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OCT 15 1991

Dear Sir or Madam:

We have considered your application for incorporation of exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code.

The information you submitted indicates that you were incorporated in [Redacted] under the law of the State of [Redacted]. Your purposes are to develop specifications for an integrated data model and to provide a set of test suites for an open, integrated software platform. You will also deliver software offerings to supplement available industry offerings. You intend to define and deliver a set of interfaces which will allow the software vendors and hardware suppliers to provide their offerings to the petroleum industry in a form that will allow effective, fully interconnected, interoperable solutions, greatly reducing wasteful expenditures in the industry. Your focus is on developing an industry standard. This integrated software platform is to be used to allow users to communicate with various departments within their organizations more easily, and also to communicate with other oil companies. This reduces costs by eliminating the need to reformat information in order to exchange data within an organization or between companies, eliminating the extra-incurring costs connected with multiple systems, and by facilitating the integration of vendor applications with end users systems.

In your letter of August 7, 1989, you state that the industry needs to be assured that the availability will not be at a higher cost in the future. You also provide detailed estimates, in oil well as well as [Redacted] in the implementation and use of the specifications and software offerings that you develop. You intend to license software and other technology to other organizations in exchange for licensing fees.

According to your bylaws, you have [Redacted] initial sponsors, who are the sole voting members of your organization. Each one of these sponsors constitutes a separate class of voting members, and each class elects one member of the

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Date	10/15/91						

Board of Directors. All [ ] classes elect one director at large. The Board of Directors will set the amount the sponsors are required to contribute up to [ ] dollars per year for three years. The Board of Directors also determines the membership dues, and can alter these at any time.

Members are divided into companies receiving income of [ ] or more of their income from petroleum products or related industries, and non-oil company members. All pay dues according to their gross revenues, the non-oil companies paying at a lower rate. Not-for-profit organizations can obtain memberships for \$ [ ] and academic institutions and government agencies pay only \$ [ ] for memberships.

Your Bylaws establish the fact that sponsors and members can credit sponsorship contributions and membership dues against these licensing fees. The Bylaws also state that, in the event a sponsorship or membership is terminated, the funds already paid in as sponsorships or membership dues are still applicable to the licensing fees and can never be forfeited. Although you have never explained royalties, your Bylaws also state that royalties also will never be forfeited by sponsors.

You have also pointed out in your application, under your licensing policy, that no member will be required to utilize, to any extent, the specifications, test suites or software developed by [ ].

Section 501(c)(6) of the Internal Revenue Code provides exemption for:

"Business leagues, chambers of commerce,..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 provide that, for an organization to be exempt, its activities must 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..."

Section 1.501(c)(6)-1 of the regulations provides as follows:

"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 *MBB, Inc. v Comm.*, 734 F 2nd 71 (1st Cir. 1984) an insurance industry organization which collected and exchanged confidential underwriting information about applicants among member companies did not qualify as an exempt business league. Even though the organization's activities provided incidental benefits for the industry as a whole it provided particular services for individual member companies. The services provided were analogous to those performed by a credit bureau. The court voted that a business league must not only improve the conditions of a line of business, but must do so in a way different from simply supplying products or services to its individual members.

Revenue Ruling 74-308, 1974-2 C.B. 168 refers to an organization whose principal activity is providing a telephone answering service for tow truck owners and operators. The organization did not qualify for exemption under section 501(c)(6) of the Code. It was providing a convenience of economy.

Revenue Ruling 70-591, 1970-2 C.B. 118 covers an organization of commercial banks formed to provide and promote a credit card plan for members banks. This organization does not qualify for exemption under section 501(c)(6) of the Code because it is operating for the convenience of economy.

Revenue Ruling 68-264, 1968-1 C.B. 264 states that a nonprofit organization is not exempt under section 501(c)(6) of the Code if its primary activity is to operate a traffic bureau for members and nonmembers as a service in the shipment of their goods and products.

Revenue Ruling 67-175, 1967-1 C.B. 139 covers an organization that subsidized the prosecution of a lawsuit for an injunction to prevent air pollution of a region. This did not cause the organization of growers and processors to lose its exemption under section 501(c)(6), since the benefit was to the entire industry.

Revenue Ruling 55-444, 1955-2, C.B. 258 covers an organization conducting a general advertising campaign to encourage the use of products and services of the industry as a whole, and is entitled to exemption under section 501(c)(6) of the Code. The services to particular members were minor and the primary purpose was the promotion of the industry.

On the basis of the information supplied, we have concluded that you are not promoting a common business interest. Your purpose is to provide a convenience of economy for your sponsors and members as were the organizations described in Revenue Ruling 74-308, Revenue ruling 70-591 and Revenue Ruling 68-264, and in *MBB v. Comm.* not like the organizations in Revenue Ruling 67-175 and Revenue Ruling 55-444, which provided a benefit to the entire industry.

However, since these members do not have any vote, this can be changed at any time, as can the membership dues. Sponsors have complete control of the organization and have unalienable rights to the end product based on the amount of money they have contributed to the project. This is a convenience of economy, not a benefit to an industry.

In your letter of August 7, 1991, you mentioned several revenue rulings and cases to support your position. We had quoted Revenue Ruling 67-182, 1967-1 C.B. 118 and Revenue Ruling 69-106, 1969-1 C.B. 153 to you to support our contention that you were supplying a convenience of service to your members. You believe that you are distinguished from these revenue rulings because you are providing your services to non-members. The fact that your sponsors are willing to sell their product to non-members does not alter the fact that you are providing a convenience of service.

Revenue Ruling 74-147, 1974-1 C.B. 136 that you quote also does not apply. You are not providing information that you have gathered which will lead to the more efficient use to the computers owned by your sponsors and members, you are designing original additional programs to be purchased.

You have quoted Evanston-Northshore Board of Realtors v. United States, 320 F.2d 375 (Cl. Ct. 1963), which supports a 501(c)(6) organization having some unrelated business income, as long as it is not the primary purpose. However, you have no other purposes besides developing the integrated software platform and other business purposes related to the platform, such as test suites and software offerings.

Revenue Ruling 75-287, 1975-2 C.B. 211 basically distinguished Code section 501(c)(5) from Code section 501(c)(6), but it refers to an organization collecting and supplying information to industry members through publication of a free newspaper. Since you are selling your information, albeit at cost, we do not see the similarity at all. More importantly, you are not disseminating collected data, you are designing an integrated platform.

You have also quoted United States v. American Bar Endowment, 106 S. Ct. 246 (1986) on the two factors defining a trade or business. The first is a profit motive, and we have previously stated that we are not attaching a profit motive to your operations, but a convenience of service motive. The second factor is whether it is the kind of activity conducted by private commercial enterprises in order to make a profit, and you have stated it is. Your only defense in conducting commercial activities is that the required information would not be disclosed to the usual for-profit entities, and we have replied that there is no restriction against your organization. We are only stating that you are a for profit organization and not operating within the meaning of 501(c)(6).

You have also defended your position that non-members can be charged at a higher price for services, because the members dues support the service. However, we are not questioning your pricing at this point, since we do not really know it. We are basing our denial on the fact that you are providing a convenience of service to your sponsors, and possibly to your members. Since members cannot vote, this is not a certainty.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(6) of the Code, and you are required to file Federal income returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

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

Sincerely,

District Director

Enclosures:  
Publication 892  
Form 6018