

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
Pacific Coast Area  
2 Cupania Circle  
Monterey Park, CA 91755

Employer Identification Number:  
[REDACTED]

Person to Contact - ID#:  
[REDACTED]

Telephone Number:  
[REDACTED]

Fax Number:  
[REDACTED]

Refer Reply to:  
[REDACTED]

Date:

JUL 13 2000

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(5) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, "Consent to Proposed Adverse Action". You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers.

You may request a hearing with a member of the officer of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

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We have sent a copy of this letter to your representative as indicated in your power of attorney.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely Yours,

*Steven T. Miller*

Steven T. Miller  
Director, Exempt Organizations

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Publication 892  
Notice 1214  
Form 6018



Enclosure I

The organization was incorporated on [REDACTED] under [REDACTED]

The cooperative was formed for the sole purpose of: obtaining an aggregate of [REDACTED] pursuant to [REDACTED]; sub-allocating that aggregate allocation among the cooperative's members in proportion to their [REDACTED] pursuant to an agreement among members. The cooperative will take such actions as may be necessary to insure the [REDACTED] and its members conduct their joint harvesting activities in compliance with [REDACTED] and related regulations implemented by the [REDACTED] from time to time; and only such other actions as may be necessary to fulfill the purposes set forth in the Act. All pollock caught by cooperative vessels will be delivered to the [REDACTED] plant in [REDACTED].

The cooperative is composed of members who own [REDACTED] percent or more of the vessels qualified under [REDACTED] to participate in a fishery cooperative delivering pollock to the [REDACTED] plant in [REDACTED] during the year [REDACTED]. Each member agrees to exercise all commercially reasonable efforts to obtain the allocation and to deliver pollock harvested in [REDACTED] to the inshore directed plant for as long as they remain members. In addition, the members also agree to release all catch data related to the operation of the member's vessel in [REDACTED] to the [REDACTED] directed fisheries during the years [REDACTED].

Members agree to harvest the pollock in accordance with a harvest schedule percentage that is based on an amount calculated by dividing (i) the total amount of pollock harvested by the member's vessel in the directed pollock fishery for processing by the inshore component during [REDACTED], by (ii) the aggregate total amount of pollock harvested by all vessels in the directed pollock fishery for processing by the inshore component during the period. Each year the schedule is adjusted based on changes to the [REDACTED] to a member's catch history.

The organization will employ an independent consultant for services as a cooperative manager. Some of the duties of the independent consultant will include:



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- a. Account for each vessel's catch of directed species, by-catch species, and prohibited species. Notify vessel operator and owner of vessel's catch in relation to allocation or cap and notify when said vessel is reaching his respective cap as per the co-op agreement. Facilitate and maintain records of any trading of quota, whether it is directed catch or by-catch.
- b. Maintain trip by trip catch records (data sheets) for each co-op vessel. Provide this information in a timely fashion to captains, owners and the plant manager.
- c. Maintain total co-op catch records on a specific schedule and provide this information in a timely fashion to captains, owners, and the plant manager.
- d. Maintain catch records in relationship to catch taken inside/outside [redacted]. Work to prevent inside [redacted] cap overages. Advise the co-op so they maintain enough inside [redacted] quota for vessels under [redacted]. In general, help the fleet meet regulations regarding [redacted].
- e. To the greatest extent possible, monitor other coop's catch data regarding directed species, groundfish by-catch species, and prohibited species. Work to prevent any other co-op from exceeding their caps and, in cases of concern, notify co-op members.
- f. Develop and maintain a working relationship with [redacted] and [redacted], the [redacted] and [redacted].
- g. Help captains and crews to understand the co-op structure and regulations. Work with the captains to develop fishing strategies that could help them capitalize on the co-op system.
- h. Work with the vessel owners and the processors to develop a fishing strategy aimed toward maximizing vessel efficiency and efficient use of caps.

Member dues are the only source of income to the organization. Dues are assessed in an amount necessary to pay for the expenses of the cooperative which include accounting and legal fees, and fees paid to the independent consultant.



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Section 501(c)(5) of the Code of 1986 provides for the exemption of labor, agricultural, or horticultural organizations.

Section 501(g) of the Code defines "agricultural" for purposes of subsection 501(c)(5) of the Code to include the art or science of cultivating land, harvesting crops or aquatic resources or raising livestock.

Section 1.175-3 of the Income Tax Regulations defines the "business of farming". Pursuant to the regulations, a taxpayer is engaged in the business of farming if he cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For the purpose of this section, the term "farm" is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested; that is, an area where they are artificially fed, protected, cared for, etc.

Section 1.501(c)(5)-1 of the regulations describes organizations covered by section 501(c)(5) of the Code as labor, agricultural, and horticultural organizations that have no net earnings inuring to the benefit of any member and have as their object the betterment of the conditions of persons engaged in those pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Section 1.501(c)(5)-1(a) of the regulations states that the organizations contemplated by section 501(c)(5) of the Code as entitled to exemption from income taxation are those which:

- (1) Have no net earnings inuring to the benefit of any member; and
- (2) Have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations. Section 501(c)(5) of the Code provides for the exemption from Federal income tax of labor, agricultural or horticultural organizations.

Revenue Ruling 66-105, 1966-1 C.B. 145 held that a nonprofit corporation formed to carry out a livestock improvement program and to sponsor and promote sales of livestock for its members who were owners or operators



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of farms was not exempt under section 501(c)(5) of the Code. The organization's principal activity was marketing livestock at auction as agent for its members. It furnished the labor, advertising, bookkeeping services, and physical facilities required for the auctions. A percentage of the sales proceeds was retained for expenses and establishment of a reserve for future acquisition of land and buildings. The balance was remitted to the members as payment for their livestock. The sale of members' products with the return to them of net proceeds was held to be neither an object nor an activity within the ambit of 501(c)(5) of the Code. The principal purpose of the organization was to act as a sales agent for its members.

Revenue Ruling 70-372, 1970-2 C.B. 118 held that an organization composed of agricultural producers, and formed to process production data for farmers for use in improving milk production of their own dairy herds, was not exempt under section 501(c)(5) of the Code. The basis of the conclusion was that the processing of production and test records for individuals was a service which simply relieved the individual farmers of work that they would either normally perform themselves or have performed for them and did not itself better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operation.

Revenue Ruling 72-391, 1972-2 C.B. 249 held that an organization whose membership was composed of farmers and which was formed for the purpose of providing its members with farm laborers was not exempt under section 501(c)(5) of the Code. The organization obtained requests from member farmers for workers, assigned the laborers to the farmers, received payment from the farmers, and paid the farmers or their representatives. The organization's income came from a small rental fee paid by the workers and fees and dues paid by the farmers. The funds were used to house transient workers while they were working in the area. The purpose of the organization was to provide member farmers with the labor force necessary for the profitable operation of their farms.

Revenue Ruling 74-195, 1974-1 C.B. 135 held that a nonprofit organization formed to manage, graze, and sell its members' cattle is providing a direct business service to its members and does not qualify for exemption as an agricultural organization. Membership to the organization was open to any person who owned ten head of range cattle. Fees were assessed based on the number of cattle owned. A percentage of the proceeds from the sale of cattle was retained by the organization to help meet the expenses of operation with the balance remitted to members. The purpose of the organization was to provide a direct business service to its



[REDACTED]

[REDACTED]

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members' economic benefit. The cooperative management, grazing and sale of members' cattle does not itself better the conditions of those engaged in agricultural pursuits, improve their grade of products, or develop a higher degree of efficiency in their operations.

Revenue Ruling 75-287, 1975-2 C.B. 211 held that the scope of the term "agricultural" for purposes of section 501(c)(5) of the Code should be confined to its ordinary and commonly accepted meaning. Webster's Third New International Dictionary (3rd ed. 1961) defines "agricultural" as "the science or art of cultivating the soil, harvesting crops, and raising livestock." Thus, commercial fishing falls outside the scope of the term "agricultural" when that term is used in its commonly accepted sense.

Your organization asserts that you qualify for tax exemption under section 501(c)(5) of the Code because your organization was formed under section [REDACTED]

[REDACTED] in a more efficient and less wasteful manner. Furthermore, you argue that the organization clearly meets the definition of an "agricultural organization" because you are directly involved in the harvest of aquatic resources as set forth in section 1.501(g) of the Code. In addition, you assert that the organization satisfies the regulations set forth in Section 1.501(c)(5) for the following reasons:

1. No net earnings inure to the benefit of any member.
2. Your organization makes it possible for fishing vessels to coordinate directly with the processing plants so that the pollock resource is harvested more effectively with higher quality finished products and less waste.

Based on the facts presented above, we hold that your organization does not qualify for tax exemption under section 501(c)(5) of the Code because your organization is not an agricultural organization described in this subsection. Your organization is not engaged in the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock, which is necessary to satisfy the requirements of section 501(c)(5).

Your organization is not in the "business of farming" as defined in Section 1.175-3 of the Income Tax Regulations. This section of the regulations defines the term "farm" to include stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. It further states that a fish farm is an area where fish are



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grown or raised, as opposed to merely caught or harvested; that is, an area where they are artificially fed, protected, cared for, etc. Your organization states that you are an agricultural organization because you are involved in the harvest of "aquatic resources". The harvest of aquatic resources as defined in the Income Tax Regulations does include fish hatcheries, however, it does not include commercial fishing.

Revenue Ruling 75-287, 1975-2 C.B. 211 held that the scope of the term "agricultural" for purposes of section 501(c)(5) of the Code should be confined to its ordinary and commonly accepted meaning. Webster's Third New International Dictionary (3rd ed. 1961) defines "agricultural" as "the science or art of cultivating the soil, harvesting crops, and raising livestock." Thus, commercial fishing falls outside the scope of the term "agricultural" when that term is used in its commonly accepted sense. Your organization asserts that you are "harvesting aquatic resources," which is within the meaning of section 501(c)(5). You indicate that there is no basis to treat the activities conducted by your organization as ineligible for tax exemption under section 501(c)(5). Your organization is not involved in the "harvesting of aquatic resources" as defined in the Revenue Ruling cited above because you are involved in commercial fishing rather than harvesting aquatic resources in fish hatcheries.

Your organization is similar to the organization described in Revenue Ruling 66-105, 1966-1 C.B. 145 because your organization is operating as a cooperative for the benefit of your members to harvest pollock fish in a less expensive manner than members could do individually. Your organization combines the resources of your members to engage in commercial fishing and divides the proceeds in a manner that is agreed upon by your members. Your organization states that this Revenue Ruling is not applicable because you are not formed to provide services to members by promoting the sale of their livestock. While your organization may not be involved in the sale of member's products, you are, however, providing services to your members in a different way. By ensuring that members obtain their product in a less costly manner by sharing your resources in a cooperative manner to harvest pollock fish, you are providing services to members, which are similar to the services provided to members in the Revenue Ruling.

Your organization is similar to the organization described in Revenue Ruling 70-372, 1970-2 C.B. 118 because you are providing services on a cooperative basis to members. Like the organization described in the Revenue Ruling, you are pulling together the resources of the organization to obtain pollock fish at a lower cost to members. The organization described in the Revenue Ruling pulled together their resources to process production data for members. Your organization



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argues that this Revenue Ruling does not apply for the following reasons:

1. Your organization is performing services for members that the members could not legally or practically do by themselves.
2. The cooperative is a vehicle that enables harvesters to coordinate directly with a specific processor to improve the finished product and the efficiency of the entire operation. All activity is involved in harvesting aquatic resources.

Your organization is similar to the organization described in the Revenue Ruling because you are providing services to members which members would either normally perform themselves or have performed for them. These services do not better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operation.

Your organization is similar to the organization described in Revenue Ruling 72-391, 1972-2 C.B. 249 because you are providing services to your members on a cooperative basis to reduce the cost of production. Your organization asserts that this Revenue Ruling is not applicable to your organization. Your organization is similar to the organization described in the Revenue Ruling because you are providing services to members in an effort to provide members with adequate pooled resources to operate in a less costly and more profitable manner.

Your organization is similar to the organization described in Revenue Ruling 74-195, 1974-1 C.B. 135 because you are providing direct business services to your members. Your organization asserts that the services provided to members of the cooperative are services that the individual members could not legally or practically do by themselves. In addition, you argue that the cooperative acts as a vehicle that enables harvesters to coordinate directly with a specific processor to improve the finished product and the efficiency of the entire operation. The organization is similar to the organization described in the Revenue Ruling because you are providing direct business services to members, which precludes tax exemption under section 501(c)(5).

Your organization is primarily engaged in commercial fishing on a cooperative basis. Commercial fishing falls outside of the scope of the term "agricultural" as defined in section 501(c)(5). The activities conducted by the organization provide direct services to members and do not have as their objects the betterment of the conditions of those engaged in agriculture and the improvement of their products and.



[REDACTED]

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occupational efficiency. Accordingly, you do not qualify for tax exemption under section 501(c)(5) of the Code.



Department of the Treasury-Internal Revenue Service  
**Consent to Proposed Adverse Action**  
*(All references are to the Internal Revenue Code)*

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- Denial of exemption
- Revocation of exemption, effective
- Modification of exempt status from section 501(c)( ) to 501(c)( ), effective
- Classification as a private foundation (section 509(a)), effective
- Classification as a non-operating foundation (section 4942(j)(3)), effective
- Classification as an organization described in section 509(a)( ), effective
- Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

*(Signature instructions are on the back of this form.)*

Name of Organization

Signature and Title

Date

Signature and Title

Date