



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201420021**
Release Date: 5/16/2014

Date: February 19, 2014

UIL: 501.06-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Karen Schiller
Acting Director, EO Rulings and
Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: December 05, 2013

501.06-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

<u>State</u>	=
<u>Date 1</u>	=
<u>Date 2</u>	=
<u>Date 3</u>	=
<u>Program 1</u>	=
<u>Program 2</u>	=
<u>Entity</u>	=
<u>Amount 1</u>	=
<u>Amount 2</u>	=
<u>Conference</u>	=
<u>Amount 3</u>	=

Dear :

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

Facts

The information you submitted indicates that you were organized as a not-for-profit corporation on Date 1 under the laws of State. You filed a Form 1023 on Date 2 for determination of exempt status under § 501(c)(3). On Date 3, you submitted a Form 1024 and requested determination under § 501(c)(6) instead of § 501(c)(3). You state that your primary activity is developing open source software and an interactive forum for the advancement of unified communications software.

Your Articles of Incorporation state that you are not organized for profit and that no part of your net earnings shall inure to the benefit of any private individual within the meaning of § 501(c)(6). Your Articles state that your principal activities shall include serving the mutual benefit of developers, distributors, and customers of open source software, creating and distributing software under open-source licensing, soliciting contributions of software; and securing

intellectual property. The Articles also state you may make distributions to nonprofits entitled to exemption under §§ 501(c)(3) or 501(c)(6), and that your assets shall be distributed to one or more nonprofits entitled to exemption under §§501(c)(3) or 501(c)(6) upon dissolution.

Your bylaws state your purposes are to: (i) create and distribute software under open source licenses, (ii) to solicit the contribution of software for modification and incorporation into your software; and (iii) to secure patents, copyrights, trademarks, service marks and certification marks to distinguish your software and services from those of other organizations.

You provide open-source software, free of charge, and a website for users and contributors to interact and contribute code. Your largest current project is development and distribution of Program 1, developed through open source collaboration. Program 1 is unified open source communications software that integrates communications into one application. It provides voice, video, unified messaging, conferencing, instant messaging, group chat, and screen sharing features. End users and system managers have the ability to set up, configure and administer the system and its features remotely. It appears that unrelated third parties make contributions to your software; that you own your website, jointly hold title to the contributed code, and review and budget for these activities and you're the amounts paid to Entity; and that all of your other operations are performed by Entity.

Your website states that Program 1 is the open source edition of Program 2, provided to the community by Entity, a for-profit corporation. Your website references the various editions Program 2. The Program 2 editions described on your website are licensed for use for a fee payable to Entity. Entity provides the commercial support for the Program 2 editions. Program 2 serves the communications needs for mid to large size enterprises.

You also organize an annual three-day conference for Program 1 and Program 2 users, and third party commercial ecosystem components. Conference is open to the public and costs approximately Amount 3 for attendance. From the information you submitted, it appears the content and purpose of the conference appears to be convening users of, and contributors to, Program 1 and Program 2 with vendors of components, applications, or support services for Program 1 and Program 2, for information exchange and education related to Program 1 and Program 2.

You state you are organized to benefit the industry or line of business of higher education institutions. Your membership is limited to higher education institutions. You work with your member educational institutions to tailor and integrate Program 1 with other programs specific to educational institutions. The educational institutions pay an initial membership fee, ranging from Amount 1, and an annual membership fee, ranging from Amount 2, depending on the student size of the educational institution. The members receive: (i) Program 1, otherwise available for free to the public; (ii) commercial support and guidance, otherwise available to paying users of Program 2; (iii) free admission to Conference user conference; and (iv) a position on your steering committee, to have a voice in the direction of development of your software. The commercial support is provided by Entity. You state that your programs are intended to assist higher education IT administrators with mobile learning systems as well as the communication needs of the students and faculty.

Nonmembers, which may include any member of the public, may use Program 1, free of charge, and receive free support provided by the open-source community through your website.

Nonmembers may also receive commercial support and guidance provided by Entity for a fee, and may attend Conference for a fee. You have not indicated whether membership on your steering committee is open to nonmembers.

The general public contributes all code to you voluntarily for no compensation to the contributor. Line 14d of Part VIII of your application states that the contributors must execute a contributor agreement that allow you to use the contributions without restriction. You submitted your sample contribution agreement, which states that the contributor must grant you and Entity joint ownership in all worldwide common law and statutory rights associate with copyrights and copyright applications. You and Entity share have the irrevocable, transferable, sub-licensable worldwide, royalty free perpetual right to make and distribute copies, and to create and distribute collective and derivative works of the contribution. The contributor agreement states that Entity will review all code and determine whether it should be admitted to the code base.

You state you have no employees. You state that you contract out many of the services you provide. The contractor for consulting, support services and administrative services is Entity. In your Consulting Services Agreement, you agreed to pay 70% of the annual membership and renewal fees received by you to Entity. In the Support Services Agreement, you agree to pay 20% of the annual and renewal membership fees received by you to Entity. In the Administrative Services Agreement, you agree to pay 10% of the annual and renewal membership fees received by you to Entity.

Entity was created by your founders to provide support services for Program 1, and that it is focused on commercial support for mid-size to large organizations. Entity was organized in 2010, the first year you had any substantial profits. Three of your five directors are employees of Entity. Two of those directors are also directors and chief officers at Entity. You state that none of those persons bill you for their time spent on your contracts as employees of Entity. You state that those services which must be outsourced are bid out, and that those directors recuse themselves from the vote on vendor selection. Your minutes indicate that all three interested directors voted on the rate structure and other substantive provisions of the agreement with Entity for consulting services, support services, and administrative services. Your financial statements show loans to Entity. It appears that most of your activities are outsourced to Entity, and that the operations performed directly by you are limited to holding title jointly with Entity to the software, maintaining your website, and budgeting for outsourced activities, such as Conference, administrative services, support services, and consulting services.

Your Bylaws state that no more than 49% of your directors shall be interested persons. You define an interested person as any persons directly compensated by you for services rendered within the prior twelve months as employee or as independent contractor, and family members of those persons. Your Bylaws state that an annual report must be prepared showing all transactions in which an interested person had a direct or indirect financial interest and that involve more then \$50,000.00. For purposes of that provision, an interested person includes any director, officer, employee of you, your parent, or subsidiary, or any holder of more than 10% of the voting power your organization, your parent, or subsidiary. Mere common directorship shall not be considered such an interest. It states that if the transaction was with a partnership with which the interested person is a partner, only the interest of the partnership need be described in such report.

Law

I.R.C. § 501(c)(6) provides for the exemption from Federal income tax of business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, not organized for profit and no part of the net earnings of which inure to the benefit of private shareholders or individuals.

Treas. Reg. § 1.501(a)-1(c) provides "[p]rivate shareholder" or individual(s) refers to persons having a personal and private interest in the activities of the organization."

Treas. Reg. § 1.501(c)(6)-1 provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. The activities of such organization should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a regular business of a kind ordinarily carried on for a profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 56-65, 1956-1 C.B. 199 holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses, is performing particular services for individual persons. Such organization is not entitled to exemption under § 501(c)(6), even though it performs functions that are of benefit to the particular industry and the public generally.

Rev. Rul. 58-294, 1958-1 C.B. 244 describes an organization formed to promote the business interests of those involved in the manufacture and sale of a particular patented product. Membership in the organization is limited to those engaged in the manufacture and sale of the product. The organization owns the controlling interests in the corporation that holds the basic patents in the product. The revenue ruling holds that such organization does not qualify for exemption as a business league under § 501(c)(6) since it is engaged in furthering the business interests of the dealers of a particular product as distinguished from improving business conditions generally.

Rev. Rul. 66-338, 1966-2 C.B. 226 holds that an organization formed to promote the interest of a particular retail trade which advised its members in the operation of their individual businesses and sells supplies and equipment to them is not exempt under § 501(c)(6). The revenue ruling states that by providing its members with an economy and convenience in the conduct in their individual businesses, the organization is performing particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade or business.

Rev. Rul. 68-264, 1968-1 C.B. 264 defines a particular service for the purposes of § 501(c)(6) as including an activity that serves as a convenience or economy to members of the organization in the operation of their own businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180, in discussion the exempt status of a shopping center merchants' association under § 501(c)(6), describes in detail the history of § 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required by Treas. Reg. § 1.501(c)(6)-1 is usually the general economic welfare of a community and it has been accepted that an organization seeking § 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all the commercial enterprises in a given trade community. Trade associations or business leagues under § 501(c)(6) are similar to chambers of commerce, except that they serve only the common business interests of the members of a single line of business or the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in a § 501(c)(6) organization is voluntary and open generally to all businesses and professional persons in the community.

Rev. Rul. 83-164, 1983-2 C.B. 95 describes an organization whose purpose is to conduct conferences for the dissemination of information concerning computers manufactured by one specific company, M. Although membership is comprised of various businesses that own, rent or lease computers made by M, membership is open to businesses that use other brands of computers. At the conferences, presentations are given primarily by representatives of M, as well as by other experts in the computer field. Problems related to members' use of M's computers are also discussed and current information concerning M's products is also provided. The revenue ruling holds that by directing its activities to businesses that use computers made by one manufacturer, the organization is improving business conditions in a segment of a line of business rather than in an industry as a whole and is not exempt under § 501(c)(6). The revenue ruling concludes that by providing a focus on the products of one particular manufacturer, the organization is providing M with a competitive advantage at the expense of manufacturers of other computer brands.

In National Muffler Dealers Association v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of § 501(c)(6) because a single brand represented only a segment of an industry.

In Church by Mail v. Commissioner, 765 F. 2d 1387 (9th Cir. 1985), aff'g 48 T.C.M. (CCH) 471 (1984), the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9th Circuit Court of Appeals, in affirming the Tax Court's decision, stated:

The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church.

In Guide International Corporation v. U.S., 948 F.2d 360 (7th Cir. 1991), the Court concluded that an association of computer users did not qualify for exemption under § 501(c)(6) because it benefited essentially users of IBM equipment.

In Bluetooth SIG, Inc. v. United States, 611 F.3d 617 (9th Cir. 2010), the Ninth Circuit Court of Appeals held that an association that owned and marketed a wireless networking protocol and trademark was not exempt under I.R.C. § 501(c)(6) because it engaged in a business ordinarily

conducted for profit, it did not improve the conditions of one or more lines of business, and it provided particular services for members. The court cited the District Court's discussion of the differences between Bluetooth and American Plywood Association v. United States, 267 F. Supp. 830 (W.D. Wash. 1967), finding that:

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

In National Prime Users Group, Inc. v. U.S., 667 F. Supp. 250 (D.C. Md. 1987), the Court held that an organization which served the needs of users of a specific brand of computers promoted only a segment of a line of business and was not exempt under § 501(c)(6).

In est of Hawaii, 71 T.C. 1067 (1979), the petitioner conducted training, seminars and lectures under licensing arrangements with various for-profit corporations conditioned on the petitioner maintaining tax exempt status. The petitioner argued that it had no commercial purpose of its own and that its payments to the for-profits were just ordinary and necessary business expenses. The Court did not agree. The question for the court was whether the for-profit benefited substantially from the operation of the applicant.

In MIB, Inc. v. Commissioner, 80 T.C. 438 (1983), rev'd on other grounds, 734 F.2d 71 (1st Cir. 1984), the Tax Court ruled that exchanging insurance underwriting information among an organization's members with virtually all insurers in the nation as members was not a regular business of a kind ordinarily conducted for profit and therefore did not preclude exemption of organization as a business league under § 501(c)(6). In making this determination, "the case law has generally focused on the existence of competing profit-oriented businesses." Factors indicating the existence of competing profit-oriented businesses include whether there was reasonably foreseeable competition, whether a for-profit business would or could perform a similar function if the organization ceased operations, and the existence of actual competition.

Rationale

Based on the information provided, your primary activity is the development and promotion of particular software, which is in competition with other software. The collaborative development of your products and free distribution of your product, without technological support, does not distinguish your activity from commercial activity. You do not improve one or more lines of business, but rather perform particular services for members. Your paying members receive a commercial level technological support for your product. Further, it appears that your membership fees inure to the benefit of private persons, because you contract with an entity related to your directors to receive 100% of your membership fees and joint ownership of intellectual property rights to your software code. Therefore, you do not qualify for recognition under § 501(c)(6).

Section 501(c)(6) authorizes federal income tax exemption for business leagues defined in § 1.501(c)(6)-1. An organization must satisfy the following factors to be recognized as exempt:

- (1) It must be an association of persons having some common business interest, and its purpose must be to promote this common business interest.
- (2) It must not be organized for profit.
- (3) It must be a membership organization and have a meaningful extent of membership support.
- (4) No part of its net earnings may inure to the benefit of any private shareholder or individual.
- (5) Its purpose must not be to engage in a regular business of a kind ordinarily carried on for profit, even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining.
- (6) Its activities must be directed at the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Treas. Reg. § 1.501(c)(6)-1; see Bluetooth SIG, Inc. v. United States, 611 F.3d 617 (9th Cir. 2010).

According to the activities of your member organizations, the common interest of your member organizations is higher education. Thus, your main activities should consist of improving the business of the higher education industry to be qualified as a § 501(c)(6) organization. In MIB, Inc. v. Commissioner, 80 T.C. 438, the court noted that a business league must not only improve the conditions of a line of business, but must do so in a way different from simply supplying products or services to its members. To determine whether an organization is exempt under § 501(c)(6), the court stated: "the ultimate inquiry is whether the association's activities advance the members' interests generally, by virtue of their membership in the industry, or whether they assist members in the pursuit of their individual businesses." MIB, Inc. v. Commissioner, 734 F.2d 71, 76. The court cited education programs, lobbying and institutional advertising as the type of activities that clearly met this test.

Since your activities are not directed at promoting the common economic interests of all the commercial enterprises in a given trade community, your right to exemption under § 501(c)(6), if any, rests on your characterization as a business league or trade association. An organization under § 501(c)(6) is a membership organization characteristically supported by dues. The information that you have submitted indicates that your membership in general, supports you through initial and annual membership fees. However, your members have a very limited involvement in your activities. In fact, your activities do not involve your members except on a limited basis. Your day to day operations are overseen by Entity. Membership support, both in the form of dues and involvement in the organizations, must be at a meaningful level. See Rev. Rul. 73-411, *supra*.

It does not appear that your activities promote higher education in general other than provision, customization, and support of unified communications software. In fact, the same benefits available to the dues-paying members of the industry you promote are available to any other persons for a fee. In effect, the common economic interest of your organization is your software, rather than higher education institutions.

You engage in a regular business of the kind ordinarily carried on for profit because your purpose is to develop and promote specific software. Treas. Reg. § 1.501(c)(6)-1. An organization whose purpose is to engage in regular business of a kind ordinarily carried on for

profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. Id. The business' nature determines whether it is ordinarily carried on for profit. Rev. Rul. 81-174. The inquiry focuses on "the existence of competing profit-oriented businesses." MIB, Inc. v. Commissioner, 80 T.C. 438, 454 (1983), rev'd on other grounds, 734 F.2d 71 (1st Cir. 1984). Factors indicating the existence of competing profit-oriented businesses include whether there is reasonably foreseeable competition, whether a for-profit business would or could perform a similar function if the organization ceased operations, and the existence of actual competition. Id. at 455-56.

Activities engaged in by regular businesses of the kind ordinarily carried on for profit include:

- Promoting uniform practices in connection with a certain product or patented technology;
- Directly or indirectly owning the relevant trademarks or patents to that product or technology;
- Granting licenses under the trademarks or patents to use the product or technology; and
- Selling the equipment and materials necessary to manufacture the product.

See Bluetooth SIG, 611 F.3d at 622; Rev. Rul. 58-294, *supra*. Furthermore, a group of individuals banding together to produce a particular product indicates that the members intend to "create a thing of value, which [the business league's] members can then use to enhance the value of the products they sell." Bluetooth SIG, 611 F.3d at 623.

Your activities are indistinguishable from the activities performed by the organizations in Rev. Rul. 58-294 and Bluetooth SIG, 611 F.3d 617. First, you develop and promote particular software, own the relevant trademarks and patents, and grant licenses to members and non-members to use your trademark. Additionally, your members and users of your software created the software, and which they can then use for any purpose.

The fact that you distribute the community edition of your software to the public for free does not change this conclusion. In Bluetooth SIG, the court recognized that licensing intellectual property for a low-price is a business tactic to prevent competitors from forming rival technology standards.

As the district court recognized, the Bluetooth trademark is a "valuable commodity" which is "for sale." Under different circumstances, Ericsson (or the original Promoters) might have licensed its intellectual property for a low price. Companies license their intellectual property rights all the time, and here—where competitors could just as easily come up with a different standard—the owner will likely license its intellectual property at a low enough cost to prevent the formation of rival standards. If Ericsson had decided to license the Bluetooth brand and technology, it would be engaging in business activity of the sort ordinarily engaged in for profit. A low selling price and a manufacturer-agnostic rights holder do not change the fundamental commercial nature of the transaction.

611 F.3d at 623. You collaborate with members and nonmembers to develop technology, and you market, own and promote the technology. You don't charge for use of the basic version of

your product, which is a common commercial marketing tactic. Therefore, you engage in a business ordinarily conducted for profit.

In National Muffler Dealers Association v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of § 501(c)(6) because a single brand represented only a segment of an industry. Similarly, the court in Bluetooth SIG determined that "Bluetooth-enabled products" was not an industry. 611 F.3d at 623. Your activities do not improve the business conditions of one or more lines of business because organizations that use your software are not an industry. Therefore, you do not benefit a line of business.

Additionally, your primary activity is developing, distributing, and licensing software. Although you distribute the software royalty free, your software competes with software produced by other entities. The fact such software may not perform the exact same function or as well as yours is irrelevant. You promote a single brand or product. Organizations that promote a single brand or product within a line of business do not improve an industry or line of business, and do not qualify for exemption under § 501(c)(6). National Muffler Dealers Ass'n., 440 U.S. at 483; Rev. Rul. 68-182, 1968-1 C.B. 263; Rev. Rul. 83-164, 1983-2 C.B. 95.

By developing and promoting your software, you are performing particular services for members. Rev. Rul. 68-264 defines "particular services" as including an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses. See MIB, Inc. v. Commissioner, 734 F.2d 171 (1st Cir. 1984). Your membership includes members of the industry of higher educational institutions, and any other users or contributors of your software. Your members pay a membership fee and receive in return access to Program 1 and technical assistance, which is otherwise available for purchase by Entity. Your members are essentially paying for a product and a service related to the product which effect their economic operation, and which are otherwise available by purchase from Entity or other competing companies. Your members also may participate in the direction of further development of your software. Such participation allows the members to maximize the economy of your software to their individual business. Rev. Rul. 68-264, *supra*. You are similar to the organization described in Rev. Rul. 56-65, *supra*, which furnished particular information and specialized individual services to individual members to effect economies in the operation of their individual businesses. Such an organization is not an exempt business league or board of trade within the meaning of § 501(c)(6).

Section 501(c)(6) provides that no part of the net earnings of an exempt business league may inure to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the Income Tax Regulations provides the terms private shareholders or individuals refer to persons having a personal and private interest in the activities of the organization.

If a related for-profit corporation benefited substantially from the operation of an applicant organization, it does not qualify for exemption. See Church by Mail v. Commissioner, 765 F. 2d 1387 (9th Cir. 1985); est of Hawaii, 71 T.C. 1067 (1979). You have three contracts with Entity that stipulate a total of 100% of your membership income shall be paid to Entity. Three of your five directors are officers and/or employees of Entity. Your board meeting minutes evidence that three of your five directors (a voting majority of your board) voted on all of the contracts with Entity. Although you state your directors do not bill you for their time as employees of Entity,

you have not provided any evidence that your directors do not benefit otherwise from the payment of all of your membership income to Entity.

Your bylaws and Articles allow interested persons to vote on transactions from which they may benefit indirectly. Your bylaws only require interested persons who benefit from transactions to report such transactions annually, but not before voting on, preparing or closing such transactions. Your minutes indicate that the interested directors participated in such votes, and initiated and seconded the votes, on the rate structure and other substantive provisions of the agreements with Entity for consulting services, support services, and administrative services. Your minutes do not indicate any discussion of any other contractor to provide administrative, consulting, or support services, or whether the amounts paid to Entity were reasonable, necessary and ordinary. There is no upper limit on the compensation to be paid to Entity. There is no evidence that the compensation is linked to the value of services performed.

Your financial statements also indicate you have entered into loan transactions with Entity, but you have not provided any information that these transactions were reasonable, arms-length transactions. You also state that you are the protectorate of your software, but your contribution agreements require contributors to assign joint copyright ownership to you and to Entity. Further, Entity controls the decisions with respect to contributions to the software code.

You have not provided any evidence that these transactions are ordinary and necessary business expenses, negotiated at arms length in your best interest. You distribute most of your revenue to Entity and have apparently distributed a portion of your assets to Entity. The timing of your founders organizing Entity also indicates intent to divert your assets from advancing an exempt purpose.

Conclusion

For the reasons described above, we conclude that you do not qualify for recognition of exemption from federal income tax under § 501(c)(6). You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you

want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

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

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Karen Schiller
Acting Director, Exempt Organizations
Rulings and Agreements