



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201425014**  
Release Date: 6/20/2014  
Date: March 28, 2014  
UIL Code: 501.06-00  
501.06-01

Contact Person:  
Identification Number:  
Contact Number:  
Employer Identification Number:  
Form Required To Be Filed:  
Tax Years:  
All Years

Date:  
Category:

Dear :

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)( ). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

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.

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, you should 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

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Catalog Number 47635Z

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Director, Exempt Organizations

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: January 30, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

C =  
D =  
F =  
G =  
H =  
M =  
N =  
O =  
P =  
Q =  
R =  
S =  
T =

**UIL:**

501.06-00  
501-06-01

Dear :

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

**Issues**

Do you qualify for exemption under section 501(c)(6) of the Code? No, for the reasons explained below.

**Facts**

You were incorporated under the laws of the State of O on P date.

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Catalog Number 47628K

You previously applied for exemption under IRC 501(c)(6) in 2003. You were denied exemption on the grounds that you provide a benefit to a particular trademarked technology and benefit only one segment of an industry. Now, due to changes in your structure, you have reapplied for 501(c)(6) status.

You represent members of the S device industry. According to your Bylaws, your purpose is "... to further define standards for, and promote market acceptance of, next generation S technology with security methods that prevent unauthorized use or copying and its applications." You will market the development of the standard to ensure compatibility and interoperability between products and applications. You promote your standards as,

You encourage the development of consumer electronic, wireless communication, digital imaging and networking products that utilize market-leading technology. Your standard is the number one choice for consumers and has earned more than 80 percent of your market due to reliable interoperability and its easy-to-use format.

The initial specifications for your standards were jointly developed by D, M and N (collectively known as T members). T members are your founding executive members. Their company, C, has agreed to make certain license rights for S standards available to your members.

According to your website

You have two membership levels:

1. Executive members - To qualify for membership at this level, the entities must be businesses that are actively engaged in the design, development, manufacture or sale of products or services which utilize your specifications. Executive members are entitled to elect your directors and vote on all matters.

Each T executive member also has the right to unilaterally designate one director to serve on your board of directors. The designated director must be an employee, officer, director, or consultant of the T member. Each T members may remove and replace its appointed director at any time. No other entity may remove a T designated director without extraordinary circumstances as described in the Bylaws.

2. General members do not have voting rights in the corporation. Membership on this level is available to any person or entity that demonstrates an interest in the design, development, manufacture or sale of products or services which utilize your specifications.

Among the member benefits you offer are:

- Access to new standards development,
- Specifications your association develops,
- The opportunity to license symbols and marks that allow members to develop products and solutions and maintain compatibility with other member devices, and
- The ability to obtain your licensing agreement.

One of your goals is to bring Q and host manufacturers together. The development of your draft specifications is your primary activity. Your secondary activity is to "engage in education and awareness activities that help promote your vision and further the adoption of a standard for the products of your industry."

A company who has or plans to use your standards to manufacture Q card products must:

- Execute your licensing agreement,
- Contact C to execute G and/or H licensing agreements, and
- Execute a third licensing agreement by contacting R.

Companies who plan to manufacture devices or ancillary products which utilize Q are required to:

- Execute your licensing agreement, and
- Contact C to execute a host product licensing agreement.

Membership with your association does not confer rights to use the logos, essential patents or other technology. These rights are only granted through appropriate license agreements with companies such as C and R. Your internet site provides links to C and R websites.

If a non-member desires to produce a standalone product that hosts a Q device or an ancillary product that is interoperable with F or Q products, the non-member must::

1. Become a member,
2. Execute your licenses agreement,
3. Ensure coverage by C licensing agreements (G and/or H),
4. Implement any necessary licensing agreements with R, and
5. Execute any other required third party agreements.

Your standards are available in a variety of formats, capacities and speed options. Thousands of consumer products manufactured by hundreds of brands worldwide rely on your standards.

Your website notes that many of the trademarks you use and promoted are registered trademarks of C. In fact, the two initials used as part of your name are identified as a

registered trademark owned by C.

## Law

IRC 501(c)(6) provides for exemption of business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues (whether or not administering a pension fund for football players), which are 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 states 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 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, clarifies Rev. Ruls. 65-164 & 72-211 where a local organization whose principal activity consists of furnishing particular information and specialized individual service 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 from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954 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. 67-77, 1967-1 C.B. 138 discussed an organization composed of dealers in a certain make of automobile in a designated area 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. Held, the organization is performing particular services for its members and is not entitled to

exemption from Federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code of 1954.

Rev. Rul. 70-80, 1970-1 C.B. 130 describes a nonprofit trade association of manufacturers whose principal activity is the promotion of its members' products under the association's registered trademark does not qualify for exemption under Section 501(c)(6) of the Code. The association establishes minimum quality standards for its members' products. These products are then sold under the association's registered trademark name. The trademark is promoted by the organization in a way that is intended to give the members of the association a competitive advantage over others in the same industry by extolling the superior quality of the trademarked products. Thus, it is held that the trademark promotion is not directed to the improvement of business conditions of the industry as a whole but is the performance of particular services for members. Accordingly, this organization is not exempt from federal income tax under Section 501(c)(6).

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 furnishes interested manufacturers specifications setting forth minimum quality and performance standards and conducts a program of testing and certification based on these standards. It permits manufacturers to display its "seal of acceptance" on all product models that have been certified as meeting its standards. The organization's product testing and certification program to enforce its product standards is a self-regulatory measure to prevent trade abuses in the industry. Such activity does not constitute the performance of particular services for individual persons. Rather the organization is engaged in activities directed to the improvement of business conditions within the industry as a whole and qualifies for exemption from Federal income tax under section 501( c)( 6) of the Code.

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. The court concluded that exemption under section 501(c)(6) is not available to aid one group in competition with another within 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. The court 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 that particular computer brand and the manufacturer of that computer brand gains a competitive advantage over other computer manufacturers through such an organization.

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

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essentially users of IBM equipment. The court stated 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. U.S.*, 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.

### **Application of Law**

You are not a business league as described in IRC 501(c)(6) because you limit your efforts to improving business conditions for Q products rather than one or more lines of business as defined under section of the Code.

You are not as described in Section 1.501(c)(6)-1 of the Income Tax Regulations because you are formed to provide particular services to your members.

You are similar to the organizations described in Revenue Rulings 56-65 and 67-77 in that your purpose and activities are directed at the promotion specifications of particular technology developed by C and R, specific brands.

You are similar to the organization described in Rev. Rul. 58-294 because you were formed to promote the business interests of those involved in the manufacture and sale of Q product. The original specifications for the manufacture of those products are proprietary to for-profit companies who hold patents and collect royalties on the use of their specifications. All of your executive membership is limited to those engaged in the manufacture and sale of product which conform to your specifications. You are engaged in furthering the business interests of the dealers of a particular product as distinguished from improving business conditions generally.

You are remarkably like the trade association in Rev. Rul. 70-80, 1970-1 C.B. 130.

- You promote members products under a registered logo;
- You establish minimum quality standards for your members' products;
- These products are then sold under registered trademark names; and
- Your trademark is promoted in a way that is intended to give the members of the association a competitive advantage over others in the same industry by extolling the superior quality of the trademarked products.

Accordingly, your trademark promotion is not directed to the improvement of business conditions of the industry as a whole, but is the performance of particular services for members.

Because you direct your activities to promoting a set of specific standards owned by you and your for-profit founders, you provide a competitive advantage at the expense of manufacturers of other industry brands like the organization denied exemption in Rev. Rul. 83-164, 1983-2 C.B. 95,.

Like National Muffler Dealers Association, National Prime Users Group, Inc. and Guide International Corporation, your membership consists of manufacturers of devices which do not constitute a line of business within the meaning of section 501(c)(6) of the Code. You promote proprietary specifications developed by you and your for-profit founder which benefit only a segment of an industry.

Like Bluetooth Sig, Inc. you were formed to advance the common business interests of your members in the development and regulation of technical standards for the compatibility and interoperability of products and devices. You develop specifications and use applications that promote consumer awareness and market your technologies and trademarks. Therefore, you operate for the exclusively benefit your members, rather than an entire line of business.

### **Applicant's Position**

You are similar to the organization granted tax exemption in Revenue Ruling 70-187. In that Ruling, the applicant organization was formed by members of a particular industry to establish acceptable standards for the industry's products, and to assure that those products are fairly described in advertising. The organization furnished industry members specification setting forth minimum quality and performance standards and conducted a program of testing and certification based on those standards. In addition, the organization permitted industry members to display its 'seal of acceptance" on all products certified as meeting the organization's standards.

Your primary objective is to develop design guidelines that will enable the members of the S device industry to build those devices in a safe and interoperable manner. These activities are of the type of 'self-regulatory measures" the IRS recognized in Revenue Ruling 70-187 are appropriate and acceptable for organizations seeking tax-exempt status pursuant to section 501(c)(6)

### **Service Response to Applicant's Position**

Your organization is not promoting an industry as a whole. Your founding executive members have developed specifications geared towards a particular trademarked technology. Although your specifications are available to both your voting members and non-voting members, this fact is not material for the purpose of determining whether you meet the requirements of section 501(c)(6) of the Code.

Your standards and specifications are in competition with other standards and specifications for similar technologies of S devices. In fact, through testing and feedback, your activities give a competitive edge to your specifications. Accordingly, the testing provides an economy and convenience in the conduct of the individual businesses that wish to use your specifications to create products that are compatible with the host devices and of your founding T members. You have established a vehicle that relieves them of the problems encountered in testing specifications to support the technologies your members use.

Your service is not considered to be a self-regulatory measure to prevent industry abuses because you promote the use of the trademark technology of your founders. Your specifications have "earned more than 80 percent of the market." Thus, your primary activity substantially increases the economic wealth of your founders and members.

### **Conclusion**

You are organized and operated to promote a particular brand on behalf of your members who are all owners/developers of that particular brand. Your activities are not 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. Accordingly, we conclude that you are not exempt under IRC 501(c)(6).

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 that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax Exempt Status*.

Types of information that should be included in your protest can be found on page 1 of Publication 892, under the heading "Filing a Protest." The statement of facts must be declared true under penalties of perjury. This may be done by adding to the protest the following signed declaration:

*"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."*

*The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.*

*Your protest will be considered incomplete without this statement.*

*If an organization's representative submits the protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying documents; and whether the representative knows personally that the statements of facts contained in the protest and accompanying documents are true and correct.*

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in 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](http://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 to you. That letter will provide information about filing tax returns and other matters.

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

Mail to:

Internal Revenue Service  
EO Determinations  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
Quality Assurance  
Room 7-008  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Kenneth Corbin  
Acting Director, Exempt Organizations  
Rulings and Agreements

Enclosure: Publication 892

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