



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: JUN 30 2003

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

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 you submitted indicates that you are a calendar year, non-stock corporation, formed . Your Articles of Incorporation state that your purposes are:

1. To promote, operate and maintain for the benefit of the general public, a marketplace for the products of local farmers, watermen and artisans of ;
2. To cooperate with the Board of County Commissioners for in its effort to preserve and promote the livelihood of local farmers, watermen and artisans.
3. To use all assets held or controlled by the corporation and the net earnings thereof for the benefit of the general public and for the promotion, operation and maintenance of a marketplace for the products of local farmers, watermen and artisans in County.

Your bylaws provide that your purpose is to develop and manage a centralized market to enable organic and conventional farmers, local watermen and local craftspeople to sell their produce and products directly to consumers, to assist members of the corporation and others with facilities, sites and services to aid in the distribution and selling of their products and to market and promote the facility to consumers in the region and to visitors of .

The producers eligible to use the market are either those located in or those within the region identified as the "local produce" area. In your letter of .

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you define the "local produce" area as "everything within a 100 mile radius of the market location," which "includes virtually all of the State of ██████████ and a portion of the ██████████." You state that no produce grown outside of the area will be sold within the market place.

You state that you were formed to operate a marketplace for the sale of local farm produce, seafood and crafts. You state that your primary activity is to operate and maintain the marketplace in such a manner as to ensure that all qualifying vendors are given a fair and equitable opportunity to sell their products at a central location.

You state that your activities and estimated time devoted to each are as follows:

1. ██████% - Operation and maintenance of the marketplace.
2. ██████% - Marketing and promotional activities to promote the goods available in the marketplace.
3. ██████% - Educational seminars on a variety of topics including full day seminars required for certification and mini-sessions including hands-on demonstrations.
4. ██████% - Fundraising such as seeking a five-year commitment to assist in funding the start-up costs of the marketplace.

In addition to the above, you state that you will engage in setting policies and rules by which to govern the operation of the marketplace, examine alternatives for advertising and promotion, prepare standards of certification of local produce, plan producer seminars and assist in the renovation of the market facility.

You state that due to the developing nature of the organization, the time and resources being dedicated to these activities are evolving and may not represent these same percentages in the future. As such, you state that you anticipate devoting an even amount of time to each of these activities.

In your letter dated ██████████, you state that a broader statement of your mission would more precisely define the nature of the activity on which you are and will be engaged. You state that the organization's primary activity should be described as "promoting, establishing standards and creating opportunities for direct consumer marketing of farm produce, seafood and crafts raised or produced in ██████████ and surrounding localities."

In your letter of ██████████, you describe direct consumer marketing as providing a benefit to both producers and consumers. Consumers get a higher-quality, fresher product and the producer is able to sell at a price very close to supermarket retail and in some cases provides a viable selling location to the producer.

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You describe your marketplace as a ██████ square foot former grocery store located in a strip shopping center in ████████████████████. You state that the present configuration of the market is structured for ███ vendor stalls, which are rented to your members, ██████████ growers and local produce growers. Each member has the opportunity to reserve his or her vendor stall for the following season over other applicants.

In addition to vendor stalls, you state that the marketplace will have leased space for value-added products within the marketplace such as a seafood vendor, a butcher shop, a bakery and a deli. These spaces are leased annually and no preference is given to members.

You state that your certification process is open to any ██████████ grower whether or not your member. You state that this process will allow the grower to display a logo on its produce or other goods, with the language "Certified Product of ██████████," attesting to the high standards and qualities. Currently no fee is assessed for the annual certification. You state that you have adopted the USDA and the State of ██████████ agricultural guidelines as your standards.

Although originally restricted to persons who reside or produce their products in ██████████ ██████████, your amended bylaws provide that membership is open to anyone interested in promoting the goals of the corporation.

Your business and affairs are conducted and managed by your Board of Directors. The board is composed of not less than ███ members composed of the following: one ██████████ Commissioner, one member of the ██████████, two members of the ██████████, one member of the ██████████, one representative of the ██████████ and two members at large. All officers and directors serve without compensation, with the exception of the manager of the marketplace.

You state that your sources of financial support include a grant from the ██████████ ██████████, a grant from the ██████████, vendor membership fees and vendor stall rentals.

In your letter of ██████████, you state that your members share the common business interest of facilitating direct consumer marketing of produce, seafood and crafts. You state that you will promote this common interest in direct consumer marketing through newspapers and other media advertising, by providing a facility wherein the products may be purchased, by developing a branding logo to certify products that are locally produced, by developing health and freshness standards that must be met before the certification can be given, and by providing consumer education to heighten awareness of the availability and desirability of the local products.

You state that your activities serve to benefit all of those regional agricultural and seafood producers, not merely individual members of the organization as demonstrated through the vendor stall rentals, which are rented to members and non-members, and advertising that is conducted on a generic basis rather than naming individual sellers. You state that you are

Involved in other activities in addition to the operation of the marketplace, including certification and educational activities.

In support of your position, you state that your marketplace "is open to the public and advertised to the public with the focus on advertising to increase public awareness of the range of local products available." You also state that "the products sold come from producers throughout the region, with different producers and products in the market from week to week and as seasons change." You state that while there is an element of convenience in having different items available under one roof, the convenience is primarily for the benefit of the consumer, and the whole nature of the organization is geared toward increasing direct sales of products to the consumer. Finally, you state that the reason for the existence of the marketplace is to improve business conditions by increasing customer traffic.

In your letter of [REDACTED], you state that the marketplace confers the most direct benefit on those producers who participate in the market, whether or not they are members of the 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 net earnings of which inure 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 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 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. 58-224, 1958-1 C.B. 242 holds that an organization, which operates a trade show as its sole or principal activity primarily for the purpose of rendering particular services to individual persons is not entitled to exemption from Federal income tax as an organization described as a business league in section 501(c)(6) of the Code. In this case, the general purpose of the organization is to promote the interest of trade and increase the facilities of commercial transactions, particularly in connection with the display, distribution, and sale of merchandise. However, the organization's sole activity consists of the staging of an annual merchandise show, primarily exhibits by manufacturers, under the sponsorship of the chamber of commerce. The revenue ruling concludes that the activities of the organization substantially serve the exhibitors and retailers as a convenience and economy in the conduct of their businesses by providing selling opportunities for the distributors, and that therefore the organization is rendering particular services for individuals persons as distinguished from the improvement of business conditions generally.

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 including an activity that serves as a convenience or economy to members of the organization in the operation of their own businesses.

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 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. 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 of 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 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.

Based on the information submitted, your primary purpose is to provide a sales facility for your members and nonmembers, similar to the organization in Rev. Rul. 58-244, *supra*. An activity such as this is providing a particular service to individuals. The facility serves as a convenience and economy to anyone who uses the marketplace to sell their products whether or not they are members. Rev. Rul. 68-264, *supra*, defines a particular service for the purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to members of the organization in the operation of their own businesses.

[REDACTED]

You state that you will engage in certification of produce, general advertising, and educational seminars for producers as well as consumers. These types of activities may support a promotion of a common business interests and are good section 501(c)(6) activities. See Rev. Rul. 55-444, *supra*; Rev. Rul. 69-832, *supra*. However the information you submitted indicates that you are operated primarily for the purpose of providing and operating a sales facility for the selling of products of individuals. Such activity is considered to be the performance of particular services and is not directed to the improvement of business conditions of one or more lines of business.

You state that your common business interest is direct consumer marketing. This is not a business purpose but a business itself. The information you submitted indicates that your members have no common business interest other than a mutual desire to have a location to increase their individual sales. Your marketplace activities are not directed to the improvement of business conditions of one or more lines of business, but rather to the promotion of the private interests of those producers who rent stalls at your marketplace.

As provided in section 1.501(c)(6)-1 of the regulations, 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.

While the regulations do not state that a business league must promote the betterment of general commercial welfare, the regulations do require that the activities of the organization be directed at the improvement of business conditions of one or more lines of business. The facts you have submitted indicate that you are not promoting the general welfare of the community or promoting the common economic interests of all of the commercial enterprises in a given trade community. Rather, you are simply providing a convenient place for individuals to market their products for their exclusive benefit. By providing such service, you are not considered to be the type of an organization for which an exemption from tax under section 501(c)(6) of the Code was intended. Rev. Rul. 73-411, *supra*.

Therefore, 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 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

[REDACTED]

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 ([REDACTED])
[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,

[REDACTED]

Manager, Exempt Organizations
Technical Group 2