

NO PROTEST RECEIVED
Release copies to District

Date 1/21/93

Surname [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

NOV 25 1992

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

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

You were incorporated under the laws of [REDACTED] on [REDACTED].

Your articles state that your purposes are:

- "(A) To be a club for computer users, enthusiasts and management personnel.
- (B) To provide a means for software users (or potential users) in the greater [REDACTED] area to share information and ideas about software products and other related technologies.
- (C) To provide contacts for software users (or potential users) to obtain information about software, hardware or other materials that may be helpful to them.
- (D) To print appropriate materials such as newsletters and journals to inform our members of computer related activities and developments."

You have also submitted a copy of your by-laws, which include the following "Mission Statement:

"[REDACTED] is dedicated to promote the use and understanding of [REDACTED] software products".

[REDACTED]

The by-laws also set forth the following goals:

1. Provide a means for users (or potential users) in the greater [REDACTED] area to share information and ideas about [REDACTED]'s products and other related technologies.
2. Provide contacts for [REDACTED] users (or potential users) to obtain information about software, hardware or other materials that may be helpful to them.
3. Publish appropriate materials such as newsletters, journals, proceedings, working papers, etc.
4. Influence the direction of development activities for all [REDACTED] software products."

You are a membership organization open to anyone with an interest in [REDACTED] ([REDACTED]) technology and [REDACTED] related products. Generally, your members are computer network administrators and computer programmers. Although new members are mainly attracted through networking, you also contact individuals who have been identified as interested in [REDACTED] tools developed by [REDACTED].

You have described [REDACTED] technology as software used to build other software. [REDACTED] is a vendor of [REDACTED] software. You have stated that, although you emphasize [REDACTED] products, other manufacturers of [REDACTED] technology participate in your activities. As your primary activity, you conduct meetings where members and the public discuss and evaluate computer software for corporate use. The purpose of the meetings is to teach members how to use and apply [REDACTED] tools and to give vendors an opportunity to learn about the shortcomings of their products. Meeting agendas include a speaker and a technical or managerial session. Occasionally, members are given an opportunity to speak directly to a primary vendor, although you do not permit marketing at the meetings. [REDACTED] has also demonstrated its products at your meetings. Your application file includes membership solicitation materials which emphasize that your meetings are opportunities to "Ask [REDACTED] [REDACTED]" regarding products that interface with [REDACTED], as well as training, methodology, and code generation. The submitted materials indicate that you have a [REDACTED] advisor on your board of governors.

Membership dues of \$ [redacted] permit an individual to attend your bi-monthly meetings for one year and to bring a guest. Nonmembers may attend your meetings for \$ [redacted] admission. Membership dues and fees for attendance by nonmembers are your only source of income.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or 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(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(3)(i)(a) of the regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities.

Rev. Rul. 74-116, 1974-1 C.B. 127, held that a membership organization whose purpose was to exchange information among users of a specific type of computer and to serve as a liaison between users and the computer manufacturer was serving the private interests of its members rather than a public interest, and was therefore not organized exclusively for any exempt purpose under section 501(c)(3).

In Guide International Corporation v. U.S., 948 F.2d 360 (7th Cir. 1991), affirming 90-1 U.S.T.C. para. 50,304 (1990), the U.S. Court of Appeals upheld a District Court ruling that a nonprofit organization, whose purpose was to provide a forum for information exchange regarding data processing systems and products manufactured by IBM, did not qualify for exemption under section 501(c)(6) of the Code. The organization's by-laws stated that its purpose was to review and exchange information on IBM products and services. Membership included companies that competed with IBM. The primary activity of the organization was sponsorship of conferences that focused on data processing issues, at which representatives of IBM and other companies gave presentations. The organization communicated matters discussed at the conferences to IBM. The Appeals Court agreed with the District Court that, although the organization stated that its

[REDACTED]

purpose was to promote the exchange of information concerning data processing equipment in general, the principal focus was on IBM equipment. The Court found that the primary beneficiary from the organization's activities was IBM and those individuals who used IBM equipment. Finally, both Courts agreed that the organization served as a marketing tool for IBM by providing a forum for IBM customers to learn about new products and services, as well as providing an opportunity for IBM to receive feedback about its products and services to further product development.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court held that, in order to qualify under section 501(c)(3) as an educational organization, the activities must be exclusively educational. The existence of a single noneducational purpose, if substantial in nature, will rule out exemption regardless of the number or importance of truly educational purposes.

Your by-laws and membership solicitation materials demonstrate that, although you permit a variety of computer software vendors to participate in your meetings, the emphasis is placed on software manufactured by [REDACTED]. Your by-laws state specifically that one of your goals is to promote use of [REDACTED] products. The presence of a [REDACTED] consultant on your board of governors and at your meetings, and the use of that manufacturer's name as part of your organization's name are further indications that, like the organizations in Rev. Rul. 74-116, supra, and Guide International Corporation, supra, one of your primary purposes is to serve as a liaison between [REDACTED] and users of its products. Like the organization in Guide International Corporation, supra, your activities provide a marketing tool for [REDACTED]. Thus, by serving as a forum for [REDACTED] customers to learn about new products and services, you are primarily benefiting the private interests of [REDACTED].

In addition, your membership is comprised of individuals who are interested in utilizing this software more effectively in their businesses. By assisting in the efficient use of software technology for members' individual business purposes, you are also like the organization in Rev. Rul. 74-116, supra, because you are furthering your members' private interests rather than public interests. As provided in Better Business Bureau, supra, the fact that some of your meeting activities may be educational in nature does not overcome your substantial purpose of serving private rather than public interests.

[REDACTED]

Based on the above, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code because you are not organized or operated exclusively for charitable or educational purposes.

Contributions to you are not deductible under section 170 of the Code.

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

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 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.

When sending a protest or other correspondence with respect to this case, you will expedite its receipt by placing the following symbols on the envelope: E:EO:R:1-BEB, Room 6236. These symbols do not refer to your case, but rather to its location.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available 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.

If we do not hear from you within 30 days of the date of this letter, this ruling will be furnished to the key District Director Brooklyn, New York, which is your key district for exempt organization matters. Thereafter, any questions about

[REDACTED]

your federal income tax status, or the filing of returns should be addressed to that office. Also, the appropriate state official(s) will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 4

cc: DD, Brooklyn
Attn: EO Group

cc: State officials of [REDACTED]
w/Form 5998

cc: [REDACTED]

cc: [REDACTED]

[REDACTED] [REDACTED]
Nov 25, 1992

[Handwritten signature]