



Department of the
Treasury Internal
Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Number: **201622033**
Release Date: 5/13/2016

Date: March 2, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.06-01

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(6) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*

cc:



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: December 12, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

M =
N =
P =

UIL:

501.06-01

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(6) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issue

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

Facts

You were incorporated in M on N as a not for profit office condominium association. You self-declared yourself as exempt under section 501(c)(6), and were automatically revoked in P because you did not file the required tax forms for three consecutive years. You have now applied for reinstatement of exemption under section 501(c)(6) of the Code.

You were formed to operate, manage, maintain, administer and control an office condominium development. The members of your association are all owners of your condominium units.

Your activities include:

1. Providing preservation of the appearance, value and amenities of the property you hold,

2. Owning and maintaining, repairing and replacing the general and/or common areas of the property,
3. Controlling the specifications, architecture, design, appearance, elevation and landscaping of all improvements and structures of any kind, in accordance with your protective covenants,
4. Providing, purchasing, acquiring, owning, replacing, improving, maintaining and/or repairing such real property, buildings, structures, street lights, landscaping, paving or other improvements accepted by you,
5. Providing services, the responsibility for which has been, or may be, delegated to, and accepted by you,
6. Operating without profit for the sole and exclusive benefit of your members, and
7. Performing any and all other functions contemplated of the or otherwise undertaken by your governing body.

Your financial support is received from your membership. Member dues are determined based on the square footage of each office condominium unit. Each member has one vote per unit of ownership.

You have appointed a manager to send monthly dues invoices, manage funds, and pay common area expenses such as water, sewer, landscaping maintenance and electric utilities. Your expenses include water and sewer, electrical power and lighting, property insurance, grounds keeping, property management fees, termite bond, professional fees, repairs and maintenance, and bank service charges.

Upon dissolution, all of your assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

1. Real property contributed to the Association without the receipt of other than nominal consideration by Developer (or its predecessor in interest) shall be returned to Developer, unless it refuses to accept the conveyance (in whole or in part).
2. Remaining assets shall be distributed among the members, subject to the limitations set forth below, as tenants in common, each members' share of the assets to be determined in accordance with its voting rights.

Law

Section 501(c)(6) of the Code provides that organizations organized as business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Treasury Regulation 1.501(c)(6)-1 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. 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.

Rev. Rul. 68-264; 1968-1 C.B. 264 held a nonprofit organization is not exempt from federal income tax under section 501 (c) (6) of the Code if it operates a traffic bureau for members and nonmembers as its primary activity because activities that constitute the performance of particular services for individual persons may preclude exemption. An activity that serves as a convenience or economy to members in the operation of their businesses is a particular service of the type proscribed. The operation of a traffic bureau for members and nonmembers is a clear convenience and economy to them in their businesses, resulting in savings and simplified operations. Accordingly, this activity constitutes the performance of particular services for individual persons.

Rev. Rul. 73-411; 1973-2 C.B. 180; 1973 held a shopping center merchants' association whose membership is restricted to and required of the tenants of a one-owner shopping center and their common lessor, and whose activities are directed to promoting the general business interests of its members, does not qualify as a business league or chamber of commerce under section 501(c)(6) of the Code. The organization's activities were not directed at improvement of business conditions of one or more lines of business or business conditions of any community as a whole, within the meaning of section 501 (c) (6) of the Code. They serve instead the individual business interests of the owner of the shopping center and, therefore, fall outside the scope of the exemption accorded by section 501 (c) (6). The same conclusion applies with respect to those phases of the organization's activities that relate to such matters as the maintenance and policing of the shopping areas, walkways and parking areas, hours of business, and similar functions. These activities are characteristic of a tenants' association, rather than of a chamber of commerce or trade association and fall short of supporting any section 501 (c) (6) exemption for the organization because they primarily serve special interests of the members related to their status as tenants of a common facility rather than any common business purposes in relation to the status of the members as representatives of the commercial interests of a community.

In *Indiana Retail Hardware Assn., Inc. v. United States* (1966), 177 Ct. Cl. 288, the Court held that when conducting particular services for members is a substantial activity of an organization, the organization will be precluded from exemption under section 501(c)(6) of the Code.

Application of Law

Section 501(c)(6) provides exemption from income tax for organizations organized as business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues. As demonstrated in your Articles of Incorporation, you are not organized for any of the purposes described in section 501(c)(6) of the Code.

Further, section 501(c)(6) provides that an organization is precluded from exemption if any part of the net earnings inure to the benefit of any private shareholder or individual. Because you operate for the sole and exclusive benefit of your membership and your assets will be distributed to your members upon your dissolution, your net earnings inure to individuals. Thus, you do not qualify for exemption under section 501(c)(6) of the Code.

Contrary to Treasury Regulation 1.501(c)(6)-1 you are not an association of persons with common business interest; rather, you are an association of condominium owners whose common interest is providing maintenance for the common areas of their office condominiums. Other than the fact that all of your members

own a condominium on common grounds, your members have no common business interests. Therefore you are not a business league, chamber of commerce, etc. as described in section 501(c)(6) of the Code.

Rev. Rul. 68-274 provides that activities that constitute the performance of particular services for individual persons may preclude exemption from federal income tax under section 501(c)(6) of the Code. Any activity that serves as a convenience or economy to members is a particular service. All of your activities are directed toward providing services to members. Maintaining the common areas of a condominium complex is a convenience to the owners. If not for you, the individual owners would have to perform this duty. Further, by pooling resources to provide maintenance for the common areas, you provide economy to members.

Like the organizations described in Rev. Rul. 73-411 and Indiana Retail Hardware Assn., Inc. v. United States, your activities do not improve the business conditions of one or more lines of business or business conditions of any community as a whole. Instead, you serve the special interests of your individual members. Your activities are characteristic of a tenants' association, rather than of a chamber of commerce or trade association and fall short of supporting any claim of exemption under section 501(c)(6).

Applicant's Position:

You claim to be a business league, which is comprised of the owners of an office condominium community, having the common business interest of promoting, maintaining and improving the overall business conditions within your community. You claim that this is a line of business.

You contend that your members represent a "line of business" as defined in Section 501(c)(6) of the Code. You argue you are not similar to the organization described in Revenue Ruling 73-411 because the organization in that ruling furthered the for-profit interests of the owner of a retail shopping center whereas you improve the business conditions of the condominium "community."

Service's Response to Applicant's Position:

Your members have no common business interest other than owning a unit in your office condominium "community." Therefore, you are not promoting the interests of one or more lines of business. Your activities focus solely on maintaining the condominium property, not furthering business interests. These activities constitute services to members that would have to be performed by your individual member businesses if not for you. You are essentially a condominium association which maintains a building for your owners, not a business league that is formed for the promotion of business interests of one or more lines of business.

Conclusion:

You are not an association of persons promoting one or more lines of business, and your activities constitute specific services to members. Accordingly, you do not qualify for exemption from federal income tax under section 501(c)(6) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I 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.

For authorized representatives:

Under penalties of perjury, I declare that I prepared 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 representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Where to send your protest

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

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

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

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements. You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892