

NO PROTEST RECEIVED.
Release copies to District

Date June 11, 1997

Surname [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

MAY 1 1997

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

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

You were incorporated under the nonprofit statute of the [REDACTED] on February 6, 1996. Article 4 of your incorporating instrument states that your purposes are "to promote the development, establishment, or expansion of the [REDACTED] by supervising the interchange inspection of cars, trailers and other detail assigned to it, within the [REDACTED] and vicinity, [REDACTED]"

In response to Part II, 1 of Form 1024, exemption application, you describe your specific activities as follows:

1. You will inspect [REDACTED] which will facilitate [REDACTED] of such equipment. [REDACTED] is defined as [REDACTED].
The inspection of [REDACTED] accounts for approximately 50% of your time. The inspections are conducted at each of your member [REDACTED]
2. You will process all damage reports and designate responsibility. This is an ongoing activity which accounts for approximately 35% of your time.

[REDACTED]

3. You will inspect [REDACTED] to facilitate [REDACTED] of such equipment. This accounts for approximately 15% of your time. The inspections are conducted at each Member's location by the District Supervisor.

In response to Part II, 7 of Form 1024, you report three (3) categories of membership as follow: (1) Full Membership; (2) Association Membership; and (3) Membership in the [REDACTED]. At time of application, you had ten Full Members, Two Associate Members, and twelve GMA Members.

Full Membership is obtained by being a [REDACTED] and a facility or piggyback terminal for loading and unloading of [REDACTED]. Full membership is subject to majority acceptance by [REDACTED]. Full Members have voting rights.

Associate Membership classification applies to [REDACTED] categorized as a [REDACTED] Associate Membership is granted upon the majority acceptance of the Committee identified in the previous paragraph. Associate Members do not have voting rights.

Qualification for membership in the [REDACTED] requires classification [REDACTED] in the [REDACTED].

Each Full Member pays a portion of your total monthly expenses. Associate Members pay a monthly fee of \$2,500. They are also billed \$18.00 for each additional trailer inspected above the agreed upon number of monthly inspections.

Under Part III, Financial Data, you report, for the seven month period running from March 1, 1996 to October 31, 1996, total revenue of \$273,508, virtually all from membership dues and assessments totalling \$273,256. Total expenses for this period equal \$315,849, consisting of expenses related to exempt function activities totalling \$303,963, and occupancy of \$11,886. This results in a deficit for the period of \$42,341. You have also submitted budget estimates for 1997 and 1998, with revenues and expenses both projected at \$500,00 plus, with revenues slightly exceeding expenses.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of nonprofit business leagues, chambers of commerce, and boards of trade, whose net earnings do not inure to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common business interest and not to engage in a business of a kind ordinarily carried on for profit. The regulations further require that a business league's activities be directed to the improvement of business conditions for one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 68-264, 1968-1 C.B. 264 describes a nonprofit organization whose members are engaged in a particular line of business. Its primary activity is to operate a traffic bureau for members and nonmembers as a service in the shipment of their goods and products. The services it provides to members and nonmembers include quotations of freight rates, rules, and practices; investigations of loss, damage, and overcharge claims, and handling of rate cases for individual members before regulatory bodies; investigation of complaints on transportation services; and furnishing of information on transportation laws. The organization derives its income from membership fees, an annual payment by the local chamber of commerce, and payments by business firms for services performed. Total revenue approximates the cost of operations.

Rev. Rul. 68-264 cites Code section 501(c)(6) and section 1.501(c)(6)-1 of the regulations and then states that where the primary activities of an organization constitute a regular business of a kind ordinary carried on for profit, exemption under section 501(c)(6) is precluded because they evidence a purpose to engage in such business. See Jockey Club v. United States, 137 F. Supp. 419, certiorari denied, 352 U.S. 834 (1956). A traffic bureau, as described above, is a business of a kind ordinarily carried on for profit. Inasmuch as this is the primary activity of the organization, it cannot qualify for exemption under section 501(c)(6).

Rev. Rul. 68-264 enunciates another ground for denial of tax exempt status under section 501(c)(6):

Furthermore, activities that constitute the performance of particular services for individual persons may preclude exemption from Federal income tax under section 501(c)(6) of the Code. See Indiana Retail Hardware Association, Inc. v. United States, 366 F.2d 990 (1966). An activity that serves as a convenience or economy to members in the operation of their businesses is a particular service of the type proscribed. See Produce Exchange Clearing Association, Inc. v. Helvering, 71 F.2d 142 (1934). The operation of a traffic bureau for members and nonmembers is a clear convenience and economy to them in their businesses, resulting in savings and simplified operations. Accordingly, this activity constitutes the performance of particular services for individual persons. United States v. Oklahoma City Retailer Association, 331 F.2d 328 (1964). Therefore, for this further reason, the organization is not exempt from Federal income tax under section 501(c)(6) of the Code.

Rev. Rul. 74-228, 1974-1 C.B. 136 describes a nonprofit organization formed by several carriers engaged in transoceanic passenger service. Its purpose is to promote, impose, and regulate the sale and handling of passenger traffic within a particular area and to harmonize policies and stabilize fares for the benefit of its members and the traveling public.

The organization's primary activity consists of appointing travel agents to book passenger travel on the ships of its members. Each appointed travel agent is required to pay an annual fee to the organization and is required to be bonded. A list of approved travel agents is periodically distributed to the organization's members who, in turn, furnish promotional materials to such agents. Travel agents are paid on a commission basis.

Rev. Rul. 74-228 cites Code section 501(c)(6) and section 1.501(c)(6)-1 of the regulations and then reasons and holds as follows:

By appointing travel agents to sell passages on the ships of its members under the circumstances described above, the organization is providing its members with a

[REDACTED]

service that assists them in the conduct of their businesses. This activity constitutes the performance of particular services for members and is not directed to the improvement of general business conditions within the meaning of the regulations. Accordingly, the organization does not qualify for exemption from Federal income tax under section 501(c)(6) of the Code.

With respect to your own application under section 501(c)(6) of the Code, it is clear that [REDACTED] and your processing of damage reports, as described above, constitute the provision of particular services to your members within the meaning of section 1.501(c)(6)-1 of the regulations. See also the holdings in Rev. Ruls. 68-264 (particularly on point) and 74-228, discussed above. These activities may also be construed as the conduct of a business ordinarily carried on for profit. The fact that you essentially operate on a break-even basis makes no difference in this regard.

The services which you provide to your member companies are "particular services" because they result in a convenience or economy in the operation of their businesses. These services or activities are a convenience or economy to your members for the following reasons: (1) they are directly related to the conduct of your members' businesses or may be considered an extension of their businesses; (2) the activities are of a type (inspection of equipment and processing of damage reports) that member companies would otherwise have to perform for themselves or pay another business entity to have performed in the ordinary course of their business; and (3) from all indications, each member's contribution to you is in proportion to what each receives (with respect to the services in question) in their individual capacities.

Based on the foregoing, we hold that you do not qualify for exemption from federal income tax under section 501(c)(6) of the Code. Accordingly, you are required to file federal income tax returns on Form 1120.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be

[REDACTED]

represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director, Midstates (Dallas, TX), which is your key district for exempt organization matters. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

When sending a protest or other correspondence with respect to this case, you will expedite its receipt by using the following address on the envelope:

[REDACTED]

1111 Constitution Avenue, NW
Washington, DC 20224

Sincerely,

[REDACTED]

[REDACTED]

Chief, Exempt Organizations

[REDACTED]

cc: DD, Midstates (Dallas, TX)
Attn: EO Group

[REDACTED]