



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201205015**
Release Date: 2/3/2012
Date: November 9, 2011
UIL Code: 501.05-01
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)(5) 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 4038(CG)(11-2005)
Catalog Number 47632S

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: October 6, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = state
C = date
d = dollar amount
e = dollar amount
f = dollar amount
g = dollar amount
h = number

UIL:

501.05-01
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 Code sections 501(c)(5) or 501(c)(6). The basis for our conclusion is set forth below.

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)(5) of the Code? No, for the reasons given below.

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

Facts

You were incorporated in the state of B on C (date). Your Articles of Incorporation states your mission is to be a gathering place where local growers, producers and community members can mutually benefit from the direct marketing of local goods. You support local farmers, promote land stewardship and sustainable agriculture. You will educate consumers on the value of buying locally produced foods, healthy eating and environmental issues.

Membership is open to vendors who are in good standing (current on dues) and non-vendors who simply support your operation. To be on your board one must have been a member for at least a year. Three of your four current board members are listed as vendors at your market.

On a weekly basis, between May and October, you provide a farmers market. You will manage the market and promote, market and advertise the goods sold there by your vendors. This is your primary activity, to which you devote 58% of your time and resources.

During your operational season, you offer a local Master Gardener program to educate interested individuals on the growing of flowers and vegetables. At a single session in August, you bring in a specialist from the University of B to provide training to local vendors and community members on proper canning techniques for produce. In conjunction with a local energy specialist, you provide a training session about energy usage and how to reduce dependence on energy to the local community.

Each November, you provide an annual training program (or session) to vendors on how to enhance and improve the quality of their products. This training includes, but is not limited to, the proper storage of vegetables, proper processing techniques for baked and canned goods and new regulations affecting their industry.

You are supported by annual vendor membership fees and daily stall fees. Season vendor dues are d dollars for the vendor membership only, then a weekly stall fee of e dollars per day or f dollars for a total season payment (which includes the d dollars membership and g dollars season stall fee).

The market is limited to h vendors. Any vendor may apply as long as they agree to be subject to your market and sales rules if selling at your market. The primary seller at the market must be the owner listed on the application to sell at the market. All applications are reviewed and approved by your governing body. You reserve the right to limit vendors offering similar products so there is appropriate balance at the market. Your

governing body reserves the right to limit the number of craft vendors. Crafts will be judged by the governing body to determine their appropriateness for the market.

Vendors must grow or produce the products/services they sell. All products must be grown or produced within a 40 mile radius of the market location. Purchasing items for resale is not allowed.

Vendors must have liability insurance that covers the products sold at the market. They (the vendors) must also obtain the proper licensing, inspection and certifications that are necessary. Vendors of nonfood items must have a sales tax identification number, as well. Vendors must also be current on fees/dues in order to participate.

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.

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.

Law – Section 501(c)(5)

Section 1.501(c)(5)-1 of the Regulations describes organizations covered by Code section 501(c)(5) as labor, agricultural, and horticultural organizations that have no net earnings inuring to the benefit of any member and have as their object the betterment of the conditions of persons engaged in those pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Revenue Ruling 66-105 held that an organization composed of agricultural producers whose principal activity is marketing livestock as an agent for its members does not qualify for exemption. The sale of members' products with the return to them of the sale proceeds is neither an object nor an activity within the ambit of section 501(c)(5) of the Code. Thus, exemption was denied.

In Revenue Ruling 74-195 a nonprofit organization formed to manage, graze and sell its members' cattle did not of itself better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operations within the meaning of section 501(c)(5) of the Code. The principal purpose of the organization was to provide a direct business service for its members' economic benefit. The organization was denied exemption under section 501(c)(5) of the Code.

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.

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.

Application of Law – Section 501(c)(5)

You do not meet the qualifications under Section 1.501(c)(5)-1 of the Regulations as your activities are not aimed at the overall betterment of conditions within the farming industry. You operate to aid vendors included in your marketplace to sell goods. Since you are providing, in return for related fees and dues, marketing and advertising of member goods to generate sales of those goods you are in turn acting as a sales agent for your members. Where members would otherwise have to market and sell their goods themselves you are relieving them of this responsibility by providing the service of operating the market. Where a service merely relieves members of work they would either have to perform themselves or have performed for them, or where the principal purpose of the organization is to act as a sales agent for its members an organization will not qualify as an IRC 501(c)(5) organization.

In Revenue Ruling 66-105, an organization acting as an outlet for the sales of members products, where the proceeds are returned to the members, does not qualify an organization under section 501(c)(5). You are similar to this organization in that you provide the market place for members to sell their wares were they receive the sales proceeds.

This is further demonstrated in Revenue Ruling 74-195. In that ruling, providing an outlet for sales of members' products (along with managing and grazing their animals) was considered a direct business service for the members' economic benefit, which precluded exemption under section 501(c)(5) of the Code. By providing a similar service

(an outlet for sales of member products), you are not bettering the conditions of those engaged in agricultural pursuits, improving the grade of their products or developing a higher degree of efficiency in their operations. While you do provide some training sessions that would in turn generate enhanced quality of vendor products your main activity is operating the market. Thus, you do not qualify as an organization described in section 501(c)(5) of the Code.

Applicant's Position

You reported that all of your activities and expenditures are for the benefit of consumers. By providing a centralized location, local community members can learn to understand and appreciate the benefits of buying locally produced foods, without having to track down each individual provider. If a community member attempted to obtain the diversity of vendors (ranging from sales of homemade breads and home grown vegetables to organic meats and eggs) available at the market, most would get frustrated and give up.

You feel that the local gathering allows vendors to reach a larger group of consumers without receiving any direct services from you. The advertising for your market alerts consumers of product availability but does not promote any one vendor. You consider the farmers market a place that allows the 'improvement of business conditions of one or more lines of business as distinguished from performance of a particular service for individual persons'.

You contend that you do not directly sell or provide any services directly to members, but exist to educate consumers on the value of buying locally produced foods and environmental issues, it is your belief that you qualify for exemption under section 501(c)(6) of the Code as do chambers of commerce who strive to encourage consumers to buy from local businesses that are members.

Lastly, you feel that based on the information provided and your understanding of section 501(c)(5) of the Code, you should also be able to meet the standards of exemption under that section if we deny your request under section 501(c)(6) of the Code.

Service Response to Applicant's Position

Although you do have some minimal activities aimed at educating the community and improving products for sale and your intention of helping the community understand and appreciate the benefits of purchasing locally produced foods and wares is admirable, your educational pursuits are incidental to your overall activity. Your primary activity is operating a farmers market. Since you currently promote the market, solicit membership based on participation in the market and spend most of your meeting time planning and

discussing the market, your primary activity is providing particular services, in the form of providing a marketplace, to the member vendors.

There is minimal evidence that any of your operations are aimed at improving any line of business. Rather, your operations are clearly aimed at performing a particular service to individual members, i.e, providing a marketplace for their wares.

Your support and operation of the farmers market provides selling opportunities for the member vendors. This serves as a convenience for the economy of the members vendors in the operation of their own businesses, which is clearly contrary to exemption under section 501(c)(6) of the Code. Thus, you do not meet the standards of exemption under section 501(c)(6) of the Code.

You are formed to regularly promote and market your members' products. This is a direct business service that economically benefits your members. Your role is as a marketing/sales agent which makes all the necessary arrangements for members to present their products for sale to the general public. You create an environment, the farmers market, for the sale of members' products. The sale of members' products does not provide for the betterment of conditions for the farmers nor improve the grade of their products. Your organization operates for the convenience of members and the production of income. By operating in this manner, you are not considered to be the type of organization contemplated in section 501(c)(5) of the Code. Thus, you do not meet the standards of exemption under this section of the Code either.

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 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)(5) of the Code. You were not formed to improve the grade of member products but rather to provide a direct business service for your members' economic benefit. Accordingly, you do not qualify for recognition of exemption under section 501(c) (5) 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