



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Date: September 15, 2020

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Number: 202050016
Release Date: 12/11/2020

UIL: 501.06-00, 501.06-01

Dear _____ :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(6). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service

number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034

Redacted Letter 4038



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: July 15, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State

C = Date

D = Number

E = Number

F = Number

G = Number

H = Names

UIL:

501.06-00

501.06-01

v dollars= Amounts

w dollars= Amount

x dollars= Amount

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(6). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under IRC Section 501(c)(6)? No, for the reasons stated below.

Facts

You were incorporated on date C under the laws of state B.

Your Articles of Incorporation state you are operated as a member organization for the development and implementation of an open standard to enable the exchange of _____ formats among members.

Prior to your existence, the _____ industry was using a variety of formats. You were established to improve the _____ industry through the adoption of one standard/format. To accomplish this, you are building standards to be licensed to your membership which allow video and metadata to be used across

different applications. These standards which use _____ software provide your members with a format/language for applications that are used by your members' respective customers who produce or consume content. Specifically, the standards that you develop and provide to your members allow your members to build "common language" software products for the _____ industry.

Early on, it was decided that to grow the market, you would provide these standards under a not-for-profit license, and to allow other vendors to use the information to generate new products for _____ customers, which would help the market grow. You said you chose to license the technology and protect these standards because you did not want the standards to be enhanced or made proprietary by a third party, thus hurting the original intent. You also emphasize that you are the custodian and caretaker of the standards for the : _____ industry.

You promote your membership through word of mouth or through your website. You have D Founding members who invested significant time and money into your purpose. There are no fees or annual dues for these members. There are also three other classes of membership who pay _____ dollars in annual dues in the range of v dollars. These consist of the:

- Tier 1 membership: This allows participating corporations to participate the development of existing standards and work with you to develop new standards. These members are responsible for the election of your managing directors. There are E Tier 1 members who pay a onetime membership fee of w dollars.
- Tier 2 membership: This allows the licensed technology to be used with any member products, and effectively is a technology license. If membership lapses, existing products may continue to be shipped. However, any changes to the licensed technology may not be applied to those existing products. New products may not be announced which incorporate the licensed technology without a current Tier 2 membership. There are F Tier 2 members who pay a onetime membership fee of x dollars.
- Tier 3 membership: This allows corporations that have an interest in the development of standards used to propagate the interchange of rich media (video, audio, metadata) between organizations, but may not have a direct use for the technology and do not wish to actively participate at the Tier 1 level. However, . corporations can participate in more than one membership. There is no one time membership fee. And there are F Tier 3 members.

In addition, founding members are automatically Tier 1 and Tier 2 members. Your Tier 1 members are responsible for electing your Board of Directors who must approve your prospective members. There have been G new members approved by your board since your inception. Moreover, your Board of Directors may remove a member for cause which includes but is not limited to:

- Breach of any applicable confidentiality obligations to you or members; and/or
- Violation of any license agreement with you or a member.

Your income is derived from the onetime membership fee and annual dues. Your expenses are for development and website maintenance.

You wrote that non-members indirectly benefit by using the universal format. For example, the creation of this universal format allows non-members like H to readily access the video/metadata produced by your members'

products. Your latest correspondence stated if a business in the : industry would like to use the standards created/adopted/or set by you, they would need to become a member. Non-members cannot use your standards.

Furthermore, your website states that you are a collaborative group who build and license technology, enabling cooperation between processors and consumers. You are guided by your membership to develop and constantly improve uniform standards.

You also have direct links on your website to your founders' specific products developed from the technology you have developed.

Law

IRC Section 501(c)(6) provides exemption from federal income tax for business leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(6)-1 defines a business league as an association having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business of a kind ordinarily carried on for profit. Its activities are directed to the improvement of business conditions of one or more lines of business rather than the performance of particular services for individual members. 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 held that a local organization whose principal activity consisted 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, was performing particular services for individual persons. Such organization was not entitled to exemption under IRC Section 501(c)(6), even though it performed functions that are of benefit to the particular industry and the public generally.

In Bluetooth SIG, Inc., v. United States, 611 F.3d 617 (9th Cir. 2010), the Ninth Circuit Court of Appeals held that an association that owned and marketed a wireless networking protocol and trademark was not exempt under IRC Section 501(c)(6) because it engaged in a business ordinarily conducted for a profit since it licensed intellectual property to its members as evidenced on how its membership fees were set. The court also recognized, that the organization did not improve the conditions of one or more lines of business, and it provided particular services for members.

Additionally, the court cited the District Court's discussion of the differences between Bluetooth and American Plywood Association v. United States, 267 F. Supp. 830 (W.D. Wash. 1967), finding that:

[T]he product in American Plywood was something the members were already selling to begin with; the product here is something the members banded together to create. Thus, the collective enterprise of the Association derives from the fact that it has created a thing of value, which its members can then use to enhance the value of the products they sell.

Application of law

You are not described in IRC Section 501(c)(6) and in Treas. Reg. Section 1.501(c)(6)-1 because you are engaged in a business ordinarily conducted for a profit. For example, you are developing and implementing an open standard to enable the exchange of _____ format among your members. You will license the standard exclusively to your members for fees depending on their membership level.

Further, your board of directors must approve new member applications and has only approved a small number (G) of new member applications since your inception. You also have direct links on your website to your founders' specific products using the standards that you have developed and have licensed to them. This shows that your activities are not directed toward the improvement of business conditions of one or more lines of businesses but rather this is the performance of particular services for a select group of individual members. Your services also provide your limited membership a competitive edge over non-members.

You are like the organization described in Rev. Rul. 56-65, 1956-1 C.B. 199. Your primary activity is to provide services to your individual members through the development of a specific standard. Your members also may participate in the direction of further development of the standard. Such participation allows the members to maximize the economy of the standard to their individual business needs which precludes exemption under IRC Section 501(c)(6).

You are similar to the organization described in Bluetooth SIG, Inc., v. United States, 611 F.3d 617 (9th Cir. 2010). For example, you engage in a regular business of the kind ordinarily carried on for a profit because your purpose is to develop and promote a specific standard which you license exclusively to your Tier 1 and Tier 2 members. In addition, you are providing services to your individual members as evidenced by the fact that you have direct links on your website to your founders' specific products using the standard that you have developed and have licensed to them. Furthermore, you are operating like a collective enterprise because you have created a thing of value, which your members can then use to their competitive advantage when creating and marketing their products.

Conclusion

Based on the information provided, you are not operated as a business league described in IRC Section 501(c)(6). You are engaged in a business ordinarily conducted for a profit. You are not operated to improve the conditions of one or more lines of business, but you are providing particular services to members.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position

- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:
Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements