

Qualification; shopping center merchants' association. 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 or chamber of commerce under section 501(c)(6) of the Code. This Revenue Ruling will not be applied to taxable years beginning before January 1, 1974, with respect to organizations that have been relying upon ruling or determination letters issued under section 501(c)(6); Rev. Rul. 64-315 clarified.

Advice has been requested whether the nonprofit organization described below qualifies for exemption from Federal income tax as a business league or chamber of commerce under section 501(c)(6) of the Internal Revenue Code of 1954.

The organization is a membership association composed of all the business tenants and the corporate owner of a shopping center. Membership in the organization is mandatory under the terms of the tenants' leases, and no business concerns or firms, or individuals, other than tenants of the center, are permitted membership. The physical facilities of the center are typical of those found in many metropolitan areas and consist of a large complex of store, shop, and other commercial space, a covered mall and walks, roadways, and parking areas, all of which were designed and developed to be owned and operated as a single, integrated real estate enterprise. In the case of retail concerns, rentals are usually geared either in whole or in part to sales volume.

The organization serves in part as a means for communication and exchange of views between the owner and the tenants of the center respecting matters relating to their tenant-owner relationship, and in part as a cooperative or governing body for developing and enforcing rules respecting the maintenance and policing of the shopping areas, walkways and parking areas, hours of business, and similar matters of common concern to the tenants and the owner. The organization also arranges and conducts various seasonal and other promotional affairs that are designed to stimulate the overall volume of trade in the center.

Income of the organization is primarily from membership dues assessed according to the type of business concern and the extent of the business space rented and, in most instances, like the rentals mentioned above, is geared in whole or in part to sales volume. Expenditures are primarily for internal administrative and office expenses, and for arranging, publicizing, and holding its various promotional affairs.

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues, chambers of commerce, and 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 defines a business league as an association of persons having some common business interest, the purpose of which is to promote such interest and not to engage in a regular business of a type ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade, and its activities should be directed to the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons.

It has been established as a matter of statutory construction that in employing popular names in describing many of the organizations exempted under Subchapter F of the Code, such as 'labor organizations,' 'fraternal beneficiary societies,' 'business leagues' and 'chambers of commerce,' and others, Congress is presumed to have had reference to organizations as they actually exist and are commonly known. U.S. v. Cambridge Loan and Building Co., 278 U.S. 55 (1928), VII-2 C.B. 290 (1928).

Commercial Travelers Life and Accident Ass'n. v. Rodway, 235 Fed. 370 (1913). This means that where the requisite characteristics of the organizations exempted by such terms are not otherwise fixed by regulations or statute, the Service is required to look to the characteristics of such organizations as they have commonly come to be known in actuality. It means also that successful applicants for exemption must be shown to possess at least the essential characteristics of the class of organizations commonly known by such names.

In the case of a chamber of commerce or similar organization, the common business interest is usually the general economic welfare of a community. Membership is voluntary and open generally to all business and professional men in the community. It has been accepted that an organization seeking exemption from Federal Income tax under section 501(c)(6) of the Code as a chamber of commerce or board of trade must be one whose efforts are directed at promoting the common economic interests of all the commercial enterprises in a given trade community. Retailers Credit Ass'n of Alameda County v. Commissioner of Internal Revenue, 90 F.2d 47 (9th Cir. 1937); Northwestern Municipal Ass'n. v. United States, 22 F.Supp. 18 (D.Minn. 1938), aff'd, 99 F.2d 460 (8th Cir. 1938). Trade associations or business leagues are 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.

Since the organization in this case is not structured along particular industry or business lines but is composed of various types of business concerns and commercial endeavors comprising the shopping center in question, its right to exemption, if any, must rest on its characterization as a chamber of commerce or board of

trade or similar organization. It is apparent at the outset, however, that neither the compulsory membership feature of the present organization nor the fact that its membership is determined without reference to any geographical or political community in the usual sense is characteristic of such organizations.

This is evident with respect to the matter of compulsory membership. A well-known and generally accepted definition of a trade association applied by the Department of Commerce, for example, describes such an organization as:

* * * a nonprofit, cooperative, voluntarily-joined organization of business competitors designed to assist its members and its industry in dealing with mutual business problems in several of the following areas: accounting practices, business ethics, commercial and industrial research, standardization, statistics, trade promotion, and relations with government, employees and the general public. (Emphasis supplied.)

Judkins, National Associations of the United States viii (Department of Commerce ed. 1949), cited in Webster, The Law of Associations 225 (1971). See also Department of Commerce, Selected Trade Associations of the United States 1937 ed., pg. 2.

Events related to the original enactment of what is now section 501(c)(6) of the Code also reflect that the organizations referred to at that time as chambers of commerce and similar organizations were voluntary associations of a semi-public nature; also, that they were organizations whose membership was representative of the commercial interests of a trade area comprising a broad segment of the general public such as a city or similar geographical or political area, See, for example, the hearings before the Senate Committee on Finance on H.R. 3321, 63rd Cong., 1st Sess. 2001, 2003 (1913) in which the Chamber of Commerce of the United States commented extensively on the character of the type of organizations in question.

Membership in the present organization is not voluntary in the sense that its members are free to join or not to join depending upon their interests as members of a business community.

Membership is compulsory and is imposed by the landlord owner of the shopping center as a matter of contract in connection with occupancy of facilities of the shopping center. Because of the restricted nature of the membership, which is limited solely to the owner and tenants of the single real estate facility comprising the shopping area, the organization also lacks the essential element of public representation with respect to its membership and the 'community' it purportedly serves which is characteristic of organizations commonly accepted as being chambers of commerce or similar organizations.

The public nature of the communities typically represented by

such organizations is reflected, for example, in acceptance by the courts of standard dictionary and legal definitions that refer to such communities as comprising 'a city' or 'a locality, a country, or the like.' See *Crooks v. Kansas City Hay Dealers' Ass'n.*, 37 F.2d 83, 85 (8th Cir. 1929) and *Retailers' Credit Ass'n of Alameda County v. Commissioner of Internal Revenue*, supra, at p. 51. The community represented by the membership of the present organization is a closed, nonpublic aggregation of commercial enterprises having none of the common characteristics of a community in the usual geographical or political sense.

Rev. Rul. 59-391, 1959-2 C.B. 159, holds that an organization whose membership is so restricted that each member represents a different trade, business, occupation, or profession does not qualify for exemption under section 501(c)(6) of the Code. This Revenue Ruling stresses that the members of such an organization have no common business interest other than a mutual desire to increase their individual sales and that the activities of such an organization are not directed to the improvement of business conditions of one or more lines of business. It notes particularly that the membership characteristics of such an organization also preclude its classification as a local board of trade or chamber of commerce, observing in that respect that 'such organizations do not limit their membership in the manner employed in the instant case.' The restriction of membership to the tenants and owner of the shopping center in the present case similarly precludes the organization from having the basic characteristics required to qualify the organization for exemption under section 501(c)(6).

The absence of essential characteristics of a chamber of commerce or similar organization with respect to the present organization is not only evident in the structural features of the organization noted above, but is also reflected in the nature of its operations.

Both the compulsory membership feature of the organization and the limitation of its membership to the tenants and owner of the center are directly related to the owner-tenant relationship of the parties comprising the organization and are designed to serve the owner's individual business interests in the operation of the center. The organization's activities thus include those of a landlord-tenant association and as such directly assist the owner in facilitating the management and operation of his real estate enterprise.

To the extent the activities of the organization serve such purposes, they are not activities 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) of the Code. They serve instead the individual business interests of the owner of the shopping center and, therefore, fall outside the scope of the exemption accorded by section 501(c)(6). Cf. *Produce Exchange Stock Clearing Ass'n. v.*

Helvering, 71 F.2d 142 (2d Cir. 1934); Medical Diagnostic Ass'n., 42 B.T.A. 610 (1940), acq., 1940-2 C.B. 5; Rev. Rul. 68-265, 1968-1 C.B. 265.

The same conclusion applies with respect to those phases of the organization's activities that relate to such matters as the maintenance and policing of the shopping areas, walkways and parking areas, hours of business, and similar functions. These activities are characteristic of a tenants' association, rather than of a chamber of commerce or trade association and fall short of supporting any section 501(c)(6) exemption for the organization because they primarily serve special interests of the members related to their status as tenants of a common facility rather than any common business purposes in relation to the status of the members as representatives of the commercial interests of a community.

Many of the broad-based publicity and promotional activities carried on by the organization are designed to stimulate the general volume of business carried on within the center. It is nonetheless evident that even these activities fall short of supporting any section 501(c)(6) qualification for the organization because the common business interests thereby being served are not the business interests of members of the kind of public business community contemplated by the statute.

On the basis of the foregoing, the organization does not possess the essential characteristics of a chamber of commerce either as they were known as the time of enactment of the exemption accorded under section 501(c)(6) of the Code or as they have come to be known today. It, accordingly, does not meet the test of the statute and, therefore, does not qualify for exemption as a chamber of commerce or similar organization under the exemption provisions of section 501(c)(6).

Rev. Rul. 64-315, 1964-2 C.B. 147, holds that an association of merchants whose businesses constituted a 'shopping center' failed to qualify for exemption under section 501(c)(6) of the Code where its activities consisted principally of advertising the individual businesses of its members. That ruling was primarily addressed to the question of the effect of such advertising on the qualification of the organization for exemption under section 501(c)(6). In no event should it be construed as implying that a merchant's association whose membership is restricted to the tenants of a one-owner shopping center and their common lessor, and whose activities are directed solely to promoting the general interests of its members, may be exempt under section 501(c)(6).

Rev. Rul. 64-315 is hereby clarified.

Under the authority contained in section 7805(b) of the Code, this Revenue Ruling will not be applied to taxable years beginning before January 1, 1974, with respect to organizations that have been relying upon ruling or determination letters of exemption

issued under section 501(c)(6).