

INTERNAL REVENUE SERVICE
Director, EO Examinations

DEPARTMENT OF THE TREASURY
Pacific Coast Area (TE/GE)

Date: OCT 31 2000

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Person to Contact:

[REDACTED]

Badge Number:

[REDACTED]

Contact Telephone Number:

[REDACTED]

[REDACTED] (Fax)

In Reply Refer to:

[REDACTED]

Certified Mail

EIN: [REDACTED]

Dear Applicant:

[REDACTED]

We have considered your application for exemption of your organization described in section 501(c)(5) of the Internal Revenue Code.

tax as an
1986.

The information submitted discloses that your organization was formed under the laws of [REDACTED]. The purpose for your organization was formed per your Articles of Incorporation is... "This corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to such organizations that qualify as exempt organizations under 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code."

The purpose for which your organization was formed per your Bylaws is:

1. To create a community building attraction that enhances local businesses, offers a social gathering place for local residents, and create a sense of community.
2. To provide the opportunity for local residents to purchase locally grown produce, crafts and unique specialty items.
3. To provide an educational experience for children and adults who are local [REDACTED] residents."

The Bylaws provide in order to meet the above goals, the [REDACTED] will offer vendor space at the [REDACTED] parking lot. Vendors will include farmers, artisans, and gourmet specialty items. Musicians will offer background entertainment. "Kids Place" is an area that will offer child related activities for a variety of ages. Weekly education presentations will be offered by a variety of community groups.

The purpose per your Application, Form 1024, states as follows:

1. The [REDACTED] was begun in [REDACTED]. The [REDACTED] Board met once a month in January – May to plan the market's first season, and then met again in October to recap the market progress. The Board

consists of volunteer members. Board meetings are held the fourth Sunday of the month at [REDACTED]. Executive Board members consist of the Chairperson, the Secretary/Treasurer, Site Management Coordinator, Vendor Representative, and Property Owner. Vendors and market volunteers have the option of being Board members. The Executive Board is the decision making body for the market. Before opening day on [REDACTED], the Executive Board located and organized vendors, sought out sponsors, marketed the market, and procured tents and other basic market supplies.

The market was open [REDACTED] from [REDACTED] through [REDACTED] at the [REDACTED] parking lot. The market will return in [REDACTED]

The market consists of [REDACTED] booth spaces for rent and three booths for information, entertainment and presentation purposes. The vendors who rent the spaces are farmers, gourmet food vendors, and artisans. The nonrented booths provided market information, kids activities, live music, and gardening tips. Volunteers manned these booths. The market never reached full capacity during the [REDACTED] season. A fee was charged for space rental. The majority of fees were collected at the end of each market day. Four vendors prepaid part or in whole for the season. This rental income is the majority source of income for the market's advertising, equipment, insurance, fees, music, and supplies. The owners of the property are asking for rent from the market in the year [REDACTED]. The market received a small financial donation from an area business and drew some income from the sales of [REDACTED] books and [REDACTED]. All income will be used to sustain the market for future seasons. The Executive Board, Board, and volunteers are not financially compensated.

Customers were local community residents. Community participation increased as customers increased each week during the season.

The market Board plans to return the [REDACTED] in [REDACTED] with similar vendor, community activities, and customers. The first [REDACTED] planning meeting is January [REDACTED]

In a response received on [REDACTED], [REDACTED] gave a more detailed description of its activities as shown below (listed as percentage of time):

Vendor selection – identifying, recruiting and registering vendors to participate in the [REDACTED]. Purpose – To improve market in order to maximize weekly attendance by [REDACTED] residents. Percentage of total time devoted – 40%.

Marketing – distribution of flyers, posting signs, placing printed ads. Purpose – To promote the market and maximize weekly attendance by [REDACTED] residents. Percentage of total time devoted – 20%.

Kids Place – identifying and recruiting volunteers to donate their services in Kid Place at market. Purpose – To improve market in order to maximize weekly attendance by Cedar Mill residents. Percentage of total time devoted – [REDACTED] %.

Benchmarking – attending [REDACTED] meetings and visiting other farmers markets. Purpose – To create a farmers market plan for a local market

for the [redacted] residents offering community members a place to gather in the community and participate in a local open air market. Percentage of total time devoted - 10%.

Music - identifying and recruiting musicians to donate their time and talent to entertainment at the market. Purpose - To improve market in order to maximize weekly attendance by [redacted] residents. Percentage of total time devoted - 5%.

Presentations - contacting gardening educational groups such as [redacted] and [redacted] to identify gardening experts available to donate their time to educate residents about gardening, recycling, composting, etc. at the market. Purpose - to improve market in order to maximize weekly attendance by [redacted] residents. Percentage of total time devoted - 5%.

In addition, the purpose for all the above activities also included: "Maximum attendance increases the opportunity for residents to gather in the community and participate in the services the market provides. These services include encouragement to buy local farm fresh produce, visiting with other residents who value fresh produce and enjoy gardening, gardening education, and entertainment. The market also provides an outlet for local farmers to improve their marketing of their produce to local residents."

[redacted] does not have any members.

Vendors are identified from the [redacted], The [redacted], [redacted], other local farmers markets, and by vendor/farmer referral. Vendors who participate in the market are local produce farmers, local artists, and local home based gourmet food sellers.

The [redacted] mix of vendors was [redacted] farmers, [redacted] artisans, and [redacted] gourmet food vendors. Vendors pay for the booth space. The cost of the booth space is determined by the Board based on the rate schedule of other [redacted] [redacted]s. Rates at the [redacted] are single booth - \$ [redacted] week, double booth - \$ [redacted] week. The proceeds from the vendors are used to pay the costs of the market including advertising, phone bills, postage stamps, operating supplies, printing, signs, insurance, rent, etc.

In [redacted] the [redacted] had for sale at the market information booth [redacted] [redacted] and [redacted]. The history books were purchased from the writer, a local [redacted] resident. The cookbooks were purchased from the [redacted]. The books are offered for sale because they contribute to the markets efforts of community building and education for local residents.

The [redacted] did not pay any salaries or wages in [redacted]. All services were volunteers.

No rent was paid in [redacted]; the space was donated by a local [redacted] business. In [redacted] minimal rent will be paid to [redacted] at the rate of [redacted] % of gross annual receipts.

The [REDACTED] provides a service to the local residents of [REDACTED] by bringing farmers, artisans, gourmet food, musicians, and garden experts to one location for residents to shop, learn about community issues, and gather gardening information.

In a response received [REDACTED] stated that it has a large volunteer pool with six to ten volunteers who set up, clean up, and staff the information booth, Kid's Place booth, and Presentation booth. In addition, volunteers also distribute fliers, door hangers, put up signage, make reminder calls, manage the market, coordinate musicians, coordinate presenters and Kid's Place volunteers, and support special events.

ISSUE:

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

LAW:

Section 501(c)(5) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(5) Labor, agricultural, or horticultural organizations."

Section 1.501(c)(5)-1 of the Income Tax Regulations provides that organizations contemplated by section 501(c)(5) as entitled to exemption are those which have no net earnings inuring to the benefit of any member, and those that have as their objects the betterment of the condition of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupation.

The term "agricultural" is defined as pertaining to, or engaged in, agriculture. "Agriculture" is defined as the art of science of cultivating the ground, especially in fields or large quantities, including the preparation of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding, and management of livestock; that is tillage, husbandry, and farming.

To be exempt under IRC section 501(c)(5), an organization must have as one of its objectives the betterment of the conditions of those "engaged in" agricultural pursuits.

Revenue Ruling 66-105, 1966-1 CB 145, discusses an organization composed of agricultural producers whose principal activity is marketing livestock for its members and was held not to be exempt under section 501(c)(5).

Revenue Ruling 74-195, 1974-1 CB 135, discusses a nonprofit organization formed to manage, graze, and sell its member's cattle. The organization was found to be providing a direct business service to its members and did not qualify for exemption as an agricultural organization under section 501(c)(5).

Revenue Ruling 77-153, 1977-1 CB 147, discusses a nonprofit organization that owns and operates a livestock facility and leases it to local members of a nonexempt national association of farmers for use in implementing the association's collective bargaining program with

processors. The organization held not to be exempt as an agricultural organization under section 501(c)(5).

ANALYSIS:

It appears that your organization has no members but will rent out vendor booths to farmers, artisans, and gourmet food vendors. Your organization's activities include some educational activities through the Presentations and Kids Place. However, your primary purpose is to provide particular services for vendors in the area by providing a selling place, advertising, and publicity. Your organization does not engage in "agriculture" as defined previously as tillage, husbandry, and farming. The organization is not organized or operated for the betterment of the conditions of those engaged in agriculture pursuits; you merely rent space to farmers, artisans, or gourmet food vendors willing to pay the fee.

Consideration was also given to your organization as an organization described in section 501(c)(6) of the Code. The facts remain the same.

ISSUE:

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code?

LAW:

Section 501(c)(6) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(6) Business leagues, chamber of commerce, real estate boards of trade, or professional football leagues (whether or not administering a pension fund for football players), 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 provides, in part as follows:

"A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest. It is an organization of the same general class as a chamber of commerce or board of trade."

Thus its activities should be directed to the improvement of business conditions of one or more lines of businesses as distinguished from the performance of particular services for individual persons.

Revenue Ruling 64-315, 1964-2 CB 147, discusses a non profit organization of merchants whose business constitutes a shopping center and was held not to be exempt under section 501(c)(6).

Revenue Ruling 73-411, 1973-2 CB 180, (a further clarification of Revenue Ruling 64-315) states that merchant associations whose activities are directed to promoting the general business interest of its members do not qualify for exemption under Code section 501(c)(6).

Revenue Ruling 58-224, 1958-1 CB 242, states that an organization which operates a trade show did not qualify for exemption under Code section 501(c)(6) as they were rendering particular services to individual persons by conducting the show, providing publicity and advertising campaigns, and providing selling opportunities for members.

ANALYSIS:

It appears that your organization has no members but will rent out vendor booths to farmers, artisans, and gourmet food vendors. Your organization's activities include some educational activities through the Presentations and Kids Place. However, your primary purpose is to provide particular services for vendors in the area by providing a selling place, advertising, and publicity. The organization is not composed of persons in a line of business having a common business interest; you merely rent space to farmers, artisans, or gourmet food vendors willing to pay the fee. You are not organized or operated to improve business conditions but to operate a farmers market for farmers, artisans, and gourmet food vendors.

CONCLUSION:

To be considered for tax exempt status under section 501(c)(5), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. Also, its activities must be restricted to those granted a section 501(c)(5) organization.

It is the position of the Internal Revenue Service, based on information submitted, that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(5) of the Code, inasmuch as you are not organized and operated exclusively for any of the specified purposes within that section.

To be considered for tax exempt status under section 501(c)(6), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. Also, its activities must be restricted to those granted a section 501(c)(6) organization.

It is the position of the Internal Revenue Service that you have not shown that you are devoted to the improvement of business conditions as distinguished from the performance of particular services for individual persons.

Your organization is not an association of persons having a common business interest as defined in the law, but rather, is a group of individuals with business interests who are not members per se.

Your organization is operating a business that is ordinarily conducted for profit, and is providing particular services for individual members with no industry-wide benefits to artisans in general. You are not promoting a common business interest merely renting space for vendors to sell their wares.

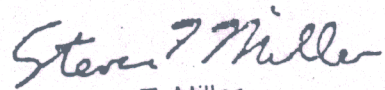
We have concluded that you do not qualify for exemption from Federal income tax as an organization described in either section 501(c)(5) or section 501(c)(6) of the Internal Revenue Code. Accordingly, you are required to file income tax returns on Form 1120 annually.

If you are not in agreement with this proposed 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 information authorization with us.

If we do not hear from you within 30 days from the date of this letter, this determination will become final.

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

Sincerely,



Steven T. Miller
Director, Exempt Organizations

Enclosures:
Pub 892