



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200540016**
Release Date: 10/7/05

Date: January 19, 2005

U.I.L. Number:
501.06-00

Employer Identification Number:

LEGEND:

A =
B =
C =
D =

M =

X =
Y =
Z =

a =
b =
c =

s =
t =
u =

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.

You state that you were incorporated in the State of M in March 2000. However, the Certificate of Incorporation that you submitted is not signed, and there is no evidence that it was filed with and approved by the appropriate state official, as required in the application.

In the Certificate of Incorporation, you state that, initially, your specific purposes are to educate the market, sponsor research, foster standards and articulate the measurable benefits of a technologies and techniques; to serve as a forum for discussion of related issues, sponsor industry research, develop open standards and guidelines and promote best practices; and to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

In your bylaws, you state that your membership is open to any entity or person who pays the initiation fees and annual dues. You identify two classes of membership: A Members and B Members. The annual membership dues range from \$s to \$t depending on the class of membership selected. In your application, you state that only A Members have voting privileges.

The following rights, privileges and benefits for A Members are among those identified in your bylaws and recruitment material: voting for directors; voting on matters submitted to voting members; nominating a director to the Board of Directors; appointing a voting representative to various committees, sub-committees, special interest groups and work groups; running for Board of Directors' seats; receiving, without charge, copies of your publications prior to public distribution, with pre-publication access to any specifications under development; have access to your resources and research; having the use of your logo; having a company website hotlink to your website; and receiving free or discounted services.

In your letter dated May 29, 2003, you stated that while all member meetings are open to B Members, none serve on your Board or as officers. You further stated that the A Committee, the only Board committee that had been created, consists of officers. The Committee proposes dispositions of issues that the Board votes on, including financial matters. You stated that like A members, B members may each appoint one voting representative to other committees.

We asked that you submit a copy of five A Members' company information that had been included in your materials. We advised you that if you had used more than one type of material, representative samples were to be provided for each. You responded that the A Members are treated as a group with lists of the companies in press kits and information kits. You further stated that all are listed

on your website, and all have links to their own websites. You did not submit representative samples of materials that you had distributed.

You submitted a copy of your logo. You stated that you had no written policy regarding its use other than its being a privilege of A Members, who are encouraged to post it on their websites and in materials. We asked you to provide representative samples of company products or materials submitted to you by members to be used to display your logo. You responded that you knew of no member materials still displaying the logo. You did not state whether members had used the logo in the past, and if so, whether you had received member material incorporating your logo.

We asked you to provide a list of free or discounted services provided to your A Members for the period from January 1, 2001 to March 31, 2003. You responded that there were no free or discounted services provided to A Members during the period that were not also provided to B Members, aside from the differing privileges accorded to different membership levels. You did not submit a list of the services that had been provided.

In your application, you state that you are dedicated to promoting, on the behalf of developers and users of a technologies, the development and use of responsible one-to-one marketing technology and practices on the World Wide Web. You further state that you seek to accomplish these objectives by encouraging the growth and success of b that delivers the benefits of c while developing and promoting industry standard "best practices" and that protect the interests of consumers. You identify the first step in your proposed C Program as being the establishment of certain objectives that articulate your goal. You state that you intend to provide a forum for industry discussion and information, sponsor industry research, foster standards for technology and best practices, conduct educational conferences for members, participate in trade shows, engage in certification and branding programs, and advertise membership on the web. In the application, you did not provide specific information regarding how you propose to conduct the activities and programs. In your correspondence, you stated that there is no certification or branding program at X. You further stated that the proposed C Program had not been implemented.

In your application, you identified the allocation of your time resources as being: marketing and sales (5%), research and development (50%), administrative activities (20%), and member services (25%). In our April 2003 letter, we asked you to state approximately what percentage of your time and resources was devoted to the activities. You responded that the figures, which are historical and approximate only due to your two years of inactivity, are 20%, 35%, 20% and 25%, respectively.

We asked you to provide a copy of the agendas, programs, etc. for your conferences. You stated that you were attaching agenda for two in-person

members meetings, and you explained that the second meeting had been cancelled due to lack of participation. No agendas accompanied your response. You stated that informal teleconferences were periodically held for interested members where committee updates were provided and questions answered.

We asked you to provide representative samples from your website (www.a.org) of material that you considered to be educational. You stated that you considered D, the primer on a, the glossary of industry terminology, and the resources posted on your website (links to a glossary, to FAQs about your organization and to other websites) to be educational. On the website, you state you do not organize public events. You post a calendar of events offered by other organizations on the website, and those that you endorse are identified by your logo.

You stated that all members suggest research topics. You explained that while nonmember suggestions for research topics would be welcome and considered, as a practical matter your limited budget has not allowed for active solicitation of nonmembers.

The results of a u item survey are posted on your website. The results of another survey were made available to the public for a fee. You stated that the fee was meant to defray the costs incurred in producing and distributing the survey, and that the costs were consistent with similar types of reports available to the public from other sources.

Your financial statements show your support as being from membership dues and assessments and sponsorship income. You stated that additional income may be provided in other ways not yet determined in the future. You further stated that if you offer certification services, you may decide to charge a fee to cover your costs.

In your application, you state that Y is to be paid to provide management services in the nature of members support services and general operational support. In response to our request for a copy of the contract with Y, you responded that there was no formal contract. You stated that for approximately two years the company has been providing minimal services to you only upon request from your officers. You did not submit any documents related to the terms of the agreement between you and Y.

Your website contains a "Members Only" section. In your "Members Only" newsletter, there was a reference to your having negotiated with Z to provide members with access to certain information through your website. In response to our request for a copy of your contract with Z, you stated that you executed the cancellation provision of the contract in 2001. You did not submit a copy of the contract.

In the letter dated May 29, 2003, you stated that you had been relatively quiescent for nearly two years during the b slowdown. In a letter dated May 29, 2004, you advised us that you continue to be inactive, and that no decision had been made as to winding up your affairs. You stated that you were "in a form of suspended operations awaiting an internal decision whether to proceed with your mission or to dissolve". You stated that no change in activities is anticipated. You asked that a determination regarding your application for exemption under section 501(c)(6) of the Code be made based upon your past practices and operations.

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.

Section 1.501(a)-1(a)(1) of the Income Tax Regulations provides, generally, for an exemption from taxes for organizations which are described in section 501(c) or (d) of the Code.

Section 1.501(a)-1(a)(3) of the regulations provides, generally, that an organization claiming exemption under section 501(a) of the Code and described in any paragraph of section 501(c) shall file the form of application prescribed by the Commissioner and shall include information as required by such form and the instructions.

Section 1.501(a)-2 of the regulations provides that in addition to the information specifically called for by this section, an organization may be required to provide any additional information deemed necessary for a proper determination of whether it is exempt under section 501(a) of the Code, and when deemed advisable in the interest of an efficient administration of the internal revenue laws, in the cases of particular types of organizations the form in which the proof of exemption shall be furnished may be prescribed.

Section 1.501(c)(6)-1 of the regulations provides, in part, 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. Proc. 90-27, 1990-1 C.B. 514, sets forth procedures with regard to applications for recognition of exemption from federal income tax under section 501 of the Code. Section 3.02 of the revenue procedure provides that where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

In Durham Merchant's Association v. U.S., 34 F.Supp. 71 (N.C. 1940), the court held that an organization seeking exemption under section 103(7) of the Revenue Act of 1932 [which corresponds to section 501(c)(6) of the Internal Revenue Code of 1986] bears the burden of proving that it satisfies the requirements for recognition as a business league.

In Retailers Credit Association of Alameda County v. Commissioner of Internal, 33 B.T.A. 1166, the Board of Tax Appeals explained that a taxpayer claiming exemption must not only carry the burden of proof, but must proceed perceptibly further and bring itself strictly within the provisions of the act creating the exemption. The case involved an organization seeking exemption as a business league under the Revenue Act of 1928, section 103(7) [which corresponds to section 501(c)(6) of the Internal Revenue Code of 1986].

Organizations exempt under section 501(c)(6) of the Code as business leagues share certain characteristics set forth in section 1.501(c)(6)-1 of the regulations:

- They are associations of persons who have a common business interest.
- Their purpose is promote this common business interest.
- Their activities are directed to the improvement of business conditions in one or more lines of business rather than towards performing particular services for individual persons.
- They are not organized to engage in a regular business of a kind ordinarily carried on for profit, even if the business is to be conducted on a cooperative basis or is to produce only sufficient income to be self-sustaining.
- No part of their earnings inure to the benefit of any private individual.

An organization claiming exemption as a business league under section 501(c)(6) has the burden of proving that it qualifies for exemption under the Code section. Durham Merchant's Association, *supra*. In addition, the organization must bring itself strictly within the provisions of section 501(c)(6). Retailers Credit Association of Alameda County, *supra*.

Form 1024, Application for Recognition of Exemption, must be completed by an organization seeking recognition of exemption under section 501(c)(6) of the Code. Section 1.501(a)-1(a)(3) of the regulations. In Section II, Activities and

Operational Information, the applicant is required to “(p)rovide a detailed narrative description of all the activities of the organization-past, present, and planned (emphasis added).” In describing its activities, an applicant is to provide information regarding when an activity was or will be initiated and where and by whom the activity will be conducted. The Service may, when deemed necessary for a proper determination of whether it an organization is exempt under section 501(a), and when deemed advisable in the interest of an efficient administration of the internal revenue laws, require an applicant to submit additional information. Section 1.501(a)-2.

You state that you have been inactive for nearly two years and you have provided no indication as to whether you intend to proceed with your activities. You merely state that no change in your activities is anticipated. The information that you furnished in your application and in response to our request for additional information does not describe your activities, past, present, or future, in sufficient detail to establish that you satisfy the requirements for recognition of exemption under section 501(c)(6) of the Code. Section 3.02 of Rev. Proc. 90-27, supra. Also, in analyzing your previous activities, it is not clear whether your activities were intended to serve the general economic interests of a geographic location or of one or more lines of business by promoting the economic interest of all businesses in a given trade community as would be the case with a chamber of commerce or board of trade. Nor is it clear whether your activities were intended to promote the common business interests of an identifiable line of business or of members of closely related lines of business within an industry. Therefore, for these reasons, we are unable to recognize you as exempt as an organization described in section 501(c)(6) 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, 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 it is convenient, you may fax your reply using the fax number shown in the heading of this letter. If you fax your reply, please contact the person identified in the heading of this letter by telephone to confirm that your fax was received.

IRS
ORGANIZATION NAME (SE:T:EO:RA:T:2)
1111 CONSTITUTION AVE., NW, PE-3M1
WASHINGTON, DC 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 G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437