



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

Box 2508  
Cincinnati, OH 45201

Date:  
February 28, 2022  
Employer ID number:

Form you must file:  
1120

Tax years:  
All

Person to contact:  
Name:

ID number:

Telephone:

Check if 501(c)(3) denial

Check if valid POA

Release Number: **202221016**

Release Date: 5/27/2022

UIL: 501.06-00, 501.06-01  
501.06-02

Dear:

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(6). 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 the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit [www.irs.gov](http://www.irs.gov).

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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 call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933

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

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Letter 437

Redacted Letter 4034

Redacted Letter 4038



**Department of the Treasury**  
**Internal Revenue Service**  
 PO Box 2508  
 Cincinnati, OH 45201

**Date:** January 4, 2022

**Employer ID number:**

**Person to contact:**

Name:

ID number:

Telephone:

Fax:

**Legend:**

B = Company Name

C = Name

D = Name

E = Date

F = State

G = Number

H = Number

p = Number

q dollars = Amount

r dollars = Amount

**UIL:**

501.06-00

501.06-01

501.06-02

Dear \_\_\_\_\_ :

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

**Issues**

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

**Facts**

You were incorporated on date E under the nonprofit corporation act of F. Your Articles of Incorporation state your purpose is to "facilitate transfers, by sale or lease, of certain land and water rights from B to individuals, businesses or other interested parties for the economic development of a post-mining entrepreneurial economy in the C area, which are beneficial to residents of the C area, and which serve to help replace lost jobs in the C area".

You state your primary focus is on economic development by improving and expanding the common business opportunities and conditions in C and the surrounding geographic area. You are committed to the diversification of the C economy so as to overcome the economic downturn that occurred as a result of the loss of jobs that were previously provided by B while the business was open and in operation. You have no members.

You accomplish your purpose through acting as an independent advisor to B in order to ensure that B's land and water rights are disposed of in such a way as to provide the best opportunity for economic growth. You explained that it is very important that water rights be retained in the C geographic area and not transferred to another location in the state where C would not benefit economically. Specifically, you will not facilitate the transfer of water rights from B for use outside the C Area.

Your bylaws indicate that you will identify potential purchasers of B's land and water rights, initially envisioned as up to G acres of land and H per year amount of water. B may contribute additional land and water rights for transfer through you, in addition to the initial amounts envisioned. To the extent possible, you will give preferential consideration for individuals, businesses and interested parties in the C area as well as to those individuals, businesses and interested parties who transact the sale of their products and services within the municipal limits of C.

You explained that any potential purchaser who wants to proceed with a potential purchase/lease of the land and/or water rights must submit an application through an outside real estate broker, paid for by B, who will then forward that application to you; you will require land and/or water rights to be sold/leased for fair market value. You may also utilize two appraisals to determine the fair market value of the land and/or water rights being sought, one of which will be paid for by the applicant and the other will be paid for by B. Alternatively, if agreed upon by the applicant, you may utilize one appraisal to be paid for by B. The proposed sales price will be the average of the two appraisals or as mutually agreed to between B and the purchaser.

To determine if you will sell the land and/or water rights to a particular applicant, you will analyze the application as to the applicant, the price, the amount of land and/or water rights being sought, the purpose for which those rights are sought, and any other requirements to be set forth by you. You will then make a recommendation to B as to whether B should transfer the requested land and/or water rights to the applicant or not. Recommendations require only a simple majority approval from your Directors. You also stated that you will forward all applications to B, whether the recommendation is to make the transfer or not. The final approval will then be made by B, who will give strong deference to your recommendation.

You also explained that you will charge a reasonable administrative fee to B not to exceed p% of the actual sale/lease price of the land and/or water rights, to cover all the expenses in performing the services. The administrative fee will not be high enough to cause you to make a profit from these services, nor low enough to cause you to experience a loss and will be adjusted accordingly. All closing costs, land evaluations, attorneys' fees and any other costs incurred by either the applicant or B will be paid by the applicant or B, not you.

Concerning your board's composition, your bylaws provide for certain mandatory membership to ensure your independent effectiveness. Specifically, you have five board members and:

- One must be a member of the C Council. This helps ensure that there is a member who has a vested interest in the economic success of C and who is accountable to the residents of C since they are elected to the C Council.
- One must be a member of the Board of Trustees of D, which is funded by B and has been recognized as a tax-exempt private foundation by the IRS. D provides grants to C and others, as well as carrying out activities for the purpose of economic development. This board member will also be committed to the economic development and diversification of C economy so as to overcome the economic downturn that occurred as a result of the loss of jobs that were previously provided by B.

- There is also an observer from B who is not a voting member of the board but acts in an advisory role to provide assurance to B that you are operating in accordance with your tax-exempt purpose.

In regard to your revenue sources, you stated that B provided your initial funding of q dollars to cover your expenses prior to you receiving any administrative fees. You do not anticipate any more funding from B, nor do you anticipate funding from donations. It is your intent that fees charged will cover your expenses. You explained that if the funds held by you from the administrative fees results in total funds held by you to be in excess of r dollars, you will reduce the administrative fee of any further applications in order to bring the total funds held by you to q dollars.

To date, 100% of your expenses have been for obtaining tax-exempt status, keeping financial records, obtaining insurance, and purchasing office supplies for the purpose of supporting your activities. It is anticipated that, going forward, 100% of the costs incurred will be for the purpose of directly supporting your activities.

### **Law**

IRC Section 501(c)(6) provides exemption from federal income tax for business leagues not organized for profit, and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

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

Rev. Rul. 81-174, 1981-26 I.R.B. 14, 1981-1 C.B. 335, 1981 WL 165884 (IRS RRU) states a nonprofit association of insurance companies that provides medical malpractice insurance to health care providers is not exempt under IRC Section 501(c)(6) as a business league.

Rev. Rul. 81-175, 1981-26 I.R.B. 15, 1981-1 C.B. 337, 1981 WL 165883 (IRS RRU) states a nonprofit association of insurance companies that accepts for reinsurance high-risk customers who would ordinarily be turned down by member companies is not exempt under Section 501(c)(6) of the Code as a business league.

Kenner vs. Commissioner, 318 F. 2d 632 (7th Cir. 1963) states, in general, an organization applies for recognition of exemption has the burden of proving that it clearly meets all the requirement of the particular section of the Code under which it has applied.

### **Application of law**

You are not described in IRC Section 501(c)(6) and in Treas. Reg. Section 1.501(c)(6)-1 because you are primarily engaged in a business ordinarily conducted for a profit and you are providing services to individual persons. Specifically, you are primarily operated to facilitate transfers, by sale or lease, of certain land and water rights from B to individuals, businesses or other interested parties for a fee to benefit the C community. Your revenue is derived from these fees and your expenses are primarily incurred through the provision of these services. Further, you are providing services to B in identifying potential purchasers of their land and water

rights. Any potential purchaser who wants to proceed with a potential purchase/lease of the land and/or water rights must submit an application through an outside real estate broker, paid for by B, who will then forward that application to you; you will analyze the applications and forward your recommendations to B. These facts show that you are not primarily operated within the meaning of Section 501(c)(6).

Additionally, you are not described in IRC Section 501(c)(6) because you are not a membership organization with a meaningful extent of membership support. See Kenner vs Commissioner.

You are similar to the organizations described in Rev. Rul. 81-174 and Rev. Rul. 81-175. Although the fees charged to B are not designed for a profit, the type of services provided to B by you are the types of services that are typically provided on a for profit basis. Therefore, you fail to qualify under Section 501(c)(6).

### **Your position**

You believe you qualify for exemption under IRC Section 501(c)(6) because you are operated to improve and expand the common business opportunities and conditions in C and the surrounding geographic area. You also claim you do not act as agent for the proposed purchaser. You do not advise the purchaser on how to structure the terms of their offer, do not recommend the price to be paid, are not paid by the proposed purchaser for any services rendered, etc. You designed the application form to be completed by the proposed purchaser to obtain the information you deemed important in making your determination that a proposed purchase would provide an economic benefit for C. You provide recommendations to B based upon your analysis but you do not represent the buyer in the acquisition process or are you paid by the buyer.

In addition, you indicated that you are an independent organization providing a voice for the community of C and the surrounding geographic area by providing advice and recommendations to B regarding applications to purchase the land and/or water rights owned by B to provide the best economic opportunities for the area. While you were funded by B, you were structured to be independent in governance and in the activities you conduct. While a representative of B attends your meetings as an observer, they do not have voting rights other than as a tie breaking vote with respect to the selection of a new director. While B is not legally required to follow the recommendations of your board, B was an essential supporter of yours as an independent entity separate from B.

You also explained that to be an agent, an agency relationship generally has to be established by means of a written agreement. From a legal perspective, an agent is generally defined as:

- A person who has been legally empowered to act on behalf of another person or agency.
- An agent generally operates in the name of and for the account of the principal they are representing.
- An agent will represent their clients in the matter for which they are legally contracted and can generally bind the principal by their actions.
- The agent may be empowered to receive payments on behalf of the principal and to transmit these monies to the principal.

The agent is generally compensated for services it provides while acting as an agent of the principal.

### **Our response to your position**

You have not provided any additional information from which it can be concluded that you meet the requirements of IRC Section 501(c)(6). As previously described, you are operated as a business ordinarily conducted for a profit and are operated to provide services to individual persons. You have failed to provide sufficient information to prove to us that you qualify under IRC Section 501(c)(6).

### **Conclusion**

Based on the information provided, we conclude that you are not operated as a business league described in IRC Section 501(c)(6). Your operations are substantially similar to those of a for profit business and you provide particular services to individual persons. Therefore, you do not qualify for exemption under Section 501(c)(6).

### **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.

### **If you don't agree**

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

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

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

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

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

### **Where to send your protest**

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service  
EO Determinations Quality Assurance  
Mail Stop 6403  
PO Box 2508  
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Mail Stop 6403  
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

**Contacting the Taxpayer Advocate Service**

The Taxpayer Advocate Service (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 if 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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

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

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

cc: