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Date 7-11-97

Surname [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

MAY 30 1997

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on March 17, 1995, under the laws of the State of [REDACTED]. Your bylaws state that your primary purpose and code of conduct is to develop, adopt, establish, maintain, publish, promote, and endorse [REDACTED]s (i.e., conformance specifications) for [REDACTED]. We note that [REDACTED] is a trademark of [REDACTED]. Your bylaws also state that, without limiting the generality of the foregoing purpose statement, your purpose includes:

- (1) providing, under appropriate transfer means (e.g., license, lease, or sale), the [REDACTED] and other intellectual property to industry participants, including labs, universities, and consultants, at a reasonable consideration, primarily to cover costs and operating expenses,
- (2) soliciting resource contributions and agreements to the development and promotion of the [REDACTED] from industry participants, independent testing labs, universities, and consultants,
- (3) establishing policies, procedures, and guidelines for the development, adoption, establishment, maintenance, publication, and endorsement of [REDACTED] including the clear definition of device and system specifications,

[REDACTED]

(4) establishing policies, procedures, and guidelines for the testing and certification of [REDACTED] incorporating or purporting to incorporate or purporting to meet the conformance specifications, including testing and reporting of results,

(5) prohibiting any discussions or decisions related to participants' prices, production volumes, areas and methods of distribution, and/or markets,

(6) maintaining the freedom of each participant to employ additional or alternate standards and courses of action on its own in addition to any standards developed, established, and/or endorsed by you, and

(7) operating at all times within applicable national and international anti-trust rules.

Your bylaws provide that your members shall be any person or entity (including without limitation a corporation, partnership, sole proprietorship, limited liability company, firm or organization, or a department or subdivision thereof) whose interest or objective involves the sale or support of systems that are compliant with the specifications (set out above), or who meets such other criteria for admission as shall be established and applied uniformly by your Board of Directors from time to time, and who has agreed to be bound by the bylaws and the policies, procedures, and guidelines promulgated from time to time by your Board of Directors. In your letter dated February 7, 1996, you state that you are open for membership to anyone who meets the basic criteria of selling, supporting, or maintaining [REDACTED]

In the membership agreements between you and your member companies, the agreement states that members endorse the purpose and mission of [REDACTED], which are to define, adopt, establish, maintain, publish, a [REDACTED], or other such [REDACTED] systems. The agreement continues that in so doing, member companies acknowledge and agree that [REDACTED] will have the right to establish policies, procedures, and guidelines for testing and certification of [REDACTED] purporting to conform with the [REDACTED] established standards.

In your application, you state that until the advent of your organization, software portability across computers from competing manufacturers has been limited to [REDACTED]. You state that the [REDACTED] brings the possibility of a similar industry standard approach to high-

[REDACTED]
[REDACTED] ranging from laptops to mainframe. You state that your specific purposes include delivering this level of software portability in a completely open [REDACTED]

In your letter dated January 19, 1996, you state that membership in your organization is limited to those companies that produce, market, and support [REDACTED] which support the [REDACTED]. You state that this, per se, is not a specific manufacturer, but each of your member companies do use technology provided or designed by specific manufacturers including [REDACTED] (through technology originally developed by [REDACTED] and microprocessor and component companies. You conclude that, therefore, companies which use different technology, such as those provided by [REDACTED] (for example) would not be eligible for membership because the direct efforts of the group would not apply to them.

You state that the [REDACTED] compatible companies work together to ensure that all operating systems are compatible, through proactive, coordinated engineering efforts and rigorous testing. You state that your testing process involves more than 10,000 test suites and more than 1,000,000 lines of code that test for [REDACTED] conformance and functionality, plus stress and load.

In your letter dated February 7, 1996, you state that you are developing and promoting a standard in an industry that demands standards. You also state that your standard is made available to all interested software developers and is publicly available, both in print and in electronic versions, to anyone who is interested in it.

In your newsletter for the [REDACTED] dated March, 1994, you state that the definition of the [REDACTED] is a living creature, evolving to meet the needs of application developers for the definition of additional interfaces. The newsletter states that since much of the definition of the [REDACTED] is fixed, the changes are manifested in the [REDACTED], known as the [REDACTED]; contains clarifications of material in the [REDACTED] advice to developers of [REDACTED] and [REDACTED] [REDACTED] has agreed upon. The newsletter states that plans have been made to produce future revisions of [REDACTED] both a short range plan (with several minor, but useful, extensions) and a longer range plan (more major revisions).

[REDACTED]

The newsletter also states that standards conformance for the [REDACTED] is divided into four major areas: (1) [REDACTED], (2) [REDACTED], (3) [REDACTED] and (4) [REDACTED]. The newsletter states that [REDACTED] and [REDACTED] testing are covered by the [REDACTED] [REDACTED] for system vendor testing, while [REDACTED] is specifically designed for the software developer. The newsletter states that [REDACTED], and application [REDACTED] both system and software vendors are able to verify and validate [REDACTED] during each stage of product development. The newsletter also states that [REDACTED] testing is very complex because the [REDACTED] is mainly concerned with machine specific details for binaries, objects and archive file formats, and dynamic shared objects; it is the responsibility of the [REDACTED] test suite to disassemble and decompose each section and segment of a binary or object file and compare values, flags, and types against the standard. The newsletter states that [REDACTED] testing builds on the [REDACTED] tests by checking the additional features defined [REDACTED]; this additional work ensures that platforms remain compliant as each revision of [REDACTED] is released. Finally, the newsletter states that the testing done with [REDACTED] tests is targeted only at the system vendor; [REDACTED] are provided to ensure that products developed by [REDACTED] to run on [REDACTED] compliant platforms conform to the [REDACTED].

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, 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 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 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, therefore, 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. The activities of the organization consisted of the maintenance of plan rooms for the convenience of members, where plans and specifications for local construction projects, together with the names of general contractors bidding on specific projects, are filed.

Rev. Rul. 66-338, 1966-2 C.B. 226, holds that an organization formed to promote the interest of a particular retail trade which advises 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 of 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 as a whole.

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 the members of the organization in the operation of their own businesses.

Rev. Rul. 74-147, 1974-1 C.B. 136, holds that 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.

[REDACTED]

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 are 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 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 Ass'n 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 computer 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 computers users did not qualify for exemption under section 501(c)(6) because it benefitted essentially users of IBM equipment.

The information you have submitted establishes that you are interested in establishing and improving the position in the market place of [REDACTED] that run on the M [REDACTED] architecture. These standards and systems, however, are in competition with other standards and systems, and incompatible with them, such as, for example, those provided by [REDACTED]. It does not matter that your members are in competition with each other for a share of the market, or that your members are compatible, or that your program is an open

[REDACTED]

system. The key consideration is whether your activities give a competitive edge to your special programs as opposed to another. [REDACTED] is the equivalent of a brand name, and [REDACTED] registered trademark of [REDACTED]. The restrictions inherent in your membership mean that you do not represent a line or lines of business, as required under section 501(c)(6) of the Code and as discussed in National Muffler Dealers Ass'n v. U.S., supra, especially since your efforts do not apply to a significant segment of your line of business. Therefore, we have concluded that you are not acting on behalf of a recognizable line of business within the intendment of section 501(c)(6).

In addition, by establishing a system whereby your members and others can have their product certified as meeting certain recognizable standards, you are providing a particular service to your members. You have established a vehicle which relieves them of the problems encountered in testing a program or a piece of hardware for compatibility with a system. This is an economy or a convenience to them and, if a primary activity, would bar exemption under section 501(c)(6) of the Code. See Rev. Rul. 68-264, supra.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(6) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to your key District Director.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

[REDACTED]

[REDACTED]

Sincerely yours,

[REDACTED]

[REDACTED]

cc:

[REDACTED]

Attn: EO Group