



Department of the Treasury
Internal Revenue Service
Appeals Office
San Jose Appeals, MS-7100
55 S. Market St., Suite 440
San Jose, CA 95113

Release Number: **201814011**
Release Date: 4/6/2018

Date: **JAN 12 2018**

Person to contact:
Name:
Employee ID #:
Phone:
Fax:
Hours:
Employer ID number:

UIL:
501.06-00
501.06-02

Certified Mail

Dear _____ :

This is a final adverse 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 section 501(c)(6) of the Code.

We made the adverse determination for the following reason(s):

Organizations described in I.R.C. § 501(c)(6) and exempt under Section 501(a) must not engage in a regular business of a kind ordinarily carried on for profit. You have failed to produce documents or otherwise establish that you operate in accordance with I.R.C. § 501(c)(6) or Section 1.501(c)(6)-1 of the Federal income tax regulations. You operate two license bureaus for profit as your primary activities, and these activities are not directed to the improvement of business conditions of one or more lines of business. Your current activities are similar to the activities that previously caused you to lose your exempt status effective _____ under the same section of the Code.

You're required to file Federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

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 either:

- United States Tax Court,
- The United States Court of Federal Claims,
- The United States District Court for the District of Columbia.

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeals an IRS Determination on Tax -Exempt Status.

You also have the right to contact 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. For TAS assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. 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 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have any questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosure: Publication 892



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

Date: **MAR 3 2017**

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

C = State
D = Formation date
E = City
F = County

UIL:

501.06-00
501.06-02

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.

Issues

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

Facts

You were formed in the State of C on D. Your Articles of Incorporation state that you were formed for the purpose of promoting civic improvement and other improvements conducive to the well-being of the community; to advance the commercial, agricultural, and general interests of the city of E and county of F in C; to promote educational and recreational advancement in the community; and to promote general interest in the historical development of the community, and to foster and encourage historical research in this regard.

Membership is open to any reputable, sole proprietor, association, corporation, partnership or estate in the area. In addition to performing the usual and customary exempt activities of a chamber of commerce, you also operate two license bureau offices under a contract with the State of C. You acknowledge your operation of the licensing bureaus as an unrelated trade or business activity.

You were previously granted exemption under Section 501(c)(6) of the Code and your exemption was revoked as a result of an examination. You have now re-applied for exemption under Section 501(c)(6) because you assert that the operation of a license bureau is not your primary activity.

You have _____ employees working at the chamber, which amounts to approximately _____ man hours per week. You have _____ employees operating the license bureaus for approximately _____ man hours per week. The licensing offices are open five days a week, eight hours per day, plus a few hours on the last Saturday of the month.

Your licensing offices are managed by a state department. You receive a transaction fee for providing the services. You then use the fees to help promote business development and carryout your mission and activities. The clerks that provide the services are your employees.

You said you conduct many activities and your board consists of _____ business men and women which meet no less than monthly to discuss ways to support your business community. You sponsor educational programs directed toward the improvement of business conditions. These are held at least quarterly and at no fee. You post notifications on social medial and send emails to your mailing list. You also support a “shop local” program which educates consumers on the importance of supporting local businesses.

You provided financial data for the last _____ years of your operations. The total of your membership dues, exempt function income, and other income, accounts for approximately _____ % of your total annual revenue. Your license bureau revenue, which you report as Unrelated Business Income (UBI), accounts for approximately _____ % of your total revenue.

Your prior examination resulted in your revocation as well as a closing agreement with the Service. In that agreement, you agreed to establish separate entities for the operation of the chamber activities and for the operation of the license bureau. You agreed that the license bureau would file Form 1120's and that the chamber would reapply for exemption and exclude the license bureau as part of your operations.

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, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(6)-1 defines a business league as an association of persons (the term “Persons” includes legal entities such as trust and corporations) having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business of any 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.

Rev. Rul. 59-234, 1959-2 C.B. 149, held that a real-estate board whose primary purpose or activity is the operation of a multiple-listing system is considered to be rendering particular services for its members as a convenience and economy in the conduct of their respective businesses, rather than for the improvement of business within the real estate business generally, and is not exempt from federal income tax as an organization described in Section 501(c)(6) of the Code. The ruling further concluded that the operation of a real estate multiple service constitutes a business of a kind ordinarily carried on for profit.

Rev. Rul. 68-264, 1968-1 C.B. 264, held that an 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. The organization's income consisted of membership fees, an annual payment by the local chamber of commerce, and payments by business firms for services performed. The income approximates the cost of operations. A traffic bureau, of the type described above, is a business of a kind ordinarily carried on for profit. Since the traffic bureau is the primary activity of this organization, it is not exempt from federal income tax under Section 501(c)(6).

Rev. Rul. 68-265, 1968-1 C.B. 265, held that an organization is not exempt from federal income tax under Section 501(c)(6) of the Code if it operates a credit information service as its primary activity. Primary activities that constitute a regular business of a kind ordinarily carried on for profit will preclude exemption from federal income tax under Section 501(c)(6) because they evidence a purpose to engage in such business.

In Apartment Operations Ass'n v. Commissioner of Internal Revenue, 136 F.2d 435 (1943), the court determined that the organization was not exempt from tax as a business league. The organization was made up of apartment owners. It did not meet the description of a business league because it regularly carried on business of a kind ordinarily conducted for profit. It performed particular services for individual persons such as the furnishing of credit information, the supplying of an apartment shopping service, the making of arrangements for direct purchases by members at discount, and similar activities.

In Indiana Retail Hardware Ass'n, Inc. v. United States, 177 Ct. Cl. 288, 366 F.2d 998 (1966), the court held that "the high percentage of income obtained by the Association from performing particular services for individuals as a convenience and economy in their business and its other income-producing activities, and the amount of time devoted by employees of the Association to the performance of these services is sufficiently substantial so that the income-producing activities cannot be said to be merely incidental activities of the Association, but are one of its two main purposes." The court found that in consecutive years the organization derived 58% and 60% of its income from activities not for the common benefit of all, as compared to income from membership fees. The court stated "the fact that such a large percentage of the [organization's] income was derived from activities for the benefit of individuals [wa]s a strong indication that th[ose] activities were more than merely incidental."

In Associated Master Barbers & Beauticians of America, Inc. v. Commissioner, 69 T.C. 53, 63 (1977), the court stated one common formulation for the requirements under Section 501(c)(6) is as follows:

- (1) It must be an association of persons having a common business interest,
- (2) Its purpose must be to promote that common business interest,
- (3) It must not be organized for profit,
- (4) It should not be engaged in a regular business of a kind ordinarily conducted for a profit,
- (5) Its activities should be directed toward the improvement of business conditions of one or more lines of business as opposed to the performance of particular services for individual persons, and
- (6) Its net earnings, if any, must not inure to the benefit of any private shareholder or individual.

If an organization fails to meet any one of these standards, it cannot be recognized as exempt or maintain its exemption under section 501(c)(6).

Application of law

You are not exempt under Section 501(c)(6) of the Code because, by operating two license bureau offices, you are engaged in a regular business of a kind ordinarily carried on for a profit, which disqualifies you from exemption. See Treas. Reg. Section 1.501(c)(6)-1.

You are operating in a manner similar to the organizations described in Rev. Rul. 59-234 and 68-265 and not exempt from federal income tax under Section 501(c)(6) of the Code. Much like the organization described in Rev. Rul. 68-264, you are operating a licensing bureau. As stated in this ruling, a traffic bureau is a business of a kind ordinarily carried on for a profit. Also, like this organization, your operation of the licensing bureaus is

your primary activity. Although you have numerous activities, you consistently spend the majority of your time on this activity and it is the primary source of your revenue, thus making it your primary activity. Accordingly, you are not exempt under Section 501(c)(6).

Similar to the organization described in Apartment Operations Ass'n, the majority of your activities do not improve the business conditions of one or more lines of business or business conditions of the community as a whole. Instead, you perform license bureau services for individuals, like a regular business, which is not an exempt purpose under Section 501(c)(6) of the Code.

Similar to the organization described in Indiana Retail Hardware Ass'n, your licensing bureau activities are carried on in a manner that cannot be viewed as "merely incidental" to your other activities. As measured as a percentage of your time and revenue, your primary activity is your operation of the licensing bureaus. Therefore, you are precluded from exemption under Section 501(c)(6) of the Code.

In the case Associated Master Barbers & Beauticians the court provided a formulation for the requirements under Section 501(c)(6). You fail to meet several of the requirements outlined in this case. Specifically, your primary purpose is not promoting a common business interest; rather, you are engaged in a regular business ordinarily conducted for a profit, and you perform particular services for individuals. You fail to meet the requirements and cannot be recognized as exempt under Section 501(c)(6).

Your position

You have been an integral part of the local area for many years and are formed for the purposes of promoting civic and other improvements conducive to the well-being of the community. You advance the commercial, educational, historical, agricultural and general interests of the area.

Your licensing bureaus provide outstanding customer service to clients in multiple counties who are in need of titling and registering vehicles and obtaining a driver's license or state ID. Revenues from the license offices are utilized to subsidize your chamber of commerce activities.

You assert that you have many non-licensing bureau activities. These events are complex and take months of planning and organizing for them to be successful. You said you are different from when you were previously revoked because these, and other activities, were not a part of your activities at that time. You are very active in the community. You develop the potential of all community businesses, professional organizations, and individuals to exemplify the rich historic past of the area, as well as integrating the untapped potentials of the present and seek methods to fulfill the economic needs of the community's future. The fees for services in the license offices are used to help meet these goals.

You said an examination of the facts should show that the operation of the license office is a non-profit funding source, not a for-profit activity. It should be noted that the C Department of Revenue actively seeks to award contracts to non-profits, women and minorities. The majority of license office services are provided by non-profits. Through a competitive bid process, the C Department of Revenue awards the contract for services based on a point system. Points are awarded to bidders that meet the requirements and provide the documentation of non-profit status. You indicated that it is required by the State of C to be exempt under Section 501(c)(6) in order to operate a license bureau.

You ensure the state contractual requirements are met but it is not your primary purpose or activity. You are a membership driven organization and your “main purpose and activity is to promote Chamber businesses, members and encourage economic development.”

Our response to your position

The operation of licensing bureaus is the primary source of your income and is also your primary activity. You said an examination of the facts should show that the operation of the license offices is a non-profit funding source; however, you previously indicated that the income you earn from this activity is classified and reported by you as a UBI and accounts for approximately % of your annual revenue. Accordingly, the operation of these bureaus is not a Section 501(c)(6) purpose and precludes you from exemption, as discussed above.

Conclusion

You are not primarily an association of persons promoting one or more lines of business and your activities constitute business services to individuals which are normally carried on for a profit. 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*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

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.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892