



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Date:
02/15/2023
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202319017
Release Date: 5/12/2023
UIL Code: 501.06-00

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.

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.

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: November 17, 2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Legend:

B = Date

C = State

D = Number Range

E = Number Range

UIL:

501.06-00

501.06-01

Dear Applicant:

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 B in the state of C as a non-profit corporation. Your Articles of Incorporation state that your mission is to provide entrepreneurs in the local area with a low barrier opportunity to sell their products, to provide people living and visiting the area with a place to purchase goods and services from local vendors, to promote local musicians and non-profit groups, and to build a sense of community by offering a marketplace in the downtown area where individuals and families can become aware of local vendors and their products, contribute to non-profit causes, and enjoy local musicians. The Articles further state that members who have paid the annual fee and signed a market contract can sell at the market, vote for the board of directors (of which vendors should be a majority), participate in meetings, be officers and/or directors, and examine the market's books, membership lists, and meeting minutes.

Your main activity is a weekly market at a local park during the summer months (constitutes % of your time). The market consists of approximately D for-profit vendors, a musician, a food truck, and approximately E non-profit booths. Vendors can pay you a seasonal or per-market fee. These fees go to pay for musicians, park rental, and advertising costs. You encourage local non-profits to set up a booth free of charge (to raise money or bring awareness to their cause). Your other activity is a festival

held at a local park (constitutes % of your time). It is a one-day event with vendors, food, and community entertainment.

Each vendor must sign a vendor agreement and pay the associated fee to sell at the market. Only one vendor per brand of branded retailers is allowed. Only two of other general types of vendors are allowed (ex: jewelry). Typical vendors sell produce, handmade items, jewelry, art, clothing, and baked goods. Once you accept a vendor, they are then considered a member. Vendor fees are set taking into consideration costs for marketing, insurance, park rental, and payment of musicians. You estimate how many vendors you will get over the season and then set the fees so you can pay all associated bills.

Board members' duties include establishment of membership fees and any other business needed for the operation of the market. Your revenue thus far consists of two grants and weekly/seasonal vendor fees. Expenses are all related to market operations.

Law

IRC Section 501(c)(6) exempts from federal income tax business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, which are 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 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. 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 a 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.

Revenue Ruling 58-224, 1958-1 C.B. 242, held that an organization which operated a trade show as its sole activity was not entitled to exemption as a business league under IRC Section 501(c)(6). The organization's sole activity consisted of staging an annual merchandise show (primarily exhibits by manufacturers), under the sponsorship of the chamber of commerce. The ruling concluded that the activities of the organization substantially served the exhibitors and retailers as a convenience and economy in the conduct of their businesses by providing selling opportunities for the distributors (primarily promoting individual interests). Thus, the trade show was considered rendering particular services for individuals as distinguished from the improvement of business conditions generally.

Rev. Rul. 59-391, 1959-2 C.B. 151, describes an organization of individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or profession. It was created for the purpose of exchanging information on business prospects and has no common business interest other than a desire to increase sales of members. Held, such an organization is not entitled to exemption from federal income tax as a business league under IRC Section 501(c)(6).

Rev. Rul. 68-264, 1968-1 C.B. 264, defined the performance of particular services for individual persons

to include an activity that serves as a convenience or economy to members in the operation of their own businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180, discussed the exempt status of a shopping center merchants association while describing the history of IRC Section 501(c)(6). The association's activities promoted the general business interests of its members and did not qualify under IRC Section 501(c)(6). The ruling stated that in the case of a chamber of commerce or similar organization, the common business interest is usually the general economic welfare of a community. An organization seeking exemption as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all commercial enterprises in a given trade community. The ruling also stresses that membership in a Section 501(c)(6) organization is voluntary and open generally to all businesses and professional persons in the community.

The American Automobile Association v. Commissioner of Internal Revenue, 19 T.C. 1146 (1953) held that an organization whose principal activities consist of performing particular services, and securing benefits, for its members, does not qualify for exemption under IRC Section 501(c)(6).

Application of law

You are not described in IRC Section 501(c)(6) and Treas. Reg. Section 1.501(c)(6)-1 because your activities are not aimed at the improvement of business conditions of one or more lines of business; rather you are performing particular services for members. By providing a market where member vendors may sell their products, you are providing a direct service to those members. Also, operating a market for selected vendors does not improve business conditions of any industry or line of business, but instead serves only as a convenience to those vendors chosen to sell at the market.

Rev. Rul. 68-264 explains that an activity that serves as a convenience or economy to members in the operation of their own businesses is the performance of particular services for individual persons. Like Rev. Rul. 58-224, your primary purpose is to provide a sales location for your members. This activity serves as a convenience and economy to your members to sell their products they otherwise would not have. Serving your members in this manner is the performance of particular services for individual persons (or their businesses) and does not improve the business conditions of one or more lines of business.

You were formed to operate a farmers' market and it is your primary activity. All expenses go to the operation of this market. Your membership consists of vendors you approve and you limit vendors by what products they sell to ensure a varied market. Like the organization in Rev. Rul. 59-391, your member vendors have no common business interest other than a mutual desire to increase their individual sales. Your marketplace activities are not directed at the improvement of business conditions in one or more lines of business, but rather the promotion of private interests of the vendors at your market. You are operating for the benefit of individual vendors, rather than common business interests of all the commercial enterprises in a given line of business. You are simply providing a convenient place for individuals to market their products for their benefit. As noted in Rev. Rul. 73-411, by providing such

service, you are not exempt under IRC Section 501(c)(6).

Like the organization in American Automobile Association, you have some activities of a civic nature. However, your primary purpose and activity is the provision of particular services for your member vendors via the weekly market. The bulk of your operating duties include advertising, promoting, and managing the market operation.

Your position

You stated that the market encourages people to shop locally, build community relationships, support local musicians, and bring awareness to non-profit groups. You also pointed to Publication 557, Tax-Exempt Status For Your Organization. You stated that two pieces from this publication apply directly to you and referred to Chapter 4, page 50:

- Under the General Purpose heading it states that an organization will be devoted to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.
- Under the Examples heading, number 4, it lists establishment and maintenance of the integrity of a local commercial market.

Our response to your position

While you have described some community goals and benefit to the local economy, you otherwise bear no resemblance to a chamber of commerce or business league. Your primary and most substantial purpose and activity is the operation of a farmers' market which provides particular services to your member vendors and improves their individual businesses rather than the economic interests of an entire community or a line of business.

The example in the publication of "common business interest" that refers to a local commercial market is not referring to a single, physical market that sells products. Instead, the term commercial market refers to a whole business community or industry. Your vendors have no common business interest other than a mutual desire to increase their individual sales.

Conclusion

Based on the information provided, we conclude that you are not operated as a business league described in IRC Section 501(c)(6). You do not improve business conditions along one or more lines of business and your member vendors do not share a common business interest. Your market operations provide a convenience and economy to your member vendors in the conduct of their individual businesses (particular services).

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 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 or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements