

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

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## **IRS LTR: IRS Revokes Exempt Status of Real Estate Trade Group.**

Citations: LTR 201329023

The IRS revoked the tax-exempt status of a trade group that supports the real estate industry, saying it primarily engages in nonexempt activities and performs particular services for members.

Person to Contact/ID Number: \* \* \*

Contact Numbers:

Voice: \* \* \*

Fax: \* \* \*

501-06.00

Release Date: 7/19/2013

Date: January 27, 2012

Taxpayer Identification Number: \* \* \*

Form: \* \* \*

Tax Years Ended: \* \* \*

LEGEND:

ORG = Organization name

XX = Date

Address = address

Dear \* \* \*:

In a determination letter dating from October 19XX, you were held to be exempt from Federal income tax under section 501(c)(6) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(6) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(6) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On September 23, 20XX, you signed Form 6018-A, Consent to Proposed Action, agreeing to the revocation of your exempt status under section 501(c)(6) of the Code.

You are required to file Federal income tax returns for the tax periods shown above. If you have not yet filed these returns, please file them with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted, or unless an examiner's report for income tax liability was issued to you with other instructions. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

\* \* \*

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

Sincerely,

Nanette M. Downing

Director, EO Examinations

\* \* \* \* \*

Person to Contact/ID Number: \* \* \*

Contact Numbers:

Telephone: \* \* \*

Fax: \* \* \*

501-06.00

Date: November 1, 2011

Employer Identification Number: \* \* \*

LEGEND:

ORG = Organization name

XX = Date

Address = address

Dear \* \* \*:

In a determination letter dated March 28, 19XX, you were held to be exempt from Federal income tax under section 501(c)(6) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(6) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(6) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On September 23, 20XX, you signed Form 6018-A, Consent to Proposed Action, agreeing to the revocation of your exempt status under section 501(c)(6) of the Code.

You are therefore required to file Form[s] 1120, U.S. Corporation Tax Return, for the year[s] ended December 31, 20XX, 20XX, and 20XX with the Ogden Service Center. For future periods, you are required to file Form 1120 with the appropriate service center indicated in the instructions for the return.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

\* \* \*

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

Sincerely,

Nanette M. Downing

Director, EO Examinations

\* \* \* \* \*

LEGEND:

ORG = Organization name

EIN = ein

XX = Date

State = state

CO-1, CO-2 & CO-3 = 1st, 2nd & 3rd COMPANIES

## ISSUES

Whether this exempt organization's (EO) activities permit it to continue to be exempt under § 501(c)(6).

## FACTS

ORG (hereinafter, "ORG") was formed with the filing of Articles of Incorporation with the State Corporation Commission on March 28, 19XX.

ORG is a subsidiary of the CO-1 and received its letter of exemption under § 501(c)(6) with an effective date of March 28, 19XX.

The purpose of the organization stated in the original Articles of Incorporation are:

- (a) To unite those engaged in the recognized branches of the real estate profession in this community for the purpose of exerting the beneficial influence upon the profession and related interests.
- (b) To promote and maintain high standards of conduct in the real estate profession as expressed in the code of Ethics of the CO-2.
- (c) To provide a unified medium for real estate owners and those engaged in the real estate profession whereby they may be safe guarded and advanced.
- (d) To further the interest of home and other real property ownership.
- (e) To unite those engaged in the real estate profession in this community with a CO-1 and the CO-2, thereby furthering their own objectives throughout the state and nation, and obtaining the benefits and privileges of membership therein.
- (f) To designate, for the benefit of the public, those individuals within its jurisdiction authorized to use the term Realtor and Realtor Associates as licensed, prescribed, and controlled by the CO-2.

ORG Articles of incorporation also contains the following:

### Article XVIII — Multiple Listing

The CO-3® shall maintain for the use of its Members a Multiple Listing Service which shall be a lawful corporation of the state of STATE, all the stock of which shall be owned by the CO-3®.

Section 2. Purpose. A Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law); by which disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as a procuring cause of the sale (or lease). Amended 11/XX)

The activity pertinent to this discussion is the level of activities devoted to the multiple listing services (hereinafter, MLS) provided to the members of the Association.

There are six classes of members. Only licensed real estate agents, brokers and realtors can list property for sale on the MLS and see sold information within the database.

ORG maintains a committee on its board that is dedicated to the MLS program. The organization generated more income from the MLS than from its membership dues.

A prior examination of the ORG books and records by the Internal Revenue Service Tax Exempt & Government Entities: Exempt Organization Division in calendar year 20XX resulted in the organization being issued an Advisory Letter. The advisory issued cautioned the organization on the impact of its exempt status with regard to the level of non-exempt activities.

The organization prepared and filed Form 990-T for the tax year ending December 31, 20XX to report all unrelated business income.

The 20XX Form 990-EZ states that the organization's primary purpose is "ORG".

Information from the "EO" 20XX Form 990-EZ:

## LAW

In Section 501(c)(6) of the Code, it defines business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In Section 1.501(c)(6)-1 of the regulations, it 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. 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.

Section 1.513-1(b) of the regulations provides that the term "trade or business" for purposes of section 513 of the Code has the same meaning it has in section 162 and generally includes any activity carried on for the production of income from the sale of goods or services.

In section 1.513-1(d)(2) of the regulations, in defining unrelated trade or business provides that where the production or distribution of the goods or the performance of the services does not contribute importantly to the accomplishment of the exempt purposes of an organization, the income from the sale of the goods or the performance of the services does not derive from the conduct of related trade or business.

In Rev. Rul. 56-65, it states that a local organization whose principle activity consists of furnishing particular information and specialized individual services to its individual members through publications and other means is performing particular services for individual persons. Such an EO is therefore not entitled to exemption under § 501(c)(6).

Rev. Rul. 68-264 defines a particular service for the purposes of section 501(c)(6) of the Code as an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses.

In Rev. Rul. 59-234 it states, the purpose of a multiple listing service is:

- (a) to assist members of the board in rendering better services to the public by creating a broader and more active market for real estate;
- (b) to stimulate and facilitate the transaction of business between members of the board through cooperation and exchange of exclusive listings;
- (c) to provide a medium through which real estate may be merchandised more efficiently and expeditiously to the advantage of both buyer and seller and
- (d) to encourage realtors to uphold high standards of business practice and to further educate them in adhering to the principles of Realtor's code of Ethics.

Rev Rul. 73-411 states, Trade associations or business leagues under section 501(c)(6) 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.

Rev. Rul. 81-175 defines the term "particular services" for the purposes of section 501(c)(6) of the Code, as acting in a manner which provides an economy or a convenience for members in the operation of their own businesses.

In *Retailers Credit Ass'n of Alameda County v. Commissioner of Internal Revenue* 90 F.2d 47, C.A.9 1937. May 10, 1937, Exemption from petitioner from taxation must be denied on the ground that the purpose to engage in a business of a kind ordinarily carried on for profit is not incidental to a main or principal purpose, but is in fact a principal or main purpose.

In *Southern Hardwood Traffic Ass'n v. U.S.* 283 F.Supp. 1013 D.C.Tenn. 1968. March 13, 1968, the District Court, Bailey Brown, Chief Judge, held that unincorporated association engaged in regular business of providing, as one of its two main purposes and as substantial part of its total activity, majority of its members with individual services of kind ordinarily carried on for profit was not a 'business league' entitled to tax exempt status.

In *Associated Master Barbers and Beauticians of America, Inc.*, 69 T.C. 53 (1977), the court held that an organization did not qualify as a tax-exempt business league because it both engaged in a regular business of a kind ordinarily carried on for profit and its activities were directed to the performance of particular services for individual members.

In *Carolinas Farm & Power Equipment Dealers Ass'n, Inc. v. U.S.* 699 F.2d 167, C.A.N.C., 1983. January 24, 1983, we must conclude that the Association's insurance service primarily advances the interests of participating members, and so it is not related to its charitable purpose.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number of exempt purposes. *Better Bus. Bureau v. United States*, 326 U. S. 279. 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); *Am. Campaign Acad. v. Commissioner*, 92 T.C. 1056, 1065 (19XX).

## TAXPAYER'S POSITION

ORG agrees that it is not entitled to exemption under section 501(c)(6) because its primary purpose is the daily operations of the Multiple Listing Services (MLS) in which \*\*\*% of the organization's activities are devoted too.

## GOVERNMENT'S POSITION

ORG provides professional development, research, and exchange of information among its members.

ORG's book and records demonstrates the Multiple Listing Services primarily advances the interests of participating members, and so it is not related to its exempt purpose.

In order to qualify for exemption as a business league under Reg. § 1.501(c)(6)-1, an exempt organization must meet all of 6 tests:

- (1) Persons having a common business interest
- (2) Whose purpose is to promote the common business interest
- (3) Not organized for profit
- (4) That does not engage in a business ordinarily conducted for profit
- (5) Whose activities are directed at improvement of one or more lines of business as distinguished from the performance of particular services
- (6) Of the same general class as a chamber of commerce or a board of trade

A review of the ORG books and records indicates the Association fail test 1, 4 and 5 under Reg. § 1.501(c)(6)-1.

ORG fails test (1) — Persons having a common business interest. Rev. Rul. 81-175 defines the term "particular services" for the purposes of section 501(c)(6) of the Code, as acting in a manner which provides an economy or a convenience for members in the operation of their own businesses. A review of the ORG books and record indicates its primary activity is operating a multiple listing service for its members, which is not a common business interest, but rather providing a convenience to members in the operation of their own businesses and thus performing particular services for members.

ORG fails test (4) — Not being engaged in a business ordinarily carried on for profit. The MLS is a database of homes for sale. Real Estate Agents use the MLS to find homes for buyers that they represent. Listing a home on the MLS notifies all local brokers that the home is for sale. If an agent other than the listing agent sees a listing and brings a buyer, the listing agent must pay the buyer's agent a commission if the buyer accepts the offer. The commission is negotiated on an agent by agent basis. Services to members are an activity ordinarily conducted for profit. These services are of the same character of services provided by Real Estate firms. The membership dues may be construed as being of the same character as that of a professional charging a retainer fee against which future services are applied.

ORG fails test (5) Whose activities are directed at improvement of one or more lines of business as distinguished from the performance of particular services Rev. Rul. 81-175 defines the term "particular services" for the purposes of section 501(c)(6) of the Code, as acting in a manner which provides an economy or a convenience for members in the operation of their own businesses. ORG's primary activity is providing member with a medium through which real estate may be merchandised more efficiently and expeditiously to the advantage of both buyer and seller. Operation of the MLS provides a convenience to members in the operation of their own businesses and thus is performing particular services for the members.

In *Better Bus. Bureau v. United States*, 326 U. S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945) and *Am. Campaign Acad. v. Commissioner*, 92 T.C. 1056, 1065 (19XX), it is stated that the presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number of exempt purposes. In *Associated Master Barbers and Beauticians of America, Inc.*, 69 T.C. 53 (1977), the court held that an organization did not qualify as a tax-exempt business league because it both engaged in a regular business of a kind ordinarily carried on for profit and its activities were directed to the performance of particular services for individual members.

The primary activity of providing a multiple listing services to members is an activity ordinarily carried on for profit and therefore is nonexempt. The EO's primary activity is one involving providing particular services to individual members in providing member with a medium through which real estate may be merchandised more efficiently and expeditiously to the advantage of both buyer and seller which conflicts with the EO's tax-exempt status.

Rev. Rul. 56-65 states that a local organization whose principle activity consists of furnishing particular information and specialized individual services to its individual members through publications and other means is performing particular services for individual persons. Such an EO is therefore not entitled to exemption under section 501(c)(6). The subject EO's principle activity consists of furnishing particular and specialized individual services to its individual members through response to individual requests for human resource information specific to the individual member; the EO is therefore performing particular services for individual persons.

This organization fails three of the six tests under section 1.501(c)(6)-1 and as a result, is not entitled to remain exempt. The organization engages in primary nonexempt activities involving activities normally conducted for profit and performs particular services for members.

## CONCLUSION

Based on the foregoing reasons, ORG does not qualify for exemption under section 501(c)(6) and its tax exempt status should be revoked effective January 1, 20XX.