



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201533014**
Release Date: 8/14/2015
UIL Code: 501.32-00

Date: May 22, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). 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 Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Director, Exempt Organizations

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date:
March 31, 2015
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

LEGEND:

UIL:

B = State
C = Date
E = Tool Name
F = Tool Name
G = Tool Name
H = Tool Name
J = Tool Name

501.03-00
501.03-08

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Does M qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You were organized as a nonprofit corporation under the laws of B on C. Your Articles of Incorporation state as your specific purpose for being organized, "Our mission is to promote global media literacy, journalism, and enlightenment through use of tagged media. We will empower people to assemble and remix media into new forms and help them create, share, and discover content by developing an open ecosystem for transcribed audio and video."

Your charitable purpose, as described on your Form 1023, is to transcribe the spoken word by taking all spoken audio located on the internet and developing transcripts which can be easily accessible, searchable, navigable, and indexed. Another stated purpose is to create transcripts for all spoken word on the internet in an effort to aid those with learning and physical disabilities and to use the transcripts as a framework for the provision of language learning applications.

You have developed open source web applications which link texts to specific moments in a piece of video or audio so users can pull content from previously created recordings and create new remixed recordings. The concept is to make online audio and video as easy as text files currently are to consume, share, and remix. You've done this by creating time-coded transcripts of the audio or video and you've provided web application build tools that work interchangeably and allow the user to create a final file that is accessible, indexed and searchable on the World Wide Web. One hundred percent of your activities consist of the development, promotion and distribution of your open source web applications.

Your programs are provided for free and in an open source format using the MIT License. Anyone with access to the internet can use or modify your programs for better use. You retain copyrights of your products but the license allows for unrestricted redistribution of either source code or the program, with or without modification, so long as the copyright header from your organization is left intact. This allows your programs to be used by any individual or organization for any purpose, including commercial purposes. Your software has been used in the media industry by creating interactive recordings for leading media companies.

You've explained that if an individual wants an audio transcript, you will help write one but if the individual does not want to write one themselves, you will do your best to provide one using your automated tools. Fees are only charged if the user wants you to host the media file but is not ok with other users using the file. If the user requests for you to generate transcripts of a media file, you work with third party partners who are willing to generate transcripts for the user and will charge fees for their services.

You have developed the following web development tools:

- E – This allows users to take audio and video files and develop transcripts of the words spoken in the files. You take audio or video files and optional non-timed transcripts as inputs and return a timed transcript marked as HTML as the output. You then utilize automated transcript software, such as open-sourced CMU Sphinx, to create the final transcripts.
- F – This software takes the results of E and corrects any word recognition errors or anomalies that occurred during the process.
- G – This takes items such as subtitles and closed captioning embedded in the file to create a word accurate transcript that is hyperlinked to the media it represents.
- H – This software application can manipulate and assemble digital transcripts together to create their own unique media file. The software allows for copy and pasting and drag and drop functions so users can embed the resulting audio/video program on their own websites. You stated it will be especially beneficial to journalists who require the ability to produce quick edits of material prior to publication.
- J – This program allows the final product to be finalized for quick publication by taking timing references in the media file and the transcripts that have been developed by the H and mixing the results into one file.

These build tools provide users the ability to create an easy and cost-effective way to generate an audio transcript. They also create interfaces that use the transcripts so that users can edit their videos, create remixes

and tell new stories without a learning curve and allow users to design experiences that make videos more interactive and easier to consume.

You are operated by a three person board of directors. Your founder has a company that developed a prototype software application used in your web application build tools. You are funded by donations and foundation grants. The financial data provided in your Form 1023 indicates that 81.6% of your total expenses are attributable to compensation of your officers, directors and/or employees, 7% of your expenses are attributable to professional fees and only 11.4% of your expenses are attributable to program expenses for the services you provide.

Law

I.R.C. § 501(c)(3) exempts from taxation any corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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

Treas. Reg. § 1.501(c)(3)-1 (b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. § 1.501(c)(3)-1 (b)(4) provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the state in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Treas. Reg. § 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 I.R.C. § 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. § 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as an organization described in I.R.C. § 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

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

Treas. Reg. § 1.501(c)(3)-1 (d)(2) provides that the term "charitable" is used in I.R.C. § 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. § 1.501(c)(3)-1 (d)(3)(i) provides that the term "educational" relates to: (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. § 1.501(c)(3)-1 (d)(3)(ii) (Example 2) provides that an educational organization includes an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Rev. Rul. 66-255, 1966-2 C.B. 210, describes an educational organization that qualified for providing public information. In this ruling, the organization educated the public as to a particular method of painless childbirth. The organization utilized meetings, films, forums, and publications to educate the public. The organization carried out its purpose through (a) public programs of films followed by discussions with doctors and members of the organization; (b) presentations on local radio stations; (c) meetings conducted by a doctor or a registered nurse for expectant parents; and (d) pamphlets, manuals, and books which are distributed to libraries, hospitals, and obstetricians.

Rev. Rul. 72-124, 1972-1 C.B. 145, held that providing for the special needs of the aged has long been recognized as a charitable purpose for federal tax purposes where the requisite elements of relief of distress and community benefit have been found to be present. As such, an organization that is relieving the distress of aged personal by providing for the primary needs of such individuals for housing, health care, and financial security is held exempt from federal income tax under section 501(c)(3) of the Code as an organization organized and operated exclusively for charitable purposes.

Rev Rul. 72-369, 1972-2 C.B. 245 held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under I.R.C. § 501(c)(3). The ruling held that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit and the fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 77-365, 1977-2 C.B. 192, describes an educational organization that conducted clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport.

Rev. Rul. 79-19, 1979-1 C.B. 195, 1979, held that the handicapped are a charitable class and that a nonprofit organization that provides specially designed housing to physically handicapped persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code.

In Forest Press Inc. v. Commissioner, 22 T.C. 265 (1954), the Tax Court determined that an organization "devoted to developing and propagating the use of the Dewey Decimal Classification System and Related Index" was a charitable organization. Forest Press' primary activity was the ongoing development of the system, which required continuous revision. To this end, Forest Press regularly employed an editor-in-chief and four editorial assistants and an additional two to three editorial assistants as publication dates approached. By the time Forest Press was formed, the System had "been adopted by more than 90 percent of the libraries in the United States to classify and index their collections" and was "in use in 42 countries." Thus, the court concluded that the System was "an important aid to education and research and not a commercial enterprise."

Application of Law

You are not described in IRC § 501(c)(3) because you do not meet the requirements for exemption described in Treas. Reg. § 1.501(c)(3)-1 (a)(1). You fail both the organizational and operational tests.

You are not organized exclusively for one or more exempt purposes, as described in Treas. Reg. § 1.501(c)(3)-1 (b)(1)(i), because your articles of organization do not limit your purposes to one or more exempt purposes. In addition, you fail the organizational test because your assets are not dedicated to an exempt purpose, as described in Treas. Reg. § 1.501(c)(3)-1 (b)(4). Your articles of organization do not include any provision regarding the dedication of your assets.

You are not described in IRC § 501(c)(3) as an educational organization for the development, promotion and distribution of open source web applications. The term "educational", as used in I.R.C. § 501(c)(3) relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community. See Treas. Reg. § 1.501(c)(3)-1 (d)(3)(i). The regulations provide several examples of organizations that qualify as educational organizations, including "organizations whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs." See Treas. Reg. § 1.501(c)(3)-1 (d)(3)(ii), example (2). One such educational organization was described in Rev. Rul. 66-255, 1966-2 C. B. 210, which describes an organization formed to educate the public as to a particular method of painless childbirth. The organization carried out its purpose through (a) public programs of films followed by discussions with doctors and members of the organization; (b) presentations on local radio stations; (c) meetings conducted by a doctor or a registered nurse for expectant parents; and (d) pamphlets, manuals, and books which are distributed to libraries, hospitals, and obstetricians. Another example of a qualifying educational organization was described in Rev. Rul. 77-365, 1977-2 C.B. 192, in which the organization qualified for its activities of conducting clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport.

You are not conducting any of the activities described above. You do not conduct any public discussion groups, forums, panels, lectures or similar programs. You merely provide open source web applications that can be used or modified by anyone and used for whatever purpose that individual sees fit. You do not conduct any educational activities that instructor train individuals for the purpose of improving their capabilities. Your activities are best described as providing a product with product information and are analogous to a product manual, which does not rise to the level of educational as required under I.R.C § 501(c)(3).

You are not described in I.R.C. § 501(c)(3) as a charitable organization for creating, promoting, and distributing open source web applications. The term "charitable" is used in I.R.C. § 501(c)(3) in its generally accepted legal sense and is not to be construed as limited by the separate enumeration in that section. See Treas. Reg. §

1.501(c)(3)-1 (d)(2). The term "charitable" includes the following: relief of the poor and distressed or of the underprivileged; advancement of education or science; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above. Additionally, a purported charitable activity must benefit a sufficiently large and indefinite class. The Service has recognized charitable classes to include the poor, distressed and underprivileged, See Treas. Reg. § 1.501(c)(3)-1 (d)(2), the aged, See Rev. Rul. 72-124, 1972-1 C.B. 145, and the sick or handicapped. See Rev. Rul. 79-19, 1979-1 C.B. 195.

You promote and distribute open source web applications freely to the public. The provision of goods or services to the public must fulfill a recognized I.R.C. § 501(c)(3) charitable purpose itself, or be directed to benefiting a charitable class recognized under I.R.C. § 501(c)(3). Merely providing open source web applications to the public for free is not a charitable activity under I.R.C. § 501(c)(3). Furthermore, as stated above, the Service has recognized charitable classes to include the poor, distressed and underprivileged, the aged, and the sick or handicapped. However, the public who may use your programs is not a recognized charitable class. Thus, you have not shown that you are operated exclusively for one or more exempt purposes.

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) of the Code and the applicable regulations. Like the organization in Rev Rul. 72-369, 1972-2 C.B. 245, your activities are not conducted with the purpose of producing a profit but they are not conducted to exclusively benefit a charitable class. Your web applications can be used by anyone with interest in your services which establishes that your purpose is not to exclusively benefit a charitable class. In fact, you've indicated that your software applications will be especially beneficial to journalists who require the ability to produce quick edits of material prior to publication. This indicates that the product is not intended to exclusively benefit a charitable class and instead can be used for commercial ventures.

You are not operated exclusively for exempt purposes because you serve private rather than public interests. See Treas. Reg. § 1.501(c)(3)-1 (d)(1)(ii). This is indicated by the fact you refer users to your third party partners who will charge fees. Your partners are in a position to receive customers for their for-profit ventures because of their relationship to you. In addition, because your software applications will be especially beneficial to journalists indicates you are operating for their private interests.

Your activities are not analogous to the activities of the organization in Forest Press Inc. v. Commissioner, 22 T.C. 265 (1954). In Forest Press, the organization's primary activity was the continued development and propagation of the Dewey Decimal Classification System, which the Tax Court described as "an important aid to education and research," and which classification system was adopted by more than 90% of the libraries in the United States and in 42 foreign countries. By providing web applications that allow users to remix content for whatever purpose they see fit, your activities are neither educational nor comparable to promoting the Dewey Decimal Classification System. Furthermore, you do not limit distribution of your programs to educational or other charitable organizations because your programs are available to all individuals and organizations, commercial or otherwise. Thus, your activities are neither educational nor advance education within the meaning of I.R.C. § 501(c)(3).

Your position

You believe you have provided the necessary information to satisfy the requirements in order to qualify for exemption as an organization described in section 501(c)(3) of the Code.

Service response to your position

Given the activities you have explained, you do not meet the requirements for exemption as an organization described in section 501(c)(3) of the Code.

Conclusion

The facts clearly show that you are not operated as an exempt organization described under section 501(c)(3) of the Code. You fail both the organizational and operational test and you are not formed and operated exclusively for one or more exempt purposes under I.R.C. § 501(c)(3).

If you don't agree

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

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

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

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

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a

basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

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

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892