



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE EO Examinations
1122 Town and Country Commons Room 128
Chesterfield, MO 63017-8293

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

October 27, 2008

Number: **200916036**
Release Date: 4/17/2009

LEGEND

ORG * Organization name XX = Date Address = address

UIL: 501.06-01

ORG
ADDRESS

Taxpayer Identification Number:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

Dear :

During our examination of the return(s) indicated above, we determined that your organization was not described in Internal Revenue Code section 501(c) for the tax period(s) listed above and therefore, it does not qualify for exemption from federal income tax. This letter is not a determination of your exempt status under section 501 for any period other than the tax period(s) listed above.

The attached Report of Examination, Form 886-A, *Explanation of Items*, summarizes the facts, the applicable law, and the Service's position regarding the examination of the tax period(s) listed above. You have agreed with our determination by signing Form 6018-A, *Consent to Proposed Action*, accepting our determination of non-exempt status for the period(s) stated above. You have filed the required income tax returns.

In the future, if you believe your organization qualifies for tax-exempt status and would like to establish its status, you may request a determination from the Internal Revenue Service by filing Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, and paying the required user fee.

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 see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Vicki L. Hansen
Acting Director, EO Examinations

Enclosures:
Form 886-A

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		/20XX12

LEGEND

ORG = Organization name XX = Date XYZ = State News = news County = county
CO-1 & CO-2 = 1st & 2nd Companies

ISSUES

Can the ORG qualify for exempt status under section 501(c)(6) of the Internal Revenue Code for the period ending December 31, 20XX when their primary activities consist of the operation of a Multiple Listing Service (hereinafter referred to as MLS) and the publication of a News that are considered particular services for members?

FACTS

The ORG (hereinafter referred to ORG) has shown on their filed Form 990, Return of Organization Exempt From Income, for the period ending December 31, 20XX, "J Organization Type" that they are described within section 501(c)(6) of the Internal Revenue Code. The ORG has never filed a Form 1024, Application for Recognition of Exemption under Section 501(a), with the Service. The Service records show that the current status of the ORG is 36, Organizations other than 501(c)(3), (9), or (17) without determination letters but who file Forms 990 and a subsection code of 06, 501(c)(6).

ORG is incorporated in the State of XYZ, under the General Not for Profit Corporation Law on March 23, 19XX. Their Articles of Incorporation, Article V, Sections a) through f) hold that the purposes for which ORG was formed are:

- to unite those engaged in the real estate business in the XYZ counties of County, County, and County for the purpose of exerting a beneficial influence upon the real estate business and related interest
- to promote and maintain high standards of conduct in the real estate business
- to provide a unified medium for real estate owners and those engaged in the real estate business whereby their interests may be safeguarded and advanced
- to further the interest in home and other real property ownership
- to unite those engaged in the real estate business in the XYZ counties of County, County and County with the 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
- to designate, for the benefit of the public, those individuals within its jurisdiction authorized to use the term "Realtor" and "Realtor Associate" as prescribed and controlled by the CO-2.

The ORG has a full-time employee, Association Executive, and a part-time employee to assist the Association Executive with his/her duties. Following is a breakdown of the Associate Executive's time spent by activity:

EDUCATION	
ACTIVITIES	HOURS
CO-1(hereinafter referred to as CO-1)	10
Offsite, non-CO-1	40

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		/20XX12

New member orientation	76
CO-1 education and business meetings	128
MLS training	24
Board co-sponsored education	10
NOTE: Examples of courses offered:	
1. Onsite Site Sewage Systems	
2. Local Impact on State Government	
3. Time Management	
4. Quarterly AE Seminars	
5. Technology	
TOTAL HOURS	288

MEMBER MANAGEMENT	
ACTIVITIES	HOURS
Committee Support	204
Accounting Functions	780
Correspondence	50
General phone calls	100
Board and General Member meetings	36
Files management	50
Roster management	25
TOTAL HOURS	1245

LISTING ACTIVITIES	
ACTIVITIES RELATED TO MLS	HOURS
Meetings	50
New member registration	100
Training	40
Caravan tours	75
Software management	90
Phone calls	50
TOTAL HOURS	405

LOCKBOX AND KEY MANAGEMENT	
ACTIVITIES	HOURS
Hardware management	65
Contract management	40
Key programming and reprogramming	40

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		/20XX12

TOTAL HOURS	145
--------------------	------------

NOTES: This comes to a total of 2083 hours for the year.

The schedule below shows the Associate Executive's time spent on activities related to ORG's exempt purpose and activities that constitute particular services (nonexempt).

ASSOCIATE EXECUTIVE'S TIME SPENT					
DESCRIPTION	EXEMPT HOURS	MLS HOURS	NEWS HOURS SPENT	OTHER ACTIVITIES	TOTAL HOURS
Education	264	24			288
Member Management					
Committee Support	30	104	30	40	204
Accounting Functions	70	580	36	94	780
Correspondence	5	35	5	5	50
General phone calls	5	8	15	5	100
Board & General Membership	0	0	0	36	36
Files Management	5	35	5	5	50
Roster Management	0	20	0	5	25
Listing Activities	0	405	0	0	405
Lockbox and Key Management	0	0	0	145	145
TOTAL	379	1278	91	335	2083

NON EXEMPT ACTIVITIES PERCENTAGE TOTALS			
DESCRIPTION	HOURS SPENT	TOTAL HOURS AVAILABLE	PERCENTAGE
MLS	1278	2083	61.35%
News	91	2083	4.37%
Other Activities	335	2083	9.12%
TOTALS	1704	2083	81.81%

The time spent by volunteers on ORG Committees is as follows:

TOTAL VOLUNTEER HOURS BY COMMITTEE	
COMMITTEE	HOURS
MLS	164

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		/20XX12

News	83
Awards	22
Bylaws	49
Banquet	26
Membership/EEO	73
Legislative/RPAC	44
Nominations	8
Education/Programs	50
Strategic Plan/Plan of Action	69
TOTAL VOLUNTEER HOURS	588

VOLUNTEER COMMITTEE HOURS

DESCRIPTION	EXEMPT HOURS SPENT	NON EXEMPT HOURS SPENT	TOTAL HOURS AVAILABLE	EXEMPT TIME PERCENTAGE	NON EXEMPT TIME PERCENTAGE
MLS	0	164	588	0.00%	27.89%
News	0	83	588	0.00%	14.12%
Awards	0	22	588	0.00%	3.74%
Bylaws	49		588	8.33%	0.00%
Banquet	26		588	4.42%	0.00%
Education	50		588	8.50%	0.00%
Membership/EEO	73		588	12.41%	0.00%
Legislative/RPAC	44		588	7.48%	0.00%
Nominations	8		588	1.36%	0.00%
Strategic Plan/Plan of Action	69		588	11.73%	0.00%
TOTALS	319	269	588	54.25%	45.5%

The breakdown of the MLS Income is as follows:

Income

- Service charge is \$ per month or \$\$ per year plus an annual board membership fee of \$\$ for the Certified Appraiser.
- The number of members is approximately 297. The number of members, 297, times \$\$ per year equals \$\$.
- According to Part VII, #93a. of the Form 990, the income for the MLS service was \$.
- The total income for the organization is \$.
- Based on the above information, the income for the MLS service is 23% of ORG's total income.

The breakdown of the News Income is as follows:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		/20XX12

Income

- The Monthly News fees are based on how many partial page ads and full-page ads each realtor wants to use.
- The income reported on Form 990, Part VII, #93b is \$\$.
- The total income for the organization is \$\$.
- Based on the above information, the News service is 44% of ORG's income.

The breakdown of the Expenses for the exempt and non-exempt purposes is as follows:

Description	Expense Amount	Direct Expenses for Exempt Purpose	%Age Expenses MLS	MLS Amount	%Age Expenses Homes Mag	News Amount	Non Exempt Expense Amount
Salaries							
Payroll Taxes							
Accounting Fees							
Supplies							
Telephone							
Postage & shipping							
Equipment rental & maintenance (Copier lease)							
Printing & Publications							
Travel							
Conferences, conventions, & meetings (Board functions)							
Interest							
Rent							
Continuing Education							
Miscellaneous							
Warranty & Support							
Repairs							
Dues & Subscriptions							
Other Expenses (Insurance & Furniture)							
TOTALS							

LAW:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		/20XX12

IRC §501(c)(6) provides the following definition; 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.

Treasury Regulation §1.501(c)(6)-1- 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.

Revenue Ruling 59-234, 1959-2 C.B. 149 – held that an organization whose primary purpose is to stimulate and facilitate the transaction of business between members through cooperation and exchange of exclusive listings, which is inherently designed for the rendering of particular services for individual members as a convenience and economy in the conduct of their respective businesses, is not entitled to exemption from Federal income tax as an organization described in **501(c)(6)** of the Code.

Revenue Ruling 78-52, 1978-1 C.B. 166 – held that the distribution of a magazine by a business league exempt from Federal income tax under section **501(c)(6)** of the Internal Revenue Code of 1954 is unrelated trade or business within the meaning of section **513**.

Governments Position:

The total amount of time spent during the year by the Associate Executive on providing particular services for members, the MLS, News and Other Activities, is 1704 hours out of 2083 total hours or 81.81%

The total amount of time spent during the year by ORG volunteers on providing particular services for members, the MLS, News service and Awards Service, is 269 hours out of 588 hours or 45.75%.

The total amount of income devoted to particular services for members, the MLS and the News, is \$ of the \$\$ total income or 67%. The total amount of expenses devoted to particular services for members, the MLS and the News services, is \$ of the \$ total expenses or 62%.

The ORG Articles of Incorporation provide that the purpose of the ORG, “to unite those engaged in the real estate business, to promote and maintain high standards of conduct, to provide a unified medium for real estate owners and those engaged in real estate, to further the interest in home or other property ownership, and to allow individuals to use the term "realtor" and "realtor associate" as prescribed by the CO-2”. This purpose promotes the member and not the industry as a whole.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		/20XX12

As shown above ORG's operation is substantially devoted both time spent and financially to activities that are considered particular services to members as described in Revenue Ruling 59-234, 1959-2 CB 149 and Revenue Ruling 78-52, 1978-1 CB 166. These rulings held the organizations not to be a business league within the intendment of section 501(c)(6) of the Code. Revocation of the organizations exempt status under 501(c)(6) of the Code was proposed and upheld. A minimal amount of the ORG's time spent and finances are devoted to activities that benefit the industry as a whole as described in regulations 1.501(c)(6)-1. It has been shown that assets of the ORG are inuring to the member which is prohibited under section 501(c)(6) of the Code.

Therefore it is the government's position that, the ORG activities of operating the News and multiple listing services are a substantial part of ORG operations and these services provide particular services to their members rather than to the business industry as a whole. The activities of the ORG are no different than that of a for-profit organization or other realty companies.

Taxpayer's Position:

To be submitted by taxpayer.

Conclusion:

Based on the information above, it is concluded that the ORG does not meet the requirements to be recognized as exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. Accordingly, the ORG is not eligible to file the Form 990, Return of Exempt Organizations, for the period ending December 31, 20XX or any period thereafter unless they can show to the Service that their activities have changed and can qualify for exempt status under section 501(c)(6) of the Code.

Form 1120 returns should be filed for the tax periods after January 1, 20XX.