



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

Date:
05/02/2025
Employer ID number:

Person to contact:

Release Number: 202530014

Release Date: 7/25/2025

UIL Code: 501.00-00, 501.03-00, 501.35-00, 501.32-00

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

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

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

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

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Letter 437
Redacted Letter 4034
Letter 4038



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

Date:
02/27/2025
Employer ID number:

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

Legend:

B = Date
C = State
D = Software
E = Software
F = Company
x percent = percentage
y percent = percentage

UIL:

501.00-00
501.03-00
501.35-00
501.32-00

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 B, in the State of C.

Your Form 1023 application states that you exist to promote collaboration and standardization in regard to the open source ecosystem by bringing together diverse stakeholders to work on best practices and standards. Your group will focus on creating a space where academia, nonprofits, and the public sector can collaborate on basic concepts and processes in the open source industry. You have several advisory groups that will be working on best practices for processes and governance. You will share these best practices under the D license. This will benefit thousands of open source projects by making them safer. You will share your training and documentation openly under the D license so anyone can freely use and reuse your work. You will also hold and be a registry for certifications after best practices and guidelines are established.

While reviewing your application, we sent a request for additional information regarding your activities.

You responded that your operations will consist of several activities, including open source collaboration and standardization, collaboration on basic processes, workshops and codeathons, registry for certifications, creation of public digital infrastructure, membership activities, and training and documentation.

When asked if you will be creating open source software, you stated you “will exclusively create open source software”. You later stated that about x percent of your activities are dedicated to creating and maintaining open source software. This software will be developed by your community of contributors (developers, designers, project managers, and other experts) using best practices in open source development. Contributors will include both volunteers and contracted professionals. You will create the software using public repositories, code reviews, and continuous integration to ensure quality and security. The documentation of your processes and collaborations will be publicly available and licensed under the D license, allowing free reproduction and distribution of the works.

You mandate that all contributors sign a contributor license agreement. This license, aligned with the D license, is a free, permissive software license that allows users to use, modify, distribute, and create derivative works from licensed software. All development work will be hosted on your E server, providing a centralized platform for version control and collaboration. The software will be available to anyone worldwide (free access with no eligibility requirements). This ensures the software can be freely used, modified, and shared. However, you will target educational institutions, nonprofits, and public sector organizations. You will also include other open source nonprofit organizations that wish to discontinue their use of proprietary software.

You have two main categories of platform users. In both cases of users, the software serves various functions such as improving public digital infrastructure, offering solutions, and providing integrations with other open source projects.

You are considering being a membership organization. Membership activities would include newsletters, member-exclusive webinars, and access to a members-only area of your website and associated tools where resources and forums are available. Members would pay an annual fee, but you also plan to have a no-cost membership for individuals. Benefits to members may include updates on initiatives, membership summit, coding competition invitations, collaborative community project opportunities, and discounts on workshop and certification programs. Members would also be encouraged to contribute to your projects, with opportunities tailored to their areas of interest.

Currently, a for-profit organization, controlled by your founder, F, is maintaining your platform and covering any hosting costs as you launch. When funding becomes available, F will participate in the bidding process for the contract to support your platform. F is also completing a variety of tasks, including administering board meetings, creating a website, and beginning a community launch and social media outreach plan.

You aim to be supported by grants and donations. You hope to transition to a more financially sustainable position through program and membership fees within three to five years as you expand your services and member base. You expect a gradual increase in self-generated income, estimating that program fees and memberships will contribute approximately y percent to the overall budget. Expenses will include salary, cloud hosting costs, platform support contracting fees, fundraising costs, and accounting and legal fees.

Law

IRC Section 501(c)(3) provides for the exemption from federal income tax of organizations 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) states that in order to qualify under 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 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 that 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(c)(2) states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides the term “charitable” is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides that the term “educational,” as used in IRC Section 501(c)(3), 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.

In Revenue Ruling 71-504, 1971-2 C.B. 231, a city medical society exempt under IRC Section 501(c)(6), that primarily directs its activities to the promotion of the common business purposes of its members may not be reclassified as an educational or charitable organization under Section 501(c)(3). The society was created for the purpose of promoting the art of medicine, the betterment of public health, and the unity, harmony, and welfare of members of the medical profession. Membership is open to all doctors in the community. Activities included presentations on new procedures and clinical care, an extensive library of medical books for use by members, a monthly medical journal, supporting medical education and local health programs, a patient referral service for members, meetings concerned with matters affecting the promotion and practice of medicine and enhancing and improving the public image of the medical profession. While some of the society’s activities are charitable or educational, several are instead directed primarily at the promotion of the medical profession and thus further the common business purposes of its members.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States interpreted the requirement in IRC Section 501(c)(3) that an organization be “operated exclusively” by indicating that an organization must be devoted to exempt purposes exclusively. The presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

Application of law

You are not described in IRC Section 501(c)(3) because you fail the operational test of Treas. Reg. Section 1.501(c)(3)-1(a)(1). You are not operating “exclusively” for exempt purposes as required by Treas. Reg. Section 1.501(c)(3)-1(c)(1). Creating, maintaining, and providing open source software for anyone to use for any purpose constitutes a substantial, non-exempt purpose. Your open source software activity is not limited for charitable purposes or to a charitable class. Your open source software activities are not charitable per Treas. Reg. Section 1.501(c)(3)-1(d)(2) or educational per Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i). Like the organization in Rev. Rul. 71-504, you have substantial non-exempt activities. Thus, you are precluded from exemption under IRC Section 501(c)(3).

Like the organization in Rev. Rul. 71-504, some of your activities may be considered educational or charitable. However, a substantial portion of your activities involves the creation, maintenance, and provision of open source software (available worldwide for any individual or organization to use for any purpose) which does not further “exclusively” exempt purposes. Thus, like the organization in Better Business Bureau, you have a substantial non-exempt purpose that destroys exemption regardless of the number and importance of truly exempt purposes.

Further, you intend to pay your founder’s organization to service your open source software activities. As described in Treas. Reg. Section 1.501(c)(3)-1(c)(1), you are not operating exclusively for exempt purposes because your funds inure to your founder.

Conclusion

Based on the information submitted, you do not qualify for exemption under IRC Section 501(c)(3). You do not meet the operational test because you are operated for a substantial non-exempt purpose and your funds inure to your founder.

If you agree

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

If you don't agree

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

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

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

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

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

Where to send your protest

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

U.S. mail:

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

Street address for delivery service:

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

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

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

Contacting the Taxpayer Advocate Service

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

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements