



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201150032**
Release Date: 12/16/2011

Date: September 21, 2011

Uniform Issue List:
501.06-00
501.06-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(6).

We made this determination for the following reason(s):

Your primary purpose and activity is to promote a single brand of inter-connection technology, rather than the improvement of business conditions of one or more lines of business. In addition, one of your substantial activities consists of providing particular services to individual persons. Accordingly, we hereby affirm our denial of your application for recognition of exemption from federal income tax under section 501(c)(6) of the Code.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

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

If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Elizabeth Kastenberg for

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: September 21, 2010

Contact Person:

Identification Number:

Uniform Issue List:

501.06-00

501.06-01

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =
R =
State =
Date =

Dear :

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

Facts

The information submitted indicates that you, M, were incorporated under the laws of State on Date.

Your articles of incorporation provide that your specific purpose is "to bring about the existence of a broad range of interoperable monitoring and controlling consumer and professional products anywhere in and around the home, buildings and industry by creating open industry standards specifications for battery-less and wireless systems operating in unlicensed frequency bands."

In addition, your bylaws state that you intend to engage in all of the following activities:

- Submit the above-referenced standards and specifications to international or national agencies for ratification, approval, and adoption
- Promote the ratification, approval, and adoption of those standards

- Protect consumers' needs and increase competition among vendors by creating and implementing these standards
- Maintain relationships with these agencies, as well as with educational institutions, government institutes, and other technology consortia that support and contribute to the development of these specifications and standards
- Foster competition in the development of new products and services based on these specifications
- Provide a forum in which your members may meet with each other to approve suggested revisions and enhancements to these standards and specifications
- Provide a forum in which users of related products and services may meet with the developers and providers of those products to identify requirements for interoperability and general usability
- Educate businesses and consumers as to the value, benefits, and applications of these interoperable, wireless products and services through public statements, publications, trade show demonstrations, seminar sponsorships, and other programs that you develop

According to your application Form 1024, you will fulfill your goals by engaging in the following activities:

- 60 percent of your activities will be promoting the development of specifications and standards for interoperable wireless products;
- 20 percent will be helping advance wireless self-powered energy harvesting sensor solutions;
- 5 percent will be enabling eco-friendly, green buildings by developing the above-referenced specifications and standards; and
- 15 percent will be engaging in other activities relating to your goals, e.g., conducting work group meetings.

In your application, you state that you will not research or develop any products. Instead, you will enable your members to research and develop products that are based upon a self-powered, wireless technology created, owned, and patented by R, a promoter member of your organization. You enable your members to research and develop products by writing and implementing standards and specifications for R-technology enabled products, promoting these standards and products, further developing the R-patented technology, and promoting global trade in these products.

Your application states that as of 2008 there were more than 300 interoperable products available using the R-patented technology, from more than 60 different companies, and located within tens of thousands of buildings throughout the world. You state that in addition to R, there are other developers of self-powered, wireless sensors and self-powered interoperable wireless building control systems.

You state that you are committed to establishing the R standard as the leading wireless technology for energy-efficient, sustainable buildings. You promote the R-patented standard and R-enabled products by attending worldwide trade shows and participating in other similar activities. You issue newsletters advertising how your members have incorporated R-patented technology into their products and services. You have created a web-based forum that fields

questions on the R-patented technology and products, and you plan to launch an R-patented technology channel on YouTube to present videos relating to R-patented technology and R technology-enabled products. For tax year 2008, 67 percent of all your operating expenses were used on public relations and marketing.

Your bylaws state as general conditions of membership that you shall have only one class of member within the meaning of state law and that your members will be known as "Promoter Members." You are also authorized to create one or more classes of non-member participants, which will be collectively referred to as "Participants" and which will have only the rights and privileges your board of directors gives them. Participants are not entitled to any voting rights with respect to any of your business. Classes of participants may be referred to as either "Participants" or "Associates" or by any other title your board of directors designates.

According to your application, any profit or nonprofit corporation, government organization, educational institution, or other enterprise that supports your goals, policies, and procedures is qualified to become a member. You have three classes of members, depending on the desired level of involvement: Promoters, Participants, and Associates Members. Depending upon the type of membership chosen, a member can "contribute to the leadership of the M technology," "shape the development and evolution of the M application and specifications and receive the added benefits of M marketing." Member companies have joined your organization from more than 70 product partners that are currently using R-technology enabled products.

Each Associate Member is entitled to receive your newsletters or magazines, obtain approved output of standards and specifications upon release to the public, and can use the M brand name for general advertisement purposes. Upon special invitation, presumably from your board of directors, associates may also attend annual meetings, workshops or events; participate in work groups; contribute to work group items; and participate in marketing events and press releases. You state that Associate membership is geared towards building professionals, academics, users, and retail organizations. You do not allow product manufacturers and suppliers to the ecosystem to be associate members. The minutes of your board meetings indicate that the board approves all associate member applications.

Each Participant Member is entitled to all rights and privileges to which Associate members are entitled. In addition, Participant members can propose committees or work groups; approve draft specifications; vote in work groups; attend annual meetings, workshops, and events; participate in work groups; participate in e-mail reflectors; contribute to work group work items; propose work items; have access to the members' only section of your website; have pre-public release access to documents; approve documents within a work group; and participate in marketing events and press releases ("Priority 2"). While your application indicates that Participants can become officers, sit on your board of directors, serve on your executive committee, or be entitled to voting rights in your organization, if authorized or nominated by a Promoter Member, your articles of incorporation indicate that only Promoter Members are entitled to these rights and privileges. According to your application, participant membership is open to any company that has exercised a participant membership agreement, paid its dues, and provides products or services that use the R-patented technology. The minutes from your board meetings indicate that the board approves all Participant member applications.

Each Promoter Member is entitled to all rights and privileges to which Participant (and Associate) members are entitled. In addition, Promoter Members can serve on your board of

directors, be officers, sit on your executive committee, chair work groups, approve committee and work groups, vote in officer elections, have final approval M specifications, vote in board of director elections, vote on all matters presented to the board or to all Promoter Members for a vote, and approve all proposed marketing, technical, and operational budgets. Promoter Members are voted upon by the board of directors based upon the criteria and conditions it establishes, they are expected to actively work on the enhancement and promotion of the R-patented technology, and they are the innovators and key players who lead, define, and drive your organization.

According to your bylaws, your board of directors exercises all corporate powers and control over all your business and affairs. It has the power to select, appoint, and remove officers, agents, employees, and contractors; authorize and empower officers or agents to enter into contracts for you; appoint and delegate responsibilities and authority to committees, officers, and agents; call special meetings; create committees and establish their duties; approve, adopt, and modify the Intellectual Property Rights Policy for your Promoter and Participant members; and adopt proposed specifications and submit and promote them to international and national agencies for ratification, approval, and adoption.

You have entered into a Trademark License Agreement with R under which R has granted you a non-exclusive, non-transferable, royalty-free limited license to use the name R and its associated logo. Under a "Participation Agreement" and a "Promoter Member Agreement," you authorize your Promoter and Participant Members to list this name and logo on their individual websites and advertising and promotion materials, and vice versa, under yours and these members' guidelines, as applicable.

Your bylaws establish a technical committee for the purpose of (1) proposing, evaluating, developing, and approval technical specifications of working groups; (2) reviewing and recommending proposed specifications and deliverables to the Board of Directors for publication and endorsement; (3) submitting the specifications adopted by the board of directors to the appropriate international and national agencies or bodies; (3) promoting the ratification, approval, and adoption of these specifications as an official standard; and (4) seeking these international and national agencies' endorsement of the specifications. The Board of directors appoints this chair of this committee, who need not be a director, employee, or authorized representative of any of your members. Promoter and Participant Members are not required to adopt or implement adopted specifications simply by virtue of being one of your members.

Your bylaws establish a marketing committee for the purpose of (1) recommending public relations and marketing activities to your board of directors for execution, publication, or endorsement and (2) performing other duties as the board establishes. The Board of Directors appoints the chair of this committee, who need not be a director, employee, or authorized representative of any of your members.

Your bylaws further state that all right, title, and interest in any and all patent rights, technology rights, or other intellectual property rights (collectively "intellectual property rights" or IPR), as well as any and all software and documentation, created or developed by one of your employees or a contractor vests solely in you. You are free to use and publish any research results, ideas, algorithms, techniques, and any other information you develop as determined solely by your board of directors. Participant members, for the term of their memberships, are

granted a royalty-free license to all your IPR under such terms as your board of directors determines.

Law

Section 501(c)(6) of the Code provides for an exemption from U.S. federal income tax for business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), 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 that are beneficial to the particular industry and the public generally. The activities of the organization consist 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. 58-294, 1958-1 C.B. 244, discusses an organization that is organized and operated for the purpose of promoting uniform business, advertising, and fair trade practices in connection with the manufacture and sale of a certain patented product. Membership in the organization is limited to any person, firm, or corporation licensed to manufacture and sell the specified product. The organization owns the controlling interest in the corporation that holds the basic patents and sells to the members of the organization the materials and equipment necessary in the manufacture of the product. The organization does not qualify for exemption as an organization described in section 501(c)(6) of the Code because it is engaged in furthering the business interests of the dealers in the particular patented product, rather than improvement of business conditions of one or more lines of business.

Rev. Rul. 67-77, 1967-1 C.B. 138, denied exemption under section 501(c)(6) of the Code to an organization composed of dealers in a certain make of automobile in a designated area, holding that the organization performed particular services for its members and, thus, did not engage in activities for the improvement of business conditions in the automotive industry as a whole. The organization was 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.

Rev. Rul. 68-182, 1968-1 C.B. 263, holds that organizations promoting a single brand or product within a line of business do not qualify for exemption from income tax under section 501(c)(6) of the Code.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for individual persons for purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses. The organization's activities resulted in savings and simplified operations for members.

Rev. Rul. 70-187, 1970-1 C.B. 131, describes an organization formed by manufacturers of a particular product to establish acceptable standards for the product and to assure that the product is fairly described in advertising. The organization furnished to interested manufacturers specifications setting forth minimum quality and performance standards and conducted a program of testing and certification based on these standards. Because the organization's product testing and certification program is a self-regulatory measure designed to prevent trade abuses in the industry, the activity does not constitute the performance of particular services for individual persons. Thus, the organization is exempt under section 501(c)(6) of the Code because its activities are directed to the improvement of business conditions within the industry as a whole.

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 under section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community. Membership is voluntary and open generally to all business and professional men and women in the community. An organization seeking exemption from federal income tax under section 501(c)(6) as a chamber of commerce or board of trade must be one whose efforts are directed at promoting the common economic interest of all the commercial enterprises in a given trade community. Trade associations or business leagues are similar to chambers of commerce or boards of trade, except that the former serve only the common business interests of the members of either a single line of business or closely related lines of business within a single industry.

Rev. Rul. 74-147, 1974-1 C.B. 136, describes an organization whose members represent diversified and competing businesses that own, rent, or lease one or more digital computers produced by various manufacturers, without regard to the identity of the manufacturer of any such computer. The organization's sole activity consists of holding semi-annual conferences at which operational and technical problems relating to computer use are discussed. Because these conferences lead to the more efficient utilization of computers by the organization's members and other interested users, the organization improves the overall efficiency of its members' business use of computers and, thus, is exempt under section 501(c)(6) of the Code.

Rev. Rul. 83-164, 1983-2 C.B. 95, describes an organization whose members represent diversified and competing businesses that own, rent, or lease one or more computers produced by a single computer manufacturer, M. The organization conducted conferences for the

dissemination of information concerning computers manufactured by 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 organization is not exempt under section 501(c)(3) of the code because it is directing its activities to businesses that use computers made by one manufacturer, thus improving business conditions in only a segment of a line of industry rather than in an entire line of industry. By focusing on the products of one particular manufacturer, as distinguished from the organization in Rev. Rul. 74-147, supra, the organization is providing M with a competitive advantage at the expense of manufacturers of other computer brands.

In Nat'l Muffler Dealers Ass'n v. United States, 440 U.S. 472 (1979), the Supreme Court upheld the "line of business" test contained in reg. section 1.501-1(c)(6) under which an organization is deemed a business league only if it benefits an entire industry or all the components of an industry within a geographic area. In this case, the Court held that an organization whose membership consisted of the franchisees of one brand of muffler was not a business league within the meaning of section 501(c)(6). The Court held that by representing only a single brand, the organization constituted only a segment of an industry, rather than a line of business. Exemption under section 501(c)(6), the court concluded, is not available to aid one group in competition with another within an industry.

In Guide Int'l Corp. v. United States, 948 F. 2d 360 (7th Cir. 1991), aff'g No. 89-C-2345 (N.D. Ill. 1990), the Seventh Circuit denied exemption under section 501(c)(6) of the Code to an association of companies composed largely of organizations who own large-scale computer equipment manufactured by IBM. The court concluded that the organization only benefitted IBM and those individuals within various lines of business that use IBM mainframes, adding that the organization also served as an influential marketing tool for IBM because the conferences it held allowed IBM to showcase its products and services.

In Bluetooth Sig Inc. v. United States, 101 A.F.T.R.2d 2008-748 (W.D. Wash. 2008), aff'd, 611 F.3d 617 (9th Cir. 2010), the Court examined an organization that was formed to advance the common business interests of its members in the development and regulation of technical standards for the compatibility and interoperability of wireless products and devices within a wireless personal area network. The organization develops specifications and use applications and promotes consumer awareness and marketing through its Bluetooth technology and trademark. The court held that the organization was not a tax-exempt business league under section 501(c)(6) of the Code because the organization's activities exclusively benefit its members, rather than an entire line of business. The court noted that it "strains credulity" for the organization to argue that its services indirectly benefit the industry as a whole simply by generating consumer awareness of the availability and reliability of its technology.

In Nat'l Prime Users Group v. United States, 667 F. Supp. 250 (D. Md. 1987), the Court held that an organization that served the needs of users of a specific brand of computer promoted only a segment of a line of business and, thus, was not exempt under section 501(c)(6) of the Code. The court noted that it could not overlook that the name of the organization contained the name of the products (i.e., Prime products) used by the organization's members. It concluded that the existence of an organization whose activities center on the needs of users of one

particular product is "indeed a useful sales tool in persuading potential customers to buy, lease or rent [that particular computer brand], and [the manufacturer of that computer brand] gains a competitive advantage over other computer manufacturers through such an organization."

In Glass Container Industry Research Corp. v. United States, 25 A.F.T.R. 2d 70-537 (W.D. Pa. 1970), the District Court examined an organization conducting scientific research in the field of glass container production and manufacture. Independent commercial research organizations, colleges, and universities performed the actual research. The contracts for the research almost all provided that the results were not to be disclosed. Members were forbidden to disclose the research reports to nonmembers, and the aim of the organization regarding the reports that were made public was not to disclose information that would be of assistance to a nonmember from a production standpoint. The Court held that because the results of the research benefitted only the organization's members, the organization was a cooperative effort on the part of a limited number of persons to research business projects for the benefit of themselves rather than the public at large, or the industry at large, and thus exemption under section 501(c)(6) of the Code was denied. The Court stated that 30 percent of a group of manufacturers engaged in an industry cannot organize themselves solely for the purpose of investigating and discovering cheaper and better methods of conducting their business with a view to increasing their profits, with restrictions on dissemination of the research results and at the same time be tax-exempt under the statute. The Court found it unnecessary to speculate what the situation might have been if the organization relaxed its rules and regulations regarding the dissemination of research results.

Rationale

The information you submitted establishes that you have endeavored to serve the interests of only one segment of an industry, rather than an entire line of an industry. Your primary activities center on technologies patented by R, one of your promoter members. While your organizational documents do not limit membership in your organization to companies that have R-technology based products, your application states that only entities that support your goals, policies, and procedures are qualified to become members. It appears that the only entities that are accepted as Promoter or Participant members in your organization are those that have R-patented products and are eager to promote those products. Promoter members are expected to actively work on the enhancement and promotion of the R-patented technology, and it appears that all potential members, including Associates, are voted upon by your board of directors. There is nothing in your application to indicate that you either intend to or are able to recruit or acquire any member other than a company that has R-patented technology-based products. It is irrelevant whether your members are in competition with each other for a share of the market, that your membership is essentially open to the entire industry, that your members are compatible, or that your program is an open system.

To be exempt under section 501(c)(6) of the Code, your activities must be directed to the improvement of business conditions of one or more lines of business, as distinguished from only a segment of an entire line of business. Reg. section 1.501(c)(6)-1 and Nat'l Muffler Dealers Ass'n, 440 U.S. at 4848. Organizations that have failed to meet the line of business test, but instead were found to have served only a segment of a line, include groups composed of businesses that have licenses to a single patented product (Rev. Rul. 58-294, supra); market a certain make of automobile (Rev. Rul. 67-77, supra); promote a single brand or product within a line of business (Rev. Rul. 68-182, supra); or maintain rooms that contain project plans for the

convenience of members (Rev. Rul. 56-665, supra). Like you, these groups promote segments of an industry at the expense of others in the industry.

One of your main purposes is to create specifications and standards for R-patented based products and to promote those products and specifications. It is clear that your activities are geared toward a particular trademarked technology of a particular for-profit corporation, R, in the same manner as the organization denied exemption under section 501(c)(6) in 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 trademarked product. The name of your organization also contains the name of the products used by your members, similar to the organization in Nat'l Prime Users Group, 677 F. Supp. 250. You do not serve an entire industry or all the components of an industry within a geographic area. Your standards and specifications, moreover, are in competition with other standards and specifications for other similar technologies in the interoperable, wireless area and are probably incompatible with them.

Rev. Rul. 70-187, supra, is distinguishable from your organization. In that ruling, the organization's standard-setting and certification processes were a self-regulatory measure to prevent trade abuses in the entire industry and, thus, the organization's activities served to improve business conditions within the industry as a whole. In addition, 90 percent of the manufacturers in the industry participated in the organization's activities, and the organization set its charges at an amount sufficient to defray only the cost of its programs. As discussed above, your organization's purposes and activities serve only to improve business conditions within your segment of a line of business. As the court stated in Bluetooth Sig Inc., 101 A.F.T.R.2d 2008-748, it is irrelevant whether your products, services, or activities indirectly benefit the industry as a whole simply by generating consumer awareness of the availability and reliability of your technology.

The holding in Rev. Rul. 74-147, supra, is also not applicable to you because, unlike the organization in that ruling, you are promoting the equivalent of a single brand name. In that ruling, the organization's membership consisted of diversified and competing businesses that owned, rented, or leased computers produced by various manufacturers. The organization, unlike you, did not provide a competitive advantage to one group of users or one segment of a line of industry but rather benefited the industry as a whole. Organizations that promote a single brand or product within a line of business do not qualify for exemption from income tax under section 501(c)(6) of the Code. Rev. Rul. 68-182, supra.

Moreover, like the organization in Rev. Rul. 67-77, supra, you were organized to promote the sale of R-patented based products and services, thus benefitting only a particular segment of an industry. Your application is replete with statements indicating that you were organized and are operated to promote global trade in R-patented based products and services. You are committed to establishing the R standard as the leading, worldwide wireless technology for energy- efficient sustainable buildings. You educate businesses and consumers as to the value, benefits, and applications of these products and services through public statements, publications, trade show demonstrations, seminar sponsorships, and other programs that you develop. You utilize the Internet, newsletters, worldwide trade shows, and other similar venues to promote the R-patented technology standard and R-patented technology enabled products. For tax year 2008, 67 percent of all your operating expenses were attributable to public relations and marketing. Like the organization in Guide Int'l Corp, 948 F.2d 360, you serve as an

influential marketing tool for R-patented enabled products, and like the organization in Rev. Rul. 68-264, supra, your activities result in savings and simplified operations for your members.

The key consideration for section 501(c)(6) purposes is whether your activities give a competitive edge to your standards, specifications, or members' products, as opposed to other standards, specification, and products. Your application clearly indicates that your activities give a competitive advantage to R-patented technology product, rather than an entire line of business. Whether your specifications and standards may ultimately be released to nonmembers does not alter the fact that your benefits are basically for only one particular specification, which benefits only one segment of an entire industry rather than an entire line of an industry. As discussed in Guide Int'l Corp., 948 F.2d 360, Bluetooth Sig Inc., 101 A.F.T.R. 2d 2008-748, and Nat'l Prime Users Group, 667 F. Supp. 250, an organization that essentially benefits a particular segment of an industry is precluded exemption under section 501(c)(6) of the Code. In this respect, you are more like the organization discussed in Rev. Rul. 67-77, supra.

Finally, as discussed and made clear in Rev. Rul. 73-411, supra, and Glass Container Industry Research Corp., 25 A.F.T.R. 2d 70-537, membership in and enjoyment of privileges in an organization exempt under section 501(c)(6) of the Code are not to be restricted or limited to a select number of entities within the described industry. Membership in a trade association or business league, as differentiated from a chamber of commerce, is both voluntary and open generally to all entities within a particular line of business or closely related lines of business. You restrict many privileges to your Promoter Members only -- such as the right to sit on the board of directors which exercises all corporate powers, vote on each matter submitted to a vote, and serve as a member of your key technical or marketing committees (which represent your two main activities). In doing so, only a small percentage of your available membership is being allowed to guide your organization. In this manner, you are lacking an essential element of public representation and membership support within the intent of section 501(c)(6), as discussed in Rev. Rul. 73-411. In addition, because it appears that your board of directors has to approve all memberships, you lack the voluntary and openness standards generally applicable to all potential members under section 501(c)(6) of the Code, as discussed in Rev. Rul. 73-411.

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 and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an

individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to this address:

Internal Revenue Service
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements