

Denial

APR 10 1981

Gentlemen:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code.

The information presented indicates that you were incorporated on [REDACTED] pursuant to the [REDACTED] Corporation Law. Your primary purpose is to foster and promote the common business interests of the merchants doing business in [REDACTED].

You state that one of the major activities of the Association is the promotion of the stores within the Mall, to make the public aware of the Mall and its merchants. Other activities include monthly meetings of members, providing a security guard and policemen when necessary and putting up and maintaining Christmas decorations for the Mall area.

Income is derived entirely from member dues. Expenses are for advertising, consulting services, and operating costs.

Membership in the Association is required of all tenants in the shopping center.

Section 501(c)(6) of the Code provides for the exemption of business 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 states that a business league is an association of persons having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business of a kind ordinarily carried on for profit.

Revenue Ruling 64-315, 1964-2 C.B., 147, held that an association of the merchants in a particular shopping center whose advertising material contained the names of the individual merchants was not qualified for exemption. In this case, the advertising carried the names of member

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businesses and constituted the performance of particular services for members.

This revenue ruling was clarified by Revenue Ruling 43-11, 1973-2 C.B., 180. The organization in the ruling is a membership association composed of all the business tenants and the corporate owner of a shopping center. Membership in the organization is mandatory and no other businesses are permitted membership.

The organization serves in part as a means for communication and exchange of views between the owner and the tenants of the center respecting matters relating to their tenant-owner relationship, and in part as a cooperative or governing body for developing and enforcing rules respecting the maintenance and policing of the shopping areas, walkways and parking areas, hours of business, and similar matters of common concern to the tenants and the owner. The organization also arranges and conducts various seasonal and other promotional affairs that are designed to stimulate the overall volume of trade in the center.

Income of the organization is primarily from membership dues. Expenditures are for internal administrative and office expenses, and for arranging, publicizing, and holding its various promotional affairs.

Since the organization in this case is not structured along particular industry or business lines but is composed of various types of business concerns and commercial endeavors comprising the shopping center in question, its right to exemption, if any, must rest on its characterization as a chamber of commerce or board of trade or similar organization. It is apparent at the outset, however, that neither the compulsory membership feature of the present organization nor the fact that its membership is determined without reference to any geographical or political community in the usual sense is characteristic of such organizations.

Membership in the organization is not voluntary in the sense that its members are free to join or not to join depending upon their interests as members of a business community. Membership is compulsory. Because of the restricted nature of the membership, which is limited solely to the owner and tenants of the single real estate facility comprising the shopping area, the organization also lacks the essential element of public representation with respect to its membership and the "community" it purportedly serves which is characteristic of organizations commonly accepted as being chambers of commerce or similar organizations.

The restriction of membership to the tenants and owner of the shopping center precludes the organization from having the basic characteristics required to qualify the organization for exemption under section 501(c)(6).

Both the compulsory membership feature of the organization and the limitation of its membership to the tenants and owner of the center are directly related to the owner-tenant relationship of the parties comprising the organization and are designed to serve the owner's individual business interests in the operation of the center. The organization's activities thus include those of a landlord-tenant association and as such directly assist the owner in facilitating the management and operation of his real estate enterprise.

To the extent the activities of the organization serve such purposes, they are not activities directed at improvement of business conditions of one or more lines of business or business conditions of any community as a whole within the meaning of section 501(c)(6) of the Code. They serve instead the individual business interests of the owner of the shopping center and therefore, fall outside the scope of the exemption accorded by section 501(c)(6).

The same conclusion applies with respect to those phases of the organization's activities that relate to such matters as the maintenance and policing of the shopping areas, walkways and parking areas, hours of business, and similar functions. These activities are characteristic of a tenants' association, rather than of a chamber of commerce or trade association and fall short of supporting any section 501(c)(6) exemption for the organization because they primarily serve special interests of the members related to their status as tenants of a common facility rather than any common business purposes in relation to the status of the members as representatives of the commercial interests of a community.

Many of the broad-based publicity and promotional activities carried on by the organization are designed to stimulate the general volume of business carried on within the center. It is nonetheless evident that even these activities fall short of supporting any section 501(c)(6) qualification for the organization because the common business interests thereby being served are not the business interests of members of the kind of public business community contemplated by the statute.

On the basis of the foregoing, the organization in the ruling does not possess the essential characteristics of a chamber of commerce. It accordingly, does not meet the test of the statute and, therefore, does not qualify for exemption as a chamber of commerce or similar organization under the exemption provisions of section 501(c)(6).

The great majority of your advertising contains the names of your member businesses and is therefore providing a particular service for member.

On the basis of the above described revenue rulings, we hold that you do not qualify for tax-exempt status as an organization described in section

(4)

[REDACTED]

501(c)(6) of the Internal Revenue Code. You are required to file Federal income tax returns.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office or, if you request, at any mutually convenient District Office. If we do not hear from you within 90 days of the date of this letter, this determination will become final.

Sincerely,

[REDACTED]
District Director

Enclosure

cc: [REDACTED]