



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

Date:
03/22/2023
Employer ID number:

Tax years:

Person to contact:

Number: **202324012**
Release Date: 6/16/2023

UIL: 501.00-03, 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.

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

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Letter 437

Redacted Letter 4034

Redacted Letter 4038

cc:



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

Date:
 February 1, 2023
Employer ID number:

Person to contact:
 Name:
 ID number:
 Telephone:
 Fax:

Legend:

- B = state
- C = date
- D = software
- E = currency
- f percent = number 1
- g percent = number 2
- h dollars = amount
- J = number 2
- K = platform
- L = company 1
- M = company 2
- N = company 3

UIL:

- 501.00-03
- 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 were formed as a corporation on C, in B. According to your amended and restated articles of incorporation your purpose is exclusively charitable, educational, or scientific within the meaning of IRC Section 501(c)(3).

You claim that your mission is to benefit and support the broader community that aims to deliver the promise of K, where every internet user can participate in the value they create because they have _____ of their _____ and _____. You plan on creating _____ to the _____ based upon the D protocol. The D protocol is a _____ linked to E by its _____ that spans the _____, called _____. This enables D to leverage E's security and enables D apps to use E's state, despite being a separate _____. D

powers apps that run on the D instead of on a , enabling new use cases that couldn't exist before. You claim in your application that your activities consist of approximately f percent research and maintenance of public infrastructure, and g percent education and grants.

Like E, D is a . There are many individuals and companies from all over the world that contribute to and build on D. The development is open source and community driven through open messaging platforms L and M. You create new avenues for innovation through funding research, ecosystem development, and developer incentives.

You made a capital commitment of h dollars to a company which employs a and has a closely aligned mission, developing K, a and .

With respect to the time you spend on research, you claim:

You may support, design, conduct and publish research, potentially in collaboration with academics and institutions, or collaborate with institutions, organizations, or individuals already conducting research, related to a , in particular the D protocol. All results of this research and/or development of related technology such as software or other innovations will be made available to the public gratis. Research results related to software will be made available through publication, wherein all will be made available to the general public under software licenses permitting n and of the .

One of the ways that you support research is by granting funds to independent researchers, contributors, and collaborators to help build a better through research and development. According to your grant agreements, a grant recipient's use of a D Development Grant is entirely outside of your control or direction. Your grant agreements also state that it is intended that benefits may accrue to your principals through the use of the D network that has been enriched by the developments you have funded.

Your grant agreements provide samples of the projects that you have funded. These projects include an application that acts as "your home on D." This application allows a user to track the "meta" data of D users as well as keep track of their own transactions. In the grant application the funded project is referred to as " " for D, providing a user with searchable and reviewable information regarding the D Another grant was awarded for a application allowing D users to fund organizations through E and for such organizations to manage their . A grant was awarded to create a "peer-to-peer marketplace for services" based on the D protocol. Finally, you also provided a grant agreement to create a program to "protect [D] users from [phishing], identity theft and other scam activities."

With respect to maintenance of public infrastructure, you claim:

D is a designed to work as a public utility to enable the development of smart contracts on E. D is powered by open networks (anyone with an Internet-connected computer can participate) that internet. These networks distribute to all participants a transactions. No party on the network acts as a or otherwise has to or the of any participant.

With respect to education, you claim:

You operate a website pertaining to a _____, D, the computing networks that power it, and research and technologies that can be integrated into the network. You educate the public regarding D through a variety of potential methods, including dissemination or publication of guides, manuals, and blogs, among other possible resources. These materials are free on your website. These materials provide education on a variety of topics, including the basics of D, the role and importance of D in society, future developments in D, and the need for ongoing development. You also hold regular forums for discussing and solving coding problems to help further the development of D technology. You are the home for governance of D's _____ technology, serving as neutral ground for various parties to come together and reach consensus on the path forward. These activities will be conducted mostly virtually by your staff, volunteers, and grantees. You also offer free consulting services to other _____ to help them make the best use of the tech available to them.

You received a _____ of J, D (_____) from N, a _____ entity and your main contributor. N acknowledges, in its contribution agreement with you, that it expects to receive economic benefits from this transfer. In the contribution agreement it states in part, "Contributor believes, based upon extensive experience in the field of _____ development, that transferring the Contributed Assets to the Assignee will bring economic benefits both to itself and to other persons and entities, and Contributor further believes that, although it will not receive any specific quantifiable services from the Assignee on account of the contribution nor will it be a customer of the Assignee, the _____ benefits it will receive from the contribution will be commensurate with the value of the Contributed Assets transferred to the Assignee." The terms of the contribution agreement place restrictions on the sale and/or transfer of _____ for _____ years for the benefit of D holders and other _____

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(a)-1(c) defines a private shareholder or individual as one having a personal and private interest in the activities of the organization.

Treas. Reg. 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 IRC Section 501(c)(3), includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with scientific; and the nature of particular research depends upon the purpose which it serves. For research to be scientific, within the meaning of Section 501(c), it must be carried on in furtherance of a scientific purpose. 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.

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 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.

In Rev. Rul. 66-358, 1966-2 C.B. 218, a corporation contributed funds and realty adjacent to its plant reception area to an organization exempt from Federal income tax under IRC Section 501(c)(3). The exempt organization used the funds and realty to establish a park for the use of the general public.

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).

Rev. Rul. 68-489, 1968-2 C.B. 210, states that, “An organization will not jeopardize its exemption under IRC Section 501(c)(3), even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for Section 501(c)(3) purposes.”

Rev. Rul. 70-79, 1970-1 C.B. 127, describes an organization that assisted local governments of a metropolitan area by researching solutions for common regional problems, such as water and air pollution, waste disposal, water supply, and transportation, that was operated exclusively for the charitable purpose of relieving the burden of government. The chief elected officers of the local jurisdictions constituted the membership of the organization. Receipts included assessments on the local jurisdictions. The interrelationship between the local governments and the organization indicates the existence of a burden of government in that the organization's membership was composed totally of government officials; persons appointed by the local governments involved. The funding of the organization from the government assessments indicates a burden of government. Developing regional plans and policies for regional problems is an activity normally conducted by governmental units and indicates a burden of the government.

Rev. Rul. 70-186, 1970-1 C.B. 128, holds that an organization formed to preserve a lake used as a public recreation facility by treating the water in the lake and otherwise improving its condition for recreational purposes is a charitable organization within the meaning of IRC section 501(c)(3).

Rev. Rul. 71-29, 1971-1 C.B. 150, states that a grant to a city transit authority for the purpose of maintaining a mass transportation system qualifies as a charitable disbursement in furtherance of an organization's exempt purposes.

Rev. Rul. 85-1, 1985-1 C.B. 177, states that an activity is a burden of government only if there is an objective manifestation by a governmental unit that it considers the activities of the organization to be its burden. It was through participation of government officials on the governing body of the charity, the provision of funding, and the actual use of the organization's services.

Rev. Rul. 85-2, 1985-2 C.B. 178, states that an organization is lessening the burdens of government if its activities are activities that a governmental unit considers to be its burdens, and the activities lessen such governmental burden. The organization must demonstrate that a governmental unit considers the organization to be acting on the government's behalf, thereby actually freeing up government assets — human, material, and fiscal — that would otherwise have to be devoted to the activity. This determination is based on facts and circumstances. The fact that a government sometimes takes part in an activity will not be enough to meet the test, nor will mere expressions of support from officials.

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 Universal Oil Products. Co. v. Campbell, 181 F.2d 451, 464 (7th Cir. 1950), it was found that a business corporation engaging in development of refining processes was not organized nor operated exclusively for scientific or educational purposes. The court quoted another case in nothing that: “It did not operate on the basis of science for the sake of science. It was science for the sake of business. The fact that scientific methods were used by the petitioner does not alter the case. Most business today uses some kind of scientific processes or methods.”

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.”

In Columbia Park & Recreation Association, Inc. v. Commissioner, 88 T.C. 1 (1987), aff’d without published opinion, 838 F.2d 465 (4th Cir. 1988), the petitioner argued that it had a charitable purpose to lessen the burdens of government. According to the petitioner, it provides a wide range of services and facilities to the residents of a large private real estate development and that if it did not provide these services and facilities the local or state government would have to provide them. The Tax Court, in upholding an IRS ruling that the petitioner is not organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3), rejected the petitioner’s argument, saying that the mere assertion that, in petitioner’s absence, government would have to assume the activities in question does not mean the activities are, in fact, the burdens of government. Rather, the court said, the organization must demonstrate that the government accepts the activities conducted by the petitioner as its responsibility and recognizes petitioner as acting on its behalf. In addition, the organization must further establish that its activities lessen the burden of the state or local government.

In Jacobsen v Katzer, 535 F.3d 1373 (Fed. Cir. 2008), the court held that a software owner cannot bring infringement action as to an open source software unless the defendant acts in a manner contrary to the open source license terms.

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 the operational test as explained below.

You have not demonstrated that you are operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). A substantial part of your activities are in furtherance of creating a , which is not an exempt purpose; therefore, you are not operated exclusively for exempt 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. A that is open source and community driven through open messaging platforms L and M does not serve an exempt purpose. As developing and maintaining a is your primary activity, it is a substantial activity. Accordingly, you have a substantial nonexempt purpose, and are not exempt under IRC Section 501(c)(3).

The Creation of a Does Not Further Scientific Purposes.

You do not qualify for tax-exemption as a scientific research organization for your activities related to the research and development of a . 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).

Your self-described activities of research and development of technology such as software or other innovations are like the two organizations described in Rev. Rul. 65-1 and Rev. Rul. 68-373, in that you are engaging in, or otherwise funding, 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 to be competitive in the market.

You are also like the organization in Universal Oil Products. Co. v. Campbell. The organization's main objective in that case was to develop and acquire oil refining processes. The court found that such activities did not constitute scientific research. The court indicated that the organization's activities were "science for the sake of business." Here your activities are for the sake of business in that what you claim to be scientific research stands to benefit an entire industry that develops technologies.

Your activity is of a type ordinarily carried on as an incident to commercial or industrial operations. A involves open-source software intended to replace software created by entities. A also involves software intended to replace " " software created by entities. The grant agreements that you provided indicate that your funds will be used to create software applications that replicate programs. One grant creates a " " for D. Another grant replicates sites like or creating a "peer-to-peer marketplace for services." And a third guards the user from malicious internet activity. The fact that the source codes for these programs will be open to the public (at least in their beta formats) does not remove such activity from being incidental to commercial operations.

Therefore, even if your research is made available to the public, you have not demonstrated that you conduct scientific research because your activities are an incident to commercial operations.

The Creation of a Does Not Further Charitable Purposes.

You have not shown that your activities further a charitable purpose because you do not limit your services to a specific charitable class. You claim that a will benefit the general public; but the general public is not a defined charitable class, as it includes all persons, not just those with charitable characteristics, such as the poor and distressed.

Moreover, whatever public good you claim your provides, it is not the type of public benefit 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 (e.g., Section 501(c)(6)) 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 to a charitable class, the development and distribution of the 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.

The Creation of a**Does Not Lessen the Burdens of Government.**

You state that you were established for the purpose of lessening the burdens of government. You must demonstrate that the government accepts your activities as its responsibility and recognizes that you are acting on its behalf. See Columbia Park & Recreation Association, Inc. v. Commissioner, 88 T.C. at 21.

The term “charitable” includes lessening the burdens of government. Treas. Reg. Section 1.501(c)(3)-1(d)(2). To qualify as an IRC Section 501(c)(3) organization on the basis of lessening the burdens of the government, you must meet a two-pronged test. The first prong requires that a government unit objectively manifest that it considers your activities to be its burden. See Rev. Rul. 85-1 and Rev. Rul. 85-2.

You do not meet the first prong of the lessening the burdens of government test as there is no objective manifestation by the government that it considers the development of an “ ” to be its burden. You have not shown that you will be funded, supported by, or have a working relationship with any governmental entity. You have not demonstrated an objective manifestation by the government recognizing that your activities are its burden or responsibility, as required by Rev. Rul. 85-1 and 85-2.

Therefore, we must consider all relevant facts and circumstances in determining whether an objective manifestation exists. “A favorable working relationship between the government and the organization is strong evidence that the organization is actually ‘lessening’ the burdens of the government.” See Rev. Rul. 85-2. The stronger the control a government has over the activities of the organization the better evidence of an objective manifestation. See Rev. Rul. 85-1. You are not controlled, nor are you working directly with the government. The government has no influence over your activities, no representation in your governing body, nor do they have any right to appoint any of your officers and/or board members. They do not have any role in how you conduct your operations.

You do not meet the second prong of the lessening the burdens of government test. To meet the second prong your activities must actually lessen the burdens of a governmental unit. Evidence that the organization is actually lessening the burdens of government is shown when the government could not continue to conduct its program without the organization’s activities. See Rev. Rul. 85-2. Your activities do not alleviate any fiscal or personnel burden of the government. There is no evidence you defray any of their expenses. Moreover, the government has not acknowledged that the creation of a “ ” is its burden. Thus, you also fail to meet the second prong of the test and do not qualify under IRC Section 501(c)(3) as an organization that is lessening the burdens of the government within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(2).

You are unlike the organization described in Rev. Rul. 70-79 where the chief elected officers of the local jurisdictions constituted the membership of the organization. The interrelationship between the local governments and the organization indicated the existence of a burden of government in that the organization’s membership was composed totally of government officials.

You state the Organization for Economic Cooperation and Development (OECD) stressed the importance of an open internet to achieve social well-being and address society’s greatest challenges, including health care and climate change. OECD does not use the phrase “open internet” to mean a fully decentralized, open source, non-proprietary, internet. The documents use the phrase “open internet” to describe how the internet is relatively open and decentralized by nature. The OECD documents do not manifest the intent of any part of the government within the meaning of IRC Section 501(c)(3) to develop an internet as you describe. The

documents also do not solely refer to the positives of internet openness, but rather, examine the pros and cons of the relatively decentralized nature of the internet.

The Creation of a [redacted] is Not a Public Work.

You state that you are creating a public work by developing a [redacted] designed to work as a public utility. [redacted] fail several key tax characteristics of public works. First, software is not a facility. It is not a lake, park, or like any other public work described in Rev. Rul. 66-358 and Rev. Rul. 70-186. [redacted] are [redacted], and by their very nature, [redacted] are not fixed; their perpetual existence and access by the public relies upon private persons [redacted] the [redacted] on private servers, and anyone may [redacted] the [redacted]. Second, [redacted] of this nature are not “ordinarily provided at public expense.” It is not something ordinarily constructed by public bodies for use by members of the public. Third, anyone can appropriate it or portions of it for nonpublic uses. For instance, private persons can use it for nonexempt purposes.

In Jacobsen v. Katzer, 535 F.3d 1373 (Fed. Cir. 2008), the court recognized that free and open software licenses are used by “software engineers ... to dedicate certain works to the public” and Rev. Rul. 71-29, recognized that purposes beneficial to the community as a whole have been deemed charitable. Even if an exempt organization copyright holder retained sufficient ownership rights via its open-source license to satisfy the public ownership requirement of public works, software cannot satisfy other essential tax characteristics. The charitable purpose underlying public works is to provide the community with facilities ... ordinarily provided at public expense. See Scott and Ascher on Trusts, 5th ed. Section 38.6. Software is not a facility nor is it ordinarily provided at public expense. The fact that digital goods can, after development, be duplicated ad infinitum at a price approaching zero does not satisfy this tax characteristic. Under copyright law, dedicating certain works to the public appears to include mere licensing to the public that does not divest the copyright holder of all right, title, and interest to the work. As noted above, complete public ownership is an essential tax characteristic of “public works” within that term's meaning under IRC Section 501(c)(3).

Because open source software fails the essential tax attributes of public works, you do not qualify under IRC Section 501(c)(3) as an organization erecting or maintaining public buildings, monuments, or works within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(2).

The Creation of a [redacted] Does Not Further Educational Purposes

You claim you are developing and maintaining a [redacted] and that you will publish some educational materials. 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. While you may conduct some activities with educational aspects, you are not operated exclusively for exempt purposes, and you are operated for substantial nonexempt purposes. Unlike the organizations in Rev. Rul. 65-2, 66-179 and Rev. Rul. 66-255, which provided instructional training, lectures, workshops, exhibits and presentations, you primarily develop and distribute open-source software. You state that your activities consist of approximately 20% education and grants. Even if 20% of your activities exclusively further educational purposes, a substantial portion of your activities are not primarily educational and are not otherwise exempt.

Private Benefit

An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than private interest. See 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.” You are operated for a substantial private interest in that you promote the private interest of your initial and primary donor, a _____ entity, and the private interests of _____ companies in the tech space. Your main contributor, a _____ entity, acknowledges it expects to receive economic benefits from its contribution to the organization. In the contribution agreement it states in part, “Contributor believes, based upon extensive experience in the field of _____ development, that transferring the Contributed Assets to the Assignee will bring economic benefits both to itself and to other persons and entities, and Contributor further believes that, although it will not receive any specific quantifiable services from the Assignee on account of the contribution nor will it be a customer of the Assignee, the economic benefits it will receive from the contribution will be commensurate with the value of the Contributed Assets transferred to the Assignee.”

You admitted in your application that your goals are closely aligned with those of some _____ entities. You made investments in some of these _____ entities. You also make grants to _____ entities and to individual entrepreneurs. According to your grant agreements, use of grant funds is entirely outside of your control or direction. Rev. Rul. 68-489 provides that for such grants to further a charitable purpose you must retain control and discretion over these funds.

You haven’t established that your free consulting services to _____ entities excludes _____ entities.

Throughout your application for recognition of exemption you have acknowledged that your efforts will provide economic benefits to private shareholders or individuals as defined in Treas. Reg. Section 1.501(a)-1(c). Your contribution contract states that the contributor, which is a _____ entity, expects economic benefits both to itself, equal to its contribution, and to other persons and entities. You invest and support the development of _____ and _____ technologies; technologies which are ordinarily used and developed for commercial purposes. And your grant agreements acknowledge that you, or your principals, may benefit from the use of the funded applications.

For the above reasons, you benefit private interests, and such benefit is not merely incidental to exempt purposes. Per Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

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 contributor and other _____ entities. In addition, you do not further a scientific purpose, do not serve a charitable purpose, are not a public work, and do not further an educational purpose or serve a charitable class 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.

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

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements