

OEMR, Protest of the IRS proposed determination

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 statements contains all relevant facts and such facts are true, correct, and complete.

\_\_\_\_\_  
Signature of Stephen Waite, Treasurer of OEMR

\_\_\_\_\_  
Date

**OEMR's general response**

It is apparent from the IRS proposed determination that there has been a misunderstanding. The OpenEMR project and the OEMR organization have mistakenly been melded together. In fact, the OpenEMR project and the OEMR organization are separate entities with separate goals and missions.

The OpenEMR project is a software project; website located at <http://www.open-emr.org>. It produces and distributes the OpenEMR software.

The OEMR organization is a nonprofit organization, website located at <http://www.oemr.org>, with the mission to ensure that all people, regardless of race, socioeconomic status or geographic location, have access to high-quality medical care through the donation of free, open source medical software and service relating to that software.

The OEMR organization supports the charitable side of OpenEMR and uses OpenEMR as an instrument to further the mission of the OEMR organization. OEMR also educates and provides services and resources to underrepresented groups and other charitable organizations. Education topics offered by OEMR include open source, code development, project management, electronic medical records, and OpenEMR.

Although the OEMR organization supports the charitable side of the OpenEMR project to

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further OEMR's mission, it is important to note that OEMR does not govern or oversee the OpenEMR project. It is notable that the list of certified OpenEMR developers and vendors are maintained by the OpenEMR project and linked on the OpenEMR project's website. They are not linked on the OEMR organization's website and the OEMR organization was not involved in creating the criteria required for developers and vendors to be listed.

It is important to note that OEMR was formed exclusively for charitable purposes and was not set up to benefit members of the board. It is also important to note that the OEMR board members are individuals who agree to serve in their individual capacity and must recuse themselves on any decision from which they may financially benefit. To this end, OEMR has a formal conflict of interest policy which has been attached.

Software freedom and the open source movement do provide charitable functions, which especially holds true in the arena of medical care. The charitable function of the OpenEMR medical software is substantial. A high quality medical care product is being freely released to the public which makes it accessible to low resource settings and the under served. The support of a nonprofit organization functions as an additional driver to ensure that the charitable functions of the software are fostered. In fact, if the OEMR were to abandon the nonprofit designation, this would likely lead to the lessening of the charitable function of the OpenEMR software.

In summary, it appears that the separation between OEMR and OpenEMR was overlooked. However, this letter, our previous responses and their respective websites make clear their distinction. OEMR was formed exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, including, for such purposes, the making of distributions to organizations that qualify as exempt under Sections 501(c)(3) and 170(c)(2) of the United States Internal Revenue Code of 1986 and any subsequent revisions of that code and a charitable corporation, as defined in NCGS§55A-1-40 (4).

## **OEMR's specific responses**

1. The IRS proposed determination states that the OEMR organization benefits private medical practices by providing a commercial advantage, which is considered to be a substantial non-exempt purpose. As discussed above in the general response, the OEMR organization is separate from the OpenEMR project. OEMR supports the charitable side of OpenEMR. OEMR does not oversee the OpenEMR project, and thus OEMR does not control who has access to the use of OpenEMR.

It is true that OpenEMR is high quality software distributed freely and that it therefore can be used by standard medical practices in addition to low resource medical practice settings and the under served. From the Internal Revenue Services' line of reasoning, only inferior quality open source software would be able to be used in the under served setting which would then be considered charitable. We disagree and believe that low resource medical practice settings and the under served also deserve to use high quality software to enable their medical care. By supporting the charitable side of the OpenEMR project the OEMR organization fulfills this mission.

2. The IRS proposed determination states that the OEMR organization benefits vendors whom OEMR refers for support. As discussed above in the general response, OEMR is separate from the OpenEMR project. OEMR does not oversee the OpenEMR project. OEMR does not refer to commercial support from the OEMR website and OEMR was not involved in creating the criteria that the OpenEMR project requires for developers and vendors to be certified on the OpenEMR project website.

3. The IRS proposed determination states that OEMR does not serve exclusively charitable purposes. As discussed above in the general response, OEMR is separate from OpenEMR and OEMR supports the charitable side of the OpenEMR project.

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4. The IRS proposed determination states that maintaining a website to promote the development, distribution, and adoption of open source software is not an exempt purpose. As discussed above in OEMR's general response, OEMR is separate from OpenEMR and OEMR supports the charitable side of the OpenEMR project to further OEMR's mission. Additionally, as discussed above in the general response, the OEMR organization also participates in education and provides services and resources to under represented groups and other charitable organizations. Education topics offered by OEMR include open source, code development, project management, electronic medical records, and OpenEMR.
  
5. The IRS proposed determination states that OEMR's website provides a link to the certified vendors/professionals that provide professional support. Certain vendors/professionals may have a connection to the OEMR board thus providing substantial benefit to these individuals. As discussed above in the general response, OEMR does not oversee the OpenEMR project. OEMR does not refer to commercial support from the OEMR website and OEMR was not involved in creating the criteria that the OpenEMR project requires for developers and vendors to be designated on the certified listing. Additionally, as discussed above in the general response, OEMR board members are individuals who agree to serve in their individual capacity and must recuse themselves on any decision from which they may financially benefit per the formalized conflict of interest policy.
  
6. The IRS proposed determination states that promotion of health is recognized as a charitable purpose. However, the IRS also suggests that OEMR fails to exclusively further an exempt purpose and, at the same time, provides a private benefit to doctors, medical offices and the vendors that provide technical support for the software. These issues were addressed in above items 1, 2, 3, 4, and 5.
  
7. Example of Retired Teachers Legal Defense Fund v. Commissioner was cited by the IRS

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proposed determination. This citation pointed out that the tax court defined private benefit to include any “advantage; profit; fruit; privilege; gain or interest.” This was addressed in above items 1, 2, 3, 4, and 5.

8. Example of Better Business Bureau of Washington D.C. Inc. v. United States was cited by the IRS proposed determination. This citation pointed out that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. We argue that there is not a substantial non-exempt purpose, thus OEMR’s claim for exemption is not destroyed.

9. Example of Federation Pharmacy Services Inc. v. Commissioner was cited by the IRS proposed determination. This citation pointed out that any organization whose purpose is to benefit health, however remotely, is not automatically entitled, without more, to the desired exemption. We argue that OEMR was formed exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, including, for such purposes, the making of distributions to organizations that qualify as exempt under Sections 501(c)(3) and 170(c)(2) of the United States Internal Revenue Code of 1986 and any subsequent revisions of that code. And we argue that the OEMR organization is a charitable corporation, as defined in NCGS§55A-1-40 (4).