

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 2508, Cincinnati, OH 45201

Person to Contact
[REDACTED]

Telephone Number:
[REDACTED]

Refer Reply to:

EP/EO

Date:

SEP 13 1985

Dear Sir or Madam:

- We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(6) of the Internal Revenue Code of 1954 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892 (Rev. 7-83), "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proposed power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]

[REDACTED]
District Director

Enclosures: 3

Enclosure I

The information submitted with your application indicates that you incorporated in the State of [REDACTED] on [REDACTED]. Your Articles state that the purposes of your corporation are:

- (a) To identify businesses that are burdened by governmental rules and regulations stifling free enterprise.
- (b) To provide a forum for the exchange of information and ideas relating to regulatory intervention in the marketplace. Also to educate those who are decision makers and attitude molders and with regard to a free and open marketplace.
- (c) To be involved at all levels of government in Indiana where administrative, judicial or legislative regulatory actions or inactions thwart an open marketplace and threaten free enterprise.
- (d) To engage in such other activities incidental to the foregoing purposes.

Your corporation has two classes of members: (a) Director Members; and (b) Associate Members.

The Director membership is composed of and is identical to the membership of the Board of Directors of the Corporation. Each Director Member is entitled to one vote on any matter submitted to a vote of the members. Associate Members have no voting rights. You currently have three Director Members. Two are attorneys who have significant business and legislative/governmental experience. The third has served in an administrative capacity with [REDACTED] and has had several years of administrative experience. One director is paid a salary. The other two directors are paid "consulting fees."

Associate Members have the following qualifications.

- (a) They have a substantial interest in the free enterprise system and open marketplace.
- (b) They subscribe generally to the positions of the Corporation on major legislative issues affecting an open marketplace in Indiana.

Associate Membership may be acquired only by invitation of the Board of Directors. Associate Members pay a membership fee upon acquiring Associate Member status. Fees are determined on an individual case basis by the Board of Directors, and are negotiable.

Membership in the future will be a direct function of the programs being supported by the organization.

[REDACTED]

Your application further lists the activities of your organization as:

- (a) Presentation of testimony at public hearings held by legislative-agencies.
- (b) Correspondence and conferences with legislators and their staffs.
- (c) Publication of documents advocating special legislative action.
- (d) Identifying and publishing burdensome governmental rules and regulations.

Basically, your organization identifies administrative, judicial, or legislative regulatory actions or inactions which thwart an open marketplace and threaten free enterprise, and develops a program of action to bring about change in the existing system and promote free enterprise and an open marketplace. Dues are then determined based upon the expected costs to bring about the desired change, and the number of prospective supporters of the particular program.

During your first year of operation, your organization worked for the repeal of Rule [REDACTED] of the [REDACTED]. You had [REDACTED] members, all of whom were involved with the beverage industry.

In the next two years, you plan to be involved with the deregulation of the banking industry, hazardous waste disposal and landfill siting, and additional projects for the beverage industry. You are also evaluating a program regarding the area of product liability and other areas of judicial and legislative actions dealing with the creation or causes of action which have an effect on business and industry and thereby thwart the ability to successfully compete in the free market.

Receipts for your next two years of operation are indeterminable at this time since no specific activities have progressed to the point where membership or contribution revenue is estimable. Furthermore, your expenses are variable, as they are a function of program activities and you have not determined specific future programs.

Section 501(c)(6) of the Internal Revenue Code of 1954 provides for the exemption of business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues (whether or not administering a pension fund for football players), which are 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 defines a business league as an association of persons (the term "persons" includes legal entities such as trusts and corporations) having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business of a kind ordinarily carried on for profit.

In order to comply with the requirements of the Code and regulations, an organization must meet the following basic tests:

- (a) It must be an association of persons having some common business interest, and its purpose must be to promote this common business interest;
- (b) It must not be organized for profit;
- (c) No part of its net earnings may inure to the benefit of any private shareholder or individual;
- (d) Its activities must 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; and
- (e) Its purpose must not be to engage in a regular business of a kind ordinarily carried on for profit, even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining.

Your organization is not a membership organization of the type contemplated by section 501(c)(6) of the Code. Your associate members have no voting rights and constantly change depending upon the type of problem you are currently engaged in resolving. Your voting members are called Director Members and are identical to the membership of the Board of Directors, which is made up of the founders of your organization.

Your activities primarily consist of lobbying on behalf of business clients that are currently burdened by some governmental regulation. Your "Associate Members" are, in reality, customers who are charged fees dependent upon the extent of services which you render on their behalf. Your purposes and activities involve the conduct of a business ordinarily carried on for profit, namely a lobbying business, and hence are not within the purview of section 501(c)(6) of the Code. The income of your organization will inure to the three directors who have total control of the organization and who may perpetuate themselves in office.

Because your organization is not an association of persons having a common business interest within the meaning of section 501(c)(6) of the Code and because you are engaging in a regular business of a kind ordinarily carried on for profit, with the profit inuring to your directors, you do not qualify as a business league under section 501(c)(6) of the Code.

Your organization has cited Revenue Ruling 61-177, 1961-2 C.B. 117, as justification for claiming exempt status. In that case, the organization was organized and operated primarily for the purpose of promoting a common business interest and bettering the business conditions of one or more lines of business which otherwise met the tests for exemption under section 501(c)(6) of the Code. The organization was exempt as a business league even though its principal activity was the advocacy of legislation which was germane to such common business interest.

Revenue Ruling 61-177 does not apply to your organization because you do not have ordinary "members" who have a common business interest. You are providing specialized services for clients. Although you are advocating legislation in the business area, you do not otherwise meet the tests for exemption as a business league under section 501(c)(6) of the Code.