



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

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

The information that you submitted indicates that you are a calendar year, mutual non-profit corporation formed [REDACTED] under the laws of the state of [REDACTED]. You state that you are a co-operative user group formed to acquire control of the [REDACTED] System ([REDACTED]) and associated environment from [REDACTED] the system's owner, for the purposes of continuing to support and enhance [REDACTED] beyond the scheduled date in which [REDACTED] has announced termination of its support.

You state that [REDACTED] is a multi-processing environment that was created 32 years ago and is considered an online transaction-processing environment. It is proprietary and currently runs only on the [REDACTED] platform. You state that [REDACTED] is used for electronic record keeping type applications such as accounting, catalog/phone/web order processing, medical records management, and airline reservation ticketing. You also state that the system is widely used by many Federal, State, county and local governmental agencies including the Navy, Army, Department of Defense, Department of Education, Department of the Interior, Federal Services Agency and the Supreme Court. You further state that the [REDACTED] hardware platform ranges from a small eight-user system to a system managing in excess of a thousand users. You state that although it is your desire to own [REDACTED] has not transferred its ownership of the operating system to you to date. You state that [REDACTED] continues to be involved in the use of the system to provide transition for the discontinuation of their support.

Your Articles of Incorporation, as amended, state that you are organized to own the [REDACTED] "environment" and related software for the benefit of your members; to provide technological services for your members on a mutual nonprofit basis; and to provide and make applications available to your members. Your Articles also provide that each of your members,

[REDACTED]

solely by reason of membership, shall be entitled to enter into an Agreement, which will permit the member to use [REDACTED] and/or related software owned by you.

Your bylaws state that your board of directors has all of the powers and duties necessary for the administration of the affairs of the corporation. Your bylaws state that the composition of the initial board shall be: 2 individuals who are End-Users of the [REDACTED] Operating System, 2 individuals who are consultants with respect to the [REDACTED] Operating System, 2 individuals who are applications vendors with respect to the [REDACTED] Operating System, 2 individuals who are utility vendors with respect to the [REDACTED] Operating System and 1 representative of HP. Board members are elected by the entire membership. Each membership carries one vote. Your membership benefits include the use of the [REDACTED] Operating System and related software and access to the cooperative technical knowledge of the general membership.

Your bylaws state that a member is any legal person with legal title to one or more memberships issued by you. This definition also includes all of your employees and board members. In your application, you state that voluntary membership is restricted to end-users, consultants and application and utility vendors of [REDACTED]. Your original business proposal, submitted with your [REDACTED] letter, defines membership as belonging to a company that either uses [REDACTED] or is a vendor in the [REDACTED] space. Each "membership" equates to a single vote on corporate matters. The business proposal further states that a "User Membership" is tied to a CPU and/or a single instance of PA-RISC emulator, so if a company has five copies of [REDACTED] the company has five memberships and five votes. In your letter of [REDACTED], you state you have a single membership level available at zero cost, and the only benefit is the right to vote for board of director members. You also state that although the membership is at zero cost, it is really intended for individuals with a vested interest in seeing [REDACTED] continued beyond the end of [REDACTED] support. In addition to the right to vote for members of the board of directors, you state that members have access to the forum discussions, list of vendors and any software, patches, upgrades, etc.

In your letter dated [REDACTED] you state that you exist to promote a common business interest of the [REDACTED] community. You state that the common business interest is the continued viability of [REDACTED] beyond the end date of support by its original manufacturer, HP. You state that the official reasons given by [REDACTED] regarding their decision to terminate support for [REDACTED] is that [REDACTED] no longer feels that it meets their required return on investment and that as a company it wishes to divest itself of proprietary operating systems such as [REDACTED] and focus on software such as [REDACTED] and Intel based hardware, printers, digital cameras, etc.

You state that [REDACTED] is the owner of the operating system, providing services such as operating system engineers, patch distribution, hardware/software support and training to customers of [REDACTED]. However, when [REDACTED] withdraws its support on [REDACTED] no hardware or software support will be available from [REDACTED]. Instead, these services will be provided by outside companies. You state that your goal is to retain the vendor community (independent software vendors) beyond 2006 so that the [REDACTED] customers, who are unable to migrate to a new operating system within the specified time frame, cannot afford to migrate, or simply choose not to migrate will continue to receive the support that was previously provided by [REDACTED].

[REDACTED]

Your primary activity in furtherance of this purpose is to act as the facilitator for all [REDACTED] related support, services, enhancements and advocacy. As the facilitator, you will be the point of contact for end-users and for-profit vendors regarding enhancements to the [REDACTED] system. This will include: bug fixes and enhancements, regression and performance testing of new releases, distribution of new patches and releases, software support and training. You state that you will ensure that the middleware that will emulate the proprietary [REDACTED] hardware previously manufactured by [REDACTED] will run on the [REDACTED] Operating System. You state that you also seek to facilitate a "virtual lab" composed of individuals outside of [REDACTED] that have experience as computer engineers to review identified bugs and create patches. You state that only your members will be eligible for the patches generated by the new "virtual lab."

You state that as facilitator, you will not directly provide the services but will act as the middleman for the for-profit companies that will provide such services. You state that you seek to streamline the process of reaching all of these services. You state that by representing the buying community, you will be able keep the costs of services at a minimum. However, these services including the virtual lab, educational information, and practical applications on [REDACTED] will be available only to members.

In your letter of [REDACTED], you state that your members will access the technological knowledge through open forum discussion groups related to [REDACTED] maintained by you and directories of [REDACTED] vendor/consultant members that offer specialized knowledge "for profit" to your end-user members. You state that non-members will have access to previously existing copies of [REDACTED] and related software should a company that used it prior to HP's departure decide to sell it along with the [REDACTED] components. Additionally, you state that it is presumed that if these parties wish to continue using [REDACTED] beyond the end of [REDACTED] support, they will want to become members of [REDACTED]. Only members may benefit from the additional software, patches, etc. that will be available from you through the independent vendor community. You also state that any new companies that wish to use [REDACTED] and the emulated [REDACTED] computer platform after the end of support by [REDACTED] would need to be your member.

Section 501(c)(6) of the Internal Revenue Code provides an exemption for business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, as long as not organized for profit and no net earnings inure to the benefit of private shareholders or individuals.

Section 1.501(c)(6)-1 of the Income Tax 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 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, which 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 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 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.



[REDACTED]

The information that you have submitted establishes that your primary activities center on the [REDACTED] Operating System and on the users and vendors of the related products. [REDACTED] is a standard of the [REDACTED]. It is clear from the facts that your primary focus is geared towards [REDACTED] in the same manner as the organization denied exemption under section 501(c)(6) in Rev. Rul. 83-164, *supra*.

[REDACTED] the equivalent of a brand name and your benefits are basically designed for a particular operating system in the same manner as the organizations denied exemption in Rev. Rul. 58-294 and Rev. Rul. 67-77, *supra*. Additionally, it does not matter that your members may be in competition with each other.

The key consideration is whether your activities give a competitive edge to your particular operating system, specifications and special programs as opposed to other operating systems, specifications and special programs, no matter whether the membership is open or closed. Rev. Rul. 83-164, *supra*.

Similar to the organization discussed in Rev. Rul. 58-294, *supra*, your activities are furthering the business interests of organizations using a particular product. [REDACTED] and its specifications are in competition with other operating systems and specifications for other similar technologies and are probably incompatible with them.

In order to be exempt under section 501(c)(6) of the Code, an organization's activities must be directed to the improvement of business conditions of one or more lines of business, which includes a trade or occupation, entry into which is not restricted by patent, trademark, or other means that allow private parties to restrict the right to engage in the business.

Inherent in your membership is the requirement that your members use or are a vendor of [REDACTED]. This means that you represent only a segment of an industry, and that you do not represent a line or lines of businesses, as required under section 501(c)(6) of the Code and as discussed in National Muffler Dealers Association, *supra*. Your activities are directed to providing your members with upgrades, patches and software for one particular operating system. These activities provide competitive advantages over nonmember end-users and vendors by enhancing one particular operating system for members only. Unlike the activities conducted by the organization in Rev. Rul. 74-147, *supra*, your discussion forum is solely related to [REDACTED] to ensure that the technology is retained and updated. Your directories list member vendors and consultants experienced with [REDACTED]. Your Articles state that your primary purpose is to own the [REDACTED] environment and related software for the benefits of your members. Your activities solely benefit companies using [REDACTED], which represents only a segment of the computer technology industry and is not a line of business within the meaning of section 1.501(c)(6)-1 of the regulations. As discussed in National Prime Users Group, Inc., *supra* at 256 and Guide International Corporation, *supra* at 362, benefits essentially for a particular segment of an industry precludes exemption under section 501(c)(6). Therefore, we have concluded that you are acting primarily on behalf of a segment of a line of business and not within the scope of section 501(c)(6).

[REDACTED]

You state that your membership will access technology knowledge through open forum, discussion groups and directories of vendor/consultant members maintained by you. By providing technical knowledge and vendor directories to members only, you are providing a particular service to your members. Rev. Rul. 56-65, *supra*. Activities such as these serve as an economy or a convenience to your members, and would bar exemption under section 501(c)(6) of the Code, if it were a primary activity. Rev. Rul. 68-264, *supra* and Rev. Rul. 66-338, *supra*.

Since your activities are not directed at promoting the common economic interests of all of the commercial enterprises in a given trade community, your right to exemption under section 501(c)(6) of the Code, if any, rests on your characterization as a business league or trade association.

A section 501(c)(6) organization is a membership organization characteristically supported by dues. While such an organization may receive a substantial portion or even the primary part of its income from non-member sources, membership support, both in the form of dues and involvement in the organization's activities, must be at a meaningful level. Based on the statutory language of section 501(c)(6) of the Code, it is a well established principle that section 501(c)(6) is intended to apply only to membership organizations, which further the common business interests of their members and which are financed, at least in part, through membership dues. The legislative history of this statute, and the rules of statutory construction applicable to that section of the Code dealing with exempt organizations, provides that only membership organizations supported by membership dues or assessments are included in the term of the exemption under section 501(c)(6). While such an organization may receive a substantial portion or even the primary part of its income from non-member sources, membership support, both in the form of dues and involvement in the organization's activities, must be at a meaningful level.

The information you have submitted indicates your membership is not assessed any dues, but supports the retention and enhancement of [REDACTED] through mutual services such as participation in the forum discussions to further develop the specification and related software. However, you state that such services are available only to members and that your membership is restricted to users of [REDACTED]. As such, your membership is not considered to be open generally to all individuals or companies in the field of computer technology or any other related line of business, and you are not considered to be a business league or trade association within the meaning of section 501(c)(6) of the Code as described in Rev. Rul. 73-411, *supra*.

For these reasons, 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 protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a

[REDACTED]

proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]

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

Sincerely,

[REDACTED]