

March 11, 1996

RE: Exemption Application  
General Corporation Tax  
FLR #:964653-006

Dear :

This letter is in response to your request dated , for exemption from the New York City General Corporation Tax ("GCT") submitted on behalf of (the "Organization"). For the reasons indicated below, we are unable to conclude that the Organization qualifies for exemption from the GCT. See Title 19 Rules of the City of New York §11-04(b)(8).

X The Organization is not operated exclusively for nonprofit purposes.(GCT) See attached explanation.

If you have any questions, you may call Ellen Hoffman, Director, Tax Law Division at (718) 403-3662. Thank you.

Very truly yours,

Devora B. Cohn  
Assistant Commissioner,  
Legal Affairs

## EXPLANATION OF DENIAL OF EXEMPTION

Title 19 of the Rules of the City of New York section 11-04(b)(8) provides that the GCT does not apply to

corporations ... organized and operated for nonprofit purposes and not engaged in substantial commercial activities, which are not authorized to issue stock or shares of certificates for stock or shares, and no part of the net earnings of which inures to the benefit of any officer, director or member.

Absent substantial evidence to the contrary:

(i) A nonstock corporation described above that has been determined to be exempt by the Internal Revenue Service from Federal income taxation pursuant to subsection (a) of section 501 of the Internal Revenue Code will be presumed to be exempt from the general corporation tax....

You have submitted copies of the articles of incorporation of the Organization and a copy of a letter from the Internal Revenue Service ("IRS") dated , exempting the Organization from Federal income tax as an business league under IRC section 501(c)(6) and a copy of a letter from the dated exempting the Organization from taxation. You have advised us that the Organization has been examined by the IRS, most recently in , with no change.

Among its other activities, the Organization conducts seminars promoting product integrity and providing information on recent developments in the industry and product liability.

You have also submitted an affidavit of , the treasurer of the Organization in which states

The main activity of [the Organization] is to maintain a product liability insurance program for its members. Although it does not issue insurance policies, it does negotiate directly with , and who between them have developed and maintain an active "line slip" of coverage. This "line slip" is only available to [Organization] members. (emphasis added.)

...

[The Organization's] source of funds is a single one -- a cost reimbursement agreement with the lead underwriters which is negotiated each year.

In addition, you have submitted a copy of the capabilities brochure issued by the Organization that states that the Organization provides "centralized claims management and defense". This is achieved through the use of a single law firm designated by the insurance underwriters. Finally, you have advised us that

As part of being an [Organization] member, the membership agreement in part states that each member agrees not to claim against other members in the same lawsuit (ie, not to exercise their right of subrogation against each other), but rather, if necessary, resolve such matters amicably through mutual discussions and arbitration.

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. 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.

Based upon the foregoing, in our opinion there is substantial evidence to the effect that, notwithstanding the Organization's exemption from federal income tax, the Organization is not operated exclusively for nonprofit purposes because its primary activity is providing insurance services for the specific benefit of its members. While the seminars conducted by the Organization satisfy the requirements of Treasury Regulation section 1-501(c)(6)-1 above, the Treasurer of the Organization has stated that the primary activity of the Organization is providing the insurance program to its members. The activities of the Organization are not funded by the members but by the underwriters of the insurance program offered to members. The insurance program arranged for by the Organization is available only to members and they must agree not to file cross claims against each other as a condition of membership.

While you have stated that nonmembers of the industry derive a benefit from the activities of the Organization through reduced insurance costs resulting from the increased competition and benefit from safety measures resulting from the Organization's activities, in our opinion those benefits are indirect and incidental to the primary activity of the Organization. Moreover, it appears that nonmembers may be disadvantaged by the above agreement by members not to file cross claims against other members.