



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

NO PROTEST RECEIVED
Released to Manager, EO Determinations - Cincinnati

Date: JUN 14 2002

DATE: [REDACTED]
SURNAME [REDACTED]

Contact Person: [REDACTED]
Identification Number: [REDACTED]
Contact Number: [REDACTED]

[REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted indicates that you were incorporated on [REDACTED] under the laws of the State of [REDACTED] as a Nonprofit Mutual Benefit Corporation. Your Articles of Incorporation state that your specific purposes are:

- (a) to develop guidelines for a unique certification mark to be used on wine bottle labels, which certification mark shall certify that the wine in such bottles is produced and is derived from grapes grown in [REDACTED]
- (b) to take all necessary steps to protect such certification mark, including trademark and any other reasonable legal protections;
- (c) to collect application and use fees from individuals or firms who sell wine produce and derived from grapes grown in [REDACTED] in exchange for which you shall grant to such individuals or firms, the right to use such certification mark on the wine bottles produced by such individuals or firms; and
- (d) to market the certification mark to the wine industry and consumers.

Your bylaws state that you shall have no voting members within the meaning of the [REDACTED] Nonprofit Corporation Law. Your Board of Directors may, in its discretion, admit individual to one or more classes of nonvoting members; the class or classes shall have such rights and obligations as the Board finds appropriate. Your bylaws also provide that your Board of Directors shall consist of at least eight but not more than thirteen Directors. At all times, five members of your Board shall represent individuals or firms who are also then-current members of the [REDACTED] two members shall represent individuals or firms who

[REDACTED]

are also then-current members of the [REDACTED] one member shall be a wine consumer or represent a consumer group and not be a member or affiliated with the [REDACTED] or the [REDACTED]. Your bylaws provide that if the number of your Directors is more than eight, the proportion of representation outlined in the previous sentence shall be maintained.

In your application, you state that you are developing a certification mark to be used in the labeling of wine bottles to certify that the wine is produced from grapes grown in the Napa Valley. Once the certification mark has been developed and protected by trademark and any other reasonable legal protection available, you will begin accepting application and user fees from qualifying wine producers, in exchange for their ability to use the certification mark on their labels. You anticipate that your administration of this process will represent 25% of your operational budget, and approximately 25% of your resources will be used to market the certification mark to the industry and customers. Approximately 50% of your time will be spent inspecting new applicants as well as previously certified producers to ensure that they are in fact qualified to use the certification mark.

You state in your application that you have been advanced funds from the [REDACTED] [REDACTED] is order to begin developing your certification mark and that your future source of financial support will be from application fees and use fees charged to qualifying producers using the certification mark.

In your letter dated [REDACTED] you state that you are by your nature a nonprofit organization; you have no shareholders, nor do you have any members. You state that you do not expect any part of your net earnings to inure to the benefit of any shareholder or member. You also state that you have no requirement that a qualifying winery must be a member of any organization, or have a particular ownership structure. Any winery using [REDACTED] grapes to make its wine can apply for use of your certification mark. Once a winery's product has been inspected and approved, a per-case fee is charged to cover the cost of developing the mark, maintaining its integrity, and promoting it to the general public. As time goes on and costs are more accurately determinable, your fees will adjust accordingly as your intention is to charge enough fees to cover operating and marketing cost. You state that you will not restrict the use of the certification mark other than requiring that [REDACTED] grapes be used in order to qualify a label for certification.

Section 501(c)(6) of the Code provides for the exemption from United States 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. 70-80, 1970-1 C.B. 130, holds that a nonprofit trade association of manufacturers whose principal activity is the promotion of its members' products under the association's registered trademark does not qualify for exemption under section 501(c)(6) of the Code. The revenue ruling concludes that the trademark is promoted by the organization in a way that is intended to give the members of the association a competitive advantage over others in the same industry by extolling the superior quality of the trademarked products. Thus the revenue ruling holds that the trademark promotion is not directed to the improvement of business conditions of the industry as a whole but is the performance of particular services for members.

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. Membership is voluntary and open generally to all business and professional men and women in the community. The revenue ruling states that it has been accepted that an organization seeking exemption from federal income tax under section 501(c)(6) as a chamber of commerce or board of trade must be one whose efforts are directed at promoting the common economic interest of all the commercial enterprises in a given trade community. The revenue ruling also defines trade associations or business leagues as similar to chambers of commerce or boards of trade, 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.

In American Plywood Association v. United States, 267 F. Supp. 830 (1967), the Court found that the individual and personal benefits enjoyed by members of the Plywood Association because of its quality control services were inherently and most immediately group benefits in that quality control insures safe plywood, a prerequisite to its acceptance by the public. All the benefits were declared to be incidental to the main purpose of the organization.

Based on the statutory construction of section 501(c)(6) of the Code, it is a well established principle that section 501(c)(6) is intended to apply only to membership organizations which further the common business interests of their members and which are financed, at least in part, through membership dues. The legislative history of this statute, and the rules of statutory construction applicable to that section of the Code dealing with exempt organizations, provide that only membership organizations supported by membership dues or assessments are included in the term of the exemption under section 501(c)(6). Thus, an organization which is not in fact membership supported lacks the most significant characteristic common to organizations for which exemption was provided under section 501(c)(6). Your governing documents do not provide for membership and you have stated that you are not a membership organization. Your sole source of financial support has been a loan from the [REDACTED]

[REDACTED] and your future source of financial support will be the application fees and use fees charged to qualifying producers using your certification mark, and you do not expect financial support from any other source. Since none of your ongoing financial support has been or will be derived from members, you have not and cannot demonstrate a pattern of membership support, and you are existing independently of any degree of member participation. For this reason, you fail a critical test of exemption under section 501(c)(6).

Since you are 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 trade association or business league. As explained in Rev. Rul. 73-411, *supra*, because you have no members and have no membership that is voluntary and open generally to all businesses within your line of business or of the members of closely related lines of business within your industry in your community, you are not serving the common business interests of members. Thus, you are lacking the essential element of representation of a line of business within the meaning of section 501(c)(6). Your eight directors, despite the proportion of their representation of the [REDACTED], the [REDACTED], and a wine consumer or representative of a consumer group, cannot provide this element of representation within the intent of the revenue ruling. Thus you are not a trade association or business league within the meaning of section 501(c)(6), which defines trade associations or business leagues as similar to chambers of commerce or boards of trade, 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.

From the information you have presented, you appear to be most similar to the organization described in Rev. Rul. 70-80, *supra*. Your trademark certification will be promoted by you in a way that is intended to give particular wineries a competitive advantage over others in the same industry by extolling the superior quality of the trademarked products. Thus your trademark promotion is not directed to the improvement of business conditions of the industry as a whole but is the performance of particular services for individual persons. The organization described in Rev. Rul. 70-80, *supra*, is distinguishable from the organization discussed in American Plywood Association v. United States, *supra*. In the case before the court, the advertising of the association trademark was found to be of minor importance and only an incidental part of the advertising that extolled the advantages of the industry product in general. In the same manner as the organization discussed in Rev. Rul. 70-80, your trademark certification is your primary reason for existence, and is the focal point for all of your activities.

Accordingly, for the above reasons, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, 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 represented by someone who is not one of your officers, that person

[REDACTED]

will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) 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, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
T:EO:RA:T:2 - CCH
1111 Constitution Avenue, N.W.
(1750 Pennsylvania Avenue, N.W.)
Washington, D.C. 20224

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

Sincerely yours,

JSL
Joseph Chasin
Acting Manager
Exempt Organizations
Technical Group 2

cc: [REDACTED]

[REDACTED]

[REDACTED]