DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4920
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 10/20/2016

Release Number: **201706018**
Release Date: 2/10/2017
UIL Code: 501.03-00

Taxpayer Identification Number:

Tax Period Ended:
December 31, 20XX
Person to Contact:

Identification Number:

Contact Information:
Telephone:
Fax:

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Code section 501(c)(6) for the tax period(s) above.

Your exempt status is hereby revoked effective January 1, 20XX.

Our adverse determination as to your exempt status was made for the following reason(s):

An organization exempt under Code section 501(c)(6) must provide for the exemption of business leagues and similar organizations. Treasury Regulations 1.501(c)(6)-1, defines a business league as an association of persons having a common interest, whose purpose is to promote a common business interest. It has been determined that you are not operated exclusively for the promotion of common business interests of your members and you are not an organization described in section 501(c)(6).

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues:

1) United States Tax Court,

2) the United States Court of Federal Claims, or

3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the

date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, N.W.
Washington, D.C. 20217

U.S. Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20439

U.S. District Court for the District of Columbia
33 Constitution Ave., N.W.
Washington, D.C. 20001

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

You may also be eligible for help from the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Publication 892
Envelope

Department of the Treasury
Internal Revenue Service
IRS Tax Exempt and Government Entities
Exempt Organizations Examinations
1100 Commerce St, MC 4957 DAL
Dallas, TX 75242-1100

Date:
May 20, 2016
Taxpayer Identification Number:

Form:
990
Tax Year(s) Ended:
December 31, 20XX
Person to Contact / ID Number:

Contact Numbers:
Telephone:
Fax:
Manager's Name / ID Number:

Manager's Contact Number:
Telephone:
Response due date:
June 24, 20XX

Certified Mail - Return Receipt Requested

Dear :

Why you are receiving this letter
We propose to revoke your status as an organization described in section 501(c)(6) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree
If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action - Section 7428,* and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(6).

Effect of revocation status
If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation
If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter.
The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an /RS Decision on Tax-Exempt Status,* and page six of the enclosed Publication 3498,

The Examination Process. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

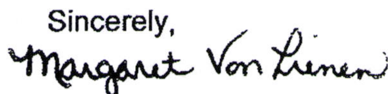
Contacting the Taxpayer Advocate Office is a taxpayer right
You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information
If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,



Margaret Von Lienen
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Name of taxpayer	Tax Identification Number	Year/Period ended
		Dec. 31, 20XX

ISSUE:

Whether qualifies for recognition of tax exempt status under section 501(c)(6) of the Internal Revenue Code (hereinafter 'Code') for the calendar year tax period ending December 31, 20XX.

FACTS:

is an association of authorized (hereinafter ' ') automobile dealerships in the of that sell automobiles within the family of vehicles (, or some combination thereof). It was organized to function as a — a term that originates from and is defined by .

The is a program designed by in order to leverage advertising and promotional efforts on a market-by-market basis. Its goal is to improve new-vehicle, retail and wholesale parts, service, accessories, and certified used/pre-owned retail sales and market share in participating markets. offers participating dealers a complete portfolio of group and individual dealer retail programs.

The group component of this program is also known as a . requires each of its to be individually incorporated and to fit within the geographic boundaries of a designated market area defined by the Nielsen Company. Dealership participation is not compulsory. A dealership may choose to enroll in the group component of depending on its own business needs and applicable market conditions.

Upon meeting the basic requirements to qualify as an , each must choose whether to adopt a turnkey approach or a custom approach. With a turnkey approach, the chooses to retain the preferred retail marketing agency and pays a X percent administration fee to . With the custom approach, the chooses to hire any qualifying retail advertising agency to handle all account coordination, creative, production, and media activities. With this approach, collects a X.XX percent administration fee.

If a dealership enrolls in an , an incremental contribution amount is added to the invoice for each new car purchased from . Each dealership participating in the pays the same contribution rate. The Board of Directors of each elects to contribute to the at a rate between a minimum of X.X percent to a maximum of X percent of Manufacturers Suggested Retail Price (MSRP) of each eligible vehicle invoiced to the dealer. The received funds are pooled in a cooperative advertising account. sends a weekly report to each participating dealership which details the amount of contributions made to date. After an individual dealer has made a contribution to an , it forfeits any right or interest in the contributions. at its sole discretion may, based on business or market considerations, decide to cap or eliminate contributions for certain vehicle models or trims.

Subject to program guidelines, the Board of Directors has the authority to decide on which media expenses, creative and production expenses, and authorized non-media expenses the will incur. Specifically, each has control over its own advertising content, as well as the ability to hire its own advertising, media planning, and purchasing agencies. Up to XX percent of net contributions for each

calendar year may be used to fund authorized non-media expenditures. encourages to spend program funds on non-media expenditures only when substantial media levels are being obtained. has the right to terminate or cancel any or the entire group component of at any time, for any reason, upon 30 days' prior written notice to all affected dealers. If the in a designated market area is terminated by , any remaining contributions will be spent on media in accordance with guidelines.

Since is the group component of for one particular market area, its dealerships make contributions through new car invoices in the same manner required of other . The contributions of the dealerships in the less administrative fees were deposited into a cooperative advertising account.

used the turnkey approach for the relevant tax period. Under this approach, agreed to use the advertising agency endorsed by , , for its advertising campaigns. is a division of , a publicly traded global marketing and corporate communications company. is not a party to a written contract with or because negotiates the terms of this contract for all that use the turnkey approach.

The only bank account used by is the cooperative advertising account. is the recipient of substantially all disbursements paid from this account. Physical custody of financial records is maintained by despite no agents or representatives of serving on governing board.

has not submitted Form 1024, *Application for Recognition of Exemption under Section 501(a)*, or received a favorable ruling or determination letter granting recognition of tax-exempt status.

has filed Form 990, *Return of Organization Exempt from Income Tax*, for every tax period starting in 20XX to current date. On these returns, it has declared itself to meet the criteria to be described as exempt under section 501(c)(6) of the Code.

LAW:

Section 6033 of the Code provides that every organization (subject to certain exceptions) exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the Internal Revenue laws as the Secretary may by forms or regulations prescribe.

Section 501(a) of the Code provides that certain organizations described in sections 501(c), 501(d), or 401(a) shall be exempt from taxation unless exemption is denied under another Code section.

Section 501(c)(6) of the Code exempts from Federal income tax organizations seeking to operate as business leagues. The primary activity for these organizations must be improving business conditions in one or more lines of business.

Section 1.501(c)(6)-1 of the Treasury Regulations defines a business league as an association of persons having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business of a kind ordinarily carried on for profit. Its activities are

directed to the improvement of business conditions of one or more lines of business rather than the performance of particular services for individual persons.

In _Associated Industries of Cleveland v. Commissioner, 7 T.C. 1449, 1465 (1946), acq. 1947-1 C.B. 1_ the Tax Court ruled that for purposes of section 501(c)(6) of the Code, the term "business" is construed broadly. Interpreting the meaning of "business" under the predecessor of section 501(c)(6), "the term 'business' is very comprehensive and embraces everything about which a person can be employed."

Rev. Rul. 55-444, 1955-2, C.B. 258 provides that an organization formed to promote the business of a particular industry and that conducted a general advertising campaign to encourage the use of products and services of the industry as a whole qualified for IRC 501(c)(6) exempt status notwithstanding that such advertising to a minor extent constituted the performance of particular services for its members.

In _Washington State Apples, Inc. v. Commissioner, 46 B.T.A. 64 (1942), acq., 1942-1 C.B. 17_ an association of apple growers that engaged in promoting the sale of apples grown in the state was held exempt under the predecessor of IRC 501(c)(6) since its purpose was to promote the industry as a whole and not members of the organization and to improve a line of business, even though its benefits were limited to a particular geographic area.

Rev. Rul. 70-80, 1970-1 C.B. 130 provides that a nonprofit trade association of manufacturers, whose principal activity was the promotion of its members' products under the association's required trademark, did not qualify under IRC 501(c)(6).

Rev. Rul. 58-294, 1958-1 C.B. 244 provides that an association of licensed dealers in a certain type of patented product did not qualify as a business league where the association owned the controlling interest in a corporation holding the basic patent, was engaged mainly in furthering the business interests of its member-dealers, and did not benefit people who manufacture competing products of the same type covered by the patent.

Rev. Rul. 67-77, 1967-1 C.B. 138 provides that an association of dealers which sold a particular make of automobile and that engaged in financing general advertising campaigns to promote the sale of that make was not exempt because it performed particular services for its members rather than promoting a line of business; i.e., the automotive industry as a whole.

Rev. Rul. 83-164, 1983-2 C.B. 95 provides that an organization whose members represented diversified businesses that own, rent, or leased computers produced by a single computer manufacturer did not qualify for exemption under IRC 501(c)(6).

Rev. Rul. 74-147, 1974-1 C.B. 136 provides that an organization that directed its activities to users of computers made by diverse and competing manufacturers, had a common business interest concerning the use of computers.

In _National Muffler Dealers Association v. United States, 440 U.S. 472 (1979)_, the Supreme Court held that an association of a particular brand name of muffler dealers did not qualify for IRC 501(c)(6) status because it was not engaged in the improvement of business conditions of a line of business.

In *Pepsi-Cola Bottlers' Association, Inc. v. United States, 369 F.2d 250 (7th Cir. 1966)*, the Seventh Circuit had concluded that that an association of the bottlers of a particular brand of soft drink was promoting a line of business. The government had contended that it was not promoting a line of business since the entire soft drink industry, rather than a particular brand, was the line of business. The Service subsequently reiterated its position in Rev. Rul. 68-182, 1968-1 C.B. 263.

Rev. Rul. 68-182, 1968-1 C.B. 263 provides that it is the position of the Service that an organization promoting a single brand or product within a line of business did not qualify for exemption from Federal income tax under section 501(c)(6) of the Code.

In *National Prime Users Group, Inc. v. United States, 667 F. Supp. 250 (D.C. Md. 1987)*, the court held that an organization that served the needs of users of a specific brand of computer promoted only a segment of a line of business and was not exempt under IRC 501(c)(6).

In *Guide International Corporation v. United States, 948 F.2d 360 (7th Cir. 1991)*, the court concluded that an association of computer users did not qualify for exemption under IRC 501(c)(6) because it essentially benefitted only users of I.B.M. equipment.

In *Automotive Electric Association v. Commissioner, 168 F.2d 366 (6th Cir. 1948)* exemption under section 501(c)(6) of the Code was denied to an association that published catalogues that listed only products manufactured by the members.

The Protecting Americans from Tax Hikes Act of 2015 (PATH Act), P.L. 114-113, Section 406, expands declaratory judgment rights under section 7428 to all section 501(c) and 501(d) organizations. As a result of these expanded rights, the IRS will revoke (or *treat as* a revocation for declaratory judgment purposes) any organization that no longer qualifies under the Code section for which tax-exemption was granted or self-declared.

Section 7428 of the Code explains declaratory judgment relating to the status and classification of exempt organizations. Declaratory judgment is a form of legally binding preventive adjudication in which a party involved in an actual or possible legal matter can ask a court to conclusively rule on.

ANALYSIS AND POSITION:

has not applied with IRS to be recognized as exempt from Federal income taxes. Therefore, IRS has not previously given consideration whether or not it qualifies for recognition of exempt status. Its filing of Form 990 returns for calendar year 20XX was intended to fulfil its duty under section 5033 of the Code to file an annual information return with gross income and expenses. On each of its returns, self-declared it meets the requisite criteria to be described in section 501(c)(6) of the Code.

Section 501(c)(6) organizations are typically business leagues, chambers of commerce, boards of trade, and similar organizations. In order to qualify for exemption under IRC section 501(c)(6) and Treas. Reg. section 501(c)(6)-1, an organization must meet the following criteria:

- It must be an association of persons having a common business interest, and its purpose must be to promote this common business interest

- Its 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 members
- It must not be engaged in a regular business of a kind ordinarily carried on for profit
- No part of its net earnings may inure to the benefit of any private shareholder or individual
- Its primary activity cannot be performing particular services for members
- It must be a membership organization and have a meaningful extent of membership support

The starting point for analysis in determining whether there is a common business interest among members of an organization is whether the organization serves a business purpose for its members. is organized to promote the sale of branded automobiles in via tailored advertising campaigns. Its members all operate from the same television market and have agreed to pool resources to produce television advertising that benefits each. In _Associated Industries of Cleveland v. Commissioner_, the term "business" is comprehensive. The promotion of automobiles available for sale is one such "business" included within the meaning of this term. members have a common business interest to promote the sale of automobiles within its designated advertising market in .

An organization properly described in section 501(c)(6) of the Code is also required to be funded to a meaningful extent by its members. Because is funded exclusively by membership dues, it has more than a meaningful amount of membership support.

An organization properly described in section 501(c)(6) of the Code is also not permitted to allow its net earnings to inure to the benefit of a private individual. Despite its strict prohibition, neither the Internal Revenue Code nor the Treasury Regulations specifically defines *inurement.* Nevertheless, its meaning can be discerned by looking at related provisions. Section 1.501(c)(3)-1(c)(2) of the regulations states that an organization is not exclusively operated for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. does not have disbursements of funds to individual officers or members; it does not allow its net earnings to inure to others.

The activities of an organization properly described in section 501(c)(6) of the Code must be directed to the improvement of business conditions of one or more lines of business. This aspect must be distinguished from the performance of particular services for individual members. The performance of particular services for members does not preclude recognition of exemption unless it becomes the primary activity. In Rev. Rul. 55-444, an organization formed to promote the business of a particular industry and that conducted a general advertising campaign to encourage the use of products and services of the industry as a whole qualified for IRC 501(c)(6) exempt status. Nevertheless, such advertising to a minor extent constituted the performance of particular services for its members, which is not an exempt purpose.

In _Washington State Apples, Inc. v. Commissioner_, an association of apple growers that engaged in promoting the sale of apples grown was held exempt because it promoted the industry as a whole and not its members. The association was limited to a particular geographic area but its membership was not limited to a particular brand or by other intellectual property [trademarks, patents, industrial design rights].

principal activity is advertising; it is the sole purpose for which the organization was formed. Its delegation of financial record-keeping to , its contracted marketing agency, supports that it does not have additional meaningful activities aside from advertising. The advertising activity is designed to increase sales of branded automobiles at dealerships in the relevant market. Advertisements are limited to branded automobiles and claim the types of accolades ordinarily seen in television and print advertising. In Rev. Rul. 70-80 an association of manufacturers, whose principal activity was the promotion of its members' products under the association's required trademark, did not qualify under IRC 501(c)(6) because the association's principal activity was the promotion of these products through various advertising media. The advertising claimed the superior quality of the trademarked products and made no mention of comparable non-trademarked products.

A series of public administrative rulings have been issued for associations that limit their business interest to certain products encumbered by intellectual property rights. In Rev. Rul. 58-294 an association did not qualify for exemption under section 501(c)(6) in part because it did not benefit people who manufactured competing products of the same type in the same line of business. In Rev. Rul. 68-182 an association which promoted a single brand or product within a line of business did not qualify for exemption as a business league. In Rev. Rul. 83-164 an organization whose members promoted computer sales and service of products produced by a single computer manufacturer did not qualify for exemption. In contrast, in Rev. Rul. 74-147 an organization directed its activities to users of computers made by diverse and competing manufacturers. The common business interest was not limited by trademark, patent, industrial design right, or other intellectual property.

Historically there have been similar associations which have attempted to limit their business interest and membership to a particular brand. In *National Muffler Dealers Association v. United States*, the Supreme Court held that an association of one particular brand name of muffler dealers did not qualify as a business league. In *Pepsi-Cola Bottlers' Association, Inc. v. United States* the court concluded that an association of bottlers of one particular brand of soft drink was promoting a line of businesses. The association's line of business was promoting one particular brand of drink instead of promoting the soft drink industry as a whole. In *National Prime Users Group, Inc. v. United States* the court held that an organization that served only the needs of users of one specific brand of computer was not exempt as a business league. In *Guide International Corporation v. United States* the court determined that an association of computer users does not qualify for exemption as a business league because it benefitted users of only one computer company. In *Automotive Electric Association v. Commissioner* the court denied section 501(c)(6) exemption because it produced advertising that listed only products manufactured by its members.

In Rev. Rul. 67-77 an association of automobile dealers which sold a particular make of automobile engaged in financing general advertising campaigns to promote the sale of that particular make. The association was determined not to be exempt because it was performing particular services for its members rather than promoting the automobile industry as a whole. This set of circumstances is quite similar to the facts at hand. is an association of automobile dealers which is limited to a particular make of branded vehicles and which finances general advertising campaigns to promote the sale of automobiles. This activity is geared towards the performance of particular services for individual members. It is not directed to the improvement of business conditions for the automobile industry in at-large.

Therefore, on the basis of its advertising being limited to branded vehicles, and having no other meaningful activities, it is the position of the government that does not meet the requisite criteria to qualify for exempt status under section 501(c)(6) of the Code. Its primary activity is performing particular services for individual members.

The IRS does not recognize as tax exempt organizations that self-certify themselves to qualify for tax exemption under section 501(c)(6) unless they have first submitted an application to request recognition using Form 1024. Since is not recognized because it did not submit an application, its tax exempt status cannot be revoked. However, under P.L. 114-113, section 406, will be treated as if its tax exempt status were revoked for declaratory judgment purposes.

TAXPAYER'S POSITION:

agrees it does not qualify for exempt status under section 501(c)(6) of the Code for the specific tax year in question.

CONCLUSION:

Based on the facts and application of the law, does not qualify for exempt status under section 501(c)(6) of the Code for the specific tax year in question. Since IRS did not previously recognize as tax-exempt, its tax exempt status cannot be revoked. However, it will be treated as if its tax exempt status were revoked for declaratory judgment purposes.