



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

Date:  
11/06/2023  
Employer ID number:

Form you must file:  
1120  
Tax years:  
All  
Person to contact:

Release Number: 202405013  
Release Date: 2/2/2024  
UIL Code: 501.03-00,  
501.03-30, 501.33-00

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](http://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,

Stephen A. Martin  
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: 09/13/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

U = Operating System

V = Product

W = Product

X = Date of Formation

Y = State of Formation

Z = Company

**UJL:**

501.03-00

501.03.30

501.33-00

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 submitted Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

You attest that you formed as an Unincorporated Association on X, in the state of Y. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

On the Form 1023-EZ, you described your mission or most significant activities as a “primary financial and operational driving group behind the open-source V operating system and finances all operational aspects of V operating system outside the purview of Z who also supports V”.

During review of your Form 1023-EZ, detailed information was requested to supplement the above information

You provide financial and logistical support to the volunteers who contribute to and develop the V version of the W operating system. V is an open-source U operating system and freely usable by anyone worldwide. Your primary logistical support for V was provided, and is still provided, to an extent, by Z, a for-profit organization, who owns the copyrights to V and W. Your primary operational infrastructure support has always been community-driven or contributed at no cost by other organizations.

Your activities of financial and logistical support include, but is not limited to, leadership of the team involved in developing V, helping developers introduce new features to V, handling payments for necessary cloud-hosted infrastructure, testing software changes, and providing representation at open software conferences and technology conventions.

Your community outreach includes assisting groups in utilization of V and U for educational and technological purposes, such as helping new computer programmers, and software developers, contribute to the project and expand their skills in learning the V and U operating systems. Furthermore, you help them develop various programs and components of the V and U operating systems.

Your primary affiliate is Z, the primary group behind the W operating system of which V is a separately developed but distinct group. Other affiliates include local education groups in various regions, local U user groups, informal groups and associations of individuals who are U enthusiasts, and occasionally local educational institutions. Your activities occur mostly online via IRC, forums, or email lists. Your activities do not have any fees associated with them.

Your revenue consists of donations from the public. You have a membership that consists of individuals who must provide significant time and effort in the ongoing development of V. There are no fees associated with becoming a member, but a prospective member must apply to your board members for consideration. Your board members are considered your permanent members. You provide funding to these permanent members to further operations, and you reimburse them for qualified business expenses. The qualified business expenses are generally small-scale infrastructure purchases to further the V project.

**Law**

IRC Section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable, or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, 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 such section. If an organization fails to meet either the organizational test or the 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 one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than private interest. Thus to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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) provides that the term "educational" as used in IRC Section 501(c)(3) generally relates to the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. Section 1.50(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. 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.

Revenue Ruling 65-1, 1965-1 C.B. 226, held that 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, held 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, provided 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, held 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. 66-358, 1966-2 C.B. 218, described a situation where an acceptance of funds and adjacent realty by an exempt organization for establishing a public park did not affect its exempt status under IRC Section 501(c)(3) even though the corporate donor retained the right to continue using the picture of a certain scenic view in the park as its brand symbol.

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). The ruling concluded that clinical testing is an activity ordinarily carried on as an incident to a pharmaceutical company's commercial operation. Thus, this activity did not qualify as one that was formed to provide "testing for public safety" as outlined in the Regulations and that such testing principally served the private interest of the manufacturer rather than the public interest.

Rev. Rul. 70-186, 1970-1 C.B. 128, held that an organization formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features qualified for exemption under IRC Section 501(c)(3) as a charitable organization that erected or maintained a public work. The ruling determined that, by treating the water, removing algae, and otherwise improving the condition of the water, the organization ensured the continued use of the lake for public recreational purposes and therefore performed a charitable activity. Furthermore, the benefits of the organization's activities flowed principally to the public through the maintenance and improvement of public recreational facilities.

Rev. Rul. 71-29, 1971-1 C.B. 150, 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.

Rev. Rul. 72-369, 1972-2 C.B. 245 ruled on an organization formed to provide managerial and consulting services for nonprofit organizations exempt under IRC Section 501(c)(3) of the Code to improve the administration of their charitable programs. The instant organization made no profit from providing its services. An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the 'operational test' the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of Section 501(c)(3) and the applicable regulations. Providing administrative services does not serve a charitable purpose. Thus, the organization did not qualify for exemption under Section 501(c)(3) of the Code.

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.

In American Campaign Academy v. Commissioner, 92 T.C. 1053, 1076 (1989), discussing Columbia Park & Recreation Assn. v. Commissioner, 88 T.C. 1, 18-21 (1987), aff'd. without published opinion, 838 F.2d 465 (4<sup>th</sup> Cir. 1988), the court indicated that the charitable purpose of an organization is not merely determined by the number of persons benefitted. Specifically, the size of an organization is meaningless if it is not fully integrated with a public element. Qualitative and not quantitative factors are more determinant of an organization's charitable purpose. Further, class size is only one factor to be considered in the qualitative analysis; it is not the sole determinant. It was also determined that the activities by the organization in this case substantially benefitted the private interests of political entities and candidates more than incidentally, which is a substantial non-exempt purpose.

In Jacobsen v. Katzer, 535 F.3d 1373 (Fed. Cir. 2008), it was found that under copyright law, dedicating certain works to the public appears to include mere licensing to the public does not divest the copyright holder of all right, title, and interest to the work.

#### **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. See Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are not operating exclusively for charitable, educational, or scientific purposes. You are operated for a substantial nonexempt purpose because you develop open-source software that authorizes use freely by anyone worldwide for any purpose, including potential nonexempt commercial, recreational, or personal purposes, campaign intervention and lobbying. These providers and producers also derive a commercial advantage from your open-source software because in its absence, they would either need to perform their own research, develop their own software, or would have to purchase commercial software. You are like the organization in Better Business Bureau of Washington D.C. because you have a single non-exempt purpose that is substantial in nature.

#### **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. The class of people served must be both indefinite and have charitable characteristics. See American Campaign Academy v. Commissioner, in discussing Columbia Park & Recreation Assn. v. Commissioner. Indefinite means that the specific members comprising the class are not fixed. The public is an indefinite class, as are the users of the open-source software you are developing. The magnitude and breath of the benefited class does not cause it to be inherently charitable. The large size of the benefited class does not diminish the need for the class to have charitable characteristics. Charitable characteristics are analyzed qualitatively.

You have not shown that all members of the public share any charitable characteristics. V can be used by any entity worldwide. These users do not share any charitable characteristics: the only common characteristic they have is that they are users of V.

Whatever public good that V 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, while political campaigns clearly provide a benefit to the community as part of the democratic process, Section 501(c)(3) expressly prohibits participation by exempt organizations. Any amount of campaign intervention disqualifies an otherwise exempt organization. Similarly, 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 the use of V to a charitable class, the development and distribution of V to the public under open-source licenses is not the type or benefit to the community contemplated by Section 501(c)(3) and does not further a charitable purpose.

You are like the organization in Rev. Rul. 72-369 because your resources are not devoted to purposes that qualify as exclusively charitable within the meaning of Section 501(c)(3) and the applicable regulations. Supporting, designing, and encouraging the development of V, which is made available to the public, gratis and under free open-source licenses, does not serve a charitable purpose. Furthermore, an organization is not exempt merely because its operations are not conducted for the purpose of producing a profit.

### **Software Is Not A Public Work.**

Your substantial purpose is the support, design, and encouragement of the development of V, which is made available to the public, gratis and under free open-source licenses. Treas. Reg. Section 1.501(c)(3)-1(d)(2) defines the term charitable to include “erecting or maintaining public buildings, monuments, or works.” The charitable purpose underlying the concept of public works from Scott and Ascher on Trusts, 5th ed. Section 38.6, as noted in American Campaign Academy v. Commissioner, is to provide facilities for the benefit of the community at public expense.

Software fails 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. Software is intangible, and by its very nature, software is not fixed; its perpetual existence and access by the public relies upon private persons hosting the code on private servers, and anyone may alter the software. Second, software is not “ordinarily provided at public expense.” It is not something ordinarily constructed by public bodies for use by members of the public. Anyone can appropriate it or portions of it for nonpublic uses. For instance, private persons can use it for nonexempt purposes. Finally, public works must serve a community. Open-source licensing ensures it is accessible to the world. We have not found any authority for the proposition that the world is a community within the meaning of IRC Section 501(c)(3).

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, above, recognized that purposes beneficial to the community have been deemed charitable. Complete public ownership is an essential tax characteristic of “public works” within that term’s meaning under IRC Section 501(c)(3). Since Z is a for-profit organization, and it retains the copyrights for V, you do not satisfy the essential public ownership requirement of public works. 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.



Because open-source software fails the essential tax attribute 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).

### **Your Activities Are Not Exclusively Educational.**

You do have activities devoted to education; However, these educational activities are insubstantial to your exclusive activities that support, design, and otherwise encourage the development of V, which is made available to the public, gratis and under free open-source licenses. By supporting, designing, and encouraging the development of V you are not exclusively providing training or instruction like the organizations in Rev. Rul. 65-2, Rev. Rul. 66-179, or Rev. Rul. 66-255, as explained above. See also Better Business Bureau of Washington D.C.

### **Scientific Purposes: Developing Open-Source Software Is Ordinarily Carried on as a Commercial Operation.**

You do not qualify for tax exemption as a scientific research organization for your activities related to the research and development of V. 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 incidental 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 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 V. This research is an activity ordinarily carried on as support to a software company's commercial operation. Your self-described activities of research and development of V are like the two organizations described in Rev. Rul. 65-1, and Rev. Rul. 68-373, in that you are engaging in routine software and technology design, development, testing, and distribution, like 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. As such, your activities are incidental to commercial operations and do not further an IRC Section 501(c)(3) scientific purpose.

### **Serving Private Interests.**

You do not meet the requirements for exemption as outlined in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). As previously indicated, you were formed to provide financial and logistical support for the development of V, an open-source operating system. Z, who owns the copyrights to V and W, is a private, for-profit entity. You also state that your funding will consist of donations from the general public, and that a portion of this funding will be to financially assist your permanent members in the development of V. Your permanent members also serve as members of your board. Because of this, your activities substantially serve the private interests of Z and members of your board, more than incidentally. Therefore, you do not qualify for exemption under Section 501(c)(3). See Rev. Rul. 68-373 and American Campaign Academy v. Commissioner.

### **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 operating for substantial non-exempt private purposes. 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). It has also been determined that you serve a private rather than public interest. 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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements