



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201242016**
Release Date: 10/19/2012

Date: **July 27, 2012**

UIL: 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)(3). 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.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. 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.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

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 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,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

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: **June 8, 2012**

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL: 501.06-01

D = Date of Incorporation
S = State
N = Corporation
p = Annual membership fee

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 section 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 Code? No, for the reasons described below.

Facts

Your founder is the owner of a for-profit company, N. N provides financial products and services.

You were incorporated on D, in the state of S with the following specific purposes.

- To promote the exchange of information and to communicate innovations and ideas in the field of health care.
- To promote professional standards in the health fields.
- To promote and conduct educational workshops and seminars in the health fields.
- Through networking, share products and services that are available in the health fields, to your members.
- To make distributions to organizations that qualify as exempt organizations under Section

501(c)(3), Section 501(c)(4) and Section 501(c)(6) or any state, territory or political subdivision exempt under section 115 of the United States Internal Revenue Code.

Your founder is the sole member of your governing body and holds all positions in the organization. Your Articles of Incorporation provide for two classes of members, founding members and appointed members. You have no Bylaws. You stated in correspondence that you currently have two members, your founder and a CPA, who is also affiliated with N. You also refer to individuals who attend your programs and pay your fees as members.

You are dedicated to improving the business conditions of the health care professionals' industry through your activities. Your application for exemption included a variety of services to health care professionals such as seminars on marketing strategies, access to patient pools, training on treatment techniques, consulting services and a relationship with your founder's for-profit organization, N. You are intended to be a forum for the exchange of information that will improve the profitability and longevity of your health care professional members and improve conditions in health care professional industries you serve.

When asked questions about your activities, your mission and activities changed. Your modified activities consist of educational seminars and programs on pensions and personal financial planning for licensed health care professionals. You will market your seminars by mailing invitations to doctors' offices. Descriptions of seminars also can be found on your web site. You plan to hold a minimum of four seminars per year. Your founder, the CPA and another individual, also connected with N, will conduct the seminars. Your sample seminar materials specifically presented your founder's financial planning program. For example, seminar topics include, in pertinent part, how to:

- o obtain stock market gains without exposure to stock market losses.
- o accumulate guaranteed principle, guaranteed return, increments of guaranteed income.
- o guarantee the recovery of losses of personal and retirement plan savings through guaranteed income.
- o use pre-tax earnings from health care professional practice to repay student loans.
- o accelerate pension contributions.

Your web site does not clearly distinguish you from N. Each page is headed with your name. The web site states N's method "creates substantial savings – in excess of two million dollars on average - with no risk." You show individuals "how to redirect monies currently paid as taxes into ...[a] personal retirement and savings fund." You show how to incorporate for tax advantages, design cash accumulation plans, develop tax strategies, create a retirement plan, minimize or eliminate capital gains taxes, build walls of protection from creditor claims and minimize or eliminate estate taxes.

You will continue to operate closely with N. N may refer prospective members to you, and you may refer members to N for financial products and services. Your services may come from a variety of vendors, including N. Other vendors are selected by past relationships with your founder.

Income will include "association dues" of \$p per year per member. You may also receive attendance fees for your seminars and fees from sponsorships.

No detail was provided on expenses. However, you state your founder and the CPA have a

verbal agreement that they may be compensated.

As part of your mission to improve the business conditions of the health care professional industry, you may provide your members the opportunity to join a benefits plan. The plan would provide life insurance to plan members aimed at providing financial stability to the industry by providing a means under which health care professionals can ensure continuation of their businesses. The insurance would be term life, the cost of which would be set by the insurance company. At present, no specific insurance policy or carrier has been identified or contacted pertaining to the plan. The term premiums associated with the purchase of the plan would be paid from membership dues and represent the annual premiums associated with the specific insurance policy being purchased. It is anticipated that initially you will own the policies, although the beneficiaries of the policies will be your members.

Law

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

Section 1.501(c)(6)-1 of the Income Tax Regulations states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Revenue Ruling 56-65, 1956-1 C.B. 199 denied exemption to a local organization whose principal activity consisted of furnishing particular information and specialized individual service to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses.

Revenue Ruling 66-338, 1966-2 C.B. 226 describes a nonprofit organization formed to promote the interests of a particular retail trade. Field representatives of the organization call on the members to consult with them and advise them on their individual business problems. The advice furnished includes assistance in planning modernization and layouts of the members' stores. As part of their calls, the field representatives also inform the members about supplies, equipment, and additional services which the organization can make available to the members at low prices. This includes office and store operating supplies, store fixtures and display accessories, store layout and merchandising services, and electronic management services. The activities provide the members of the organization with an economy and convenience in the conduct of their individual businesses by enabling them to secure supplies, equipment, and services more cheaply than if they had to secure them on an individual basis. Therefore, the activities constitute the performance of particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole. The organization was denied exemption under section 501(c)(6) of the Code.

Revenue Ruling 67-176; 1967-1 C.B. 140; 1967 stated that an organization formed to provide specific services to members, who are students preparing for a given profession, in the form of grants, loans, insurance, discounts, etc. on matters relating to their professional practices did not qualify for exemption under section 501(c)(6) of the Code.

Revenue Ruling 76-409, 1976-2 C.B. 154 denied exemption to an organization whose principal activity is the publication and distribution of an annual directory consisting almost entirely of members' names, addresses, and telephone numbers. The directory is distributed free to those members of the business community who are likely to require the services of the profession. It was held, the publication and distribution of a directory containing the names and addresses of members constitutes advertising for individuals, and therefore, is the performance of particular services to members rather than an activity aimed at the improvement of general business conditions.

In Apartment Operations Ass'n v. Commissioner of Internal Revenue, 136 F. 2d 435 (1943), the court denied exemption as a business league. The organization was an apartment owners' association which regularly carried on a business of a kind ordinarily conducted for profit and performed particular services for individual persons. These services consisted of acting as a clearing house for information about tenants, including the operation of apartment houses, and about legislation affecting the business; gave counsel and advice to its members and did what it could to promote their welfare; secured information about prices for necessary goods for the apartments; and represented its members in labor disputes and negotiations. The Court held the organization regularly carries on business of a kind ordinarily conducted for profit, and performs particular services for individual persons. There is no showing that business done or the activities described were merely incidental to the organization's total activities.

Application of Law

You are not described in section 501(c)(6) of the Code because you are not an association of members. You are controlled by one individual, your founder, who holds all governance positions. The individual described as your second member is also affiliated with your founder's for-profit organization, N, and there is no indication he has any authority in your operations. In your Articles of Incorporation "Founding Members" and "Appointed Members" are differentiated. However, terms and qualifications are not specified, and your Bylaws were not provided. Even though you use "members" to describe those attending your seminars and paying your fees, there is no indication these individuals have a voice in your operation.

Section 501(c)(6) of the Code requires that no part of your net earnings may inure to the benefit of any private shareholder or individual. You are controlled by your founder, and your founder will benefit either directly through your operation or indirectly through expanded business to N. You were formed to market your founder's financial planning seminars and direct individuals to N for the purchase of financial products. You are not described in IRC section 501(c)(6) because you were formed to provide particular services to individuals and therefore, operate similar to a for-profit business. Your operation serves to benefit N, your related for-profit entity, as well as your founder.

You are not described in Section 1.501(c)(6) -1 of the Income Tax Regulations because the facts show you are not formed to promote the common business interests of a particular industry or trade. Rather, you provide a referral service by referring individuals whom you identify as members to N. You engage in a regular business of the kind ordinarily carried on for profit in that you provide a specific service, financial planning seminars and programs, that it would otherwise be necessary

for individual members to engage on their own or through another entity.

You do not meet certain basic tests required to be exempt under IRC section 501(c)(6). As stated in the regulations, one of the tests is that you must be an association of persons having some common business interest, and your purpose must be to promote that common business interest. The common business interest of your two members that you promote is the business interest of N, your related for-profit entity. An organization exempt under IRC section 501(c)(6) must not be organized for profit, must be a membership organization and have a meaningful extent of membership support. However, in your operation you feed business to N, a for-profit business organization. You have two members, both of whom are significantly involved in the organization and operation of both your organization and N, the for-profit, as well. Section 501(c)(6) of the Code requires that no part of the organization's net earnings may inure to the benefit of any private shareholder or individual. By feeding business to N, the for-profit owned in part by your officer and where both of your members are beneficiaries of N's for-profit enterprise, net earnings do inure to the for-profit. Section 1.501(c)(6)-1 of the regulations requires that 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. However, you provide particular services for individual persons in that you seek to educate members on pension planning while selling them insurance. An organization recognized as tax-exempt under section 501(c)(6) of the Code must not engage in a regular business of a kind ordinarily carried on for profit, even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining. However, as previously noted, your operation serves a profit making purpose in that you promote and feed business to N, the for-profit.

Like the organization in Revenue Ruling 56-65 you are providing a particular service to businesses by making referrals to N. You are not benefiting the common business interests of all businesses involved with your industry. Your activity constitutes performance of a particular service to your clients. You are providing services to clients that are similar to a business that is ordinarily carried on for profit. Even if the individuals attending seminars were considered members of the organization, providing financial planning seminars is a particular service, and since this is your primary activity, exemption is precluded.

Similar to the organization in Revenue Ruling 66-338, your organization was formed to provide consulting to individual businesses. By referring your clients to N or other vendors vetted by you, you are providing the clients with a service that they would otherwise have to secure on their own. Although the activities of your organization may not be the same specific activities addressed in the revenue ruling, denial of exemption is based on the performance of a particular service for clients, which makes the ruling relevant to your activities.

You are like the organization in Revenue Ruling 67-176, which not qualify for exemption under section 501(c)(6), because in your operation you provide insurance products to your members.

You are also like the organizations in Revenue Ruling 76-409, where the organizations acted as employment agencies for their members. Although your organization does not publish a directory, you do refer clients to N and possibly to current and future vendors in order to secure beneficial business deals. This creates a convenience and economy for the clients that they would otherwise have to purchase independently.

You are like the organization in Apartment Operations Ass'n v. Commissioner of Internal

Revenue, 136 F. 2d 435. Like the organization in this case, you provide professional services for the benefit of your members. Similar to a business ordinarily carried on for profit, you render particular services for individual members rather than promoting the general business conditions of the industry as a whole.

Applicant's Position

You believe you are exempt under 501(c)(6) and have met all requirements for exemption under 501(c)(6).

Service Response to Applicant's Position

You have not recognized the significance of the relationship with a for-profit entity controlled by insiders, as well as the provision of services and benefits to individuals, as factors that disqualify an applicant from exemption under section 501(c)(6) of the Code.

Conclusion

The facts clearly show you are not operated as a business league. Your activities are not directed to the improvement of business conditions of one or more lines of business, or any other purpose defined in IRC section 501(c)(6). Rather, your activities and purposes are directed at providing specific services for your members and referring your clients to N, a for-profit enterprise, which was founded and is operated by your officer and founder. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code.

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

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

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

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

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

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

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

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

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
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