



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201405025**
Release Date: 1/31/2014
Date: November 7, 2013
UIL Code: 501.06-00

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.

Because 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. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

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, 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.

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,

Ken Corbin
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 16, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

UIL: 501.06-00
501.06-01

B = Name
C = Name
D = Name
M = State
X = Date
Y = Date
Z = Date
f dollars = Amount
g dollars = Amount

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.

Issues

Do you qualify for exemption under Section 501(c)(6) of the Code? No, for the reasons described below.

Facts

You were incorporated on date Y in the State of M. You were automatically revoked on date X for failure to file three consecutive returns.

You filed an application for exemption requesting classification under Section 501(c)(6) of the
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Code on date Z. According to your Articles of Incorporation, you were formed for the following purposes:

- To unite those engaged in the recognized branches of the real estate profession for the purpose of exerting a beneficial influence upon the profession and related interests.
- To promote and maintain high standards of conduct in the real estate profession as expressed in the Code of Ethics of B.
- To provide a unified medium for real estate owners and those engaged in the real estate profession whereby their interests may be safeguarded and advanced.
- To further the interests of home and other real property ownership.
- To unite those engaged in the real estate profession in this community with C and B. Thereby furthering their own objectives throughout the state and nation, and obtaining the benefits and privileges of membership therein.
- To designate for the benefit of the public, individuals authorized to use the terms Realtor and Realtors as licensed, prescribed, and controlled by B.

Upon your dissolution, your assets will be distributed to C, or to any other non-profit organization.

Your bylaws state the same purposes as your Articles of Incorporation and state you are a membership organization. Benefits of membership are use of the Multiple Listing Service (MLS) and access to B and C benefits.

membership benefits. Article XVIII of your bylaws provides you will:

“Make every reasonable effort to contract for the provision of the MLS on behalf of your members.”

According to your bylaws, the MLS is a “means by which authorized participants make blanket unilateral offers of compensation to other participants (acting as either sub agents or buyer agents); by which cooperation among participants is enhanced by which information is accumulated and disseminated to enable authorized participants to prepare appraisals analyses and other valuations of real property for bona fide clients and customers; by which participants engaging in real estate appraisals contribute to common data bases; and is a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and the public.”

To be a member, an applicant must be an active, licensed real estate agent or a licensed or certified appraiser. Members pay annual dues; in addition, you provide them unlimited MLS use for a monthly fee.

Moreover, you provide eligible non-members the use of the MLS for a monthly fee. To be eligible for this, applicants must be a member of another real estate association anywhere in the

country where licensed to engage in the sale of real estate. Furthermore, a sales person may affiliate with a branch office that is a full member in this jurisdiction to become an MLS user only.

You submitted a copy of your rules and regulations regarding the operation of the MLS. It describes in detail the listing procedures, property types, as well as numerous rules regarding the use of the MLS by members. For example, members must change the status of their listings from active to pending to sold. The MLS also permits appraisers to contribute to the common database and use information for appraisals. In addition, the general public has limited access to the MLS.

You also operate a web site. The web site home page states the web site

Furthermore, your web site provides a page link to the MLS for the counties you serve. You currently contract with D for the provision of the MLS on behalf of your members. You charge members f dollars per month and pay D g dollars per member for unlimited MLS use and access. You have a board member who is assigned to the MLS committee of D. The board member attends regular meetings with D regarding the provision of the MLS.

The financial data you provided indicates for each of your last four completed tax years between 93 – 96% of your total revenue was received from MLS fees. Expenses relating to the MLS service are between 80% and 85% of your total expenses.

Other information you provided consists of:

- You were established because a local organization had to be formed in order to be a member of B and C.
- You have a large board, who reviews member applications and apprises members of changes in the law for real estate agents keeping them current on real estate activities.
- Your board of directors will carry on the day-to-day activities of the membership, including monthly meetings, quarterly meetings and special meetings as needed providing information from the state level to the members.
- Other than MLS fees, you receive revenue from membership dues.

Law

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulation 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.

In Rev. Rul. 59-234, 1959-2 C.B. 149, a real-estate board whose primary purpose or activity was the operation of a multiple listing system is considered to be rendering particular services for its members and is not exempt from federal income tax as an organization described in section 501(c)(6) of the Code. The organization received its revenue from initiation receipts and membership fees, fees related to the operation of the multiple listing service, interest and income from the sales of literature relating to real estate. It was shown that the multiple listing service accounted for 75% of the organization's income and 80% of the expenses. It was held that the operation of a multiple listing services as operated by real estate boards were inherently designed to render particular services for individual members and their particular businesses as a convenience and economy in the conduct of their business.

In Rev. Rul. 72-211, 1972-1 C.B. 150, an organization whose principal activity was the operation and maintenance of a plan room that was open for use by all individuals and businesses in the industry, nonmembers as well as members, is not rendering particular services to its members and therefore qualifies for exempt status under section 501 (c)(6) of the Code. Providing a plan room available to the entire building and construction industry without charge was found to improve the business conditions of that line of business because it makes information on construction projects freely available to the construction industry.

In Evanston-North Shore Bd. of Realtors v. U.S., 320 F.2d 375 (Ct.Cl. 1963), an Illinois not-for-profit corporation which operated a multiple listing system not directed to improvement of business conditions in the real estate market and not merely as an incidental activity of the board of licensed realty brokers and salesmen, was not entitled to exemption from income tax. It was held the operation of the multiple listing service was the dominant activity. In addition, the decision held the multiple listing service was a tool businesses used in their real estate transactions. The MLS was used to facilitate the sale of property by bringing buyers and sellers together and provided a benefit to those selling property.

Application of Law

You are not described in IRC 501(c)(6) because you are primarily providing particular services to members.

You are not described in Section 1.501(c)(6)-1 of the Income Tax Regulation because the facts show you are not formed to promote the common business interests of a particular industry or trade, but rather for the purpose of contracting on members behalf unlimited use and access to the MLS for a fee. You are providing members specific services, which would otherwise be necessary for each individual member to obtain on his/her own. Moreover, non-members who meet certain criteria may also pay a monthly fee for unlimited use and access to the MLS. In addition, although the fees from the MLS produce only sufficient income to be self-sustaining, you are engaging in

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a regular business of a kind ordinarily carried on for profit.

You are like the organization described in Revenue Ruling 59-234 because you are primarily providing members the use and access of the MLS which you contract on their behalf. Your MLS fees make up between 90-94% of your revenue. MLS related expenses make up 80-85% of your total expenses. This indicates this is your primary activity.

You are not like the organization described in Revenue Ruling 72-211. Although the public has limited access to the MLS, only paying members and other qualified individuals or businesses in the real estate industry who also pay monthly fees have unlimited access and use of the MLS. On the other hand, the organization in the revenue ruling is making its plan room and news bulletin available to all in the construction industry; moreover, there is no charge for use of the plan room.

Your operations are similar to the organization in Evanston-North Shore Bd. of Realtors v. U.S because the majority of your revenue is generated from fees from the MLS; this supports the fact that the provision of the MLS is your dominant activity. Furthermore, your members use the MLS as a tool in their real estate businesses to facilitate the sale of property, which provides a benefit to those selling property. Therefore, the MLS system provides a particular service to your individual members instead of primarily engaging in activities that further the common business interests of the real estate industry.

Conclusion

Based on the information provided in your Form 1024 and supporting documentation, we conclude that you are not operated for purposes described in section 501(c)(6) of the Code. You are primarily contracting on your members behalf unlimited access and use of the MLS which is the rendering of particular services for your members. This precludes exemption under Section 501(c)(6).

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.

Types of information that should be included can be found in Publication 892. The statement of facts must be declared true under penalties of perjury. This may be done by adding to the protest the following signed declaration:

"Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete."

Your protest will be considered incomplete without this statement.

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

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance

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,

Ken Corbin
Director, Exempt Organizations

Enclosure: Publication 892

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