

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Release copies to District

Date 8-18-99

Subject [REDACTED]

Date:

JUL 06 1999

[REDACTED]
[REDACTED]
[REDACTED]

Employer Identification Number:

Contact Person:

ID#

Contact Number:

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 [REDACTED]. Your Articles of Incorporation state that your purpose is to be a national association for private accredited investors devoted to the improvement, enhancement, standardization, simplification, and promotion of the process of investing in early-stage growth companies; you intend to reduce the cost, reduce the risks, and encourage private equity investing (a) by providing information, resources, and training to private accredited investors, (b) by developing standards, guidelines, and models which will simplify private equity investing, and (c) through active representation and advocacy in the public policy process at the federal and state levels. Your Articles also state that your initial Board of Directors shall be designated by your incorporator and that you shall have members, the qualifications and rights of which shall be set forth in your bylaws.

Your bylaws provide that your initial number of directors shall be fixed by your Articles of Incorporation, and thereafter the number shall not be less than three. Your bylaws make no mention of members, membership qualifications, or membership rights. Your bylaws state that your Board of Directors shall have annual, regular, or special meetings, and that your directors shall be elected by majority vote at the annual meeting of your Board; your officers shall be elected by your Board of Directors at the annual meeting of your Board.

In your application, you state that you shall be devoted to the improvement, enhancement, standardization, and simplification of the process of investing in early-stage growth companies. In furtherance of your purposes, you state that you shall:

- (1) develop and promote multi-state guidelines and models to simplify and standardize the company formation process;
- (2) develop a website which shall include all service providers interested in working with early stage companies;
- (3) educate the public that investing in early-stage companies is a desirable part of a balanced investment portfolio for accredited investors;
- (4) initiate legislative and regulatory campaigns at the state and federal levels to facilitate and encourage private equity investment; and

[REDACTED]

(5) "cooperate and cross promote with regional angel and venture groups, the American Institute of CPAs and industry associations such as AEA, BIO, ITAA, SPA, the Mass Retail Association, the U.S. Chamber of Commerce, etc."

In your application, you state that the Office of Advocacy in the Small Business Administration has developed simplified materials for founding new growth companies, has developed an internet service that matches investors and entrepreneurs seeking equity capital, has been seeking a nonprofit organization to expand their work and make it more useful to the private sector, and has agreed to work with you.

You state that [REDACTED] shall be available to organizations interested in promoting entrepreneurship and company formation for a first year contribution to you of \$ [REDACTED] and a commitment of \$ [REDACTED] for two subsequent years, and that [REDACTED] (a) will have a seat on your Board of Directors and Steering Committee, (b) will be listed on your website, stationery, promotional materials, and public service ads, (c) will receive prime advertising space on your website and in your publications, (d) will have a right of first refusal to participate in every program in the future, and (e) will be able to offer one year free [REDACTED] to their employees and clients who qualify as accredited investors. You state that [REDACTED] are available to companies and organizations for a commitment of \$ [REDACTED] a year for three years, and that [REDACTED] (a) will have a seat on your Board of Directors, (b) will be listed on your website, promotional materials, and public service ads, (c) will receive free advertising space, and (d) will receive one year's free [REDACTED] for their accredited investor clients and employees. You state that companies and organizations interested in supporting your formation process and/or offering their services and products to your members may become [REDACTED] for \$ [REDACTED] per year; [REDACTED] will be listed on your website and in vendor directories. You also state that your funding will come primarily from [REDACTED] and [REDACTED] and their individual investor members.

In your application, with regard to membership, you state that you shall provide your model investment kits and materials to the public free of charge, and that you shall have members who shall be entitled to receive a comprehensive package of programs and discounted services tailored to the needs of private equity investors; members will not have voting rights with respect to your management. You state that [REDACTED] (basic membership) will be available to self-certified accredited investors for \$ [REDACTED] per year; [REDACTED] will be available to service providers at the national level for \$ [REDACTED] per year and at the local chapter level for \$ [REDACTED] per year; [REDACTED] will be listed in your membership directories; [REDACTED] will be available to seed capital venture firms and investment firms specializing in early stage ventures, and will be eligible to participate in your programs based on a sliding scale membership rate that reflects the size of the firm; [REDACTED] will be available to firms founded by your [REDACTED], and will be eligible to participate in your programs based on a sliding scale membership rate that reflects the size of the firm. You state that services to members will include:

- (1) standards, guidelines, models, "Best Practices, and FAQs" to simplify private equity investing in a variety of growth-oriented industry sectors;
- (2) local chapter meetings to provide investor networking opportunities and programs presented by associate member service-providers;
- (3) neutral access to a variety of pre-screened investment opportunities, including the Small Business Administration's Ace-Net and other private, internet-based investment matching services;

- (4) private investor news, editorial content, forums, and a reference library;
- (5) a variety of investor education programs at the local chapter level, and [REDACTED] at the university level;
- (6) education on the benefits of investing in early-stage firms;
- (7) public policy advocacy at the federal and state levels;
- (8) discounts on a wide variety of affinity benefits for investors and young companies; and
- (9) vendor listings and search engines for services providers specializing in early stage investments and companies.

You state that you are making arrangements to offer your members a diversified package of member benefits at substantial discounts. You state that you may use these "affinity" programs to generate revenue for you, and that they may include preferential pricing on (a) computers, software, and office supplies, (b) insurance services, pharmaceutical programs, and retirement plans, (c) mutual funds and financial services, (d) commercial and residential telecommunications services, (e) mortgage services, (f) auto and truck buying, rental, leasing, and roadside services, (g) travel and leisure services, and (h) personal improvement and career services.

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 consisted 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. 59-391, 1959-2 C.B. 151, holds that an organization whose membership consists of individuals, firms, associations, and corporations, each of whom represents a different trade, business occupation, or profession, and created for the purpose of exchanging information on business prospects does not qualify for exemption under section 501(c)(6) of the Code. Part of the rationale for the ruling is that the members have no common business interest other than a mutual desire to increase their individual sales.

Rev. Rul. 67-295, 1967-2 C.B. 197, holds that an organization of businessmen holding luncheon meetings may qualify for exemption under section 501(c)(6) of the Code. The key to the determination is that the luncheon meetings are devoted to discussions, reviews, and considerations of the various problems in a particular industry.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses. The revenue ruling also states that activities that constitute the performance of particular services for individual persons may preclude exemption under section 501(c)(6).

Rev. Rul. 70-641, 1970-2 C.B. 119, involves an organization comprised of individuals from various professions in the field of public health. The organization's activities, which consist of lectures, seminars, and discussions, seeks to provide an interdisciplinary forum for exchanging knowledge and information. The revenue ruling concludes that the organization's activities promote the members' common business interests by increasing the effectiveness of the interaction among the various professions and solving common business problems. The fact that the members represent various professions does not prevent the organization from qualifying for exemption under section 501(c)(6) of the Code because they share a common business interest in the field of public health.

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 by 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.

In American Kennel Club v. Hoey, 148 F.2d 920 (2nd Cir.1945), the court held that an association of dog owners, most of whom were not in the business of raising and selling dogs, did not further a common business interest and thus was not exempt under section 501(c)(6) of the Code.

The term "business" is construed broadly for purposes of section 501(c)(6) of the Code and includes almost any enterprise or activity conducted for remuneration. Thus, the term is broad enough to encompass professionals, as explained in Rev. Rul. 70-641, supra, as well as mercantile and trading businesses. It may also include the activities of organizations, such as consumer cooperatives, which engage in business on a cooperative basis. Where there is no "business" involved, however, as explained in American Kennel Club v. Hoey, supra, exemption under section 501(c)(6) is precluded.

The information you have submitted fails to establish that the individuals whom you identify as your members are in a common line of business for purposes of section 501(c)(6) of the Code, which requires more than a finding that the individuals are engaged in a business. Unlike the organizations described in Rev. Ruls. 67-295 and 70-641, both supra, your membership does not represent a specific industry nor various professions within a common business field. Your membership is not comprised of either an entire industry or all components of an industry within any particular trade community, but rather is composed of individual private equity investors..

Your program is similar to that of the organization described in Rev. Rul. 59-391, supra, in that the sole purpose your members have to attend your meetings and receive your information is a mutual desire to increase their own individual portfolios. We recognize that there are distinctions between your operations and those of the organization described in Rev. Rul. 59-391, in that membership in your organization is not necessarily restricted to different trade, business occupations, or professions. However, the basic holding in that revenue ruling is that the participants have no common business interest other than a mutual desire to increase sales and that this is not sufficient to establish a common line of business for the purposes of section 501(c)(6) of the Code. Your membership similarly is not made up of persons with a common business interest within the meaning of section 501(c)(6), but rather consists of persons desiring to increase their own personal wealth. We have concluded that the holding in Rev. Rul. 59-391 applies to you and therefore you do not qualify for exemption under section 501(c)(6).

Also, the "affinity" programs you are making arrangements to offer your members are considered to be particular services within the meaning of section 1.501(c)(6)-1 of the regulations as described in Rev. Rul. 58-65, supra. If such programs rise to the level of being primary activities, they would be an independent ground for denial of exemption under section 501(c)(6) of the Code as explained in Rev. Rul. 68-264, supra.

In addition, although you indicate that your membership is generally open to all interested parties, at least to the extent that you provide your model investment kit and materials free of charge to anyone who asks for them, you lack the essential characteristic of a chamber of commerce in that your efforts are directed at individuals managing their own individual mutual fund investments rather than directed at promoting the common economic interests of all the commercial enterprises in your particular trade community (see the general discussion in Rev. Rul. 73-411, supra, regarding the history of organizations described in section 501(c)(6) of the Code). Your activities are more analogous to the organization described in Rev. Rul. 58-65, supra, where particular information and specialized individual services to individual members precluded exemption under section 501(c)(6).

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax 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 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 will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

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]

Internal Revenue Service
OP:E:EO:T:2- [REDACTED], Room 6539
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

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

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

cc:

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

OP:E:EO:T:2

OP:EO:T:2

[REDACTED]
[REDACTED]

[REDACTED]