



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201349019**  
Release Date: 12/6/2013  
Date: September 9, 2013  
UIL Code: 501.06-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear \_\_\_\_\_ :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(6).

We made this determination because you are not operated to promote a common business interest as defined under Code section 501(c)(6).

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Karen Schiller  
Acting Director, Exempt Organizations  
Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: July 24, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL  
501.06-00

Legend:

B  
Company  
C  
M  
Date1  
Date2  
Date3  
Date4  
State

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6). The basis for our conclusion is set forth below.

FACTS

You were formed on Date1 as a State non-stock nonprofit corporation and have requested classification as a business league under section 501(c)(6) of the Code. Your certificate of incorporation states that your initial purposes are:

[T]o conduct activities directed to the improvement of business conditions within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986 as amended or any successor thereto (the "Code"), including: (i) advocating and researching for an internet platform whereby individuals store and control access to their own C, (ii) developing and maintaining the standards and specifications to enable individuals and businesses to accomplish the foregoing purpose and (iii) conducting any and all lawful activities which may be useful in accomplishing the foregoing purposes.

Similar purposes are set forth in Article I – Objectives of your by-laws which were adopted on Date1.

In addition to setting out your objectives, your by-laws provide that your board will determine how many members it will have by resolution, though there must be at least one member. New directors are elected by a majority of the directors then in office. However, if there are no directors left, the members will elect new directors. If there are no members and no directors, the President of the corporation may appoint one or more new directors. In the absence of a president the Secretary may appoint one or more directors in this situation, and in the absence of a Secretary, the Assistant Secretary may make the appointment or appointments.

Your application describes your three primary activities.

percent ( %) of your activities you describe as "White Papers and Advocacy" which you describe as consisting of the following: writing and disseminating white papers about and using various on-line forums to discuss and advocate for a new method of storing and controlling C on the Internet. White papers, when used outside of the government context, are a method of arguing for the benefits of a particular policy or product or technology. The on-line forums you will use are methods that may be used to establish and disseminate facts or opinions about various topics. You also plan to devote part of your time to various forms of advocacy, including talking to state and national legislatures and to the news media and public speaking engagements.

percent ( %) of your activities will be creating a new technology standard for storing and controlling C on the Internet. You state that this new standard is intended to replace the way that people and businesses store and control C. You state that the new method will not be compatible with the way C is currently stored and controlled.

percent ( %) of your activities will be hosting national, regional and on-line events, symposiums and other forums. One of these events will include your annual meeting to elect the Board, a steering committee and standards committees and carry out other necessary business.

In your letter dated Date2, you stated that you have two employees in addition to B and were looking to hire 5 more. You said that you were recruiting members and said that you expected to have 12 members within two and a half months. You also specified that you had added one board member and had invited 2 more people to join the board of directors. You provided a work plan for your health sector.

You state that once the new technology standards are created, you plan to license them to generate your ongoing revenue stream. Other revenue will be provided by sponsorship fees and fees for events. Your initial funding will come from initial members and sponsors. At the time of your application, you were looking into grants from foundations but have not provided any additional information about grants from foundations or other sources.

After the initial phase in which the standards will be developed and adopted, you state that the board of directors may establish a review process for determining which entities may become members. The standards that will be used for allowing membership have not yet been specified. At that time membership will allow members to use the standards in their products and services. The membership fees will act as royalties for the use of the standards.

In your application, you indicate that B was your incorporator, your board chair, the only member of your board and your president. B is also the owner and a director of Company, a for profit entity. B intends to remain as your president for approximately one year of normal operations after your founding stage and then leave that role. He will remain on your board while running Company, which will begin operations as a software developer that will develop applications for use by consumers and industry using the standards that you will create. You state that you may contract with Company for services and technical work once it begins operations.

In your application, you state that there will be three levels of membership during the "advocacy phase" of the organization: corporate, affiliate and individual. Corporate members will be able to vote on the governance and standards committees. Affiliate members will be able to vote on the standards committees and will, as a group, be able to elect one non-voting member of the governance bodies. Individual members will be able to vote for one member to represent them on the governance and standards committees. You do not specify whether this representative is voting or not.

You also state that you are recruiting sponsors and members from three main business sectors: finance, education, and health care. Some of your materials also specified a fourth sector called talent, but you have not provided detail on what that sector entails other than that they may provide a representative to the industry advisory council. In addition to membership, companies that become Founding Sponsors will have access to representation on their Industry Advisory Council. They will also have their company logo displayed on your website and in other types of communication. Only one company in any industry will be allowed to become a Founding Sponsor.

In your letter dated Date2, you stated that in addition to membership, companies that become Industry Sponsors will have access to representation on their Industry Advisory Council. They will also have their company logo displayed within their industry domain on your website. Only ten companies in any industry will be allowed to become an Industry Sponsor.

You also indicate that basic corporate membership will give the member access to all the resources on your website and participation in working groups as well as invitations to members-only events and discounts to organization events. Each member will be named on the membership page of your website and each company will also have a webpage of content on your website. You have not yet created the individual membership, but state that it will include access to on-line resources, invitations to exclusive events and discounts for organization events. You did not provide any information regarding representation of members on standards and governance committees or any detail on affiliate membership.

You state that your core purpose is "to propose, draft and implement a new M for the internet. In your letter dated Date2, you state that your activities will be beneficial to your corporate and individual members and that it would become a public good at some time in the future.

In your letter dated Date3, you explained that you would not be coordinating with other organizations that currently deal with internet standards because your approach will be very

different from their own. Your standards would create an entirely new way of approaching storing and controlling C on the Internet.

In your news release dated Date4, in discussing your purpose and activities, you state, "M from [you] will be that new standard, a language for people on the Internet."

#### LAW

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, not organized for profit and no part of the net earnings of which inure to the benefit of private shareholders or individuals.

Section 1.501(c)(6)-1 of the Income Tax Regulations (regulations) 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. The activities of such organization 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 a 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. Rul. 56-65, 1956-1 C.B. 199 holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses, is performing particular services for individual persons. Such organization is not entitled to exemption under section 501(c)(6) of the Code as a business league, even though it performs functions that are of benefit to the particular industry and the public generally.

Rev. Rul. 58-294, 1958-1 C.B. 244 describes an organization formed to promote the business interests of those involved in the manufacture and sale of a particular patented product. Membership in the organization is limited to those engaged in the manufacture and sale of the product. The organization owns the controlling interests in the corporation that holds the basic patents in the product. The revenue ruling holds that such organization does not qualify for exemption as a business league under section 501(c)(6) of the Code since it is engaged in furthering the business interests of the dealers of a particular product as distinguished from improving business conditions generally.

Rev. Rul. 66-338, 1966-2 C.B. 226 holds that an organization formed to promote the interest of a particular retail trade which advised its members in the operation of their individual businesses and sells supplies and equipment to them is not exempt under section 501(c)(6) of the Code. The revenue ruling states that by providing its members with an economy and convenience in the conduct in their individual businesses, the organization is performing particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade or business.

Rev. Rul. 67-77, 1967-1 C.B. 138 describes an organization composed of dealers in a certain make of automobile in a designated area that is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile. The revenue ruling holds that the advertising is a service for its members and the organization is not entitled to exemption as a business league under section 501(c)(6) of the Code. Activities should be directed towards the improvement of business conditions of one or more lines of business as distinguished from the performance of services for individual persons.

Rev. Rul. 68-264, 1968-1 C.B. 264 defines a particular service for the purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to members of the organization in the operation of their own businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180 in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required by section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community and it has been accepted that an organization seeking exemption under section 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all of the commercial enterprises in a given trade community. 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 the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in section 501(c)(6) organizations is voluntary and open generally to all businesses and professional persons in the community.

Rev. Rul. 74-147, 1974-1 C.B. 136, describes an organization whose members represent diversified businesses that own, rent, or lease one or more digital computers produced by various manufacturers, without regard to identity of the manufacturer of any such computer. The sole activity of the organization mentioned in the revenue ruling is the holding of semi-annual conferences, at which operational and technical problems relating to computer use are discussed. The revenue ruling concludes that the organization's primary objective, provision of a forum for the exchange of information which will lead to the more efficient utilization of computers by its members and other interested users, improves the overall efficiency of its members' business use of computers and qualifies for exemption under section 501(c)(6) of the Code.

Rev. Rul. 83-164, 1983-2 C.B. 95 describes an organization whose purpose is to conduct conferences for the dissemination of information concerning computers manufactured by one specific company, M. Although membership is comprised of various businesses that own, rent or lease computers made by M, membership is open to businesses that use other brands of computers. At the conferences, presentations are given primarily by representatives of M, as well as by other experts in the computer field. Problems related to members' use of M's computers are also discussed and current information concerning M's products is also provided. The revenue ruling holds that by directing its activities to businesses that use computers made by one manufacturer, the organization is improving business conditions in a segment of a line of business rather than in an industry as a whole and is not exempt under section 501(c)(6) of the

Code. The revenue ruling concludes that by providing a focus on the products of one particular manufacturer, the organization is providing M with a competitive advantage at the expense of manufacturers of other computer brands.

In National Muffler Dealers Association v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of section 501(c)(6) of the Code because a single brand represented only a segment of an industry.

In National Prime Users Group, Inc. v. U.S., 667 F. Supp. 250 (D.C. Md. 1987), the Court held that an organization which served the needs of users of a specific brand of computers promoted only a segment of a line of business and was not exempt under section 501(c)(6) of the Code.

In Guide International Corporation v. U.S., 948 F.2d 360 (7th Cir. 1991), *aff'g* No. 89-C-2345 (N.D. Ill. 1990), the Court concluded that an association of computer users did not qualify for exemption under section 501(c)(6) of the Code because it benefited essentially users of IBM equipment.

In Bluetooth Sig, Inc. v. U.S., 101 A.F.T.R. 2d 2008-748 (W.D. Wash. 2008), *aff'd*, 611 F.3d 617 (9th Cir. 2010), the Court examined an organization that was formed to advance the common business interests of its members in the development and regulation of technical standards for the compatibility and interoperability of wireless products and devices within a wireless personal area network. The organization develops specifications and use applications and promotes consumer awareness and marketing through its Bluetooth technology and trademark. The Court held that the organization was not a tax-exempt business league under section 501(c)(6) of the Code because the organization's activities exclusively benefit its members, rather than an entire line of business. The Court noted that it "strains credulity" for the organization to argue that its services indirectly benefit the industry as a whole simply by generating consumer awareness of the availability and reliability of its technology.

## ANALYSIS

The information that you have submitted establishes that your primary activity is to establish a new standard for storing and controlling C on the internet. Although you have not yet established any standards, you plan to create a particular technology standard to be licensed and used by your members to sell software and other technology compatible with the new technology standard.

These standards, if adopted by member companies and other entities that use the Internet will be in competition with the generally accepted business practices that are currently in use for storing and controlling C. The only businesses that can benefit from your proposed activities of creating and promoting these standards are the ones who will adopt your standards in the future. Currently, there are no businesses that can directly benefit since your standards do not exist. After they are created, the only businesses that will benefit will be members of your organization since membership will be the only way to be licensed to use your standards.



Your standard, when it is created, will be owned by you as intellectual property. Although you do not state that there will be separate licensing fees, you do state that membership fees will be the only royalties required to use the standards. Creation, ownership and licensing of intellectual property is an activity generally carried out by a business. Rev. Rul. 58-294, *supra* and Rev. Rul. 67-77, *supra*.

Similar to the organization discussed in Rev. Rul. 58-294, *supra*, your activities can only further the business interests of organizations that eventually decide to use your standard for storing and controlling C. You state that your standard and its implementation will be very different than the method currently used by organizations to store and control C on the Internet and is meant to replace the method currently in use. In this circumstance, the key consideration is whether your activities give a competitive edge to your standard and the organizations that decide to use it as opposed to any other method of storing and controlling C on the Internet. Since your standards are meant to replace the methods currently in use, your benefits will only be for one segment of the industries of your members, and not these industries as a whole. As discussed in National Prime Users Group, Inc. v. U.S., 667 F. Supp. 250 and Guide International Corporation v. U.S., 948 F. 2d 360, benefits essentially for a particular segment of an industry precludes exemption under section 501(c)(6). In this respect, you are more like the organization discussed in Rev. Rul. 67-77, *supra* and Rev. Rul. 83-164, *supra*. In addition, you are unlike the organization described in Rev. Rul. 74-147, 1974-1 C.B. 136. In that ruling, the organization was involved in helping to solve the problems of all businesses involved in programming computers. All organizations who engaged in the activity could benefit from the solutions, not just the members of the organization.

In order to qualify for exemption from federal income tax under section 501(c)(6) of the Code, your activities must be directed to the improvement of the business conditions of one or more lines of business, as distinguished from providing particular services for your members. Treas. Reg. section 1.501(c)(6)-1. Inherent in adoption of your standards by members is that the members will no longer be using the business practices currently used by similar businesses. Your activities will try to convince the public to patronize businesses that use your standard instead of similar businesses that do not. This means that you do not represent a line or lines of businesses, as required under Treas. Reg. section 1.501(c)(6)-1 and as discussed in National Muffler Dealers Association v. U.S. and Bluetooth Sig, Inc. v. U.S., 101 A.F.T.R. 2d 2008-748. Therefore, we have concluded that you are not acting on behalf of a recognizable line of business within the scope of section 501(c)(6).

In addition, you do not plan to be governed by your entire membership. You will have three levels of membership during your initial phase: corporate, affiliate and individual. Corporate members will be able to vote on the governance and standards committees. Affiliate members will be able to vote on the standards committee but will have no voting representation on the governance committee. Individual members as a group will be able to elect one member to the standards and governance committee. You are also recruiting corporate members to be Founding Sponsors and Industry Sponsors. Corporate members who are also Founding Sponsors or Industry Sponsor will have access to representation on their Industry Advisory Councils which other members will not have. You are providing certain members of your organization with much more access to governance and other decision making positions than other members, which may lead to those committees making decisions that will benefit only the members who are part of the decision making process. These limitations on which members

will have input into your decision making are the functional equivalent of having a limited membership. The discussion of the history of section 501(c)(6) of the Code in Rev. Rul. 73-411, *supra.*, specifies that an organization seeking exemption under section 501(c)(6) as a business league must have an open membership to organizations within the line or lines of business.

It does not matter that your members may be in competition with each other, that your membership is open to the entire industry or that your technology is an open system. The key consideration is whether your activities give a competitive edge to your specifications and the special programs as opposed to other specifications and special programs, no matter whether the membership is open or closed. Rev. Rul. 83-164, *supra.*

In addition, the primary purpose of a business league may not be the provision of particular services to any of its members. B, who is your founder, the chairman of your board of directors and your president, owns Company which currently exists but is not actively operating. You have stated that approximately one year after your initial stage, B will cease to be your president, though he will remain on the board of directors. At that time, B will begin full time operations of Company to create software that implements the standards for storing and transmitting C that you will create during the initial stage. You have stated that Company will become one of your members and that you may hire Company to provide technology services to you. In all of this, it appears that your primary purpose is to create a market for the software company which will be one of your members and is owned by your founder, board chairman and president. You are creating the standards that Company will implement. Your white papers and advocacy will try to persuade others that these standards should replace the current general business practices that are used in storing and controlling C for businesses using the Internet. While other companies might decide to create software to implement the standards, you are not recruiting other software companies as members and only members will be able to use the standards. All of these factors imply that Company may be the only company that creates software to implement the standards. Creating a market for the products of one of your members, is the provision of a particular service for that company and may not be the primary purpose of an organization that qualifies for exemption under section 501(c)(6) of the Internal Revenue Code.

### Conclusion

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE (SE:T:EO:RA:G:1)

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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