

[REDACTED]

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[REDACTED]
[REDACTED]

OCT 9 1991

CERTIFIED MAIL:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates you were incorporated on [REDACTED] under the laws of the State of [REDACTED]. Your purposes as stated in your Articles of Incorporation include the following:

- a. To promote a forum of exchange for ideas and information relating to the use of [REDACTED] software, and communications with [REDACTED];
- b. To provide the opportunity for the study and discussion of various business and technical aspects of [REDACTED]'s software in order to increase the members' knowledge and awareness of [REDACTED] Product capabilities;
- c. To provide input to [REDACTED] regarding the needs and desires of the [REDACTED] user community;
- d. To acquire, preserve and disseminate data and information to members relating to [REDACTED]'s software.

You have stated that your activities will consist of conducting periodic user group meetings to facilitate an information exchange regarding selection, implementation and operation of [REDACTED] software, facilitating communication between members of the user group/user community and [REDACTED], publish a newsletter to facilitate further exchange of information among members, and to maintain a roster of current software users.

Your income is derived from user group meeting registration fees and donations to the organization from users' employers.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]						
Date	9/30/91	10/2/91	10/9/91				

Expenses are shown for conferences, newsletters, travel and other expenses related to the activities of the organization.

You state that you are not a membership organization eventhough your activites are directed towards members who utilize [REDACTED] software.

Section 501(c)(3) of the Code exempts from tax organizations which are organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states, "In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organization test or the operational test, it is not exempt."

Section 1.501(c)(3)-1(b)(1) of the Regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations state that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets would be dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal, state, or local government for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

You have stated in your Articles of Incorporation that "...Upon the dissolution of the Corporation's affairs...the assets of the Corporation then remaining in the hands of the Corporation shall be distributed...to any other charitable organization (as hereinafter defined) of this or any other State, having a similar or analogous character or purpose, in some way associated with or connected with the corporation to which the property previously belonged." This is an imposed relationship test and has the same effect as naming a beneficiary. If there is no organization, at the time of dissolution which is both a qualified charity and "in some way connected to or associated with" the organization dissolving, the effect is to void the dissolution clause. This is not a dedication of assets meeting the "exclusiveness" test for exemption under section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Revenue Ruling 74-116, published in Cumulative Bulletin 1974-1 on page 127, discusses a membership organization devoted to developing and exchanging research data among users of a specific type of computer. The organization also serves as a liaison between users and the manufacturer of the computer. The organization conducts meetings and seminars at which operational and technical problems relating to the use of this computer are discussed. Representatives of the manufacturer are invited to attend those functions and answer questions concerning the computer's operation. The organization publishes reports of its meetings and seminars for distribution to members. Membership is limited to organizations that own, rent, or use this specific computer. Income is from membership dues and seminar fees. Expenditures are made primarily for instructional materials, publishing and other operational expenses. The subject organization had requested exempt status under Section 501(c)(3) of the Code. It was determined that the organization was not exempt because it was serving the private interests of its members.

Although the Revenue Ruling involves a specific type of computer, the rationale is also applicable to a specific type of software.

Based on the information submitted, you are not organized exclusively for educational purposes since your Articles of Incorporation do not contain purposes limited to those allowable under section 501(c)(3) of the Code.

Further, the activities you conduct are all directed to serving the private interests of your members rather than serving any public interest and are similar to those of the organization described in Revenue Ruling 74-116.

Therefore, we have concluded that you are not an organization described in section 501(c)(3) of the Code.

You are required to file Federal income tax returns on Form 1120.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

[REDACTED]

If you do not appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

In accordance with section 6104(c) of the Internal Revenue Code, we will notify the appropriate state officials of this action.

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

Sincerely yours,

[REDACTED]

District Director

Enclosure: Publication 892
cc: State Attorney General [REDACTED]