

# NONPROFIT SUPPORT SERVICES

A Law Office Assisting Nonprofit Organizations with  
Legal, Financial and Organizational Matters

October 29, 2012

## THE OPEN SOURCE GEOSPATIAL FOUNDATION

Attn: Daniel Morissette  
345 Rue Des Saguenéens, Suite 280  
Chicoutimi, Quebec G7H 6K9  
Canada

Dear Daniel,

Following are some observations and suggestions that came out of my discussion with the IRS agent assigned to your organization's application, Ms. Liz Ardoin. Most of her concerns are apparent in the questions and requests for further information that she has now sent you. We have already discussed all of them by phone, however, in case it is helpful to you I am sending you this summary of her observations and suggestions.

1. Open Source organizations as a class are generally not granted tax exempt status by the IRS for a variety of reasons, including ways in which their work may confer an "Improper Private Benefit" on businesses. For example the website describes a sponsorship program that includes "Project Sponsorships" in which the donor can choose to support a particular program. The IRS is concerned that this could result in supporting a for-profit software business. That would not be allowed, as it could confer an "improper private benefit" on those businesses, which would be a violation of IRS regulations.

The IRS agent seems very sure that OS Geo will need to either eliminate a number of programs and activities, or transfer them to a new for-profit taxable subsidiary corporation. If OS Geo would like to engage in any activities that advertise for for-profit companies, or that produce any benefit to for-profit companies, then all such activities should be moved into such a taxable for-profit subsidiary corporation that would be created, owned and controlled by OS Geo for such purposes.

2. The website indicates that Event Sponsors get a full page of donor acknowledgment space on the back of the program. This is acceptable

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by itself, but it must be phrased as thanking a sponsor, and NOT appear to be ADVERTISING.

A. It appears that event sponsors also get their logo and a 200 word profile place in the event program book. This is a problem because it appears that OS Geo is engaged in promoting or at least advertising for that event sponsor, instead of just making a donor acknowledgement.

B. Similarly, it appears that event sponsors get to have their company brochure in the program book, which looks more like promoting a company or advertising for it than simple donor acknowledgment.

C. Also, the complementary product display booth provided to certain donors or sponsors provides a way of inviting them to sell their items there at the organization's event. Again, that's more than just acknowledging and thanking a donor.

3. There is a statement in the 1023 application form for OS Geo that states that it encourages the use of its software, its intellectual property, its advertisements, and its logo in shipping and selling its products. The agent is concerned that this all looks too much like a business activity and asks whether all those kinds of activities could be done by a taxable for-profit subsidiary corporation created and owned by OS Geo for that purpose?

4. Your website indicates that you provide support for the broader open source geospatial community. This statement is so broad that it probably would include supporting open source organizations that a 501(c)(3) organization cannot legally support. Open source products are often helpful, but nothing about them is automatically qualified for 501(c)(3) status. It would be better to focus on a mission that is more clearly educational.

As you answer the IRS agent's questions, please keep these issues in mind. Let us know how we can best help you.

Sincerely,



David E. Atkin, Attorney