



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities

Box 2508
Cincinnati, OH 45201

Date:
February 28, 2022
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Check if 501(c)(3) denial

Check if valid POA

Release Number: **202221009**

Release Date: 5/27/2022

UIL: 501.00-00, 501.03-00, 501.35-00

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)(3). 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.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

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 Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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,

Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Letter 437

Redacted Letter 4034

Redacted Letter 4038



Department of the Treasury
 Internal Revenue Service
 PO Box 2508
 Cincinnati, OH 45201

Date: January 11, 2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

- C – Date
- D = State
- E = Law
- F = Name
- G = Name
- H = Name
- J = Name

UIL:

- 501.00-00
- 501.03-00
- 501.35-00

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)(3). 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)(3)? No, for the reasons stated below.

Facts

You formed as a cooperative nonprofit corporation in the state of D under the U statute on C. Your purpose as stated in your Articles of Incorporation is to develop, distribute, and maintain open-source software and educational materials. Your bylaws state you are:

- Organized as a democratically controlled nonprofit worker cooperative.
- Organized for the benefit of the public.
- Organized for the mutual benefit of your members as patrons and that your net earnings and savings will be equitably distributed to your patrons, based upon their patronage and any surplus will benefit the public.

Your activities consist of researching, designing, developing, documenting, and promoting open-sourced software tools. You will own all intellectual property rights on all software and written materials that you develop, all of which will be released to the public under the J license. You specifically provide the public:

- Software tools, which can be distributed and modified freely.
- Educational information on a variety of processes.

Any member of the public complying with your terms of use may use the software. The software is not limited to a specific charitable class. You further explained that while anyone can run, modify, or distribute any and all software which you develop under the terms of the J license, a fixed fee will be charged based on the number of users on an account on a monthly, quarterly, or yearly basis to use certain features of your software which you run. You may also in the future, choose to offer additional features or services for a fee such as printable materials or professional assistance installing the software on the premises of the user. Specifically, groups and organizations may open an account with you to engage to use these paid services and those accounts will be billed for the paid services provided

At this time, you are developing projects including a website which provides information about you and documentation on how to use your applications. Your other projects consist of F, which supports all apps developed by you, and G, which is used as part of H.

You indicated that your projects are conducted by your members. To become a member, a candidate must be at least 18 years of age, committed to your mission and not otherwise legally forbidden to attain membership. Members are not assessed fees, nor do you require them to make a capital contribution for membership. There must also be a two-thirds majority vote among members for a motion regarding the admission of a candidate to membership. At this time, you only have members, all of whom are founding directors. You then explained that in practice, you will generally accept members for a specific project; however, you do not want member eligibility criteria to prevent you from bringing on a member with credentials that would contribute to your goals or a specific project.

To develop your projects, your members will employ processes typical to software development. For instance:

- Members with product design duties will develop and maintain a plan for your projects based on user research and business goals and measure how well the projects perform when released.
- Members with experience design duties will produce materials that guide the development of interactivity in the software.
- Members with engineering duties will write the code for the software which aims to meet the goals established by the project's plans and designs.

In addition, depending on the projects' needs, they may be supported by:

- Your members with operations duties who will manage how the project and data are deployed to servers.
- Your members with project management duties who will prioritize work items for the other members doing research and development work.

You explained that once you receive adequate funding, your directors will propose work periods and negotiate work assignments with members in order to complete the projects. Specifically, members may propose work assignments in regard to projects. These proposals must generally contain work assignment details including the member's information, duties to be carried out by the member, the hourly monetary value, and the term, but not limited to the maximum duration of the assignment, or maximum hours billable in a work period. These proposals may be initially reviewed by one of your directors and may require negotiating with the member to come up with an acceptable proposal. Once there is an acceptable proposal, it will be voted on at your next meeting. The proposal is usually accepted if there is a simple majority decision with a quorum of % of members eligible to vote. Further, if the work assignment proposal is approved,

you will offer the member employment, and a corresponding contract within days of the proposal's approval. A member has the right to cancel their work assignment by providing you a written notice.

Members with an approved work assignment who log hours working on your projects during approved work periods will be compensated with patronage dividends. Patronage in your bylaws is defined as the sum of hours worked by a member in the course of carrying out a work assignment multiplied by the hourly value of that work assignment for each of the member's work assignments. Only members with a work assignment who log billable hours during approved work periods will accrue patronage and thus receive compensation. These will be generally allocated in cash. At this time, no member has received any compensation.

Your activities are currently funded by donations and will in the future be funded by fees charged for additional services as well fees from additional features provided by the software tools. The code for these tools will still be released as open source. The costs associated with software development, patronage dividends and administrative expenses are your primary outlays. Concerning your governing body, you have four directors. Directors are nominated by any member as long as one other member agrees and the candidate consents to nomination. Nominated candidates for directorship must be a member and are elected by a simple majority from the membership. Directors who are not members at the time of election are granted membership and if a director resigns from membership, the director also resigns from directorship. Additionally, you explained that although the software is open source, should any project receive a contribution from someone other than one of your members, that contribution will be reviewed and either accepted or rejected by a member with duties relevant to the contribution.

Finally, you indicated that your future projects include developing numerous apps for use in various platforms.

Law

IRC Section 501(a) provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized if they are organized and operated exclusively for religious, charitable, educational purposes, or other exempt purposes.

IRC Section 501(c)(3) provides for exemption from federal income tax of organizations organized and operated exclusively for charitable, educational, scientific, and other purposes, provided that no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in IRC Section 501(c)(3). If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term “charitable” is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes, among other things, lessening the burdens of government, relief of the poor and distressed or of the underprivileged, advancement of education or science, erection or maintenance of public buildings, monuments, or works, and promotion of social welfare by organizations designed to accomplish any of the above purposes, or in part to defend human and civil rights secured by law.

Treas. Reg. Section 1.501(c)(3)-1(d)(3) defines educational as the instruction or training of the individual for the purpose of improving or developing their capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community

Treas. Reg. Section 1.501(c)(3)-1(d)(5) provides that a scientific organization must be organized and operated in the public interest. Therefore, the term scientific, as used in Section 501(c)(3), includes the carrying on of scientific research in the public interest. Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc. Scientific research will be regarded as carried on in the public interest: (a) If the results of such research (including any patents, copyrights, processes, or formula resulting from such research) are made available to the public on a nondiscriminatory basis; (b) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or (c) If such research is directed toward benefiting the public.

In Rev. Rul. 65-1, 1965-1 C.B. 226, an organization that made research grants for the development of new machinery to be used in particular commercial operations and retained all the rights to the new developments, did not qualify for exemption under IRC Section 501(c)(3).

Rev. Rul. 65-2, 1965-1 C.B. 227 holds that a foundation operated exclusively to teach children a sport by holding clinics conducted by qualified instructors in schools, playgrounds, and parks and by providing free instruction, equipment, and facilities qualifies for exemption under IRC Section 501(c)(3).

Rev. Rul. 66-179, 1966-1 C.B. 139 provides illustrations under which garden clubs may establish exemption as charitable or educational organizations, civic organizations, horticultural organizations, or as social clubs.

Rev. Rul. 66-255, 1966-2 C.B. 210 holds that a nonprofit organization which through meetings, films, forums, and publications educates the public in a particular method of painless childbirth is entitled to exemption.

Rev. Rul. 68-373, 1968-2 C.B. 206, held that an organization which primarily engaged in testing drugs for commercial pharmaceutical companies did not qualify for exemption under IRC Section 501(c)(3).

In Rev. Rul. 71-29, 1971-1 C.B. 150, it was held that providing the city transit authority with the funds necessary to ensure that bus service for the city is continued, is a charitable disbursement furthering exempt purposes.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an “underlying commercial motive” that distinguished its educational program from that carried out by a

university.

In Syrang Aero Club Inc. v. Commissioner, 73 T.C. 717 (1980), the tax court upheld the Service's position that the organization was not conducting educational activities since it did not provide any formal instruction, it did not provide classes, lectures or instructional material. The Court determined that the organization did not serve an "educational" or "charitable" purpose even though it was conducting flying lessons.

In Retired Teachers Legal Defense Fund v. Commissioner, 78 T.C. 280, 286 (1982) the tax court defined private benefit to include any "advantage; profit; fruit; privilege; gain or interest."

Application of law

IRC Section 501(a) provides for the exemption from federal income tax for organizations described in Section 501(c)(3). As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You do not meet the requirements under Section 501(c)(3) because you fail both the organizational and operational tests as explained below.

You fail the organizational test under IRC Section 501(c)(3) because you formed under the E statute in D as a cooperative nonprofit corporation. An organization legally formed as a cooperative is not organized exclusively for religious, charitable, educational purposes, or other exempt purposes because by law these are organized for the members of the cooperative.

You are also not described under IRC Section 501(c)(3) because you do not meet the operational test. You are not operated exclusively for charitable, educational, or scientific purposes because you are operated for substantial nonexempt purposes. You develop open source software published under the J license that authorizes use by any person for any purpose, including potential nonexempt commercial, recreational, and/or personal purposes. In Better Business Bureau of Washington, D.C. Inc. v. United States, 326 U.S. 279 (1945) the Supreme Court found that even though an organization has some exempt activities, if there is one activity that is substantial and does not further an exempt purpose, the organization will not qualify for exemption. Open-source software is published under licenses that allow any person to use the software, or parts of the software, for any purpose including nonexempt purposes such as commercial, recreational, or personal purposes. As developing software is your primary activity, it is a substantial activity. Accordingly, you have a substantial nonexempt purpose, and are not exempt under Section 501(c)(3).

You are also operated for a substantial nonexempt commercial purpose. For example, you will charge a fixed fee based on the number of users on an account to use certain features of the software. In addition, you may offer additional services for a fee such as printable documents or professional assistance installing the software at a user's premises. Organizations may open an account with you to use these services, which will periodically be billed. This is similar to a commercial operation and shows you are operated for a substantial nonexempt commercial purpose.

An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than private interest. Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). In Retired Teachers Legal Defense Fund, the tax court defined private benefit to include any "advantage; profit; fruit; privilege; gain or interest." Your directors and approved members derive a benefit as evidenced by the fact that you are organized and operated as a cooperative. Members are the facilitators of your projects and earn patronage dividends for approved work assignments. Your bylaws state that your net earnings and savings will be equitably distributed

among your members, based upon their patronage. These facts show you are operated for the private benefit of your members and you are operated for a substantial nonexempt private purpose.

Developing Open-Source Software Does Not Further a Charitable Purpose

Your activities do not further a charitable purpose because you do not limit your services to a specific charitable class. You have not shown that all members of the public share any charitable characteristics. The general public is by definition not poor (i.e., income <60% of the area median income), distressed, elderly, underprivileged, or sharing any other charitable characteristic and does not meet the definition of a charitable class. Users of your software do not share any charitable characteristics because any member of the general public may use your software.

Moreover, whatever public good your open-source software provides, it is not the type of benefit to the community contemplated by IRC Section 501(c)(3). Not all organizations which incidentally enhance the public good will be classified as “public” organizations within Section 501(c)(3). For example, commerce clearly provides an economic benefit to the community, but Treas. Reg. Section 1.501(c)(3)-1(c)(1) limits the kinds and amounts of commerce exempt organizations may conduct. It is significant that Congress enacted special exemption provisions for certain types of organizations which would be unable to meet the stricter Section 501(c)(3) tests which require service to public interests rather than to private ones. Accordingly, because you do not limit use of your open-source software to a charitable class, the development and distribution of software developed by you to the public under open-source licenses is not the type of benefit to the community contemplated by Section 501(c)(3) and does not further a charitable purpose.

Your Activities Are Not Exclusively Educational

You are developing, distributing and maintain open-source software and educational materials which aim to improve public understanding of democracy and collaboration. However, these activities are not exclusively educational because you do not instruct or train people. Treas. Reg. Section 1.501(c)(3)-1(d)(3) defines educational as the instruction or training of the individual for the purpose of improving or developing their capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community. Unlike the organizations in Rev. Rul.’s 65-2, 66-179, and 66-255, supra, which provided instructional training, lectures, workshops, exhibits and presentations, you primarily develop and distribute open-source software. The purpose of your open-source software is so any one can download it for their own use. Anything learned is incidental. By developing open-source software, you are not providing training or instruction like the organizations in Rev. Rul. 65-2, Rev. Rul. 66-179, or Rev. Rul. 66-255, supra.

You are similar to the organization described in Syrang Aero Club Inc. v. Commissioner, 73 T.C. 717 (1980) because you provide a product with an insubstantial amount of classes, lectures or instructional materials. You do not generally provide any formal or informal instruction on how to use your open-source software. Accordingly, your activities are not educational within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(3).

Scientific Purposes: Developing Open-Source Software Is an Activity Ordinarily Carried on As an Incident to Commercial or Industrial Operations

You do not qualify for tax-exemption as a scientific research organization for your activities related to the research and development of open-source software. To qualify as an IRC Section 501(c)(3) scientific research organization, an organization must (1) engage in scientific research; (2) the scientific research must not include activities that are incident to commercial or industrial operations; and, (3) the scientific research must be undertaken in the public’s interest. See Treas. Reg. Section 1.501(c)(3)-1(d)(5).

The information you have provided shows that you develop, distribute, and maintain open-source software and educational materials. This is an activity ordinarily carried on as support to a software company's commercial operation. Your self-described activities of research and development of technology such as software or other innovations are similar to the two organizations described in Rev. Rule's 65-1, and 68-373, supra in that you are engaging in routine software and technology design, development, testing, and distribution, similar to that which a commercial software company engages in to create new products or adapt their products to new uses in order to be competitive in the market. As such, your activities are an incident to commercial operations and do not further an IRC Section 501(c)(3) scientific purpose. Accordingly, you are not a scientific research organization exempt under Section 501(c)(3).

Conclusion

Based on the foregoing, we have determined that you were formed for the purpose of creating, developing, and publishing a specific product. You are operated for substantial non-exempt purposes and for the private benefit of your members. In addition, you do not serve a charitable class, further an educational purpose, or further a scientific purpose as described in IRC Section 501(c)(3). Therefore, you do not qualify for exemption under Section 501(c)(3) and donations to you are not deductible by the donor.

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 Determination 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
PO 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