

Internal Revenue Service
Appeals Office
10 Causeway Street
Room 493
Boston, MA 02222

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Contact Hours: 8:00 a.m.-4:30 p.m.

Refer Reply to:

AP:FE:BOS:

In Re:

Tax-Exempt Status

Tax Period(s) Ended:

Date: **JAN 05 2009**

Number: 200914073
Release Date: 4/3/2009

A
B
C

UIL: 9999.98-00

Legend: A = ***** *** ***** & ***** *****

B = ** ***** **

C = ***** , ** ****_****

D = *****

This is a Final Adverse Determination/Ruling Letter concerning your organization's tax-exempt status under the provisions of Section 501(a) of the Internal Revenue Code of 1986 ("Code") as an organization described in Sections 501(c)(6) and/or 501(c)(9) of the Code for all years beginning on or after January 1,

The evidence presented disclosed that you were organized under the laws of the State of _____ on June 29, _____ as an unincorporated association.

Your purposes, as stated in your Constitution and By-Laws are:

[*] To bring together individuals representing businesses and organization, or the employee associations thereof, for the purposes of promoting the concepts of Employee Services and Recreational programs as an integral factor of sound business management principles.

[*] To improve and enhance the competence and skills of Employee Services/Employee Benefits practitioners.

[*] To raise the standards of performance in all phases of Employee Services/Employee Benefits.

[*] To act as a catalyst for implementing various activities, events, and special offers that would be beneficial to the member organizations.

[*] To achieve these purposes, [A] shall not discriminate on the basis of Race, Religion, Gender, Creed, Age, Disabilities, Country of Origin, Sexual Identity, or Sexual Preference.

In response to question 1 of Part II (Activities and Operational Information) states that "[it] is a not-for-profit dedicated to employee buying power from discounts. We exist on membership dues from members. Members pay to join and offer discounts (Associate Members). Others join to receive discounts (General Members). Members are issued a membership card to gain them access to these discounts. We also do occasional H[uman] R[elations] educational seminars."

In response to question 7 of Part II (dealing with the qualifications necessary for membership in the organization) A states that "Associate Members [are] any business or service offering a discount to General Members (members). General Members [are] any company in the () area wishing to join. Membership is then extended to [the] individual employees [of these companies] (members)." A in subsequent correspondence also stated that since it has offered individual memberships, which allow these individuals and families to partake of the discount programs it offers.

In response to question 1 of Part F (dealing with the description of benefits available to members) A states "discounted products and services of more than 165 products and services. Regular educational meetings (quarterly). All programs and savings can be found at "D."

A has published a pamphlet (See Attachment One) which appears to give an overview of the organization and its activities to prospective general membership companies (Employers) associate membership business or service providers (Vendors) and individual and family (General) members.

In pertinent part, A states that "[it] was formed as a not-for-profit organization with the following purposes:

- to bring together individuals representing businesses and for-profit and non-profit organizations or the employee associations thereof within a general geographic area for the purposes of promoting the concept of employee services and recreational programs as an integral factor of sound management.
 - to raise the standard of performance in all phases of employee services and recreational management.
 - to act as the catalyst for implementing various activities, events and special offers that would be beneficial to the member organizations.
1. General Membership is designed for businesses or community organization's interested in enhancing, developing or starting employee service programs within these companies ... all will provide all employees of your company with discounts on goods and/or services that are provided by our Associate Members.
 2. Associate Memberships were created for businesses to offer discounted goods and/or services that benefit or enhance employee programs. These discounts are offered to the [A] general membership. For a small annual fee and a

discount that you set to drive business, Associate Members can promote their products or services to our more than General Members through this website, a monthly newsletter, and special events such as our annual Vendor Fairs (one in the Spring and a second, smaller one in the Fall).

It is the goal of [A] to utilize its collective 'buying power' to maximize the savings available to its members. Associate Members (also referred to as Vendors) agree to offer [A] members discounts on their goods or services that is greater than the price offered the general public. In return, Associate Members who take advantage of our membership network receive a very attractive marketing opportunity and potential return on their investment.

[] makes available to all members ID cards that may be shown at more than 4- dozen area businesses and attractions to receive discounts on the spot. Other discounts require reservations or purchase of tickets/coupons in advance.

[A] offers the member companies the chance to participate in its consignment ticket program ... in the consignment ticket program ... consignment tickets are available for all area amusement parks, many out-of-area entertainment attractions, area car washes, and movie theatres. Because of our buying power and the fact that we don't mark-up the price of amusement park and car wash tickets, these consignment tickets are offered to [A] members at prices lower than can be obtained through _____, or other area organizations. (Underlining added.)

Section 501(c)(6) of the Code exempts from Federal income taxes business leagues, chambers of commerce, real-estate boards, boards of trade or professional football leagues, not organized for profit and no part of its net earnings inures 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 interests, the purpose of which is to promote such common business 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."

Section 1.501(a)-1(c) of the Regulations provides that "the words 'private shareholder and individual' in Section 501 refers to persons having a personal and private interest in the activities of the organization."

Section 501(c)(9) of the Code exempts from Federal income taxes voluntary employee business associations (VEBA) providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or designated beneficiaries, if no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-1 of the Regulations provides that an organization must meet all of the following requirements:

- a) the organization is an employees' association;
- b) membership in the association is voluntary;
- c) the organization provide for the payment of life, sick, accident, or other similar benefits to its members or their dependents, or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits; and
- d) no part of its net earnings inures, other than by the payment of the benefits referred to in paragraph (c) of this section, to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2 of the Regulations provides that "the membership of an organization described in Section 501(c)(9) must consist of individuals who become eligible to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Typically, those eligible for membership in an organization described in Section 501(c)(9) are defined by reference to a common employer, to coverage under one or more collective bargaining agreements, to membership in a labor union, or to membership in one or more locals of a national or international labor union ... Exemption will not be denied merely because the membership of an organization includes some individuals who are not employees provided that such individuals share an employer-related bond with the employee-member ... an association will be considered to be composed of employees if 90% of the total membership of the association on one day of each quarter of the association's taxable year consists of employees."

Section 1.501(c)(9)-2(b) of the Regulations provides that "the term 'employee' includes the following:

1. an individual who is considered an employee;
2. an individual who becomes entitled to membership in the association by reason of being or having been an employee; or
3. the survivor spouse and dependents of an employee."

Section 1.501(c)(9)-2(c)(1) of the Regulations provides there must be an entity, such as a corporation or trust established under applicable local law, having an existence independent of the member-employees or their employer.

Section 1.509(c)(9)-2(c)(2) of the Regulations provides that membership in an association is voluntary if an affirmative act is required on the part of an employee to become a member rather than the designation as a member due to employee status. However, an association shall be considered voluntary although membership is required of all employees, provided that the employees do not incur a detriment as a result of membership in the association.

Section 1.509(c)(9)-2(c)(3) of the Regulations provides that an organization must be controlled by –

- i. its membership;
- ii. independent trustee(s); or

- iii. trustees or other fiduciaries at least some of whom are designated by, or on behalf of, the membership.

Section 1.509(c)(9)-3(d) of the Regulations provides that the term "other benefits" include only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if -

1. It is intended to safe guard or improve the health of a member or a member's dependent, or
2. it protects against a contingency that interrupts or impairs a member's earning power.

Section 1.509(c)(9)-3(e) of the Regulations provides that paying vacation benefits, providing vacation facilities, reimbursing vacation expenses, and subsidizing recreational activities such as athletic leagues are considered "other benefits".

Section 1.501(c)(9)-4 of the Regulations provides that no part of the net earnings of the organization may inure to the private benefit of any private shareholder or individual other than through the payment of benefits permitted by Section 1.501(c)(9)-3.

In Rev. Rul. 73-411, 1973-2 C.B. 180, the Service provided a somewhat historical look at the definition of a chamber of commerce and similar organizations and stated "that 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 or comprising a broad segment of the general public such as a city or similar geographical or political area."

In addition, the Service stated that "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."

In MIB, Inc. v. Commissioner of Internal Revenue, 1984-1 USTC 9476 (1st Cir.) the Court held that the petitioner did not qualify for tax-exempt status under the provisions of Section 501(a) as an organization described in Section 501(c)(6) of the Code.

In pertinent part, the Court's rationale was that "to reach the result it did, the Tax Court had to reflect what seems an almost incontrovertible fact - that MIB's activities by their nature consist of rendering particular services for individual member companies. MIB responds to a member's request for information about a named applicant by transmitting whatever information it has about that person to the requesting member, who then uses it as an aid to deciding whether to sell insurance to the applicant. These services obviously benefit the businesses of the individual members to whom rendered. That they also produce, as a kind of spin-off, various indirect and intangible benefits for

the Insurance industry as a whole does not alter the fact that the rendered services are in form and substance 'particular services for individual persons.' As the Second Circuit said in Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684 (2d Cir.)."

Based upon the above facts, law and court decisions cited, it has been determined that while your stated purposes are to improve business conditions in the profession of Employee Services and Recreation administration, your primary activity is to provide discounted services to employees of General Member companies, and to provide Associate Members with opportunities to increase their sales ... You are providing your members with the service of a cooperative discount program. While you provide some professional educational services to General Member Representatives, your membership solicitation materials and other information make it clear that your discount programs are the primary motivation for membership ... Your discount program is your primary activity and it serves as a convenience and economy to your members who might otherwise be unable to obtain such discounts. Ultimately, your discount program constitutes a particular service that precludes tax-exemption under the provisions of Section 501(c)(6) of the Code similar to the 1st Circuit Court of Appeals finding in MIB, Inc. (supra).

Your organization is required to file Federal income tax returns on Form 1120, U.S. Corporate Income Tax Return, for all years beginning on or after January 1, if you have not already done so.

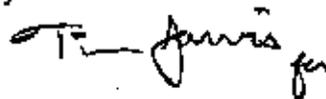
As provided in Section 6104(c) of the Internal Revenue Code and applicable regulations, the appropriate state officials will be notified of this determination.

If you have any questions, please contact the person whose name and telephone number are shown above.

The contact person identified on the front of this letter can access your tax information and help you get answers. You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer advocate assistance. Or you can contact the Taxpayer Advocate for the IRS office that issued this notice by calling or writing to Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

Thank you for your cooperation.

Sincerely,
Douglas H. Shulman
Commissioner
By



Charles F. Fisher
Appeals Team Manager

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 - RM 7008
Cincinnati, OH 45201

Date: JAN 05 2009

Employer Identification Number:

Person to Contact - I.D. Number:

Contact Telephone Numbers:
***** Phone
***** FAX

Dear :

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(9) and section 501(c)(6) of the Internal Revenue Code of 1986 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. However, we have concluded that you do not qualify under another subsection.

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 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, "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 proper 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.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Enclosure 1

A = Name of Parent Organization
B = State
C = Date
D = Year
E = Number
F = Number
G = Year
H = Date
X = Dollar Amount
Y = Dollar Amount
Z = Dollar Amount

FACTS

You incorporated as a non-profit corporation on C, in the state of B.

You have stated that you were covered under the group exemption of your parent organization, A, through D when you decided to discontinue paying their annual membership dues. You believe that your coverage under the group exemption ended at the end of D. A is currently tax exempt under section 501(c)(6) of the Code and holds a group exemption under this subsection.

You are dedicated to employee buying power from discounts. Your primary activity is to allow your members to offer discounts and to receive discounts from local merchants. You operate an extensive web site that lists your members and explains all of the discounts available to them as well as how to exercise these discounts. Your discounts for members include amusement parks, out-of-area entertainment attractions, car washes, movie theaters, etc... Because of your buying power and the fact that you do not mark-up the price of amusement park and car wash tickets, these discounts are offered to your members at prices lower than can be obtained through _____, or other area organizations. You spend a small part of your time conducting human resources - related educational training for your members.

You have two primary types of members: general and associate. General members are any business, not-for-profit, governmental agency, or employee organization that is interested in the development and maintenance of effective employee service programs. Organizations that join as general members are motivated by their desire to obtain discounts offered by associate members. The employees of general member companies are also considered general members. Associate members are any company, trade association, or other organization dealing with products and/or services that seeks to establish a relationship with your organization for mutual benefit or to

Enclosure 1

contribute to the development and enhancement of Employee Services and Employee Benefits projects or programs. Associate members agree to provide a discount on a product or service they provide or on multiple products or services for a designated period of time. Associate members, also referred to as vendors, are not entitled to receive discounts through the organization unless they also join and pay the membership fee for general membership. According to your web site, you currently have over E member companies that serve as general and associate members. Approximately F employees are receiving benefits through your discount program at this time.

General members take advantage of discounts in one of four ways: First, all members are issued an ID card. Many discounts are obtainable by showing the ID card to locations such as the box office at the local soccer stadium, hockey stadium, professional theatre company etc.. Some discounts are available only through pre-purchase of a ticket or coupon. These tickets or coupons are offered on consignment to member companies to provide to their employees at their convenience. In cases where the member company representatives do not wish to participate in the on-site consignment ticket program, employees can purchase tickets and coupons directly from your office. Finally, employees may also obtain tickets online directly through your web site.

You also offer memberships to individuals. Student memberships are available to either part or full time graduate or undergraduate students who are enrolled in Employee Services, Employee Benefits, or Recreation-related curriculums at nearby colleges and universities. You can also confer an honorary general or associate membership upon individuals or organizations in recognition of distinguished or unusual services. Since G you have also offered membership on an individual basis to individual members of the general public. Your individual memberships represent a very small portion of your total membership.

Your Articles of Incorporation state that you were formed for the following purposes:

- (a) To bring together individuals representing businesses and governmental organizations, or the employee associations thereof, within a general geographical area for the purposes of promoting the concepts of Employee Services and Recreational programs as an integral factor of sound business management principles;
- (b) To improve and enhance the competence and skills of Employee Services/Recreation practitioners;

Enclosure 2

- (c) To raise the standards of performance in all phases of Employee Services/Recreation Management; and
- (d) To act as the catalyst for implementing various activities, events and special offers that would be beneficial to the member organizations.
- (e) In general, to do any and all acts and things to exercise any and all powers which it may now or hereafter be lawful for the corporation to do or exercise under and pursuant to the laws of the State of B for the purpose of accomplishing any of the purposes of the corporation, but not for the pecuniary profit or financial gain of its members, directors or officers. Nothing contained in this certificate shall authorize or empower the corporation to perform or engage in any act or practice prohibited by the Law Section or any other anti-monopoly statute of the State of B.

You are primarily funded through gross dues and assessments of members though you do have some income from investments. Your primary expense is for salaries and wages. You also have expenses attributable to activities related to your exempt purpose.

Your dues schedule for general members ranges from x depending on when a corporation joins and the number of individuals they employ. Individual member dues is set at y for G. Your dues for associate members during the calendar year G is set at z.

LAW

Section 501(c) (9) of the Internal Revenue Code describes voluntary employees' beneficiary associations (hereinafter referred to as "VEBA") providing for the payment of life, sick, accident, or other benefits to its members or their dependents, or designated beneficiaries, if no part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c) (9)-1 of the Income Tax Regulations provides that to be described in section 501(c) (9) an organization must meet all of the following requirements:

- (a) The organization is an employees' association,
- (b) Membership in the association is voluntary.

Enclosure 1

- (c) The organization provides for the payment of life, sick, accident or other benefits to its members or their dependents or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits, and
- (d) No part of the net earnings of the organization inures, other than by payment of the benefits referred to in paragraph (c) of this section, to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2(a)(1) of the regulations provides that:

The membership of an organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Typically, those eligible for membership in an organization described in section 501(c)(9) are defined by reference to a common employer (or affiliated employers), to coverage under one or more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s), to membership in a labor union, or to membership in one or more locals of a national or international labor union. For example, membership in an association might be open to all employees in specified job classifications working for certain employers at specified locations and who are entitled to benefits by reason of one or more collective bargaining agreements. In addition, employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment-related bond for purposes of an organization through which their employers provide benefits. Employees of a labor union also will be considered to share an employment-related common bond with members of the union, and employees of an association will be considered to share an employment-related common bond with members of the association. Whether a group of individuals is defined by reference to a permissible standard or standards is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this paragraph.

Section 1.501(c)(9)-2(b) of the regulations states the following:

Meaning of "employee". Whether an individual is an "employee" is determined by reference to the legal and bona fide relationship of employer and employee. The term "employee" includes the following:

Enclosure 1

- (1) An individual who is considered an employee:
 - (i) For employment tax purposes under Subtitle C of the Internal Revenue Code and the regulations thereunder, or
 - (ii) For purposes of a collective bargaining agreement, whether or not the individual could qualify as an employee under applicable common law rules. This would include any person who is considered an employee for purposes of the Labor Management Relations Act of 1947, 61 Stat. 136, as amended, 29 U.S.C. 141 (1979).

Section 1.501(c)(9)-3(a) of the regulations states the following:

In general. The life, sick, accident or other benefits provided by a voluntary employees' beneficiary association must be payable to its members, their dependents, or their designated beneficiaries. For purposes of section 501(c)(9), "dependent" means the member's spouse; any child of the member or the member's spouse who is a minor or a student (within the meaning of section 151(e)(4)); any other minor child residing with the member; and any other individual who an association relying on information furnished to it by a member, in good faith believes is a person described in section 152(a). Life, sick, accident or other benefits may take the form of cash or noncash benefits. A voluntary employees' beneficiary association is not operated for the purpose of providing life, sick, accident, or other benefits unless substantially all of its operations are in furtherance of the provision of such benefits. Further, an organization is not described in this section if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by paragraphs (b), (c), (d), or (e) of this section.

Section 1.501(c)(9)-3(d) of the regulations states the following:

Other benefits. The term "other benefits" includes only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if:

- (1) It is intended to safeguard or improve the health of a member or a member's dependents, or
- (2) It protects against a contingency that interrupts or impairs a member's earning power.

Enclosure 1

National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472 (1979), held that the term "line of business" meant "either an entire industry... or all components of an industry within a geographic area." The court stated that employers whose major economic activity consists of the production or distribution of products or the provision of services having markedly similar characteristics, who employ similar production and marketing facilities, and who compete in the same markets may be considered to be in the same industry.

You applied for tax exemption under section 501(c)(9) as a Voluntary Employees Beneficiary Association, however, in a phone conversation on July 14, 2004, you indicated that you wished to be considered under section 501(c)(6) as a business league. Your decision to request this consideration was based on the fact that your parent organization, _____, is currently tax-exempt under section 501(c)(6). Since you were previously covered under section 501(c)(6) through the group exemption of your parent, you decided that you would also like to pursue independent tax exemption under that subsection.

Section 501(c)(6) of the Internal Revenue Code of 1986 provides for exemption from Federal Income Tax of business leagues not organized for profit, no part of the net earnings of which inures to the benefit of any shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations states, in part: "A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest... 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."

Revenue Ruling 76-409, 1976-2 CB 154 held that a nonprofit organization of individuals in the business of furnishing finance adjusting services, which assigns exclusive franchise areas to its members and publishes and distributes to their potential customers a directory containing members' names and addresses, is performing particular services for its members and does not qualify for exemption under section 501(c)(6) of the Code.

Revenue Ruling 74-81, 1974-1 C.B. 135 held that an organization whose principal activity is to provide its members with group workmen's compensation insurance did not qualify for tax exemption under section 501(c)(6).

Enclosure 1

Revenue Ruling 65-244, 1965-2 C.B. 167 held that an organization which conducted a trading stamp plan whereby patrons of members received trading stamps redeemable for merchandise at local stores did not qualify for tax exemption under section 501(c)(6).

Application of Law

To qualify as a voluntary employees' beneficiary association under section 501(c)(9) of the Code an organization must meet all of the following requirements outlined in section 1.501(c)(9)-1 of the regulations:

- (a) The organization is an employees' association,
- (b) Membership in the association is voluntary,
- (c) The organization provides for the payment of life, sick, accident or other benefits to its members or their dependents or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits, and
- (d) No part of the net earnings of the organization inures, other than by payment of the benefits referred to in paragraph (c) of this section, to the benefit of any private shareholder or individual.

Your organization does not satisfy requirements (a) and (c) listed above. As a result, you do not qualify as a voluntary employees' beneficiary association described in section 501(c)(9) of the Code.

You are not an "employees' association" for three reasons:

- (a) Your membership is open to individuals who did not become entitled to participate by reason of their being employees. Rather, you recently opened up membership to any individual who wished to pay a membership fee of \$ per year to participate in your discount program. Though you do not currently have a large number of individual members, you are not in compliance with the regulations and this bars tax exemption under 501(c)(9).
- (b) Your associate members compose over half of your membership. Associate members are not entitled to participate in your association by reason of being employees as required by section 1.501(c)(9)-1 of the regulations. Rather, these individuals are participating as members of the association because they have products and services that they are willing

Enclosure 1

to provide discounts on to the general members of your association.

- (c) Section 1.501(c)(9)-2(a)(1) of the regulations provides that membership of an organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Typically, those eligible for membership in an organization described in section 501(c)(9) are defined by reference to a common employer (or affiliated employers), to coverage under one or more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s)), to membership in a labor union, or to membership in one or more locals of a national or international labor union. Employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment-related bond for purposes of an organization through which their employers provide benefits. You are not an employees' association because your members do not share an employment-related common bond. Your membership both associate and general is open to any corporation or individual that is willing to pay your annual dues. There is no common employer, no collective bargaining agreements, or other objective standards that constitute an employment-related common bond among your members.

Further, you are not an employees' association that shares an employer-related common bond by reason of your member employers being engaged in the same line of business in the same geographic locale. National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472 (1979), defined the term line of business as "either an entire industry ... or all components of an industry within a geographic area." Your membership is not limited to employers sharing the same line of business in a particular geographic locale. As a result, you are not an "employees' association" as defined in section 1.501(c)(9)-1 of the regulations.

You do not meet the requirements of section 1.501(c)(9)-1 of the regulations because you are not providing for the payment of life, sick, accident or other benefits to your members, their dependents or designated beneficiaries. The only benefits that your organization provides are discounts on recreational activities. In order to qualify under section 501(c)(9), your recreational discounts would

Enclosure 1

have to meet the definition of "other benefits" as defined in the regulations.

Section 1.501(c)(9)-3(d) of the regulations defines the term "other benefits" to include only benefits that are similar to life, sick or accident benefits if -

- (1) It is intended to safeguard or improve the health of a member or a member's dependents, or
- (2) It protects against a contingency that interrupts or impairs a member's earning power.

The discounts on recreational activities that you provide to your members do not meet the definition of "other benefits" as defined by section 1.501(c)(9)-3(d) of the regulations because they are not intended to safeguard or improve the health of members and they do not protect against a contingency that interrupts or impairs your members' earning power.

In conclusion, you do not qualify for tax exemption under section 501(c)(9) as a Voluntary Employees Beneficiary Association because you do not meet the proscriptions outlined in sections 1.501(c)(9)-1(a) and (c) of the regulations.

You have verbally requested tax exemption under section 501(c)(6) as a business league. To qualify for tax exemption under section 501(c)(6), the regulations require that an organization must be an association of persons having some common business interest, the purpose of which is to promote such common interest. Further, the organization's 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.

We hold that you do not qualify for tax exemption under section 501(c)(6) as a business league because you do not meet the requirements set forth in section 1.501(c)(6)-1 of the regulations. You are not an organization or association of persons having some common business interest, the purpose of which is to promote such common interest. Further, your activities are not directed at the improvement of one or more lines of business. Rather, they are directed at the performance of particular services for individual persons.

You are similar to the organization described in Revenue Ruling 76-409 1976-2 CB 154 because you are also providing particular services to your members. This ruling denied tax exemption to an organization which provided financing adjusting services to its members. Like the

Enclosure 1

organization described in the ruling, you are providing your members with the service of a cooperative discount program for members. You do not qualify for tax exemption under section 501(c)(6) because your discount program constitutes the performance of particular services for members and thus precludes tax exemption under section 501(c)(6).

You bear similarities to the organization described in Revenue Ruling 74-81, 1974-1 C.B. 135 because like the organization described in this ruling, you are conducting a discount program for members which allows them to offer discounts on recreational activities to their employees for a fee that would otherwise not be obtainable by the individual businesses. This ruling held that conducting an activity that serves as a convenience or economy to members in the operation of their business is a particular service. Your discount program is your primary activity and it serves as a convenience and economy to your members who might otherwise be unable to obtain such discounts. Ultimately, your discount program constitutes a particular service which precludes tax exemption under section 501(c)(6).

You are similar to the organization described in Revenue Ruling 65-244, 1965-2 C.B. 167 because like the organization described in this ruling, you are providing particular services to your members. The organization described in this ruling conducted a trading stamp plan whereby patrons of members received trading stamps redeemable for merchandise at local stores. Like the organization described in this ruling, you are providing particular services to your members by offering a discount program on recreational activities. As a result, you are precluded for qualification as a tax-exempt organization under section 501(c)(6) because you do not meet the proscriptions outlined in section 1.501(c)(6)-1 of the regulations.

Taxpayer Position

Your correspondence dated June 15, 2004, states your position with regard to qualification for tax exemption under section 501(c)(9). In your letter, you make the argument that you qualify as a Voluntary Employees' Beneficiary Association for the following reasons:

- a. You are a voluntary association of employees.
- b. You provide all of your members with discounts on products and services without discrimination. You even provide the opportunity to purchase Long Term Health Care at group discounts.
- c. No single individual or business is benefited more than any

Enclosure 1

other individual.

- d. You offer educational activities for your members. You hold seminars on topics ranging from career changing to employee benefit and retirement plans to workplace and employee safety.

In a phone conversation on July 14, 2004, you indicated that you thought that you were best classified as a Voluntary Employees' Beneficiary Association under 501(c)(9), but, that if you did not qualify under this subsection, you would like to pursue tax exemption under section 501(c)(6) as a business league. You requested classification under this subsection because your parent organization, _____, is currently tax exempt under section 501(c)(6) and holds a group exemption under this subsection. You were covered under your parent's group exemption through D when you determined that you wished to discontinue coverage and to pursue independent tax exemption. Based on the fact that you were previously covered by a group exemption under section 501(c)(6), you requested classification under this subsection.

IRS Position

We hold that you do not qualify for tax exemption under section 501(c)(9) as a Voluntary Employees' Beneficiary Association and that you also do not qualify for tax exemption under section 501(c)(6) as a business league.

You have asserted that you qualify for tax exemption under 501(c)(9) of the Code because you are a voluntary association of employees, you provide your discount program without discrimination, your discount program does not benefit one individual or business more than another and you offer educational programs to members. We hold that you do not qualify for tax exemption under 501(c)(9) for two reasons: (1) you are not an "employees' association" and (2) you are not providing for the payment of life, sick, accident or other benefits to your members. The fact that you offer educational programs and provide benefits to members on an equitable basis does not allow you to meet the requirements of this subsection.

With regard to our first argument, we hold that you are not an "employee's association" for three reasons:

- (1) Your membership is open to individuals who did not become entitled to participate by reason of their being employees.
- (2) Your associate members compose over half of your membership. Associate members are not entitled to participate in your

Enclosure 1

association by reason of being employees as required by section 1,509(c)(9)-1 of the regulations.

- (d) Section 1.501(c)(9)-2(a)(1) of the regulations provides that membership of an organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. You are not an association of employees because your members do not share an employment-related common bond. Your membership both associate and general is open to any corporation that is willing to pay your annual dues. There is no common employer, no collective bargaining agreements, or other objective standards that constitute an employment-related common bond among your members.

Further, you are not an association of employees who share an employer related common bond by reason of your member employers being engaged in the same line of business in the same geographic locale.

With regard to our second argument, we conclude that you do not meet the requirements of section 1.501(c)(9)-1 of the regulations because you are not providing for the payment of life, sick, accident or other benefits to your members. The only benefits that your organization provides are discounts on recreational activities. It is our opinion that these benefits do not meet the definition of "other benefits" as defined in the regulations.

Section 1.501(c)(9)-3(d) of the regulations defines the term "other benefits" to include only benefits that are similar to life, sick or accident benefits if -

- (3) It is intended to safeguard or improve the health of a member or a member's dependents, or
- (4) It protects against a contingency that interrupts or impairs a member's earning power.

The discounts on recreational activities that you provide to your members do not meet the definition of "other benefits" as defined by section 1.501(c)(9)-3(d) of the regulations because they are not intended to safeguard or improve the health of members and they do not protect against a contingency that interrupts or impairs the member's earning power.

Enclosure 1

In conclusion, we hold that you do not meet the requirements for tax exemption under 501(c)(9) because you do not meet the proscriptions outlined in sections 1.501(c)(9)-2 and 1.501(c)(9)-3(d) of the regulations.

With regard to your request for tax exemption under section 501(c)(6) as a business league, you assert that up until H, you were covered by the group exemption of your parent organization, _____, which currently holds a group exemption under section 501(c)(6). Based on the fact that you were previously covered by a group exemption under this subsection, you assert that you qualify for independent tax exemption under this section.

We do not agree. To the contrary, we hold that you do not qualify for tax exemption under section 501(c)(6) because your primary activity is to provide a discount program on recreational activities to your members and this activity constitutes providing particular services for your members. Your activities are clearly directed at the performance of particular services rather than the improvement of business conditions of one or more lines of business. As a result, you do not meet the requirements for tax exemption under section 501(c)(6) because you do not meet the proscriptions outlined in section 1.501(c)(6)-1 of the regulations. The fact that you were previously covered by a group exemption under this subsection does not change our conclusion.

Conclusion

We hold that you do not qualify for tax exemption under section 501(c)(9) as a Voluntary Employees' Beneficiary Association or under section 501(c)(6) of the Code as a business league.

You do not meet the requirements for tax exemption under section 501(c)(9) because you are not an "employees' association" and you are not providing for the payment of life, sick, accident or other benefits to your members. Accordingly, you do not meet the proscriptions outlined in sections 1.501(c)(9)-2 and 1.501(c)(9)-3(d) of the regulations.

You do not qualify for tax exemption under section 501(c)(6) because your organization is primarily engaged in providing a discount program on recreational activities to your members. Your discount program constitutes the performance of particular services for members. Accordingly, you do not qualify for tax exemption under section 501(c)(6) of the Code because you do not meet the proscriptions outlined in section 1.501(c)(6)-1 of the regulations.