in the city of [REDACTED] during growing season. To participate in the market's activities, persons must be members of the market. Membership is open to anyone, contingent on payments of a \$[REDACTED] annual membership fee payable at the time of application. Members are charged, as follows:

- a) Annual Fee \$[REDACTED]
- b) Receipts of \$[REDACTED] or less --- \$[REDACTED] per space per current market day.
- c) Receipts over \$[REDACTED] --- will be assessed at a rate of [REDACTED] of gross sales, rounded to the nearest dollar. Oversized space charge is \$[REDACTED] extra per current market day.

The market hours are from 9:00 A.M. to 1:00 P.M. every Saturday, May through October. Vendors set up in a booth or stall assigned to members on a first come first served basis as members arrive at the market. Because the members sell their products directly to the public, they are able to answer questions about the things they offer for sale, how it was grown, what to do with it. This is primarily a market for fresh produce. The public also has the opportunity to purchase local products and ask questions of the grower. All activities conform to local and state regulations.

ISSUE:

Does the organization qualify for exemption as an organization described in section 501(c)(5) of the Internal Revenue Code?

LAW:

Section 501(c)(5) of the Code provides for the exemption from Federal income tax for labor, agricultural, or horticultural organizations. The regulations state that organizations exempt under section 501(c)(5) are those which:

- a. have no net earnings inuring to the benefit of any member, and
- b. have as their objects the betterment of the conditions of persons engaged in the pursuits of labor, agriculture, horticulture; the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Section 513 of the Internal Revenue Code defines a trade or business as follows:

"For the purposes of this section, the term 'trade or business' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For

purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger complex of other endeavors which may, or may not be related to the exempt purpose of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

Trade or business has the same meaning that it has for the purpose of determining whether a particular expense is a deductible trade or business expense under Internal Revenue Code section 162 and includes any activity carried on for the production of income from the sale of goods or in the performance of services. See Internal Revenue Regulations, (Regs), section 1.513-1(b).

Regs. section 502-1 states in part:

"...In the case of an organization operated for the primary purpose of carrying on a trade or business for profit, exemption is not allowed under section 501 on the grounds that all profits of such organizations are payable to one or more organizations exempt from taxes under section 501. In determining the primary purpose of an organization, all the circumstances, including the size and extent of the trade or business and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 501."

Revenue Ruling 69-51, 1969-1 C.B. 159, denied exemption to an organization who carried on as one of its lesser activities, the sale of cattle for its members. The revenue ruling determined that such sales did not promote the betterment of conditions of cattle breeders, but was carried on for the convenience of members and the production of income.

Revenue Ruling 74-195, 1974-1 C.B. 135, denied exemption to an organization formed to manage, graze, and sell its members' cattle as providing a direct business service to its members and not qualifying for exemption as an agricultural organization.

Revenue Ruling 66-105, 1966-1 C.B. 145, denied exemption to an organization composed of agricultural producers whose principal activity is marketing livestock for its members as not qualifying for exemption under section 501 (c) (5) of the Internal Revenue Code. It was providing a direct benefit to members.

ANALYSIS:

The activity of your organization, of assisting local farmers with the sale of their crops is similar to the organization in Revenue Ruling 69-51 in that you will operate [REDACTED] for the benefit of the growers. The facts in Revenue Ruling 74-195 and 66-105 are also similar to your organization in that your main activity is the carrying on of a market where members can sell their goods and increase their income.

Your primary purpose is to provide particular services for growers in the area by providing a selling place, advertising and publicity. You are not organized or operated to improve business conditions but

to improve sales of the growers and to operate a farmer's market for growers.

CONCLUSION:

It is the position of the Internal Revenue Service that your organization does not qualify for exemption from Federal income tax as an organization described in Section 501 (c) (5) of the Internal Revenue Code as you are primarily engaged in operating a trade or business to sell the products of your members as described in section 513 of the Code.

Accordingly, you are required to file income tax returns on Form 1120, U.S. Corporate Income Tax Return, annually with your respective Service Center.

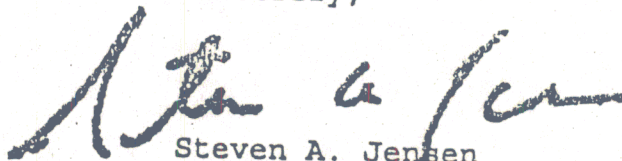
If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of the Form.

If you are not in agreement with this proposed determination we recommend that you request a hearing with the office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information in support of your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a hearing. The hearing may be held in the Office of Regional Director of Appeals, or if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become the final determination.

If you have any questions, please contact the person whose name appears on the heading of this letter.

Sincerely,



Steven A. Jensen
District Director

Enclosure:
Publication 892
Form 6018

Department of the Treasury-Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare In
Duplicate

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- Denial of exemption as an organization described in section 501(c)(5) of the Internal Revenue Code.
- Revocation of exemption, effective
- Modification of exempt status from section 501(c)() to 501(c)(), effective
- Classification as a private foundation (section 509(a)), effective
- Classification as a non-operating foundation (section 4942(j)(3)), effective
- Classification as an organization described in section 509(a)(), effective
- Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature in: actions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date