



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Date: August 19, 2004

Contact Person:

Contact Number:

UIL Index
501.06-00
501.06-01

Legend:

M =
N =
p =
q =
Date x =

Dear

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Facts:

You are an unincorporated association. In a letter dated January 16, 2004, you state that "the date we consider to be the date of formation is sometime 8 to 10 years ago; this is when the first of our group got together to discuss its formation. For tax purposes the date of formation would be the date we opened our checking account: [Date x]."

Your "Mission Statement," as provided in your Articles of Association, reads:

The [M] is a nonprofit association of master level [q] makers dedicated to the promotion of quality craftsmanship, excellence in design, and the pursuit of artistic vision. Our goal is to increase public awareness and appreciation of

this time-honored art, thereby expanding the market for handcrafted [q] and promoting the common interest of [q] makers in [N].

Your "Membership Criteria," as provided in your Articles of Association, read:

These criteria, though somewhat subjective, still require prospective members to earn most of their living through [q] making. They should make beautiful [q] and, most importantly, they should make it well. In the past we discussed whether this was to be an organization of individual craftsmen or whether we would include larger businesses where the product wasn't necessarily the result of the individual member's own physical labor. We decided that it is the quality of the final product, or in the case of a larger business, the quality of the "whole line" of promoted products that matters. If the [q] (this is the subjective part) satisfies the majority of the members gathered for the jury, if they feel the work being presented and promoted shows "quality of craftsmanship, excellence in design and the pursuit of artistic vision" then the individual or business should be welcomed as members of the [M].

We encourage all to apply! If the group decides not to offer membership after the jury process we will provide a written explanation as to why not, our hope being that the juried party will address our concerns and return a better [q] maker, craftsman, designer and be invited to join at a later date.

You are funded by dues collected from members annually.

You list the following activities in your application Form 1024: websites, brochure, gallery shows.

According to your application, you create, maintain, and promote several web sites that promote custom q makers in N, especially your members. In your letter dated January 16, 2004, you provided the following information about your web sites:

The criteria for being included on the websites are that an individual be a dues paying member of the [M]. Four of the sites, which we will continue to have hosted, are outdated and will not be updated. The individuals listed may or may not be current dues paying members of the [M]. We have decided to keep hosting these sites for the time being because they continue to generate traffic and interest in our group. We will not, however, spend any more money on changing their content. The primary site: [p] is the site that we now promote and which is current.

The primary web site, p, contains photographs and descriptions of work by various member q makers with links to the respective member's web site and email address. The web site also contains a members directory which lists each member's physical, postal, web site and email addresses.

You produce a brochure that is distributed to the public at all N state information centers. The brochure lists each member and contains a state map that shows the approximate location of the member. Each member listing contains the member's physical, postal, web site and email addresses.

You promote g shows sponsored by galleries that feature the works of your members by means of postcard, newspaper, and radio advertising.

Law:

Section 501(a) of the Code exempts from federal income taxation organizations described in section 501(c).

Section 501(c)(6) of the Code describes business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues, not organized for profit and 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 provides 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.

Rev. Rul. 64-315, 1964-2 C.B. 147 considers whether an association of merchants whose businesses constitute a shopping center and which expends its funds and engages exclusively in advertising in various newspapers and on television and radio in order to attract customers to the shopping center is entitled to exemption as an organization described in section 501(c)(6) of the Code. The organization's activities consist of publication of an advertising newspaper ("shopping news"), advertising in other community publications, and sponsorship of commercial advertising on television and radio. The shopping news consists primarily of advertising by individual member merchants. The part of the shopping news which advertises the shopping center as a whole also frequently lists the names of member merchants located within the shopping center. Most of the other advertising carried on in community publications contains the names of individual merchants. Also some of the radio and television commercials occasionally mention the name of a member merchant. The ruling finds that the publication of a shopping news, advertising in other publications and also by radio and television, by which means the organization advertises the merchandise and names of its member merchants is the primary purpose and activity of the organization. The ruling holds that such activity constitutes the performance of particular services for members rather than an activity directed to the improvement of business conditions generally. Accordingly, the organization does not qualify for exemption under section 501(c)(6) of the Code.

Rev. Rul. 65-14, 1965-1 C.B. 236, considers whether an organization formed to promote the tourist industry in its territory and which publishes a yearbook consisting largely of paid

advertisements by members may qualify for exemption from Federal income tax as a business league under section 501(c)(6) of the Code. The organization's principal activity consists of publishing and distributing a tourist guidebook comprised largely of members' advertising. It also conducts a program of advertising in newspapers and other media designed to attract tourists to the various vacation spots located in the trade territory of its members. The income is derived primarily from the sale of tourist guidebooks and travel maps, members' advertising in the tourist guidebook, and membership fees. The advertisements consist of a listing of the name and address of the member-advertiser and a description of the product sold or the service rendered by the advertiser. The ruling finds that the publication of advertising matter containing listings of the names of individual members constitutes advertising for the individuals so advertised and is thus considered the performance of particular services for such individuals, rather than an activity aimed at the improvement of general business conditions. Inasmuch as the principal activity of the instant organization is the publication of such advertising, the ruling concludes that the organization does not qualify for exemption from Federal income tax under section 501(a) of the Code as an organization described in section 501(c)(6).

Rev. Rul. 55-444, 1955-2 C.B. 258, considers whether an organization composed of retail dealers which conducts an advertising campaign for the benefit of an industry as a whole qualifies for exemption from Federal income tax as a business league under section 501(c) (6) of the Internal Revenue Code. Membership in the organization is open to any person or association engaged in the retailing of products or equipment related to a particular industry. The organization has endeavored to increase public acceptance of the industry's product for home use by advertising in newspapers, on radio and television, in the classified telephone directory, by means of pamphlets, etc. The advertisements have stressed the economical and other desirable features of the product. None of the advertising, with the exception of one newspaper advertisement and a listing in the classified telephone directory, contained the names of individual members. In these two instances the space for the members' names was paid for by the individual members and not by the organization. A substantial part of the advertising related to a 24-hour service which was supplied by contractors who were not members of the organization and which was available to all consumers regardless of whether or not they bought from a member. Most of the advertising contained the central phone number of the organization and some of the newspaper and radio advertisements urged consumers to buy from an organization member. The ruling finds that the purpose of the advertising campaign conducted by the instant organization was not to make a profit or to render particular services to individual members. The advertising was designed primarily for the improvement of conditions in the particular industry. Most of the benefits to members of the organization were indirect and accrued alike to members and other persons in the industry. With respect to that part of the advertising which carried the names of members or urged consumers to buy from an organization member, it may be said generally that such advertising constitutes the furnishing of particular services to members. However, in this case the advertising which carried the names of individual members or otherwise directly aided members represented only a minor portion of the total advertising expenditures and may be regarded as only incidental or subordinate to the main or principal purpose. Under these circumstances, the advertising campaign conducted by the instant organization was primarily for the benefit of the industry as a whole. Accordingly, the ruling holds that the organization, in conducting its advertising campaign, is engaged in activities directed to the improvement of business conditions of the particular industry as a whole as

distinguished from the performance of particular services for individual persons and that it qualifies for exemption as a business league under section 501(c) (6) of the Code.

Rev. Rul. 73-411, 1973-2 C.B. 180, considers whether a shopping center merchants' association ("association") whose membership is restricted to and required of the tenants of a shopping center and their common lessor, and whose activities are directed to promoting the general business interests of its members, qualifies as a business league or chamber of commerce under section 501(c)(6) of the Code. Membership in the organization is mandatory under the terms of the tenants' leases, and no business concerns or firms, or individuals, other than tenants of the shopping center, are permitted membership. The ruling, noting that the regulations define a business league as an association of persons having some common business interest, the purpose of which is to promote such interest, states that the common business interest of a chamber of commerce is usually the general economic welfare of a community. Membership is voluntary and open generally to all businesspersons and professionals in the community. Trade associations or business leagues are similar to chambers of commerce except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry. The ruling finds that membership in the association is not voluntary in the sense that members are free to join or not to join depending upon their interests as members of a business community. Instead, membership is compulsory and limited solely to the owner and tenants of a shopping. The ruling holds that the restriction of membership to the tenants and owner of the shopping center precludes the association from having the basic characteristics required to qualify the organization for exemption under section 501(c)(6).

Analysis:

Based on the materials in your application file, we find that your primary purpose is to advertise the names and products of your members rather than to promote the N g industry in general. Your principal activities consist of maintaining a web site and producing a brochure for distribution to the public. Your web site and brochure consist primarily of a listing of your member's names and addresses, and pictures of their products. We find these activities to constitute the performance of particular services for individual persons similar to those of the organizations considered in Rev. Rul. 64-315 and Rev. Rul. 65-14, above. Therefore, we do not find your activities directed to the improvement of business conditions in your industry in general as illustrated in Rev. Rul. 55-444, above.

Furthermore, we note that membership is not freely open to all persons engaged in the production of handcrafted g. Rather, you accord full membership only to selected applicants whose work and portfolio have been juried and approved by a quorum of members in attendance at a membership meeting. Consequently, like the organization considered in Rev. Rul. 73-411, above, you lack an essential characteristic of a business league, i.e., that membership be freely open to all persons engaged in a line of business.

Conclusion:

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, and do not intend to protest our denial of exempt status, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If you also disagree with our proposed deletions, you should send your comments on the deletions with your protest statement, and not to the address shown in Notice 437.

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:2)
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

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

Sincerely,

Lois Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437