



TAX
GOVERNMENT ENTITIES
DIVISION

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

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Release to Manager, EO Determinations - Cincinnati

Date: OCT - 3 2002

DATE: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [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.

Facts:

Your purpose is to promote consumer purchase of cable television and related services in the [REDACTED] direct marketing area. The direct marketing area, also known as the designated marketing area ("DMA"), is a term used in the broadcast industry. DMA describes the geographic area that covers the major broadcast television stations area reach. Within the [REDACTED] DMA, the cable operators are: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

You have two classes of membership: Regular members, limited to the cable operators within the Los Angeles DMA; and Honorary members composed of the programming partners that have paid an annual contribution to the advertising campaign budget. The current honorary members are [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Regular members are entitled to vote on each matter submitted to a vote of the membership. Honorary members are entitled to vote only on matters relating to the specific advertising campaign for which they are providing funding. Additional regular members are admitted based on the approval of the Board of Directors. The board of directors is responsible for the business affairs of the taxpayer. The Board is composed of 10-16 directors, selected by the regular members.

Contributions and funding for the regular members is based on the market share of each of the members. Each regular member commits to contribute its pro-rata share of the budget based upon that company's share of the [REDACTED] market. The percentages at time of the application were: [REDACTED] (39%), [REDACTED] (24%), [REDACTED] (20%), [REDACTED] (11%), and [REDACTED].

[REDACTED]

(6%). These percentages are determined by the "Homes Passed market service area" which is reassessed each year by the board of directors to determine if an adjustment needs to be made for the contributions and funding of each member.

You describe the Homes Passed market service area as those homes in a direct market area that are "passed" by cable TV service wires, meaning the home is near enough to the wires to access cable TV services. You state that the Local Franchising Authority (LFA) grants the cable TV franchise rights to the local cable TV operator. Each cable operator has a geographically defined "homes passed market service area" that may overlap one or more municipalities, but do not overlap with any other cable TV operator. Each market service area is effectively exclusive to a single operator.

You plan to purchase advertising media including but not limited to, broadcast television, radio, direct mail and other promotional vehicles to induce customers to buy broadband services from the participating cable operators. Additionally, you will work with an advertising agency as well as media buyers to buy commercial time and create television commercials, radio spots, and direct mail materials. The purpose of these activities is to assist the members in combining their resources to produce a generic television commercial to promote cable services.

The television commercial produced by you describes cable television by showing clips of the programming available to consumers. The transcript of the commercial indicates that it ends by directing a consumer to a 1-800 number that will presumably connect the consumer to the cable operator in their area. In addition to the television commercial, you produce individualized advertisements for each of the cable operators to deliver to consumers in their respective market service areas. You have no other activities other than marketing and advertising.

Law:

Section 501(c)(6) of the Code provides an exemption for business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, as long as not organized for profit and no net earnings inure to the benefit of private shareholders or individuals.

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. The activities of such organization are directed to the improvement of business conditions of one or more lines of business and not to perform particular service 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. 55-444, 1955-2 C.B. 258 holds that an organization composed of retail dealers which conducts an advertising campaign for the benefit of an industry as a whole through a general ad campaign, qualifies for exemption as a business league under section 501(c)(6) of

[REDACTED]

the Code. The organization was incorporated to improve the relationship between certain dealers and the public by improving the delivery, maintenance of quality and development of high standards of service. The organization engaged in general advertising campaigns that did not contain reference to its members, except on two occasions and the individual member and not the organization paid for the particular ads. The purpose of the advertising was to improve the business conditions of this particular industry and where the advertising carried the names of the individual members, those situations represented only a small portion of the total advertising expenditures and was regarded as incidental or subordinate to the main purpose.

Rev. Rul. 56-84, 1956-1 C.B. 201 holds that an organization, operated primarily for the purpose of promoting, selling and handling the national advertising in its members' publications is engaged in the performance of particular services for its members and is not engaged in activities for the improvement of the business conditions of its members as a whole and is therefore, not entitled to exemption under section 501(c)(6) of the Code.

Rev. Rul. 64-315, 1964-2 C.B. 147 holds that an association of retail dealers whose business is a shopping center, does not qualify as a business league under section 501(c)(6) of the Code where the organization's activities consist of advertising using the names and products of the individual member merchants. 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. 67-77, 1967-1 C.B. 138 describes an organization composed of dealers in a certain make of automobile in a designated area that is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile. The revenue ruling holds that the advertising is a service for its members and the organization is not entitled to exemption as a business league under section 501(c)(6) of the Code. Activities should be directed towards the improvement of business conditions of one or more lines of business as distinguished from the performance of services for individual persons.

Rev. Rul. 68-182, 1968-1 C.B. 263 holds that organizations promoting a single brand or product within a line of business do not qualify for exemption from Federal income tax under section 501(c)(6).

Rev. Rul. 68-264, 1968-1 C.B. 264 describes a nonprofit organization whose members are engaged in a particular line of business. The organization was incorporated to operate, as its primary activity, a traffic bureau for its members and nonmembers as a service in the shipment of their goods and products. The revenue ruling holds that the organization is not exempt under section 501(c)(6) of the Code since the operation of the traffic bureau serves as a convenience or economy to members in their businesses. The income of the organization approximates the cost of operations and the operation of a traffic bureau is the type of activity normally carried on for profit.

Rev. Rul. 69-632, 1969-2 C.B. 120 holds that a nonprofit organization, composed of members of a particular industry, was formed to develop new and improved uses for existing

[REDACTED]

products of the industry and may be exempt under section 501(c)(6) of the Code since the activities are directed towards improving the business conditions of the industry.

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.

Rev. Rul. 73-411, 1973-2 C.B. 180 holds that a shopping center merchants' association, whose membership is restricted to and required of the tenants of a one-owner shopping center and their common lessor, and whose activities are directed to promoting the general business interests of its members, does not qualify as a business league under section 501(c)(6) of the Code. The association was organized to serve as a means of communication and exchange of views between the owner and the tenants. Income was primarily from the membership dues assessed according to the type of business concern and the extent of business space rented. Expenditures are for internal administration and office expense including publicizing and promotional services. The organization was not structured along a particular industry or business lines. Membership was limited solely to the owner and tenants of the facility. The organization lacked the essential element of public representation with respect to its membership and the community it purportedly served. Additionally, the activities of the organization were not directed at improvement of business conditions of one or more lines of business or business conditions of any community as a whole within the meaning of section 501(c)(6), instead the activities served the individual business interests of the owner of the shopping center. Each of the organization's activities served the special interests of the members related to their status as tenants rather than any common business purpose in relation to the status of the members as representatives of the commercial interests of the community. The publicity and promotional activities were designed to stimulate the general volume of business.

Rationale:

The information you have submitted establishes that your sole activity is to provide advertising and marketing services for your members. Your primary purpose is to increase the purchase of cable television and related services by consumers within Los Angeles from each of your respective members. As provided by section 1.501(c)(6)-1 of the regulations, an organization that engages in a regular business of a kind ordinarily carried on for profit, although conducted on a cooperative basis, is not a business league under section 501(c)(6) of the Code.

Your television advertisement does not promote the cable television industry as a whole but rather promotes each of your members, the individual cable providers. Rev. Rul. 55-444, supra, holds that a general advertising campaign, which does not induce the consumer to purchase a particular product from a particular provider, may be an exempt activity. However, in your situation, your advertising and marketing activities are inducing consumers to purchase a particular product from a particular provider.

[REDACTED]

Each member has an exclusive market service area. Your membership is limited by the LFA. The LFA grants the cable franchises to individual operators, limiting the availability to a consumer of a choice among the cable services. Each operator maintains an exclusive franchise in the area designed by the LFA. As such, your membership is closed by the LFA through its franchising grants. Under these circumstances, it does not appear that your membership will increase with new members and your activities will be limited to your current members.

Your general advertisement will presumably direct consumers to the single, individual cable operator in their area via the 1-800 number. This does not promote cable television generally. Instead the structure of the direct marketing area and the franchising authority essentially induces the consumer to purchase a particular product from a particular provider. In the case of your individual advertisements, by limiting the scope of the advertisement to that single member, they essentially promote a single brand or product within the line of business. Rev. Rul. 68-182, supra. Additionally, individual advertisements are not exempt activities as in Rev. Rul. 56-84, supra and Rev. Rul. 64-315, supra. Activities such as advertising and marketing are also the type of activity that would ordinarily be conducted by a cable service provider to induce consumers to purchase their products. There is no general promotion of the cable television industry but rather an attempt to induce the consumer to purchase your members' cable services through a mass marketing campaign.

Unlike the fact situation in Rev. Rul. 69-632, supra, your activities are not directed to forming and developing new and improved uses of cable television. Instead, by directing your activities to increasing the number of cable television subscribers within the Los Angeles area, you are performing a particular service for your members. Rev. Rul. 68-264, supra and Rev. Rul. 67-77, supra.

Similar to the situations found in Rev. Rul. 68-264, supra and Rev. Rul. 73-411, supra, your advertising and marketing activities are for the clear convenience and economy of your members in their businesses, resulting in savings and simplified operations. Your advertising and marketing services are designed to stimulate the volume of business generated by your members. Although your activities are conducted on a cooperative basis and produce minimal income, you are not a business league under section 1.501(c)(6)-1 of the regulations where such activity constitutes the performance of particular services for the individual members rather than an improvement of the business conditions generally.

Accordingly, 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 will need to file a

[REDACTED]

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
TE/GE (T:EO:RA:T:2)

[REDACTED]
1111 Constitution Ave, 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,


Jane Baniewicz
Acting Manager
Exempt Organizations
Technical Group 2

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]	[REDACTED]			
Surname						
Date						