



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

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: December 21, 2016

Release Number: **201718040**
Release Date: 5/5/2017
UIL Code: 501.06-00

Taxpayer Identification Number:

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

Identification Number:

Contact Information:

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):

You have not demonstrated that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code § 501(c)(6) and Treasury Regulations 1.501(c)(6)-1. Exempt business league must have a common business purpose, the purpose of which is to promote a common business interest and activities must be directed to the improvement of one or more lines of business as distinguished from the performance of particular services for individual persons. Your activities are not directed to the improvement of business conditions of an industry as a whole because your sole activity is to provide advertising services to your members, who consist solely of franchisees of a particular brand that operates in competition with other brands within the same industry.

Organizations that are not exempt under section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information please visit www.irs.gov.

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
333 Constitution Ave., N.W.
Washington, D.C. 20001

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under section 7428 of the Internal Revenue Code.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect you taxpayer rights. We 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 our assistance, which is always free, we will do everything possible to help you. Visit 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,

Mary A. Epps
Acting Director, EO Examinations

Enclosure: Publication 892



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Exempt Organizations Examinations

Date:
06/15/2016
Taxpayer Identification Number:

Form:

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

Contact Numbers:

Manager's Name/ID Number:

Manager's Contact Number:

Response due date:
07/16/20XX

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).

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

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 IRS 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

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended DECEMBER 31, 20XX

ISSUE

Does the nonprofit organization described below, whose primary activity is promoting the common business interests of its members, qualify for exemption from federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code?

FACTS

The _____ (The Organization) is a non-profit organization made up of Brand Partners operating _____ in the _____

The organization was formed to provide a _____ arrangement for the membership to benefit from mass additional market promotion through various media for the benefit of the area _____ of _____

Its membership is made up primarily of _____ businesses that own one or more in the general _____ area of _____

The Organization collects monies monthly based on a percentage of sales from each member to conduct a _____ wide marketing/advertising program. _____ perform a comprehensive marketing support program for all _____ in good standing with the _____, as identified by the Executive Committee.

Income is from Advertising fees charged to each participating _____ Expenditures are made for Advertising expenses and miscellaneous administrative costs _____

The following are proposed marketing objectives performed by _____ for the _____ area for The Organization:

- (1) increase public awareness about _____
- (2) increase base of potential _____ guests through advertising _____
- (3) increase _____ individual and average _____ sales over previous year _____
- (4) increase _____ profits _____
- (5) support other marketing programs and special events as required _____

LAW AND ANALYSIS

IRC Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues not organized for profit, 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 defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest. Its activities should be directed towards the improvement of _____

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business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons.

Rev. Rul. 74-147, 1974-1 C.B. 136, holds that a nonprofit organization, whose members represent diversified businesses that own, rent, or lease digital computers produced by various manufacturers, and that is organized to improve the efficiency of its members' use of computers, qualifies for exemption under IRC Section 501(c)(6) of the Code. Rev. Rul. 74-147 states that the common business interest of the members of the organization is their common business problem concerning the use of digital computers. The primary objective of the organization is to provide a forum for the exchange of information that will lead to the more efficient utilization of computers by its members and other interested users, and thus improve the overall efficiency of the business operations of each.

Rev. Rul. 83-164, 1983-2 C.B. 95, holds that a nonprofit organization, whose primary activity is promoting the common business interests of users of one particular brand of computers, does not qualify for exemption from federal income tax as a business league under IRC Section 501(c)(6) of the Code.

Although the members of both the organization described in Rev. Rul. 74-147 and Rev. Rul. 83-164 have a common business interest concerning the use of computers, the organization in Rev. Rul. 74-147 directs its activities to users of computers made by diverse and competing manufacturers, while Rev. Rul. 83-164 directs its activities to users of computers made by one manufacturer. By directing its activities only to the users of brand M computers, the organization in Rev. Rul. 83-164 is directing its activities towards the improvement of business conditions in only segments of the various lines of business to which its members belong. Because it limits its activities to the users of M computers, the organization helps to provide a competitive advantage to M and to its customers at the expense of M's competitors and their customers that may use other brands of computers. Thus, the organization's activities in Rev. Rul. 83-164 are not directed towards the improvement of business conditions in one or more lines of business within the meaning of IRC Section 1.501(c)(6)-1 of the regulations.

In addition to promoting the common business interest of its members, a business league exempt under IRC Section 501(c)(6) of the Code must also seek to improve conditions in one or more lines of business. In **National Muffler Dealers Association, Inc. v. United States**, 440 U.S. 472, Ct.D. 1997, 1979-1 C.B. 198 (1979), the United States Supreme Court held that an organization of muffler dealers franchised by Midas International Corporation does not qualify for exemption from federal income tax as a business league under IRC Section 501(c)(6) of the Code because the organization's purpose was too narrow to satisfy the line of business test of IRC Section 1.501(c)(6)-1 of the regulations. The Court concluded that the line of business limitation of IRC Section 1.501(c)(6)-1 is well grounded in the origin of IRC Section 501(c)(6) and in its enforcement over a long period of time. The Court further concluded that exemption under IRC Section 501(c)(6) is not available to aid one group in competition with another within an industry.

The term "line of business" has been interpreted to mean either an entire industry, see **American Plywood Assn. v. United States**, 267 F.Supp. 830 (W.D. Wash. 1967); and

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National Leather & Shoe Finders Assn. v. Commissioner, 9 T.C. 121 (1947), acq., 1947-2 C.B. 3, or all components of an industry within a geographic area, see **Commissioner v. Chicago Graphic Art Federation, Inc.** 128 F.2d 424 (7th Cir. 1942); **Crooks v. Kansas City Hay Dealers' Assn.**, 37 F.2d 83 (8th Cir. 1929); and **Washington State Apples, Inc. v. Commissioner**, 46 B.T.A. 64 (1942), acq., 1942-1 C.B. 17.

Organizations that have failed to meet the line of business test but instead were found to have served only a "segment of a line" includes groups composed of businesses that have licenses to

- Promote a single patented product (Rev. Rul. 58-294, 1958-1 C.B. 244); or
- market a certain make of automobile (Rev. Rul. 67-77, 1967-1 C.B. 138); or
- bottle one type of soft drink (Rev. Rul. 68-182, 1968-1 C.B. 263).

These groups promote segments of an industry at the expense of others in the industry.

Rev. Rul. 67-77, 1967-1 C.B. 138, holds that a nonprofit organization, composed of dealers in a certain make of automobile in a designated area is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile. Held, the organization is performing particular services for its members and is not entitled to exemption from Federal income tax as a business league under IRC Section 501(c)(6) of the Internal Revenue Code of 1954.

Revenue Ruling 68-182, C.B. 1968-1, p. 263, involves an organization whose members were engaged in the bottling and sale of a single franchised soft-drink product. Its purpose and activities were directed to more efficient production and sale of that product. While the U.S. Court of Appeals decided the organization to be exempt under section 501(c)(6), the Internal Revenue Service has refused to follow this decision. It is the Service's position that organizations promoting a single brand or product within a line of business does not qualify for exemption under section 501(c)(6).

This, services position, was upheld by the **Supreme Court in National Muffler Dealers Association v. U.S.** 440 U.S. 472 (1979). In this case the court held that an organization of muffler dealers franchised by Midas International Corporation did not qualify for exemption from Federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code because the organization's purpose was too narrow to satisfy the line of business test of regulation 501(c)(6)-1. The court concluded that the line of business limitation of section 501(c)(6)-1 is well grounded in the regulations and in its enforcement over a well-established period. The court further concluded that exemption under section 501(c)(6) is not available to aid one group in competition with another within an industry.

Revenue Ruling 69-106 C.B. 1969-1, p. 153 discusses an organization formed and operated by a group of manufacturers to carry on research and development in projects of common interest to their industry. A committee of the membership agreed on what projects will be undertaken. The results of the research were made only available to members. While membership in the organization was open to all businesses in the "industry" not all businesses in the "industry" were members. In order to qualify for exemption under section 501(c)(6), a research organization must make the results of its research available to all the members of the industry.

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The activities of the organization were not considered to be directed toward the improvement of business conditions facing the industry since it distributed the results of its research only to members of the organization.

Rev. Rul. 70-80, 1970-1 C.B. 130, holds that a nonprofit trade association of manufacturers whose principal activity is the promotion of its members' products under the association's registered trademark does not qualify for exemption under section 501(c)(6) of the Code. The trademark is promoted by the organization in a way that is intended to give the members of the association a competitive advantage over others in the same industry by extolling the superior quality of the trademarked products. Thus, it is held that the trademark promotion is not directed to the improvement of business conditions of the industry as a whole but is the performance of particular services for members. Accordingly, this organization is not exempt from Federal income tax under section 501(c)(6) of the Code. This case is distinguishable from American Plywood Association v. United States, 267 F.Supp. 830 (1967). In that case the advertising of the association trademark was found to be of minor importance and only an incidental part of the advertising that extolled the advantages of the industry product in general.

TAXPAYERS POSITION:

has not provided any

response or statements as to their position on this issue.

CONCLUSION

Based on the facts and the case law cited, it is conclude that the activities which you conduct and the services that you provide to your members, are not directed to the improvement of business conditions facing the industry as a whole. Your activities are solely for those engaged in the operations of members . A restricted membership engaged in the marketing of a particular product or product bearing a particular trademark or trade name does not constitute a line of business. As a result the line of business test is not met.

Therefore, it has been determined that you do not qualify for exemption as an organization described in section 501(c)(6) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.