



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **201821013**
Release Date: 5/25/2018

Date:
March 1, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL Code: 501.06-00

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*

cc:



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date:
April 25, 2017
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Formation date G = Sponsorship fee 1
C = State H = Sponsorship fee 1
D = Software brand 1 I = Sponsorship fee 1
E = Software brand 2 J = Sponsorship fee 1
F = Software brand 3 K = Sponsorship fee 1

UIL:
501.06-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(6) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under section 501(c)(6) of the Code? No, for the reasons stated below.

Facts

You were incorporated on B as a C nonprofit corporation. Your Bylaws state that your purpose is:

To advance the effective utilization of D, E, F, and compatible products; to request problem solutions and product improvement from the F corporation; and to promote free interchange of information and ideas through regularly scheduled meeting and publication sponsored by the organization.

D, E, and F products are owned by the F Corporation.

Your primary activities are:

- Providing a forum for F customers to exchange ideas and solutions and influence software development.
- Providing a website, through which you offer a forum and file library for members.
- Quarterly meetings and educational sessions which provide members with the ability to connect, collaborate, problem solve, and consult with one another.

You have three classes of membership: Customer Members, Diamond/Platinum/Gold/Silver/Bronze Sponsor Members, and Life Members.

Customer members are designated employees and representatives of business entities which hold one or more valid licenses for D or E software products.

Sponsor members are business and consulting firms, suppliers, vendors, and other persons who market products or services related to D or E software products and other products/services of interest to your Customer Members.

Life members are all past officers of your executive board of directors that have served a minimum of one full two year term.

Your sole source of revenue is from your Sponsor members. There are five levels of sponsorship:

Diamond – Annual Fee \$G
 Platinum – Annual Fee \$H
 Gold – Annual Fee \$I
 Silver – Annual Fee \$J
 Bronze – Annual Fee \$K

Employees of F are prohibited from holding any office position; however, they are not prohibited from becoming members.

We requested additional information pertaining to any common business interests between membership classes, membership benefits, and F's role in the set-up of your organization. You did not respond to this request for additional information.

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, 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.

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. 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.

In Rev. Rul. 59-391, 1959-2 C.B. 151, exemption under 501(c)(6) was denied to an organization composed of individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or

profession. The organization was created for the purpose of exchanging information on business prospects and had no common business interest other than a desire to increase sales of members. The revenue ruling found that the organization's activities were not directed to the improvement of business conditions of one or more lines of business, but rather to the promotion of the private interests of its members.

Rev. Rul. 74-147 holds that an organization whose members represent diversified businesses that own, rent, or lease digital computers produced by various manufacturers and that was formed to provide a forum for the exchange of information leading to the more efficient utilization of computers by its members, and thus improving the overall efficiency of the business operations of each, qualifies for exemption under § 501(c)(6).

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 composed 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 § 501(c)(6). 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 § 501(c)(6) because a single brand represented only a segment of an industry. The court concluded that exemption under § 501(c)(6) is not available to aid one group in competition with another within an industry.

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 § 501(c)(6) because it benefited essentially users of IBM equipment. The court stated that the organization also served as an influential marketing tool for IBM because the conferences it held allowed IBM to showcase its products and services.

Application of law

According to Reg. § 1.501(c)(6)-1, to be described in IRC § 501(c)(6) you must be an association of persons having some common business interest, and your purpose must be to promote the common business interest of your members and not engage in a regular business of a kind ordinarily carried on for profit. In addition, your activities should be directed to the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons. Finally, you would not be described in § 501(c)(6) if any part of your net earnings inures to the benefit of any private shareholder or individual.

Upon consideration of your application, we have determined that you do not qualify for exemption under § 501(c)(6) because—(1) your activities are not directed to the improvement of business conditions in one or

more lines of business, but merely to a segment of a line of business; and (2) your members lack a common business interest.

Your purpose is not to improve business conditions in one or more lines of business. Rather, according to your bylaws, your purpose is "to advance the effective utilization of D, E, F, and compatible products; to request problem solutions and product improvement from the F corporation; and to promote free interchange of information and ideas through regularly scheduled meeting and publication sponsored by the organization."

Similar to the organization describe din Rev. Rul. 59-391, your membership is composed of individuals representing different trades, businesses, occupations, and professions. Their only common interest is the use of D, E, and F software. Similarly, your activities are not directed to the improvement of business conditions of one or more lines of business, but rather to the promotion of the D, E, and F software.

You are dissimilar to the organization described in Rev. Rul. 74-147 and similar to the organization described in Rev. Rul. 83-164 because you limit your activities to users and vendors of particular brands of software. Your activities serve to favor and promote D, E, and F applications. Like the organization described in *National Muffler Dealers Association v. U.S.*, you serve primarily to benefit one segment of an industry, rather than the industry as a whole. Although there may be incidental benefits to other software providers as a result of your activities, your primary purpose is to benefit F Corporation.

In addition, you are like the organization described in *Guide International*. That organization's stated purposes were: "(a) The promotion of sound professional practices with respect to the uses of data processing equipment . . . (b) The exchange and dissemination of information concerning data processing equipment . . . and (c) The participation with manufacturers of data processing equipment . . . in the improvement and development of products, standards, and education." 948 F.2d at 361. Your stated purposes similarly involve education, the development of standards, and the exchange of information.

Like *Guide International*, you are primarily operated to benefit a particular product: namely, D, E, and F software. The 7th Circuit affirmed the district court's holding that "Guide *primarily* advances IBM's interests and that any benefit to its members and other data processing companies who use information prepared by Guide is incidental." 948 F.2d at 362 (emphasis in original). Similarly, you primarily benefit F and its users, while the benefit you may provide to other software companies is incidental. The materials you submitted to us suggest that you largely use such materials to promote F.

Rather than promoting the adoption of similar software in general, you are promoting the use of particular software, D, E, and F.

You are an association of members who are users of D, E, and F software and employees of D, E, and F dealers. Your activities are directed to improving and promoting D, E, and F products, and you do not intend to extend any of your activities to improvement of business conditions of one or more lines of business as required by IRC 501(c)(6).

Your position

It is your position that because you have a broad membership base that represents multiple industries that you are not merely representing one segment of an industry as described in Rev. Rul. 83-164.

Our response to your position

Your activities are limited to promoting and improving a particular brand. Even though your membership represents multiple industries, your activities are focused solely on promoting and improving a particular brand of software. Having a broad membership further shows that your memes do not have a common business interest, other than improving a particular brand of software.

Conclusion

It is our position that you do not qualify for exemption under IRC 501(c)(6) because your activities are not directed to the improvement of business conditions in one or more lines of business, but merely to a segment of a line of business; and your members lack a common business interest.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

For authorized representatives:

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a

basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892