



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201205014**
Release Date: 2/3/20102
Date: November 16, 2011
UIL Code: 501.04-00
501.06-00
501.06-01

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)(4) and 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,

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: September 29, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = date
C = date
G = city
H = city
L = county
M = county
N = county
R = river
Q = date
S = date
T = county
V = date
W = state
x = dollar amount
y = dollar amount
z = dollar amount

UIL:

501.04-00
501.06-00
501.06-01

Dear Applicant:

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 Code sections 501(c)(4) or 501(c)(6). The basis for our conclusion is set forth below.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

Issue

Do you qualify for exemption under section 501(c)(6) of the Internal Revenue Code?
No, for the reasons given below.

Alternate Issue

Do you qualify for exemption under section 501(c)(4) of the Internal Revenue Code?
No, for the reasons given below.

Facts

You originally incorporated in the state of W on S, organized to provide food at a low cost to low income people. You submitted amended Articles of Incorporation dated B which stated that you are organized exclusively for charitable purposes under IRC section 501(c)(3). An additional amendment was submitted dated C, which states that you are organized to provide a forum for small local growers and others to make produce available to residents and support farming efforts in T.

You were formed by a small group of vendors that wanted a place to sell their produce as well as stimulate interest in and demand for locally grown farm products. To accomplish this, you operate a traditional farmers market in G, W. You state that % of your time and funds are spent on the farmers market. The market operates out of a building that is owned by the City of G on land owned by the H. In addition to running the market, your staff also organizes and coordinates visiting tax-exempt organizations, collects food from vendors for donation to local food banks, and operates an educational booth. Tax-exempt organizations use space at the market to promote their missions and Master Gardeners are present each day that the market is open. Approximately % of the market space is used by vendors and customers and approximately % of the space is used by community organizations. Currently, all of your board members are vendors, as stipulated by your Bylaws.

Your mission is to promote the development of local agriculture by supporting the development and expansion of the small family farm, to increase public awareness of nutritional values of local fresh farm produce and to make the highest quality, locally grown produce available in one location. You have approximately 115 vendors who are given opportunities to improve growing techniques and merchandising through formal workshops and through close proximity to each other at the market. You participate in the Food Stamp and WIC programs in order to raise nutritional levels within the community. Customers are able to pick up information on recycling, sustainable agriculture, nutritional information on fresh produce, and hints for shopping at the market. Along with shopping opportunities daily entertainment is provided for market patrons, generally in the form of musical acts, at a main stage on the premises.

The market operates from April to October, Thursday to Sunday, and in November and December on Saturday and Sunday, from 10am to 3pm. The following products are

offered: produce, flowers, meat, seafood, dairy and eggs, condiments and honey, lotions and soaps, baked goods and confections, and various artisan products such as glass, wood, paper and metal work, puzzles, pottery and jewelry.

Membership includes vendor members and supporting members. Supporting members are simply non-profits or individuals who want to help your market. Vendor members who sell at your market are broken down into four categories:

Farmers: those who raise produce such as fruits, vegetables, herbs, flowers, crops, beekeepers, growers of animals, egg farmers, fish or shellfish growers (approximately % of members)

Processors: those offering fresh products such as meat, fish, baked goods meeting all state, county and local legal requirements with proper permits and licenses (approximately % of members)

Farmer/Processors: those farmers who have a Board approved processed/unprocessed food or animal item meeting all health and legal requirements with proper permits and licenses (approximately % of members)

Crafters: those who craft the products offered for sale requiring tool skills, personal handling and/or guidance (approximately % of members)

Anyone may be a member as long as they live in T, M, L, or parts of N and they must grow or make their own product. Membership is limited to individuals or small family farms. Any new vendor applicants with established businesses or businesses which do not meet the individual or small family farm guidelines must apply to and receive approval from your Board of Directors before they are able to sell at the market. These memberships are granted only when individual or small family or farm units are not available. All of your members are required to be vendors; this is one of your member benefits.

Vendor members cannot buy and resell commodities that are or can be grown or processed locally. You define local as being from L, M, N, T or east of the R. Membership also requires that all vendors submit to being inspected to make sure that all products sold are vendor produced and that the vendor lives and works within the geographical boundaries outlined in the Bylaws. Members pay a fixed, annual membership fee of z dollars.

You are funded by stall fees, membership fees, and parking and merchandise sales. Vendors also pay a percentage of daily gross sales or a minimum fee, whichever is greater, of x dollars on Thursday and Friday and y dollars on Saturday and Sunday. The percentage for sales based fees are broken down as follows:

Farmers/Crafters/Farmer/Processors/Processors I/Food Carts – %
Processors II – %
Crafter II/Farmer II/Food Concessionaires – %
Fruit Vendors – %

Your expenses include occupancy, advertising, salaries and benefits, market entertainment, supplies, taxes and licenses. You submitted a copy of a lease held between the H and the City of G for premises to be used for a market. While the majority of your expenses cover advertising and market entertainment, you were unable to provide any copies of advertising materials when asked.

You have three paid employees, a general manager, assistant manager and maintenance personnel. You indicated 80% of the employees time is spent on the market, which included workshops, sales and educational activities, however, you then stated % of employees time is spent on educational activities. These employees are neither members nor vendors.

You did submit a brochure that was used in the past as promotional material. It includes a brief history of the market in that it was originally formed by a small group of vendors and eventually revived which led to your current location. The brochure you submitted states that the market is the jewel of the H's new waterfront development and publicizes the unique waterfront location's proximity to other entertainment and dining attractions as well as the ability for customers to access the market by most modes of transportation.

Law – Section 501(c)(6)

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 58-224 held that an organization which operated a trade show as its sole activity, primarily for the purpose of rendering particular services to individual persons was not entitled to exemption as a business league under section 501(c)(6) of the Code. The organization's sole activity consisted of staging an annual merchandise show (primarily exhibits by manufacturers), under the sponsorship of the chamber of commerce. The ruling concluded that the activities of the organization substantially served the exhibitors and retailers as a convenience and economy in the conduct of

their businesses by providing selling opportunities for the distributors, which was found to be considered rendering particular services for individuals as distinguished from the improvement of business conditions generally.

Rev. Rul. 59-391, 1959-2 C.B. 151, describes an organization of individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or profession. It was created for the purpose of exchanging information on business prospects and has no common business interest other than a desire to increase sales of members. Held, such an organization is not entitled to exemption from federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code of 1954.

Revenue Ruling 68-264 defined 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 members of the organization in the operation of their own businesses.

In Revenue Ruling 73-411 the history of section 501(c)(6) was described while discussing the exempt status of a shopping center. In the case of a chamber of commerce or similar organization, the common business interest is usually the general economic welfare of a community. An organization seeking exemption as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all commercial enterprises in a given trade community. The ruling also stresses that membership in section 501(c)(6) organization is voluntary and open generally to all businesses and professional persons in the community.

The American Automobile Association v. Commissioner of Internal Revenue, 19 T.C. 1146 (1953) held that an organization whose principal activities consist of performing particular services, and securing benefits, for its members, does not qualify for exemption under section 501(c)(6) of the Code.

Law – Section 501(c)(4)

Treasury Regulation 1.501(c)(4)-1 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 improvements and is not an action organization as set forth in paragraph (c)(3) of Regulation 1.501(c)(3)-1.

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations that are operated for profit.

Revenue Ruling 78-86 held denial of an organization formed by various merchants to provide customer parking. A parking arrangement whereby merchants join together to provide parking for their customers at a reduced rate serves the merchants' private interests by encouraging the public to patronize their stores. Thus it cannot be said to be operated exclusively for charitable purposes under section 501(c)(3) of the Code or primarily for social welfare purposes under section 501(c)(4).

Veterans Foundation v. United States, 281 F.2d 912 (10th Cir. 1960). Thrift stores—A foundation reselling donated goods for a profit was held taxable even though its net profits were payable to a veterans' organization exempt under IRC 501(c)(4). In that case, the primary purpose of the organization, as evidenced by its activities, was to engage in a business, and it did not qualify under 501(c)(4).

Application of Law – Section 501(c)(6)

You do not meet the qualifications under Section 1.501(c)(6)-1 of the Regulations as your activities are not aimed at the improvement of business conditions of one or more lines of business but rather you are performing particular services for members. By operating and marketing a venue under which a member may sell their products you are providing a direct service to that member. Also, operating a market for selected vendors does not improve business conditions of any industry or line of business but rather serves only as a convenience to those vendors chosen to sell at that market.

Based on the information submitted, your primary purpose is to provide a sales facility for your members, similar to the organization in Revenue Ruling 58-244. An activity such as this is providing a particular service to individuals. The facility serves as a convenience and economy to anyone who uses the marketplace to sell their products. Serving your members in this manner provides a convenience and economy in the conduct of their businesses by providing selling opportunities they otherwise would not have. Revenue Ruling 68-264 defines this as providing a particular service to members. Performing services for members constitutes a prohibited activity under 501(c)(6) thereby disqualifying you from exemption under this Code section.

You are like the organization in Rev. Rul. 58-294 in that you were formed to conduct advertising and marketing activities to promote the farmers market where the sale of products occurs. The sales activities at the market are carried on for profit for the members/vendors. Like the organization in Rev. Rul. 58-294, you are engaged in furthering the business interests of the members/vendors instead of focusing on the improvement of one or more lines of business.

The information you submitted indicates that your members have no common business interest other than a mutual desire to have a location to increase their individual sales. Your marketplace activities are not directed at the improvement of business conditions

of one or more lines of business, but rather to the promotion of the private interests of those producers who rent stalls at your market. The facts you submitted indicate that you are not promoting the general welfare of the community or promoting the common economic interests of all of the commercial enterprises in a given trade community. Rather, you are simply providing a convenient place for individuals to market their products for their exclusive benefit. As noted in Revenue Ruling 73-411, by providing such service, you are not considered to be the type of organization contemplated by section 501(c)(6) of the Code. Therefore, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code.

Like the organization in Rev. Rul. 59-391, your membership consists of individuals and farmers representing different products and crafts. You were created for the purpose of conducting a farmers market. You have no common business interest other than a desire to increase the sales of your members/vendors.

You are like the organizations in American Automobile Association v. Commissioner of Internal Revenue. By conducting a farmers market, your primary purpose is the operation of a regular business of a kind ordinarily carried on for profit. You advertise and promote the farmers market as well as provide paid management services for the operation of the market and are therefore rendering particular services for your members/vendors.

Application of Law – Section 501(c)(4)

Treasury Regulation 1.501(c)(4)-1 provides that an organization is operated 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 that primarily benefits a private group of citizens cannot qualify for exemption. You are formed to benefit your members who have joined as members to sell products as vendors at your market. While the community at large derives some benefit from the availability of certain products, the reason you were formed was to provide a place for these vendors to sell their products. Because you are primarily benefitting a group of private individuals, your members, you do not qualify under 501(c)(4).

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides that an organization is not operated for the promotion of social welfare if it is carrying on a business similar to organizations that are operated for profit. You carry on a business similar to any for profit market in providing a varied array of products for customers. Members are selected based on the types of products provided, measured by quality standards and legal licensing requirements enabling them to sell, and are allowed to operate generating maximized profits through individual sales at their own vendor stall. Activities

of this type are no different from any grocery that sells food and food related products. Although you indicate you are the only market of this type in the area the goods you offer are not so unique as to not be in competition with any other store selling similar products.

In Revenue Ruling 78-86 an organization formed by various merchants to provide parking for their customers at a reduced rate was found to be serving the merchants' private interests by encouraging the public to patronize their stores.

Rather than providing their own parking, merchants were able to join together to provide a common parking facility in which all share the benefits. In that ruling, although there was some public benefit derived from the construction and operation of the parking lot, it was not formed to be operated primarily for social welfare purposes under section 501(c)(4). Your market was formed by vendors looking for a place to sell goods. The market is serving the private interests of your members, merchants, by providing a common venue for the sale of those goods. Rather than these vendors having to handle their own marketing, promotion or advertising, this is done by you. Customers are in turn encouraged by you to patronize and purchase goods sold by your members at your market. For these reasons you are serving private members interests and, much like the ruling, although the public derived some benefit from the use of the parking lot and they derive benefit from the convenience or selection of goods sold at your market, this was not the reason behind your formation.

You are similar to the organization in Veterans Foundation. Although you allow for the sale of goods to those of a disadvantaged class, through the WIC and food stamp programs, which in turn helps the betterment of the community, the operation of the market itself is still a regular business. Your primary purpose is to engage in a business of operating a market and therefore do not meet 501(c)(4) qualifications.

Conclusion

Based on the information provided we conclude that you are not operated as a business league described in section 501(c)(6) of the Internal Revenue Code. Your operations provide specific services to members and allow them a convenience and private economic benefit. You do not improve business conditions along one or more lines of business or of a certain area but instead provide services for the convenience of your members. Therefore, you do not qualify for exemption under IRC 501(c)(6).

In addition, we conclude that you are not primarily operated as described in section 501(c)(4) of the Code. You were not formed for an overall community benefit and/or for social welfare purposes but to provide a direct business service for your members' economic benefit. Accordingly, you do not qualify for recognition of exemption under section 501(c)(4) of 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". 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
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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,

Lois Lerner
Director, Exempt Organizations

Enclosure, Publication 892

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