

ATKIN & ASSOCIATES

CENTER FOR NONPROFIT LAW

August 12, 2013

TO: Open Source GeoSpatial Foundation, Board of Directors
Attn: Daniel Morissette
RE: Your application to the IRS for 501(c)(3) status
Response to the IRS

Dear Members of the Board of Directors:

As requested, I am writing to explain the response of the U.S. Internal Revenue Service (IRS) to the Open Source GeoSpatial Foundation's (hereafter OS GEO) application for tax exempt status pursuant to Section 501(c)(3) status of the Internal Revenue Code.

United States Federal law requires that tax exempt, 501(c)(3) organizations must be organized and operated exclusively for the public's benefit, by working to accomplish charitable, educational, scientific, religious or literary purposes. Even if an organization does this, however, if there is more than an incidental amount of "private benefit" conferred on any private parties or private interests, that will lead to the denial or revocation of 501(c)(3) status.

The IRS now has accumulated more than a decade of experience dealing with "open source" organizations applying for tax exempt status, and operating as tax exempt organizations. Based on that experience, the IRS has determined that open source organizations frequently provide too much private benefit to the business interests of the people involved with them, and such organizations will generally not be granted 501(c)(3) status. Accordingly, the IRS agent assigned to investigate your application has concluded that your Foundation will very likely be granted 501(c)(3) status if it is limited to organizing, funding and funding only the three following activities:

1. Any activities done in educational in nature and done cooperation with Universities and Colleges, and any educational activities involving the students at those educational institutions.
2. Any work involved in planning, organizing and holding the OS GEO Annual Conference, if the Foundation organizes the conference, provides the venue, selects the topics and speakers, and actively

"Helping the People Who Change the World"

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directs the themes of the Annual Conference to ensure that it is educational.

3. Publication of an OS GEO journal that is educational, if the Foundation actively selects the topics and authors rather than just providing a space or venue for people to share their own ideas.

Accordingly, OS GEO can gain 501(c)(3) status by focusing exclusively on any or all of those three activities, and ceasing its involvement in any other activities, including facilitating the general sharing of information and ideas about open source software, because those other activities provide too much benefit to private interests.

Therefore, the IRS agent has suggested that they will grant 501(c)(3) status to OS GEO if it ceases those other activities. You can do that by creating a new nonprofit corporation to be the 501(C)(3) tax exempt Foundation, which will focus exclusively on the three approved activities listed above. For now, all the OS GEO Board has to decide is whether it wants to have a 501(c)(3) Foundation that will focus on just those three approved activities listed above, in order to qualify for that status. If so, or if not, we need to notify the IRS of your commitment to that plan by the end of this month.

The next decision you must make is whether to create a new nonprofit corporation to be your 501(c)(3) Foundation, and let the current OS GEO corporate entity, conduct all of the other activities; or to do the reverse – you can try to have the current corporate entity OS GEO Foundation be approved as the 501(c)(3) entity and create a new corporation that can conduct the other activities, including facilitating all of the sharing of ideas and information you want to have.

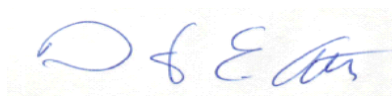
Based on what the IRS agent said about this choice, it seems clear that it will be much better received by the IRS, and so quicker, cheaper, and easier for you to gain 501(c)(3) status, if you incorporate a new nonprofit corporation for the purpose of organizing, funding and conducting the three approved activities listed above. Due to the current controversy inside the IRS over granting 501(c)(3) status to open source organizations, however, I would advise and suggest that you change the name of the Foundation in the process, by deleting the words Open Source and leaving the name simply as “The GeoSpatial Foundation.” Incorporating a new legal entity to carry on those three approved activities can be done quickly and relatively inexpensively.

The existing OS GEO Foundation corporation can then continue to use the current full name Open Source GeoSpatial Foundation, and can conduct and fund all of the other activities you currently do, plus any other activities you might want to do, including facilitating a variety of methods for encouraging and facilitating the open sharing of ideas and information about open source software, holding open source 'trade fairs,' and having business firms act as sponsors of those and other activities, for which they receive public acknowledgement and industry-wide promotion.

If you wish, you can then easily convert your current application for the existing OS GEO corporation to an application for 501(c)(6) status as a Professional Association or an Industry Association, if the people and companies involved are primarily there for their shared commercial and business purposes; or alternatively you can simply let the existing nonprofit corporation become a tax paying entity that pays little or no taxes so long as it spends most of its income each year and thus retains little or no taxable profits.

Please let me know if you have further questions or concerns that you would like to discuss with us.

Sincerely yours,



David E. Atkin