



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200833031**
Release Date: 8/15/2008

Date: May 23, 2008

UIL: 501.06-00
501.06-01

EO

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(6). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: MAY 23 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

M = Name of Organization
N = Name of Region/City
O = Name of Organization
P = Name of State
Q = Date

UIL INDEX:

501.06-00
501.06-01

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(6) of the Code. The basis for our conclusion is set forth below.

Issues:

1. Does the applicant (hereinafter 'M') which provides sales facilities to vendors to sell products, qualify for exemption from Federal income tax under section 501(c)(6) of the Code?
2. Does 'M' qualify for exemption from Federal income tax under any other section of 501(c) of the Code?
3. Does 'M' qualify for exemption from Federal income tax under section 521 of the Code?

Facts:

You were formed as an unincorporated association on Q. According to your Bylaws, your purpose is to encourage and establish a successful farmers' market in the N valley. It is indicated the market will provide two benefits: (1) provide an avenue by which growers/artisans can sell directly to the consumer and realize a profit from their land and efforts; and (2) provide

a means by which farmers/artisans and consumers can communicate directly regarding community based food production, locally made products and the health benefits of fresh produce.

You indicate that you are organized on a membership basis. You have three classes of members: vendors (farmers/artisans who sell products at the market; \$ /year annual dues), community members (person/organization who supports the association; \$ /year annual dues) and junior members (person 16 years old or younger who markets/assists in the marketing of products at the market; no annual dues). Only vendor and community members have voting rights. There are currently members comprised of vendor members (farmers and artisans) and community members (community, non-profits and other). **Vendors members comprise approximately percent of your total membership.**

Vendor class members control your Board of Directors. Based on Article 4 of your Bylaws, "The business affairs of the Association shall be managed by an initial Board or Directors consisting of nine (9) persons. A maximum of six Board members and a minimum of five Board members must be filled by Vendors. The balance of the Board may be filled by Community Members."

Your market runs from May through October every Saturday and Sunday from 9 a.m. to 1 p.m. You lease the parking lot from the City of N to hold your market. The lease agreement provides that five percent of the gross stall rental revenues will be paid to City of N for maintenance and improvements to the market facility. In addition, Provision H of the lease contract states that M will "...strive to maintain access to State and Federal food subsidy programs including but not limited to Women Infants and Children (WIC) funding and such other programs available to Farmers' Market. [M] is encouraged to provide health and nutrition education programs."

Participating market vendors do not have to be organization members. All fresh farm products or crafted products sold at your market must be produced in the State of P or in counties which border the State of P. You charge daily vendor fees of \$ /day for vendor members and \$ /day for non-member vendors. Reserved space dues are \$ /year. The average number of vendors participating is . An average breakdown of the type of vendor is as follows: % selling produce, % selling produce products, % selling arts/crafts and % others (i.e. nonprofit and other services such as massage therapist, network information booth). **You indicate that you spend approximately percent of your time on the farmers' market activity.**

Fees are your primary source of income. Approximately percent of your income is derived from fees. Funds are used to pay salaries, market facility rent, advertising, printing, and other market expenses.

You state that you help to provide education to the public concerning agriculture and agricultural products. You have indicated that educational services are provided by participating vendors, who inform customers concerning the products they sell, the benefits of fresh produce, supporting local growers and products. You are currently scheduled to participate in the local health fairs offered in the N school district. You also partnered with Q in holding its first 5-K run. You indicate that the market provides a venue for the community to get fresh fruit and vegetables as well as allowing seniors and the poor to use coupons issued by State and Federal programs to improve nutrition. **You state that you spend approximately**

percent of your time on these community activities.

Law:

Section 501(c)(6) of the Internal Revenue Code 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 having a common business interest, the purpose of which is to promote such common interest and not to engage in a regular trade or business of a kind ordinarily carried on for profit. 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 kind of business ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only enough income to be self-sustaining, is not a business league.

Section 1.501(c)(4) 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 community.

Revenue Ruling 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 individual persons as distinguished from the improvement of business conditions generally.

Revenue Ruling 59-234, 1959-2 C.B. 149 provides that a real estate board whose primary purpose is the operation of a multiple listing services is considered to be rendering particular services for its members and is not exempt under Code section 501(c)(6), where the multiple listing service accounts for most of its income and expenses, since the provision of this function serves as a convenience and economy to its members.

Revenue Ruling 64-315, 1964-2 C.B. 147 describes an association of merchants whose businesses constitute a shopping center, and which engages exclusively in radio, television, and newspaper advertising in order to attract customers to the shopping center. The ruling holds that the organization does not qualify for exemption under Code section 501(c)(6) since its primary purpose and activity, advertising, constitutes the performance of particular services for

members.

Revenue Ruling 68-264, 1968-1 C.B. 264 defines a particular service for the purpose of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to the members of the organization in the operation of their businesses.

Revenue Ruling 71-175, 1971-1 CB 153 holds that an organization whose purposes include the improvement of the health of the community it serves as well as the promotion of the profession of medicine, and whose activities include the operation of a telephone answering service for a fee for its members in addition to the maintenance of a medical library and the distribution of a monthly bulletin informing its members on new developments in the field of medicine, does not qualify for exemption under section 501(c)(6) of the Code due to the fact that its activities include the rendering of particular services for members and serves as a convenience of economy to members in the operation of their businesses.

Revenue Ruling 73-349, 1973-2 C.B. 179 describes an organization formed to purchase groceries for its members on a cooperative basis. Membership was open to all residents in the community. It was held that the organization was operated primarily for the benefit of members and did not qualify for exemption under Code section 501(c)(4).

Revenue Ruling 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 interest 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 interest 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.

In Revenue Ruling 78-131, 1978-1 C.B. 157, an organization that sponsored an annual community art show was held to qualify under Code section 501(c)(4). Any adult or high school student in the community could enter artwork in the show, which was free to the public. Artworks might or might not be offered for sale, at the artist's option. If sold, the organization collected a 10% commission, only from adult entrants. Entry fees were also charged only to adult entrants. In this case, the fact that the show was a once-a-year event operated by volunteers, that not all artists offered works for sale, and that students were offered free participation led to the conclusion that the show was noncommercial and served primarily to benefit the community by exposure to art and by encouraging participation in the arts.

In Revenue Ruling 78-132, 1978-1 C. B 157, an organization formed to facilitate the exchange of personal services among members did not qualify for exemption under section 501(c)(4). The organization was held to be primarily providing economic benefits for its members, even though no direct monetary exchange occurred.

In *Commissioner v. Lake Forest, Inc.*, 305 F.2d 814 (4th Cir. 1962), it was held that a corporation that provided housing on a cooperative basis was a private self-help enterprise with only an incidental benefit to the community as a whole.

Application of Law:

Section 501(c)(6) of the Code provides for the exemption of business leagues which are not organized for profit and no part of the net earnings of which inures to the benefit of any individual or private shareholder. The Regulations section 1.501(c)(6)-1 define a business league as an association of persons having a common business interest, the purpose of which is to promote the common interest and not to engage in a regular trade or business of a kind ordinarily carried on for profit. *The Regulations state that 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.*

As stated above, the regulations do require that the activities of a business league be directed at the improvement of business conditions of one or more lines of business. Based on the administrative record, you are not promoting the improvement of the business conditions of one or more lines of business or *promoting the general economic welfare of all of the commercial enterprises in a given trade community*. Your participating vendors include not only agricultural growers, but artisans/craftsman, which suggests that the promotion of a common line of business is not present. You are simply providing a convenient place for individuals to market their products for their private benefit. By providing such a service, you are not the type of an organization for which an exemption from tax under section 501(c)(6) of the Code was intended as affirmed by Revenue Ruling 73-411.

Your primary activity is the operation of a farmers market at which members and non-members rent vendor space to sell their goods and services to the general public. You are providing your vendors/artisans a convenience and economy in the conduct of their businesses, the sale of crops and crafts. Analogous to the organizations described in Revenue Rulings 58-224, 59-234, 64-315, and 71-175, your primary purpose is the provision of particular services to the individual business operators by affording selling opportunities to them to sell their products.

The provision of sales facilities and advertising services are activities which provide your vendors and artisans with a convenience or economy in the operation of their own businesses. As stated in Revenue Ruling 68-264, such an activity is defined as a particular service. By primarily performing this activity, you are primarily engaged in an activity proscribed under section 1.501(c)(6)-1 of the regulations, and therefore, you are not entitled to tax exemption under section 501(c)(6) of the Code.

Exemption consideration under Code section 501(c)(4) is also addressed. Code section 501(c)(4) provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Although your organization participates in community events and allows local non-profit groups to use space for publicizing their programs and services, you are primarily organized and operated as an economic convenience for your vendors similar to the organization described in

Commissioner v. Lake Forest Inc., supra. It is not unusual for commercial entities, such as shopping malls, to sponsor entertainment and public service events as a means of attracting potential customers or promoting public goodwill. Additionally, the educational aspect provided by your vendors also relate largely to the promotion of their own products.

Unlike the organization described in Revenue Ruling 78-131, you are not operated in a noncommercial manner to primarily benefit the community through education. Community activities merely comprise _____ percent of your overall activities. Rather, your primary purpose is to operate for the economic benefit of your vendors comparable to the organizations described in Revenue Rulings 73-349 and 78-132. Accordingly, we find that you do not qualify for exemption under Code section 501(c)(4).

Code section 521 provides for qualified exemptions from Federal income tax for certain farmers' cooperatives. These include cooperatives marketing the products of members and other producers. Marketing cooperatives collect the proceeds from selling members' products and allocate net profits to member patrons on the basis of the quantity or value of the products furnished by the patrons.

While you are organized on a membership basis, you are not organized on a cooperative basis. Further, your vendors include nonmembers and persons who are not producers of agricultural products within the meaning of Code section 521. Accordingly, we conclude that you do not qualify for exemption under section 521 of the Internal Revenue Code.

Applicant's Position:

Per your response dated October 16, 2007, you asserted that one of your goals is to provide a venue for the community to get fresh fruit and vegetables. Moreover, you maintained that you also serve to provide a venue where vegetable and fruit coupons issued by the Federal and State governments to the poor and senior citizens for improved nutrition can be used. Additionally, you stated that about _____ percent of the sales at the market are the result of the use of government issued coupons by the poor and elderly. You reiterated your contention that you meet the requirements for recognition of tax exemption under section 501(c)(6) of the Code.

Service's Response to Applicant's Position:

We agree that your participation in the WIC program does generate some public benefits, however, sales under the WIC program amounts to no more than _____ percent of your overall sales. The public benefits generated as a result of your participation in the WIC program appear limited and there is no evidence in the administrative record to show that you are operated *primarily* for the purpose of improving the conditions of the poor and distressed. In fact, your lease contract with the City of N encourages your participation in programs such as the WIC program. You are also not formed *primarily* for educational or social welfare purposes as your community activities merely comprise _____ percent of your total activities. Providing a venue to purchase fresh fruit and vegetables does not distinguish your organization from any other commercial produce market. Based on the information in the administrative record, your primary purpose is the operation of the farmers market to provide a venue for local farmers/artisans to directly market their products to consumers.

We hold that you do not meet the requirements for tax exemption under section 501(c)(6) as a business league because you are providing particular services to individuals as opposed to promoting the improvement of business conditions in one or more lines of business. Your activities substantially serve the vendor and artisans as a convenience and economy in the conduct of their businesses by providing selling opportunities to them, and that therefore you are rendering particular services for individual persons as distinguished from the improvement of business conditions generally. Since you are primarily engaged in an activity proscribed under section 1.501(c)(6)-1 of the regulations, you are not entitled to tax exemption under section 501(c)(6) of the Code.

Conclusion:

Based on the facts presented above, we hold that you do not meet the requirements for tax exemption under section 501(c)(6) of the Code or under any other section within the Internal Revenue Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether

the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street,
P.O. Box 2508
Cincinnati, OH 45201
Attn:

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
Cincinnati, OH 45202
Attn:

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892