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INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

Director, EO Examinations  
Internal Revenue Service  
1100 Commerce Street  
MC 4900 DAL  
Dallas, TX 75242

APR 22 2008

UIL: 9999.98-00

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification Number:

Years Involved:

LEGEND:

M =

X =

Y =

Z =

year r =

year s =

year t =

b =

c =

d =

e =

f =

g =

h =

ISSUES:

1. Does X qualify for tax exemption under section 501(c)(6) of the Internal revenue Code ("Code")?
2. If it is determined that X fails to qualify for exemption under section 501(c)(6) of the Code, would X qualify for exemption under another code section.

FACTS:

X was organized as an unincorporated association in the state of M in year r, and was subsequently recognized as an organization exempt from federal income tax under section 101(7) of the Internal Revenue Code [which corresponds to section 501(c)(6) of the Internal Revenue Code of 1986]. X was later incorporated as a nonprofit corporation on year s, and was recognized by the Service as being exempt from federal income tax under section 501(c)(6) of the Code on year t.

X was established and has been operated for the purpose of promoting public safety in the area of b. To accomplish this purpose, the organization promotes a standard code established by an organization exempt under section 501(c)(3) for the manufacturing of b as its own code for the repair and alteration of the items. Its activities, conducted for members and nonmembers, are directed towards the advancement of this purpose. The organization limits its membership to officials, in the U.S. and Canada, who are charged with enforcing the codes, with an official's membership terminating when its responsibility for enforcing the codes is terminated.

X's focus is:

- To promote uniform administration and enforcement of laws, rules and regulations pertaining to b and their parts and appurtenances [collectively, Type 1 items] and c and their appurtenances [collectively, Type 2 items].
- To promote standards for acceptance of Type 1 and Type 2 items to assure safe operation.
- To promote one uniform code and one standard stamp to be placed on all registered b, parts and other objects constructed in accordance with the requirements of that code.
- To promote one standard of qualifications and examinations for inspectors who enforce the requirements of said code.
- To gather and make available information and statistics useful to the members, inspectors and others interested in safety.
- To promote the Z facility for the safety-testing of certain devices and other b appurtenances, and to disseminate the test results in the interest of public safety.

The uniform standards for b and for d and e and f, which X helps promulgate, maintain and enforce, are contained in two codes, Y and Z codes. The Y code, which pertains to the initial manufacture of b and c items, is published by Y, an organization exempt from federal income tax under section 501(c)(3) of the Code. This code has been adopted in all 50 states, 16 U.S. cities, counties, and territories, 13 provinces and territories of Canada, and by federal regulatory agencies including the U.S. Department of Labor and the U.S. Department of Transportation. The Z code is in-service safety standard for repairs and alterations and is published by X. The Z code has been adopted in 47 states, 8 U.S. cities and territories, and 12 Canadian provinces and territories.

From its inception, X's membership has been restricted to the following:

- Chief inspector, or
- Other officials who are charged with the enforcement of b and c inspection laws of a jurisdiction ("Member Jurisdiction") that has adopted and enforces one of more sections of the Y code.

Membership is open to officials from any country or jurisdictions within that country. X members are currently drawn from jurisdictions in the U.S. and Canada. All Member Jurisdictions must maintain an office to enforce the requirements of the code. Those seeking initial membership after a certain date are required to register b with X. Membership in X terminates when the chief inspector or other official ceases to be employed in that capacity by the Member Jurisdiction or when the Member Jurisdiction no longer adopts and enforces one of more sections of Y Code.

X engages in the following activities in furtherance of its stated purposes:

- Assisting with incident investigations at the request of the jurisdictional chief inspector;
- Auditing manufacturers, assemblers and repairers of b, c, e and f, to ensure the devices are designed, constructed, tested and repaired in accordance with the Z and Y codes as applicable. All audit teams are comprised of or include one or more employees or representatives of X;
- The registration of data reports that manufacturers or other organizations are required to prepare to certify that an item has been produced, repaired or altered in accordance with the Y or Z codes. The manufacturers' reports include information regarding the manufacturer's name; the inspector; compliance with the standards, technical data; the type of equipment; an identifying number; original code of construction; and a description of the work done. X retains a copy of a report in perpetuity and sends a copy to the appropriate jurisdictional authority. X states that it is the only central repository for the information.
- Providing copies of registered data reports, which contain technical information that allows owners and others to make proper repairs.
- Conducting reviews and surveys for compliance with Y or Z code. The activities include reviews of quality control manuals for programs or devices; reviews of manufacturers' and organizations' quality control programs; and, audits of organizations for accreditation and for compliance of control systems.
- The testing and certification of items for compliance with X or Y standards. This includes certification related to design types; parts testing; visits to manufacturers to test parts at either the laboratory or a non-independent laboratory; visits to non-independent laboratories to witness testing of a part; and, independent reviews of tests performed at other testing laboratories as required by the Y code and X's certification program. X has established its own laboratory for testing the performance and relieving capacity of devices. It supports industry research and development of new design

concepts and validates new concepts for industry technical standards. Educational institutions are also given access to the laboratory's facilities.

- Providing technical training courses for inspectors on the requirements of the Y and Z codes;
- Providing seminars on industry topics such as the quality control, manufacture, repair and alteration for b; seminars covering all areas related to the codes; miscellaneous manufacturer seminars; seminars regarding understanding the mandatory sections of the Y code and how to complete forms to comply with the Y and Z codes; and, seminars for those who review quality control programs.
- Operating accreditation programs for compliance with the Z code including stamp accreditation; operating an accreditation program for organizations that own and operate items and employ commissioned inspectors; providing special endorsements; registering authorizations (for maintaining permanent records); and, issuing credentials (commissions both original and renewed) to authorized individuals, government employees and other individuals who perform inspections.
- Providing blank copies of data forms which manufacturers and organizations are required to complete and copies of the codes.

X's constitution provides that general office expenses and all business expenses are to be paid from fees for services. The fees charged to members and non-members and they are described in various publications and include actual costs for travel, food, lodging and incidentals for onsite visits. X states that the fees that it charges for its services are set at an amount needed to cover its cost of operations and to provide a reasonable operating reserve. Its constitution requires that an operating reserve be maintained at a level not less than g nor more than h of the most recently approved operating expenses and capital expenditures budgets. If the operating reserve falls below or exceeds these levels, then the fees are to be revised and adjusted as necessary to compensate for any deficiency or surplus.

#### **A. Qualification for exemption under section 501(c)(6) of the Code**

##### **LAW:**

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 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 ("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.

In Commissioner v. Chicago Graphic Arts Federation, Inc. 128 F.2d 424 (7<sup>th</sup> Cir. 1942), the court held that in order to come within the exemption as a business league, an organization's activities must be directed to the improvement of business conditions or to the promotion of the general objects of one or more lines of business as distinguished from the performance of particular services for individual persons.

In Retailers Credit Association of Alameda County v. Commissioner of Internal Revenue, 90 F.2d 47 (9<sup>th</sup> Cir. 1937), affirming Retailers Credit Association of Alameda County v. Commissioner of Internal, 33 B.T.A. 1166 (1936), the Court described a chamber of commerce as relating to all businesses in a particular geographic location while a board of trade may relate to only one or more lines of business. The Court explained: 'There is no special significance to the words 'business league.' If the persons of an association have some common business interest then the association is a 'business league.' The common business interest of the members of petitioner is the betterment of credit conditions. Therefore it is a business league. All business leagues are not exempt, however. Only those having particular purposes, which do not have the prohibited purposes, and which operate in the prescribed way are exempt." The Court also stated that a taxpayer has the burden of proof to prove exemption under this Code section.

In Associated Industries of Cleveland v. C. I. R., 7 T.C. 1449 (1946), the court defined the term 'business' as being very comprehensive and embracing everything about which a person can be employed.

In National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472 (1979), the Court held that an organization that did not draw its members from a broad base and whose activities reflected its limited constituency failed to qualify for exemption under section 501(c)(6) of the Code. The Court reasoned that the term "line of business" is interpreted to mean either an entire industry or all components of an industry within a geographic area. It explained that the history of section 1.501(c)(6)-1 of the regulations and its "line of business" requirement supported a determination that an organization that was not tied to a particular community and is not industry-wide should not be exempt under section 501(c)(6).

In National Prime Users Group, Inc. v. United States of America, 667 F. Supp. 250 (1987), the Court held that an organization that served the needs of users of a specific brand of computer promoted only a segment of a line of business and was not exempt under section 501(c)(6) of the Code. See also, Guide International Corporation v. United States of America, 948 F.2d 360 (7<sup>th</sup> Cir. 1991).

Rev. Rul. 58-294, 1958-1 C.B. 244, describes an association that limited its membership to persons, firms, or corporations licensed to manufacture and sell a specified product was found to be furthering the business interests of its members rather than improving the business conditions of one or more lines of business. Therefore, the association did not qualify for exemption under section 501(c)(6) of the Code.

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) of the Code.

Rev. Rul. 73-411, 1973-2, C.B. 180, clarifying Rev. Rul. 64-315, 1964 C.B. 147, holds that in the case of a chamber of commerce or similar organization exempt under section 501(c)(6) of the Code, membership must be open generally to all business and professional men in the community. The revenue ruling discusses 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 describes 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.

Rev. Rul. 83-164, 1983-2 C.B. 95, holds that an organization whose primary activity is promoting the common business interests of users of one particular brand of computers does not qualify for exemption from federal income tax as a business league under section 501(c)(6) of the Code. Such organizations fail to meet the line of business test as they serve only a "segment of a line of business."

#### ANALYSIS:

Section 501(c)(6) of the Code provides for the exemption from federal income tax of chambers of commerce, business leagues, and similar organizations provided certain requirements are satisfied. An organization claiming exemption under section 501(c)(6) has the burden of proving that it qualifies for exemption under the Code section. In addition, the organization seeking exemption must bring itself strictly within the provisions of section 501(c)(6). Retailers Credit Association of Alameda County v. Commissioner of Internal, 33 B.T.A. 1166.

A requirement under section 501(c)(6) of the Code is that members of the organization must have common business interest, and the organization promotes such common business interest. Section 1.501(c)(6)-1 of the regulations. A section 501(c)(6) organization must direct its efforts towards serving the common business interests of the members of a single line of business or of the members of closely related lines of business within an industry. Section 1.501(c)(6)-1. See also, Retailers Credit Association of Alameda County, 90 F.2d 47; Chicago Graphic Arts Federation, Inc., *supra*; Rev. Rul. 73-411, *supra*. X was specifically formed to promote public safety through the promulgation of

specific uniform safety codes (the Y code and subsequently the Z code). This is not the promotion of a common business interest and, hence, not an exempt purpose under section 501(c)(6).

A line of business as described in section 501(c)(6) of the Code has been interpreted as meaning an entire industry or all components of an industry within a geographic area. National Muffler Dealers Association, Inc., *supra*. See also, National Prime Users Group, Inc., *supra*; Rev. Rul. 58-294, *supra*; Rev. Rul. 68-182, *supra*; Rev. Rul. 83-164, *supra*. X represents only a segment of a line of business because its activities benefit a limited constituency which X serves. When it was established, X excluded from its membership chief inspectors and similar officials employed by jurisdictions that had not adopted the Y code, and later the Z code. Member jurisdictions were required to maintain offices for the enforcement of the Y code, and if they no longer were charged with the code's enforcement, their membership terminated. X accepts as members only those chief inspectors whose profession requires them to enforce the Y and Z codes. Membership in X is restricted and does not have open membership. This does not meet the requirements under section 501(c)(6). See Rev. Rul. 73-411, *supra*. (requirement of an open membership).

Accordingly, we have determined based on all the facts and circumstances that X does not qualify as an organization under section 501(c)(6) of the Code.

#### **B. Qualification for exemption under section 501(c)(4) of the Code**

##### LAW:

Section 501(c)(4) of the Code provides that a civic organization not organized for profit but operated exclusively for the promotion of social welfare is exempt from Federal income tax.

Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvement.

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4<sup>th</sup> Cir. 1962), "social welfare" is defined as being the well-being of persons of a community. The benefits provided by a social welfare organization must be municipal or public.

In People's Educational Camp Society, Inc. v. Commissioner of Internal Revenue Service, 331 F.2d 923 (2<sup>nd</sup> Cir. 1964), the Court characterized the promotion of social welfare as involving the serving of "purposes beneficial to the community as a whole," or the promotion of the "welfare of mankind" in the manner generally of the charitable,

educational, and religious organizations exempted by like provisions of the Code. It explained that since the exemption granted to social welfare and like organizations is made in recognition of the benefit which the public derives from their social welfare activities, it is only fair to determine a particular organization's right to an exemption largely on the basis of the effect its operations have on the public.

Rev. Rul. 79-316, 1979-2 C.B. 228, describes an organization that was found to be exempt under section 501(c)(4) of the Code. The organization tried to prevent liquid spills, primarily of oil, and to contain and clean up spills within a city port area. It provided its services to members and nonmembers for the same fees. It was an approved discharge cleanup organization under the state law dealing with the prevention of oil spills and pollution control. As such, it was required to clean up spills of unknown sources when requested by state authorities. Because of their membership in the organization, certain members could meet part of the state licensing requirements for their facilities and they could make required showings of financial responsibility. The organization visited members' facilities to give technical assistance and to recommend improvements in handling liquids. It disseminated information pertaining to liquid spillage prevention and cleanup to the port's users and to other spillage cleanup organizations throughout the country. In addition, the organization trained members of the city fire department and personnel of its member organizations in their effective use of equipment it had acquired to clean up the spills. In the event of a spill, the U.S. Coast Guard called the organization to the scene while the fire department contained the spill. After the spill was contained, the organization moved in with trained personnel to clean up the spill under the general supervision of the U.S. Coast Guard. This arrangement was part of the Coast Guard's Pollution Contingency Plan which the organization assisted in preparing. By preventing and cleaning up liquid spills that endanger marine life and foul recreational beaches and shorefront property in the port area, the organization was primarily engaged in activities designed to benefit all inhabitants of the community served by it. By cleaning up spills of members and nonmembers, identified and unidentified, the organization acted to prevent deterioration of the port community and not merely to prevent damage to facilities of its members. In aiding compliance with applicable state law, benefits conferred by the organization extended to all members of the port community and not just to its members. Therefore, any benefits to members were characterized as incidental to the primary activity of the organization. It was determined that since charges for the organization's services were sufficient only to cover the cost of labor, equipment, and supplies used, the organization was not carrying on business with the general public in a manner similar to organizations operated for profit.

#### ANALYSIS:

In order to be recognized as exempt under section 501(c)(4) of the Code, an organization must be operated exclusively for the promotion of social welfare. Section 501(c)(4) of the Code. Such an organization engages in promoting in some way the common good and general welfare of the people of the community. Section 1.501(c)(4)-1(a)(2)(i) of the regulations.



An organization that promotes social welfare directs its efforts towards providing benefits to the community. See, Lake Forest, Inc., *supra*; People's Educational Camp Society, *supra*. In determining whether an organization is promoting the public welfare, the activities of the organization must be examined to see who derives a benefit from them and the degree of benefit conferred.

Based on all the information in the administrative file, we conclude that the X qualifies for exemption under section 501(c)(4) of the Code. The purpose for which X was created is like that of the organization described in Rev. Rul. 79-316, *supra*. X presented historical and statistical data detailing the safety hazards that were (and still are) present in the use of b, c, and similar items. The safety hazards exist in the workplace, the home, public transportation system, and education and recreation facilities. Like the entity in this revenue ruling, X was created to provide support to the public sector in dealing with hazardous situations so as to safeguard the well being of the community. X established a uniform method by which to enforce safety standards across jurisdictions, so they could accomplish this goal. X promotes a standard qualification and examinations for inspectors who enforce the Y code through inspection of manufactured items. By training and certifying nongovernment inspectors, X extended the safety inspections to times during the manufacturing process when the inspectors would not have access to the b. Later, X developed its own code to be used in the repairing and alteration of the items, which would fall outside the government inspector's jurisdiction under the Y code. It also extended the codes to related and similar items such as d, e, and f.

As with the organization described in the Rev. Rul. 79-316, *supra*, X works with government officials to train and assist government personnel. It also assists in investigations of incidents involving b. X makes available training and educational seminars on the Y and Z code standards to manufacturers, their in-house inspectors, and other organizations that perform repairs and alterations. X is the sole central repository for registration information on b. X allows individuals and the community access to information that can be used for investigations, repairs, and alterations of b and c. X also maintains b and c accident data.

X provides uniform standards for determining the skill and expertise levels of those charged with enforcing safety laws and regulations. X operates accreditation programs, audits, reviews, testing, and certification programs to meet this objective. X also operates a testing laboratory for certifying c devices. In addition to the testing, the laboratory is used for research and development of new design concepts and validating industry technical standards. X allows educational institutions to make use of the facilities.

X's activities support a finding that X benefits the community as a whole. People's Educational Camp Society, *supra*. As discussed previously, there are significant dangers in the use of b and c, whether as a problem in the manufacturing, the alteration or repair, from daily use or from a lack of knowledge on the part of the owner. It is beneficial to the whole community that X is involved in providing technical assistance, oversight, audit, review, and

onsite visits. Although these activities benefit manufacturers, inspectors, and repairers, they are incidental to the organization's primary activity of ensuring the public safety.

Accordingly, we have determined that based on all the facts and circumstances that X qualifies as an organization described in section 501(c)(4) of the Code.

CONCLUSIONS:

1. X is not an organization described in section 501(c)(6) of the Code.
2. X qualifies as an organization described in section 501(c)(4) of the Code.

A copy of this memorandum is to be given to the organization. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

-END-