

NO PROTEST RECEIVED
Release copies to District

Date [REDACTED]

Surname [REDACTED]

[REDACTED]

[REDACTED]

Employer Identification Number:
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. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED], under the laws of the State of [REDACTED]. Your Articles of Incorporation state that your purpose is the promotion of shopping at [REDACTED]. Your Articles also state that you shall have two classes of membership: active and associate. An "active" member is defined solely as an individual, partnership, or corporation who or which shall be the proprietor of a business or profession carried on in the [REDACTED] or the owner of real property therein. The Articles also provide that the owner of the real property comprising the [REDACTED] shall at all times be an active member of the corporation possessing the special rights and privileges as provided in the bylaws. An "associate" member is defined as any individual, partnership, or corporation who or which, in the opinion of the majority of the Board of Directors, shall have a legitimate interest in the purposes and objects of the corporation; the Articles state that associate members are entitled only to such notices, if any, of meetings or otherwise, as the bylaws shall from time to time prescribe that such members shall receive, and shall at no time have any right to vote at any meetings of the corporation.

Your bylaws provide that at any meeting of the members, only active members shall be entitled to vote, and each active member shall be entitled to one vote for each annual \$ [REDACTED] such member's lease requires them to pay to you, provided, however, that a fraction of \$ [REDACTED] does not entitle the member to an additional vote, unless such member pays less than \$ [REDACTED] per

[REDACTED]

year, in which event the member is entitled to one vote. Your bylaws further provide that the owner of the real property comprising the [REDACTED] (the landlord), in addition to his contributory votes, shall be entitled to cast at all meetings of the members a vote equal to [REDACTED] of all the votes all your other members could cast were all present at the meeting and voting. Your bylaws provide that any action shall be effective and valid if taken or authorized by not less than a majority of all the votes thereon to which all the members present in person or by proxy at a duly constituted meeting shall be entitled, provided the landlord is present in person or by proxy (or by duly authorized corporate officer if a corporation). Your bylaws also provide that no amendment of your bylaws, or additions thereto, may alter or affect the provisions of your bylaws relating to the landlord, and the rights and privileges granted it.

In your application, you state that your primary activity is the promotion and marketing of the [REDACTED] and that it is through you and your activities that the [REDACTED] relates and interacts with the surrounding community. You state that your membership is made up of dues paying merchants located in the Mall with an interest in promoting the [REDACTED] as a whole to create community awareness and thus establishing a loyal customer base; the basic medium used to convey this message is newspaper, radio, direct mail, and point of purchase ads. You also state that the following promotional activities are planned throughout the year to entertain, educate, raise money for nonprofit organizations, and build traffic in hopes of increasing sales volume:

- (1) community bazaars (local nonprofit clubs and churches),
- (2) arts and craft shows,
- (3) antique shows,
- (4) blood drives (American Red Cross),
- (5) sidewalk sales,
- (6) fashion shows,
- (7) teen board events,
- (8) kid's club events,
- (9) Santa Claus and the Easter Bunny,
- (10) book fairs (retired teachers),

- [REDACTED]
- (11) toddler games,
 - (12) educational events with local schools,
 - (13) home, garden, and flower shows (local garden clubs),
 - (14) car/boat shows,
 - (15) antique car shows [REDACTED],
 - (16) community health fairs,
 - (17) fire education and safety ([REDACTED] e),
 - (18) school bus safety [REDACTED],
 - (19) stranger danger kid's events,
 - (20) community awareness for safety and health [REDACTED],
 - (21) mother/daughter look alike contest,
 - (22) father/son look alike contest,
 - (23) art exhibits,
 - (23) Halloween trick or treat,
 - (24) Cancer Society/MDA/Heart Association jail and bail,
 - (25) sales driven promotional events (back to school, Easter, Christmas, gifting, Fall),
 - (26) coupon events,
 - (27) register to win giveaways, and
 - (28) animal shows.

In your letter dated [REDACTED], you state that [REDACTED] is located in a rural area that serves several surrounding communities. You state that the [REDACTED] is a vital part of the community, providing an area where local civic clubs and organizations can hold fundraising events and community awareness promotions, such as health screenings and safety programs for children. You further state that the community depends upon the

[REDACTED]

[REDACTED] for various seasonal promotions as well as special holiday events that the area's children and adults enjoy.

With your letter [REDACTED] you included copies of various advertising materials which you stated you use to inform the community of events and promotions at the [REDACTED]. The contract you signed with [REDACTED] and [REDACTED], to cover the [REDACTED] retail promotion, shows that the radio station, in order to make the sale "a bigger retail day" than the last year, was offering ten thirty-second commercials to promote the sale, a minimum of forty promotional announcements listing the businesses as a participants in the sale, and a minimum of six mentions during live broadcasts from the centers of the sale activities, all for a \$ [REDACTED] investment. The contract you signed with [REDACTED] on the Olympic Torch Run, in order to bring "listeners to [REDACTED] to shop before the torch run," shows that with a \$ [REDACTED] investment the [REDACTED] would receive inclusion in fifty promotional announcements about live broadcast from the torch run and mention as a sponsor in all remote breaks (three per hour) from the torch run. An invoice from [REDACTED] to you dated [REDACTED], shows your purchase for \$ [REDACTED] of an "advertising package" consisting of thirty spots between [REDACTED], and [REDACTED]. Similar invoices dated [REDACTED], and [REDACTED]; show advertising packages for prior monthly periods. You included several copies of advertising for the [REDACTED] published in [REDACTED], some of which list the names of your member merchants.

In your response of [REDACTED], to our letter dated [REDACTED], you state that your dues are variable, based on the tenant's lease, and that several tenants contribute to you voluntarily. You also state that there are approximately sixty retail business establishments in [REDACTED], [REDACTED], and that you have twelve members; you did not state that you had any associate members. You state that there are five businesses at [REDACTED] which are not members of your organization.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, 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 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. 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 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 a 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. 56-65, 1956-1 C.B. 199, holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses, is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption under section 501(c)(6) of the Code as a business league even though it performs functions which are of benefit to the particular industry and the public generally. The activities of the organization consist of the maintenance of plan rooms for the convenience of members, where plans and specifications for local construction projects, together with the names of general contractors bidding on specific projects, are filed.

Rev. Rul. 64-315, 1964-2 C.B. 147, holds that an association of merchants whose businesses constitute a shopping center, and which 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 is not entitled to exemption as an organization described in section 501(c)(6) of the Code. The organization's advertising contains the names of member merchants and their merchandise, and the publication of a shopping news, advertising in other publications and also by radio and television, by which means the organization advertises the merchandise and the names of its member merchants, shows this to be the primary purpose and activity of the organization. Such activity constitutes the performance of particular services for members rather than an activity directed to the improvement of business conditions generally as required by the applicable regulations.

Rev. Rul. 68-264, 1968-1 C.B. 264, holds that primary activities that constitute a regular business of a kind ordinarily carried on for profit will preclude exemption from federal income tax under section 501(c)(6) of the Code. In this case, the organization was providing services to members and nonmembers.

Rev. Rul. 73-411, 1973-2 C.B. 180, in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required under section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community, and it has been accepted that an organization seeking exemption under section 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all the commercial enterprises in a given trade community. Trade associations or business leagues under section 501(c)(6) are similar to chambers of commerce, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in section 501(c)(6) organizations is voluntary and open generally to all businesses and professional persons in the community. The revenue ruling clarifies Rev. Rul. 64-315, supra, by stating that in no event should it be construed as implying that a merchant's association whose membership is restricted to the tenants of a one-owner shopping center and their common lessor, and whose activities are directed solely to promoting the general interests of its members, may be exempt under section 501(c)(6). The revenue ruling also states that where the organization's activities include those of a landlord-tenant association and as such directly assist the owner in facilitating the management and operation of his real estate enterprise, exemption under section 501(c)(6) is precluded.

Rev. Rul. 78-225, 1978-1 C.B. 160, distinguishes Rev. Rul. 73-411, supra, and describes a shopping center where membership is voluntary, is open to all businesses in a neighboring community, and is not involved in tenant and landlord matters relating to the shopping center. The revenue ruling holds that the organization is exempt under section 501(c)(6) of the Code even though a majority of the businesses are located in one particular shopping center because the organization is operated to improve the business conditions of a community rather than a single one-owner mall.

Since you are not structured along particular industry or business lines, your right to exemption under section 501(c)(6) of the Code, if any, must rest on your characterization as a chamber of commerce or board of trade or similar organization. Although your Articles and bylaws state that you intend to have an open membership, your efforts are restricted to and directed at organizations and individuals doing business with and in

[REDACTED]

[REDACTED] rather than being directed at promoting the common economic interests of all the commercial enterprises in your particular trade community. Therefore, your benefits are not considered to be open generally to all businesses and professional men and women in your community. Thus, as explained in Rev. Rul. 73-411, supra, you are not defined as a chamber of commerce within the meaning of section 501(c)(6).

You are not similar to the organization described in Rev. Rul. 78-225, supra, because your members pay dues that are set up through their lease requirements at Bainbridge Mall and one of your members is required to be the owner of the real property of [REDACTED], which has powers at your meetings that override any action except a clear majority of members in opposition to its actions. In this manner, since the entity controlling at least one-half of the votes at your meetings is the landlord of all your members, you cannot escape being involved in tenant and landlord matters relating to the [REDACTED].

You are similar to the organization described in Rev. Rul. 64-315, supra, even though you have more activities than advertising, because advertising for your members and the [REDACTED], the owner of which is also one of your members, appears to be your primary activity as well as your stated purpose. All your activities have, as the primary underlying purpose, the object of bringing people to the [REDACTED] to shop at your members' businesses rather than to improve the business conditions of the area in general. As also stated in the revenue ruling, advertising the merchandise and the names of member merchants constitutes the performance of particular services for members rather than an activity directed to the improvement of business conditions. As stated in Rev. Rul. 68-264, supra, where the primary activities of an organization constitute a regular business of a kind ordinarily carried on for profit, such as advertising, exemption under section 501(c)(6) of the Code is precluded.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax as a chamber of commerce under section 501(c)(6) of the Code. You are required to file federal income tax returns.

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

[REDACTED]

request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to your key District Director.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

[REDACTED]

Sincerely yours,

[REDACTED]

[REDACTED]

Chief, Exempt Organizations

[REDACTED]

cc: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]