



Exempt Organizations Technical Guide

TG 5: Labor, Agricultural, and Horticultural Organizations – IRC Section 501(c)(5)

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I. Overview

- (1) This Technical Guide (TG) discusses tax exemption of labor, agricultural, or horticultural organizations described under Internal Revenue Code (IRC) Section 501(c)(5).

Note: This Technical Guide references General Counsel Memoranda (GCM). Although GCM may not be used or cited as precedent, they do offer tax law analysis to consider when precedential guidance does not exist.

A. Background / History

- (1) Since introduction in the Payne-Aldrich Tariff Act of 1909 (also known as the Corporation Excise Tax Act of 1909), the language of what became Section 501(c)(5) has been the same five words for over one hundred years.
- (2) Section 501(a) says, in part, an organization described in subsection (c) shall be exempt from taxation. Section 501(c)(5) then simply states, “Labor, agricultural, or horticultural organizations.” Though only two letters, the word “or” has significance; an organization needs only to be one of the three listed types of organizations, however the qualification requirements differ among them and are discussed separately.

II. Exemption Requirements

A. General 501(c)(5) Information

A.1. Regulatory Definition

- (1) Treasury Regulation (Treas. Reg.) 1.501(c)(5)-1(a) indicates that to be tax-exempt, an organization must meet the following requirements:
 - a. The net earnings of the organization may not inure to the benefit of any member; and
 - b. The objectives of the organization must be the betterment of conditions of those engaged in the pursuits of labor, agriculture, or horticulture, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.
- (2) Treas. Reg. 1.501(c)(5)-1(b)(1) indicates that, generally, an organization is not described in Section 501(c)(5) if its principal activity is to receive, hold, invest, disburse, or otherwise manage funds associated with savings or investment plans.
- (3) Treas. Reg. 1.501(c)(5)-1(b)(2) provides for an exception to this rule for certain dues-funded organizations that do not provide for, permit, or accept employer contributions.

A.2. Non-Deductibility of Contributions

- (1) Contributions to Section 501(c)(5) labor, agricultural, and horticultural organizations are not allowable as a deduction under Section 170. Section 6113 requires certain tax-exempt organizations that are ineligible to receive tax deductible charitable contributions to disclose, in “an express statement (in a conspicuous and easily recognizable format),” the nondeductibility of contributions during fundraising solicitations. Section 6710 provides penalties for failure to comply with Section 6113 without reasonable cause. Organizations whose annual gross receipts do not normally exceed \$100,000 are excepted from this disclosure requirement.
- (2) For solicitations involving membership dues for Section 501(c)(5) labor, agricultural, and horticultural organizations that may be deductible as business expenses under another section of the Internal Revenue Code, additional stipulated safe harbor notices may be substituted in order to meet the Section 6112 requirements, such as, “Contributions or gifts to [name of organization] are not tax deductible as charitable contributions. However, they may be tax deductible as ordinary and necessary business expenses.” See Notice 88-120, 1988-2 C.B. 454.

A.3. Unrelated Business Taxable Income (UBTI)

- (1) Section 511 imposes a tax on the unrelated business taxable income, as computed under Section 512, of organizations otherwise exempt from tax under Section 501(c)(5). The term “unrelated business taxable income” as defined in Section 512 means, with certain exceptions, additions, and limitations, the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less allowable deductions directly connected with the carrying on of such trade or business. Section 513 defines the term “unrelated trade or business,” in the case of any organization subject to the tax imposed by Section 511, as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its exempt functions. See Rev. Rul. 60-86, 1960-1 C.B. 198.
- (2) See additional information in Sections II.B.11 and II.C.11, below.

B. Labor Organizations

- (1) A labor organization is an association of workers who have combined to protect or promote the interest of all members by bargaining collectively with their employers to secure better working conditions, wages, and similar benefits. The term includes labor unions, councils, and committees. See *Portland Co-operative Labor Temple Association v. Commissioner*, 39 B.T.A. 450 (1939), acq. 1939-1 C.B. 28.

B.1. Scope of the Term *Labor*

- (1) The term *labor* is commonly accepted as meaning the performance of service as employees. See Rev. Rul. 78-288, 1978-2 C.B. 179.
- (2) The term “labor organization” has “a liberal construction to embrace the common acceptance of the term, including labor unions and councils and the groups which are ordinarily organized to protect and promote the interests of labor.” See *Portland Co-operative Labor Temple Association v. Commissioner*, 39 B.T.A. 450 (1939), acq. 1939-1 C.B. 28 A “labor union” is one type of organization under the broader “labor organization” term.

B.2. Principal Purpose

- (1) A labor organization must primarily serve the interests of labor. See Rev. Rul. 59-6, 1959-1 C.B. 121, and Rev. Rul. 77-5, 1977-1 C.B. 146.
- (2) Entrepreneurs and independent contractors are not considered employees. Therefore, the interests of entrepreneurs and independent contractors are not the interest of labor. When most of an organization’s members are entrepreneurs or independent contractors, it will not qualify for exemption as a labor organization under Section 501(c)(5). See Rev. Rul. 78-288, 1978-2 C.B. 179.
- (3) An organization of retired persons who are no longer working or available for work is normally beyond the scope of a labor organization as described in Section 501(c)(5) and does not qualify for exemption. Consider GCM 36264 (1975).

B.3. Membership Composition

- (1) An organization need not be composed exclusively of employees to be exempt under Section 501(c)(5). An organization whose membership includes mostly employees and some independent contractors can qualify for exemption as a labor organization under Section 501(c)(5) if its primary purpose is to better the conditions of its members by negotiating better wages and working conditions with those who contract for its members’ services. See Rev. Rul. 74-167, 1974-1 C.B. 134. See also Rev. Rul. 77-154, 1977-1 C.B. 148, which describes a nurses’ association whose membership includes some private duty nurses. Membership can also consist of employers and employees. See Rev. Rul. 59-6, 1959-1 C.B. 121.
- (2) Where most of an organization’s members are entrepreneurs or independent contractors, however, it will not qualify for exemption as a labor organization under Section 501(c)(5). See Rev. Rul. 78-288, 1978-2 C.B. 179.

B.4. Organizational Control

- (1) The fact that a collectively-bargained dispatch hall is under the supervision of a joint committee composed of an equal number of employer and union

representatives does not preclude exemption under Section 501(c)(5). See Rev. Rul. 75-473, 1975-2 C.B. 213.

- (2) Persons with no connection with a labor organization should not control the organization. An organization, controlled by private individuals, that provides weekly income to its members in the event of a lawful strike by the member's labor union in return for an annual payment by the members does not qualify for exemption as a labor organization under Section 501(c)(5). See Rev. Rul. 76-420, 1976-2 C.B. 153.

B.5. Qualifying Activities

- (1) A Section 501(c)(5) labor organization must have as its principal purposes the betterment of conditions of workers, the improvement of their products, and the development of a higher degree of efficiency in their respective occupations. See Treas. Reg. 1.501(c)(5)-1.
- (2) Traditionally, qualifying activities include the representation of employees, in the form of a labor union, in such matters as wages, hours of labor, working conditions and economic benefits, and the general fostering of matters affecting the working conditions of their members. However, the qualifying activities of a labor organization can be considerably broader. Consider GCM 37942 (1979) and GCM 38981 (1983).
- (3) If an organization is not providing labor representation, qualification is based on whether the organization's activities are appropriate undertakings and whether the organization is controlled and funded by an exempt labor organization. See *Stichting Pensioenfonds Voor De Gezondheid, Geestelijke En Maatschappelijke Belangen v. U.S.*, 950 F.Supp. 373 (D.D.C. 1996), *aff'd*, 129 F.3d 195 (D.C. Cir. 1997).
- (4) Principal activities that qualify a labor organization for exemption under Section 501(c)(5) include the following:
 - a. Employees' Association – A city school teachers' association, formed to improve its members' professional abilities and to secure for them better salaries and working conditions, that sponsors seminars and courses for its members, participates in teacher conventions, bargains collectively, and processes grievances, and keeps its members informed of its activities through regular meetings and a newsletter, may qualify for exemption as a labor organization. See Rev. Rul. 76-31.1976-1 C.B. 157.
 - b. Labor Newspaper – A corporation engaged solely in publishing a newspaper containing only matters concerning union activities is exempt under Section 501(c)(5). See Rev. Rul. 68-534, 1968-2 C.B. 217.
 - c. Labor Facility – A corporation operating a "labor temple" containing offices, meeting and recreation halls, and otherwise "providing a home" for several labor unions qualifies for exemption under Section 501(c)(5). See *Portland Cooperative Labor Temple Ass'n. v. Commissioner*, 39 B.T.A. 450 (1939), *acq.* 1939-1 C.B. 28.

- d. Dispatch Hall – An organization, established pursuant to a collective bargaining agreement to operate a dispatch hall to allocate work assignments equitably and efficiently among eligible union members and provides facilities to investigate and adjudicate grievances, is exempt under Section 501(c)(5). See Rev. Rul. 75-473, 1975-2 C.B. 213.
- e. Litigation Support – An organization, established by Section 501(c)(5) labor organizations that represent public employees, that files amicus curiae briefs on behalf of its member organizations or individual employees, in cases of precedential importance to all public employees, qualified for exemption under Section 501(c)(5). See Rev. Rul. 74-596, 1974-2 C.B. 167.
- f. Payment of Work-Related Legal Defense – The payment by an organization of law enforcement officers for its members' legal defense in actions brought against them in connection with the performance of their official duties does not adversely affect the exempt status of the organization. See Rul. 75-288, 1975-2 C.B. 212.
- g. Prepaid General Legal Services – An organization that provides dues-financed prepaid general legal services to members of a local of a tax-exempt labor organization may itself be an organization described in Section 501(c)(5). Consider GCM 38981 (1983).
- h. Union and Employer Stewardship Trust – A trust organized pursuant to a collective bargaining agreement, which hired and compensated a steward who was under the union's direct control and who was responsible for investigating complaints filed by employees, assisting in the settlement of disputes, and assuring that employers complied with the terms of the collective bargaining agreement, qualified for exemption under Section 501(c)(5). See Rev. Rul. 77-5, 1977-1 C.B. 146.
- i. Apprenticeship and Training Committee – A trust that conducted various educational courses and programs in various aspects of the trade for local members, employees, or associates of the industry to ensure that local standards on the quality of work conformed with national codes for the industry and also selected apprentices and supervised their training, qualified for exemption under Section 501(c)(5). The trust also had an affirmative action plan that was approved by the U.S. Department of Labor. See Rev. Rul. 78-42, 1978-1 C.B. 158.
- j. Strike and Lockout Fund – An organization controlled by a Section 501(c)(5) labor organization that provided financial assistance to members of the union during strikes and lockouts may be exempt as a labor organization described in Section 501(c)(5). See Rev. Rul. 67-7, 1967-1 C.B. 137. Compare to Rev. Rul. 76-420, 1976-2 C.B. 153, which held that an organization controlled by private individuals that provided weekly income to its members in the event of a lawful strike by the member's labor union in return for an annual payment by the member did not qualify

for exemption as a labor organization under Section 501(c)(5) because it did not directly support the efforts of any labor organization to (or make its payments with an objective to) improve employment conditions.

- k. Financial Aid and Other Benefit Payments to Members – Labor organizations are exempt from income tax because, in part, they operate as mutual benefit organizations, providing benefits to their members or their members' families in the event of death, sickness, accident, etc. Accordingly, payment of such benefits, if made under a plan which has as its object the betterment of the conditions of the members, does not preclude exemption for the organization under Section 501(c)(5). See Rev. Rul. 62-17, 1962-1 C.B. 87.
- l. Bid Supplement or Report Programs – Typically, a bid supplement program is a separate fund established by a labor union which awards subsidies to contractors who use union labor on a project for the purpose of making that project more price competitive against non-union labor costs. The goal of these programs is to increase employment opportunities for the union members. These funds are typically established through a collective bargaining agreement and funded by contributions of union member dues. The funds may also have employer members and receive funding from the employers. Because the fund is a separate entity from the labor union, it needs to qualify for exemption on its own merits. There is no precedential guidance specific to bid supplement programs, however, since the fund is not providing labor representation, qualification is based on whether the organization's activities are appropriate labor undertakings and whether the organization is controlled and funded by an exempt labor organization. See the discussion of Stichting Pensioenfonds, cited above.

B.6. Lobbying

- (1) A labor organization can conduct lobbying activities that are germane to its interests. If lobbying activities are germane to labor interests, an organization could conduct lobbying activities exclusively. Consider GCM 34233 (1969).
- (2) Labor organizations described in Section 501(c)(5) are not subject to the requirements under Section 6033(e) or the related proxy tax because they are deemed to be an organization, substantially all the dues of which are not deductible without regard to Section 162(e). See Rev. Proc. 98-19, 1998-1 C.B. 547.

B.7. Non-Qualifying Activities

- (1) Activities which do not qualify a labor organization for exemption under Section 501(c)(5) include the following:
 - a. Providing Employment to Members Through a Business Activity – An organization established by a Section 501(c)(5) labor organization that carries on a business activity to furnish employment to its members does

not qualify for exemption under Section 501(c)(5). See Rev. Rul. 69-386, 1969-2 C.B. 123.

- b. Furnishing Laborers to Individual Employers – A nonprofit organization of farmers formed to furnish farm laborers for individual farmers does not qualify for exemption. See Rev. Rul. 72-391, 1972-2 C.B. 249.
- c. Collecting Employment Taxes – An organization created by an association of manufacturers and a labor union to receive employment taxes that the manufacturers were required to deduct from the pay of their union employees and remit them to federal and state revenue departments was not exempt under Section 501(c)(5). See Rev. Rul. 66-354, 1966-2 C.B. 207.

Note: If an organization otherwise qualified for exemption as a Section 501(c)(5) labor organization and conducted a less-than-primary amount of accounting and tax service, income derived from those accounting and tax services generally would be subject to tax on unrelated business income. See Rev. Rul. 62-191, 1962-2 C.B. 146.

- d. Maintaining a Savings Plan – A savings plan for union members established pursuant to a collective bargaining agreement does not qualify for exemption under Section 501(c)(5). See Rev. Rul. 77-46, 1977-1 C.B. 147. Contrast Rev. Rul. 67-7, 1967-1 C.B. 137, and Rev. Rul. 62-17, 1962-1 C.B. 87.

- Twenty years after Rev. Rul. 77-46, Treas. Reg. 1.501(c)(5)-1(b) was changed to provide that if the principal activity of the organization is to receive, hold, invest, disburse, or otherwise manage funds associated with savings or investment plans or programs, including pension or other retirement savings plans or programs, it does not qualify for Section 501(c)(5) exemption unless it meets specific exceptions.
- Treas. Reg. 1.501(c)(5)-1(b) also provides an exception for an organization which is (1) established and maintained by another labor organization described in Section 501(c)(5); (2) is not directly or indirectly established or maintained in whole or in part by one or more employers, governments or agencies or instrumentalities thereof or by government-controlled entities; (3) and which is funded by member dues and has not permitted or accepted employer contributions after September 2, 1974.

- (2) However, a less than primary amount of nonqualifying activity could be conducted without adversely affecting exemption. Consider GCM 34233 (1969).

B.8. Political Activities

- (1) Political Campaign Intervention – Support for or opposition to a candidate for public office does not further Section 501(c)(5) labor organization purposes. Consider GCM 34233 (1969).
 - a. Section 527(f) imposes a tax on the direct political expenditures of organizations exempt from tax under Section 501(a) including labor organizations described in Section 501(c)(5).
 - b. A separate segregated fund maintained by an exempt labor organization to conduct its political activities is treated as a separate organization subject to Section 527.
 - c. Labor organizations described in Section 501(c)(5) are not subject to the requirements under Section 6033(e) or the related proxy tax because they are deemed to be an organization substantially all the dues of which are not deductible without regard to Section 162(e). See Rev. Proc. 98-19, 1998-1 C.B. 547.

B.9. Inurement

- (1) Treas. Reg. 1.501(c)(5)-1(a)(1) prohibits the inurement of earnings to the benefit of any member of a Section 501(c)(5) organization. Because of differing legislative histories, inurement differs between labor organizations and agricultural organizations. Consider GCM 38743 (1981).
- (2) A labor organization described in Section 501(c)(5) can pay death, sick, accident and similar benefits to its members because a review of the subject, including the legislative history of the provisions exempting labor organizations from income taxation, indicates that labor organizations were exempted for the very reason they operated, in part, as mutual benefit organizations providing death, sick, accident, and similar benefits to their members. See Rev. Rul. 62-17, 1962-1 C.B. 87.

B.10. Other Possible Subsection Classifications

- (1) Because of the rather broad language of some of the paragraphs under Section 501(c), there are situations where a certain amount of overlap occurs, thus creating a question whether an organization should be classified under Section 501(c)(5) or under some other paragraph. When considering whether the activities of an organization qualify it for exemption as a labor organization described under Section 501(c)(5) rather than another Section 501(c) organization, consider how the amount of the activity affects qualification or whether the organization is controlled and funded by labor. The following information illustrates these considerations.
- (2) Section 501(c)(5) v. Section 501(c)(3) – Certain activities may either further Section 501(c)(5) or Section 501(c)(3) purposes, such as training industry employees. For the organization to qualify for Section 501(c)(3) exemption, it would need to exclusively further 501(c)(3) purposes. See Rev. Rul. 67-72,

1967-1 C.B. 125, Rev. Rul. 72-101, 1972-1 C.B. 144, and Rev. Rul. 77-272, 1977-2 C.B. 191. For Section 501(c)(5) exemption as a labor organization, the activities primarily need to further Section 501(c)(5) labor purposes. See Rev. Rul. 59-6, 1959-1 C.B. 121, and Rev. Rul. 77-5, 1977-1 C.B. 146.

- (3) Section 501(c)(5) v. Section 501(c)(6) – A corporation whose membership is made up of individuals, partnerships, firms, and corporations engaged in a particular industry was organized for the purpose, among others, of assisting in the making of trade agreements respecting employment of labor by its members generally; conducting collective bargaining with employees and labor groups for its members; promoting settlement of labor disputes and preventing strikes and lockouts. Its activities consist solely of negotiation of collective bargaining contracts, interpretation of such contracts, and adjustment of labor disputes. Such organization qualifies for exemption as a business league. See Rev. Rul. 65-164, 1965-1 C.B. 238. See also these Section 501(c)(6) favorable rulings: Rev. Rul. 70-31, 1970-1 C.B. 130, and Rev. Rul. 82-138, 1982-2 C.B. 106, in which the members are labor unions and business leagues. Contrast with these Section 501(c)(5) favorable rulings: Rev. Rul. 59-6, 1959-1 C.B. 121, and Rev. Rul. 75-473, 1975-2 C.B. 213, in which employees or labor unions were among the members and for which the activities primarily promoted labor.
- (4) Section 501(c)(5) v. Section 501(c)(9)
 - a. The payment of death, sick, accident and similar benefits to its individual members by a labor organization, if made under a plan which has as its object the betterment of the conditions of the members of the organization, does not preclude exemption under Section 501(c)(5). See Rev. Rul. 62-17, 1962-1 C.B. 87.

Note: A Section 501(c)(5) labor organization may provide many of the benefits that a Section 501(c)(9) Voluntary Employees Benefit Association (VEBA) may provide. Consider GCM 38981 (1983). See Treas. Reg. 1.501(c)(9)-3(e) for examples of VEBA benefits.
 - b. An organization that provides dues-financed prepaid legal services to members of a local chapter of a tax-exempt labor organization is itself an organization described in Section 501(c)(5). The activities of labor organizations have traditionally been broader than those of employees' voluntary beneficiary associations, and an excluded benefit for Section 501(c)(9) is not automatically excluded under Section 501(c)(5). Consider GCM 38981 (1983).

B.11. Unrelated Business Income (UBI)

- (1) Section 511 imposes a tax on the unrelated business taxable income (UBTI), as computed under Section 512, of organizations otherwise exempt from tax under Section 501(c)(5).
- (2) For example, providing an accounting and tax service is a business of a kind regularly carried on for profit. The performance of such services is not

substantially related to the purposes of 501(c)(5) labor organizations. Income derived from those accounting and tax services would be subject to tax on UBI. See Rev. Rul. 62-191, 1962-2 C.B. 146.

- (3) Dues payments from associate members are treated as UBI except when the principal purpose of the associate member category furthers the exempt purposes of the organization. See Rev. Proc. 97-12, 1997-1 C.B. 631.

C. Agricultural and Horticultural Organizations

- (1) Agricultural or horticultural organizations are associations of persons who have combined to promote the interests of persons engaged in the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock. See Section 501(g).

C.1. Scope of the Term *Agricultural*

- (1) The definition of *agricultural* for purposes of Section 501(c)(5) is set forth in Section 501(g), which provides the term 'agricultural' includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock. It was added to the Code as part of the Tax Reform Act of 1976, P.L. 94-455, enacted on October 4, 1976. This definition expands upon the definition of agriculture used by the Service prior to 1976, expressed in Rev. Rul. 75-287, 1975-2 C.B. 211 and Senate Report 94-938(I), 419-20.
- (2) Prior to Section 501(g), farm-raised fish was included as *agricultural*. See Rev. Rul. 74-488, 1974-2 C.B. 166. Rev. Rul. 75-287 did not treat organizations devoted to improving fishing or related occupations such as taking lobster or shrimp as agricultural organizations. In contrast, the Senate Report accompanying the public law that added Section 501(g) to the Code states: "There seems to be no valid reason for differentiating under Section 501(c)(5) between occupations devoted to producing foodstuffs from the earth and occupations devoted to producing foodstuffs from water. Id. In describing the definition of "agricultural" provided in Section 501(g), the Senate Report further states, "The term 'harvesting aquatic resources' includes fishing and related pursuits (such as the taking of lobsters and shrimp). Both fresh water and saltwater occupations are to qualify as 'agricultural' under the new definition. In addition, the cultivation of underwater vegetation, such as edible sea plants, qualifies as agricultural in nature, as does the cultivation or growth of any edible organism. Also, the operation of 'fish farms' is to be considered agriculture under the new definition. However, aquatic resources are only to include animal or vegetable life, not mineral resources."
- (3) *Livestock* includes fur-bearing animals raised in captivity for their pelts, as well as domestic farm animals such as sheep, cattle, hogs, etc. It does not include dogs that are not used as farm animals. See Rev. Rul. 73-520, 1973-2 C.B. 180, and Rev. Rul. 56-245, 1956-1 C.B. 204.

C.2. Scope of the Term *Horticultural*

- (1) Unlike *agricultural* which is defined in Section 501(g), *horticultural* is not defined in the Code. The precedential guidance specific to Section 501(c)(5) horticultural organizations is limited. The Supreme Court of Texas, though nonprecedential for federal income tax purposes, provides some context of the meaning of *horticulture*. It defines *horticulture* as being encompassed within the definition of agriculture as a branch concerned with the cultivation of a garden or orchards, the science or art of growing fruits, vegetables or flowers, or ornamental plants. See *Guerrero v. United States Fidelity and Guaranty Co.*, 98 S.W. 2d 796, 128 Tex. 407 (1936).
- (2) Congress melds the terms *agricultural* and *horticultural* with its explanation of the definition of *agricultural*, referencing Sections 3121(g) and 6420(c). In the Senate Report 94-938(l), the terms are combined under the definition of *farming*. Agricultural labor per Section 3121(g) includes, in part, all service performed on a farm in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife. Farming purposes are defined in Section 6420(c) with similar language.
- (3) Because Congress melds the terms agricultural and horticultural, the term *agricultural* used throughout the rest of this document will denote both agricultural and horticultural organizations for purposes of brevity.
- (4) For a ruling on the scope of horticultural, Situation 3 of Rev. Rul. 66-179, 1966-1 C.B. 139, provides an example. It describes how a horticultural organization furthered horticultural pursuits and improved the grade of their products by publishing a monthly trade journal, reporting periodically to its members any new developments in horticultural products, and encouraging the development of better horticultural products through a system of awards.

C.3. Principal Purpose

- (1) Rev. Rul. 75-287, 1975-2 C.B. 211, establishes that if the activities of an organization are directed toward the betterment of the conditions of those engaged in some pursuit outside the scope of the term 'agricultural,' it does not qualify for exemption from federal income tax as an agricultural organization described under Section 501(c)(5).
- (2) In *Forest City Livestock and Fair Co. v. Commissioner*, B.T.A.M. (P-H) P 32,215 (1932), the United States Board of Tax Appeals revoked the exemption of an agricultural organization that was organized to hold agricultural fairs, stock shows, and horse race meets, but had discontinued the holding of agricultural fairs and stock shows. It reasoned, "It would be a far stretch of the imagination that would allow [the word 'agriculture'] to be used as a cloak to give exemption from taxation to the racing business. The single fact that horse racing tends to promote the breeding and raising of better racehorses, which are raised on a

farm, is not enough. The connection to agriculture should be more immediate than this.” Compare to *California Thoroughbred Breeder’s Ass’n. v. Comm.*, 57 T.C.M. 962 (1989), which held that the sale of horses through an auction was substantially related to the taxpayer’s section 501(c)(5) agricultural purpose for purposes of determining whether the taxpayer owed unrelated business income tax.

- (3) Rev. Rul. 67-252, 1967-2 C.B. 195, describes an organization formed to promote the sale and use of a processed agricultural product. To this end, it conducts research in processing and marketing, and conducts advertising campaigns to encourage consumers to buy and use the product. The organization’s members are processors, packagers, and distributors of the processed agricultural product. The ruling finds the organization does not qualify as a Section 501(c)(5) agricultural organization because the members are not engaged in agriculture. It notes improvement of the conditions of persons engaged in agriculture arises only indirectly from the activities of the organization whose purpose is to improve business conditions among its members.

C.4. Membership, Services to Members, & Sales Activities

- (1) Agricultural organizations, like labor organizations, are membership organizations.
- (2) Those served by the entity must represent a significant portion of the interested agricultural community. Rev. Rul. 74-118, 1974-1 C.B. 134, illustrates how the connection to the agricultural community can be demonstrated. The ruling provides that a nonprofit organization of farmers’ wives formed to enhance and improve the agricultural way of life in a particular state qualifies for exemption under Section 501(c)(5). The ruling notes the organization’s members have a mutual interest in promoting the occupation of their husbands who are engaged in agriculture. Primarily providing services simply to relieve the individual member of work that the member would have to perform otherwise does not qualify for Section 501(c)(5) exemption. See Section II C.7 Non-Qualifying Activities, below, for more information.
- (3) If individual member benefits are incidental to the objective of bettering agriculture as a whole, the organization may qualify for Section 501(c)(5) exemption.
 - a. Soil Testing – An organization established by a separate organization of farm bureaus to test soil for members and nonmembers of the farm bureau and educate the community in soil treatment qualified for exemption as a Section 501(c)(5) agricultural organization. See Rev. Rul. 54-282, 1954-1 C.B. 126.
 - b. Program Collection of Data – A nonprofit organization of dairy farmers, participating in a dairy program sponsored by the U.S. Dept. of Agriculture, that derives its income from testing fees and membership

assessments and that weighs and tests milk of members' cows and makes statistical information based on the tests available to members, nonmembers, and governmental agencies for use in improving milk production is exempt as an agricultural organization. See Rev. Rul. 74-518, 1974-2 C.B. 166. Compare with Rev. Rul. 70-372, 1970-2 C.B. 118, which states that the processing of milk production and test records for individual farmers does not of itself better the conditions of those engaged in agricultural pursuits and does not qualify for exemption under Section 501(c)(5).

- c. Pest Control – A local association of farmers, formed to promote more effective agricultural pest control that employs pest management scouts who periodically inspect members' fields, identify and count agricultural pests, and compile data on agricultural pest infestation qualifies for exemption. See Rev. Rul. 81-59, 1981-1 C.B. 334.
- (4) Sales activities can provide a unique direct benefit to members. Where the principal purpose of the organization is to act as a sales agent for its members, an organization will not qualify as a Section 501(c)(5) organization. On the other hand, where the organization limits its activities to negotiating a price that is satisfactory to its members, exemption under Section 501(c)(5) is available.
- a. Price Negotiations – An organization of growers and producers of a particular agricultural commodity formed principally to negotiate with processors for the price to be paid to members for their crops and not act as a sales agent for its members was held exempt under Section 501(c)(5). See Rev. Rul. 76-399.
- (5) If the services to members are not the organization's primary activity, the organization may still qualify for exemption as an agricultural organization described in Section 501(c)(5). Income from the service activity is subject to a tax on unrelated business taxable income imposed by Section 511.
- a. The sale of cattle by a Section 501(c)(5) agricultural organization for its members on a commission basis as one of its lesser activities is an unrelated trade or business under Section 513. See Rev. Rul. 69-51, 1969-1 C.B. 159. Contrast Rev. Rul. 66-105 in which the sales activity constituted the principal activity, and therefore the organization did not qualify for exemption under Section 501(c)(5).

C.5. Qualifying Activities

- (1) In addition to qualifying activities mentioned above, some other qualifying activities for agricultural and horticultural organizations under Section 501(c)(5) include:
- a. Farm Bureaus – A farm bureau organized to advance and improve agriculture on a county-wide basis qualified for exemption as a Section 501(c)(5) agricultural organization. See Rev. Rul. 57-466, 1957-2 C.B. 311.

Note: If a farm bureau provides services to an insurance company it partially owns, those services give rise to unrelated business income because that income is not substantially related to the accomplishment of the organization's tax-exempt purposes. See *Texas Farm Bureau v. United States*, 53 F.3d 120 (5th Cir. Tex.1995). See also Rev. Rul. 60-228, 1960-1 C.B. 200.

- b. Exhibitions and Fairs – An organization formed and operated to conduct exhibitions of livestock and other farm products can qualify under Section 501(c)(5). See Rev. Rul. 67-216, 1967-2 C.B. 180.
- c. Breeders Associations – An association organized to guard the purity of the breed of Welsh ponies, to promote interest therein, and to establish, maintain, and publish authoritative records, registers, and transfers of ownership of that breed qualified for exemption as a Section 501(c)(5) agricultural organization. See Rev. Rul. 55-230, 1955-1 C.B. 71.
- d. Rodeos – An organization formed for the purpose of supporting and maintaining rodeos in a center near ranch and farm activity was a tax-exempt Section 501(c)(5) agricultural organization. See *Campbell v. Big Spring Cowboy Reunion, A Corp.*, 210 F.2d 143 (5th Cir. 1954).

C.6. Lobbying

- (1) An agricultural organization can conduct activities influencing legislation, or lobbying activities, that are germane to its interests. If the lobbying activities are germane to agricultural interests, an organization could conduct lobbying activities exclusively. Consider GCM 34233 (1969).
- (2) Expenditures for lobbying made by Section 501(c)(5) agricultural and horticultural organizations may be subject to the requirements of Section 6033(e). Section 6033(e) imposes a notice requirement and proxy tax on the lobbying expenditures of certain agricultural and horticultural organizations. See Rev. Proc. 98-19, 1998-1 C.B. 547.

C.7. Non-Qualifying Activities

- (1) An organization primarily providing services simply to relieve an individual member of work that the member would have to perform otherwise does not qualify for Section 501(c)(5) exemption.
 - a. Member Collection of Data – A nonprofit organization of agricultural producers formed to process individual farmers' milk production and test records for use in improving milk production does not qualify for exemption. See Rev. Rul. 70-372, 1970-2 C.B. 118, clarified and distinguished by Rev. Rul. 74-518, 1974-2 C.B. 166.
 - b. Providing Laborers – A nonprofit organization of farmers formed to furnish farm laborers for individual farmers does not qualify for exemption. See Rev. Rul. 72-391, 1972-2 C.B. 249.

- c. Management, Grazing, and Sale of Cattle – A nonprofit organization formed to manage, graze, and sell its members' cattle is providing a direct business. See Rev. Rul. 74-195, 1974-1 C.B. 135.
- d. Livestock Facility – A nonprofit organization that owns and operates a livestock facility and leases it to local members of a nonexempt national association of farmers for use in implementing the association's collective bargaining program with processors does not qualify for exemption as an agricultural organization. See Rev. Rul. 77-153, 1977-1 C.B. 147.

C.8. Political Activities

- (1) Political Campaign Invention – Support for or opposition to a candidate for public office does not further Section 501(c)(5) agricultural organization purposes because a candidate for public office has interests broader than those germane just to agricultural interests. Consider GCM 34233 (1969).
 - a. Section 527(f) imposes a tax on the direct political expenditures of organizations exempt from tax under Section 501(a) including agricultural organizations described in Section 501(c)(5).
 - b. A separate segregated fund maintained by an exempt agricultural organization to conduct its political activities is treated as a separate organization subject to Section 527.
 - c. Political expenditures made by Section 501(c)(5) agricultural organizations may be subject to the requirements of Section 6033(e). See Rev. Proc. 98-19, 1998-1 C.B. 547.
- (2) However, a less than primary amount of nonqualifying activity could be conducted without adversely affecting exemption. Consider GCM 34233 (1969).

C.9. Inurement

- (1) Treas. Reg. 1.501(c)(5)-1(a)(1) prohibits the inurement of earnings to the benefit of any member of a Section 501(c)(5) organization. Because of differing legislative histories, inurement differs between labor organizations and agricultural organizations. Consider GCM 38743 (1981).
- (2) Labor organizations were exempted, in part, as mutual benefit organizations, and therefore, can provide death, sick, accident, and similar benefits to their members. See Rev. Rul. 62-17, 1962-1 C.B. 87. On the other hand, the exempt purposes of a Section 501(c)(5) agricultural organization are to better the conditions of those engaged in agricultural pursuits generally rather than to specifically benefit the individual members. There is no indication agricultural organizations were exempted on the grounds that they operate, in part, as mutual benefit organizations for their members.
- (3) Therefore, as explained in GCM 38743, the holding of Rev. Rul. 67-251, 1967-2 C.B. 196, that the provision of welfare aid and financial assistance to the members of a Section 501(c)(6) organization constitutes proscribed inurement,

applies to Section 501(c)(5) agricultural organizations but does not apply to Section 501(c)(5) labor organizations.

- (4) The refund of excess dues to members of an exempt agricultural organization in the same proportion as the dues are paid does not constitute inurement under Section 501(c)(5). See Rev. Rul. 81-60, 1981-1 C.B. 335.

C.10. Other Possible Subsection Classifications

- (1) Because of the rather broad language of some of the paragraphs under Section 501(c), there are situations where a certain amount of overlap occurs, thus creating a question whether an organization should be classified under Section 501(c)(5) as an agricultural organization or under some other paragraph. The following information illustrates these considerations.
- (2) Section 501(c)(5) v. Section 501(c)(3)
 - a. Because the activities of agricultural organizations usually have a certain amount of educational value, there are logical reasons to seek exemption under Section 501(c)(3). However, to obtain tax exemption under Section 501(c)(3), the organization will have to satisfy the requirements of the organizational and operational tests. See Treas. Reg. 1.501(c)(3)-1(a)(1).
 - b. If an organization is organized and operated exclusively for Section 501(c)(3) purposes, it will qualify for exemption under Section 501(c)(3) even if the organization's activities result in the improvement of agriculture. For example, an organization organized and operated to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products was held exempt as an educational organization under Section 501(c)(3). Amusement features presented to increase attendance do not necessarily preclude Section 501(c)(3) exemption. See Rev. Rul. 67-216, 1967-2 C.B. 180.
- (3) Section 501(c)(5) v. Section 501(c)(3) v. Section 501(c)(4) v. Section 501(c)(7)
 - a. Depending upon how it is organized and operated, a "garden club" may qualify for exemption under Sections 501(c)(3), (4), (5), or (7). A nonprofit corporation will qualify for exemption under Section 501(c)(5) where its members are individuals and firms engaged in the business of horticulture who intend, through the operation of the club, to better the conditions of persons engaged in horticulture and to improve the grade of their products. The garden club may seek to accomplish these purposes by publishing a monthly trade journal, reporting periodically to its members any new developments in horticultural products, and encouraging the development of better horticultural products through a system of awards. See Rev. Rul. 66-179, 1966-1 C.B. 139.
- (4) Section 501(c)(5) v. Section 501(c)(6)
 - a. Section 501(c)(6) provides exemption for, among others, nonprofit business leagues. Many associations that are to some degree related to

agriculture may be more properly classified as business leagues. The decisive factor is whether the organization's purpose is to promote the common business interests and better the conditions of persons directly engaged in agricultural pursuits or to promote the common business interest of some other business groups closely related to agriculture such as suppliers of goods or services to the agricultural community or packers or processors of raw agricultural commodities. See Rev. Rul. 67-252, 1967-2 C.B. 1954.

- b. An organization of fur ranchers was formed to encourage better and more economical methods of raising fur-bearing animals, provide for an orderly system for marketing the pelts of animals raised by its members, and create a public demand for their products. It carried out its purposes by furnishing its members educational material on the breeding and raising of fur-bearing animals and the marketing of pelts, procuring agreements from auction companies to market the products of its members, and conducting advertising to encourage the use of fur products. This organization was held to be principally occupied with improving the conditions and products of persons engaged in agriculture, and therefore, was exempt under Section 501(c)(5). See Rev. Rul. 56-245, 1956-1 C.B. 204.
- c. In contrast, Rev. Rul. 55-715 discusses an organization incorporated for the purpose of regulating the sale at auction of a specified agricultural commodity in a certain area in order to protect the interests of producers, warehousemen and purchasers. To evenly distribute sales among all warehousemen where auctions are held, regulations have been adopted limiting the quantity of products sold and arranging schedules of dates, hours, and location of auctions. High standards of the market are maintained by the supervisor, resulting in benefits to the buyers as well as the growers. The organization was held to qualify for tax-exemption under Section 501(c)(6) as a board of trade. See Rev. Rul. 55-715, 1955-2 C.B. 263.

C.11. Unrelated Business Income (UBI)

- (1) As mentioned above, Section 511 imposes a tax on the UBI, as computed under Section 512, of organizations otherwise exempt from tax under Section 501(c)(5).
- (2) For example, an exempt agricultural organization is subject to tax on the UBI resulting from services rendered to certain insurance companies and from the performance of property management services. See Rev. Rul. 60-228, 1960- 1 C.B. 200.
- (3) For Section 501(c)(5) organizations, UBI does not include an agricultural and educational fair or exposition activities, or qualified convention and trade show activities which stimulates interest in, and demand for, the products or services of a particular industry or segment of such industry or which educates persons

in attendance regarding new developments or products and services related to the exempt activities of the organization. See Section 513(d).

- (4) Dues payments from associate members are treated as UBI except when the associate member category furthers the principal exempt purpose of the organization. Rev. Proc. 97-12, 1997-1 C.B. 631.
 - a. UBI will not apply to annual dues payments to agricultural organizations described in Section 501(c)(5) if annual dues payments from members do not exceed a certain cost-of-living adjustment amount. See Section 512(d).
 - b. As of 2018, that cost-of-living amount is \$165. Rev. Proc. 2018-18, 2018-10 I.R.B.392, Section 3.29.
- (5) If the activity generating UBI is the principal activity, the organization will not qualify for exemption. As discussed above, compare Rev. Rul. 66-105, 1966-1 C.B. 145, to Rev. Rul. 69-51, 1969-1 C.B. 159.

III. Other Considerations

A. Section 527 Related Organizations

- (1) Section 527(f) imposes a tax on the direct political expenditures of organizations exempt from tax under Section 501(a) including labor organizations under Section 501(c)(5).
- (2) A Section 501(c)(5) organization's separate segregated fund maintained to conduct its political activities is treated as a separate organization subject to Section 527. See Section 527(f)(3).
- (3) For additional information, see Section IV.B.4 and VI.A below.

IV. Application for Recognition of Exemption and Return Requirements

A. Application Requirements

- (1) The Code and Regulations do not specifically state that labor or agricultural organizations have a time limit for filing an application for exemption. Historically, as long as the organization has an organizing document indicating it is formed under Section 501(c)(5) and its activities are consistent with Section 501(c)(5), it is considered exempt under Section 501(c)(5).
- (2) Organizations may choose to seek a determination letter recognizing exemption under Section 501(c)(5) but are not required to do so except in certain cases (see, for example, Section 6033(j)(2) regarding failures to file annual information returns or annual electronic notifications required under Section

6033(a) or (i)). See Revenue Procedure 2023-5 (updated annually), Section 6.07(1).

- (3) A completed application is one that:
- a. is signed by an authorized individual under penalties of perjury,
 - b. includes the organization's correct EIN,
 - c. includes a statement of receipts and expenditures and a balance sheet,
 - d. includes a detailed narrative statement of proposed activities, and a narrative description of anticipated receipts and contemplated expenditures, and
 - e. includes a copy of the organizing or enabling document.

See Revenue Procedure 2023-5 (updated annually), Section 6.06.

A.1. Form 1024

- (1) An organization seeking a determination letter from the Service recognizing exemption under Section 501(c)(5) must submit a completed Form 1024, Application for Recognition of Exemption Under Section 501(a), along with additional information. See Revenue Procedure 2023-5 (updated annually), Section 4.02(3) and Section 5.02.
- (2) As of January 3, 2022, the IRS requires that Form 1024 be submitted electronically online.

A.2. User Fee

- (1) Section 7528 directs the Secretary of the Treasury or delegate (Secretary) to establish a program requiring the payment of user fees for requests to the Service for determination letters and similar requests. See Rev. Proc. 2024-5, 2024-1 I.R.B. 262 (updated annually), Section 4.07 and Section 14.01.
- (2) As of January 3, 2022, the user fee must be paid electronically when the organization's Form 1024 is filed (also electronically). See Revenue Procedure 2023-5 (updated annually), Section 6.04 and Appendix A

A.3. Organizational Documents

- (1) Section 501(c)(5) organizations do not have required language for the organizational document. Generally, it should have the name, address, and purposes of the organization. The documents should show that they have been filed or adopted.
- (2) An unincorporated association includes a copy of the organizing or enabling document that is signed by a principal officer or two members, or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a "conformed copy" as outlined in Rev.

Proc. 68-14, 1968-1 C.B. 768. See Revenue Procedure 2023-5, Section 6.06(1).

- (3) A corporation includes a copy of the articles of incorporation with evidence that it was filed with, and approved by, an appropriate state official (e.g., stamped “Filed” and dated by the Secretary of State); alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state. If a copy is submitted, the written declaration must include the date the articles were filed with the state. See Revenue Procedure 2023-5, Section 6.06(1).
- (4) The organization has adopted bylaws or similar governing rules and includes a current copy; the bylaws need not be signed if submitted as an attachment to the application for recognition of exemption; otherwise, the bylaws must be verified as current by an authorized individual. See Revenue Procedure 2023-5 (updated annually), Sections 4.04 and 6.06(1).
- (5) A labor organization formed under a collective bargaining agreement should also provide a copy of the most recently adopted collective bargaining document. See Rev Proc 2023-5 (updated annually) Section 5.02(2).

A.4. Effective Date of Exemption

- (1) In general – A determination letter recognizing exemption of an organization described in Section 501(c)(5) is effective as of the date of formation of an organization if (1) its purposes and activities prior to the date of the determination letter have been consistent with the requirements for exemption, and (2) it has filed an application for recognition of exemption within 27 months from the end of the month in which it was organized. See Revenue Procedure 2023-5 (updated annually), Section 6.08(1).
- (2) When an application is not submitted within 27 months of formation – An organization that otherwise meets the requirements for tax-exempt status and the issuance of a determination letter but does not meet the requirements for recognition from date of formation will be recognized from the postmark date of its application or the submission date of its Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code; Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code; Form 1024, Application for Recognition of Exemption Under Section 501(a); or Form 1024-A, Application for Recognition of Exemption under Section 501(c)(4) of Section 501(a) of the Internal Revenue Code, as applicable. See Revenue Procedure 2023-5 (updated annually), Section 6.08(2).

A.5. Denials of Exemption

- (1) Denials may be appealed – Organizations described in Section 501(c)(5) may institute a declaratory judgment proceeding in court in response to a denial under the rules of Section 7428. See Rev. Proc. 2024-5, 2024-1 I.R.B. 262

(updated annually), Section 9, generally; Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

B. Return Requirements

B.1. Annual Information Return

- (1) In general, most exempt organizations are required to file annual returns. Section 501(c)(5) organizations with gross receipts over \$50,000 annually are required to file either Form 990, Return of Organization Exempt From Income Tax, or 990-EZ, Short Form Return of Organization Exempt From Income Tax. If gross receipts are \$50,000 or less annually, they are eligible to complete the Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990EZ, instead.
- (2) Effective for tax years beginning after July 1, 2019, the Taxpayer First Act, Pub. L. No. 116-25 Section 2301, requires that the annual Form 990 returns are to be filed electronically, unless covered by one of the exceptions. Form 990-EZ filers are required to file electronically for tax years ending July 31, 2021, and later.
- (3) The Form 990-N, created following passage of the Pension and Protection Act of 2006, must be submitted electronically.
- (4) Required returns that are not filed or are filed late could result in assessment of penalties and interest.
- (5) In addition, if required returns are not filed for three consecutive years, the organization automatically loses its tax-exempt status through auto-revocation. See Section 6033(j)(1)(B).

B.2. Unrelated Business Income (UBI)

- (1) As mentioned above, Section 501(c)(5) organizations are subject to unrelated business income tax. An exempt organization that has \$1,000 or more of gross income from an unrelated business must file Form 990-T, Exempt Organization Business Income Tax Return.
- (2) The obligation to file Form 990-T, is in addition to the obligation to file the annual information return, Form 990, 990-EZ or 990-N.
- (3) An organization must pay estimated tax if it expects its tax for the year to be \$500 or more.

B.3. Employment Taxes

- (1) If a Section 501(c)(5) organization has employees, it is responsible for federal income tax withholding and Social Security and Medicare taxes. In addition, it is also responsible for Federal Unemployment Tax.

- (2) For Section 501(c)(5) organizations, services could be rendered by:
 - a. An independent contractor,
 - b. A common-law employee (employee),
 - c. A statutory employee, or
 - d. A statutory non-employee.
- (3) Generally, the Section 501(c)(5) organization has the right to control or direct only the result of the work done by an independent contractor, and not the means and methods of accomplishing the result.
- (4) Under common law rules, a worker who performs services for a tax-exempt organization is the organization's employee if the organization can control what will be done and how it will be done. Even if the organization gives the worker wide latitude in how the work is accomplished, they may still be a common law employee. What matters is that the organization has the right to control the details of how the services are performed.
- (5) Some workers are deemed to be employees by statute. For Section 501(c)(5) organizations, the most common statutory employees are its officers. Generally, officers are employees if they perform more than minor services to the organization and receive or are entitled to receive some type of remuneration either directly or indirectly.
- (6) Directors of a corporation – Members of the governing board are defined by statute as non-employees. If an exempt organization pays its board members to attend board meetings or otherwise compensates them for performing their duties as directors, the organization should treat them as independent contractors. This is the most common type of statutory non-employee that may be involved in an exempt organization. Organizations will be required to file Form 1099-NEC, Nonemployee Compensation, for any director that is paid over \$600 in any given tax year.
- (7) When a Section 501(c)(5) organization has common law and/or statutory employees, the organization will need to withhold income tax, Social Security and Medicare taxes as applicable and report those taxes on either the quarterly Form 941, Employer's Quarterly Federal Tax Return, or annual Form 944, Employer's ANNUAL Federal Tax Return.
- (8) The organization will also be required to pay federal unemployment tax and file the annual Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return.
- (9) For independent contractors and statutory non-employees, the organization is required to file the Form 1099-NEC for any person or company that they paid over \$600 total in a year.

B.4. Political Activities

- (1) As indicated in Section III, Section 501(c)(5) organizations can set up separate organizations to handle their political activities. These organizations are Section 527 organizations. Section 527 organizations are generally required to file one or more of the following:
 - a. An initial notice, Form 8871, Political Organization Notice of Section 527 Status
 - b. Periodic reports on contributions and expenditures, Form 8872, Political Organization Report of Contributions and Expenditures
 - c. Annual income tax returns, Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations, and/or
 - d. Annual information returns, Form 990-series
- (2) Form 1120-POL is due on the 15th day of the 4th month following the end of the political organization's taxable year. For organizations on a calendar year, Form 1120-POL is due on April 15th of the following year.
- (3) Form 1120-POL is an annual income tax return that must be filed by organizations with political organization taxable income exceeding \$100 for the taxable year. Only taxable income (generally, the organization's investment income) is reported on Form 1120-POL.
- (4) Tax-exempt political organizations with gross receipts of \$25,000 or more for taxable years beginning after June 30, 2000, are required to file Form 990. Certain small political organizations may file Form 990-EZ instead.
- (5) A tax-exempt political organization is not required to file Form 990 if it is: (1) not required to file Form 8871, (including an organization required to file as a political committee with the Federal Election Committee (FEC)) or (2) a caucus or association of state or local officials.

V. Examination Techniques

A. Labor Organizations

- (1) A labor organization is an association of workers who have combined to protect or promote the interest of all members by bargaining collectively with their employers to secure better working conditions, wages, and similar benefits. The term includes labor unions, councils, and committees. See *Portland Co-operative Labor Temple Association v. Commissioner*, 39 B.T.A. 450 (1939), acq. 1939-1 C.B. 28.

A.1. Membership

- (1) A labor organization is a membership organization primarily made up of employees or representatives of employees.

- (2) If most of the members are entrepreneurs or independent contractors, the organization doesn't qualify for exemption. See Rev. Rul. 78-288, 1978-2 C.B. 179.
- (3) Ask the following questions and any follow-up questions during the initial contact or initial interview:
 - a. What are the membership requirements?
 - b. Does the organization have different classes of memberships?
 - c. If so, what are the membership requirements for each class of members?
 - d. Are the business owners allowed to be members of or receive benefits from the organization?
 - e. Does the employer (or do the employers) withhold and pay member dues from members' salaries to the labor organization?
- (4) Review the articles of organization to determine the written membership requirements.
- (5) Review materials that solicit members to determine requirements, benefits, and different classes of memberships.
- (6) Review the dues accounts in the cash receipts journal and supporting documents.
- (7) If the employer withholds and pays dues to the labor organization from member's salaries, check any separate payments to detect payments from entrepreneurs or independent contractors.
- (8) Check dues solicitations that the labor organization issues. Verify they contain a statement of non-deductibility of contributions required by Section 6113 that certain non-Section 501(c)(3) organizations must disclose in fund-raising solicitations.

A.2. Inurement

- (1) The net earnings of a Section 501(c)(5) organization may not inure to the benefit of any member.
- (2) The concept of inurement under Section 501(c)(5) differs somewhat from that applied under Section 501(c)(3) and Section 501(c)(4).
- (3) Benefits provided to the members of a labor organization to improve their working conditions are permitted. See Treas. Reg. 1.501(c)(5)-1(a).
- (4) Examples of permitted benefits:
 - a. death, sick, accident and similar benefits
 - b. payment of legal expenses (if the action is related to the member's employment)
 - c. financial assistance to members during strikes and lockouts

- (5) Examples of benefits that may result in inurement:
 - a. payment of a member's or employee's personal expenses
 - b. loans to members or employees
 - c. personal use of the organization's property
- (6) Ask about member and employee benefits during the initial interview.
- (7) During the tour of the organization's facilities, identify who uses the facilities to determine whether employers, related entities, members, or other persons are using the facilities for nonexempt purposes. For example, if the organization has five employees and there are eight private offices, determine who uses the offices and the purpose of the use.
- (8) Review the organizational documents, membership solicitation materials, minutes, and contracts with employers, to identify the types of benefits provided to officers and members.
- (9) Review the organization's employment contracts, Forms W-2, Wage and Tax Statement, and other employment records to determine the number and duties of the organization's employees and the reasonableness of salaries and benefits.
- (10) Review the cash receipts record for payments from individuals that may be repayment of loans.
- (11) Review the cash disbursement records and supporting documents for unexplained payments to individuals, unusual purchases of supplies, materials or assets or unusual payments for services. For example, purchases from a clothing store recorded as other expenses may indicate the organization pays personal expenses.
- (12) Compare assets on the organization's books to assets noted in your tour of the organization's facilities. Discrepancies could indicate the use of assets for personal purposes.
- (13) Analyze changes in assets. Disposition of assets to officials or members for less than fair market value could indicate inurement.
- (14) Review Form LM-2 or LM-3, Labor Organization Annual Report, and compare the information with the information on Form 990 for unexplained discrepancies.

A.3. Unrelated Business Income

- (1) Labor organizations often have UBI from the following sources:
 - a. Rental of debt financed property
 - b. Commercial advertising in the organization's publications
 - c. Associate/Limited member dues
 - d. Provision of goods and services to others

- (2) Section 501(c)(5) organizations are subject to UBIT. An exempt organization that has \$1,000 or more of gross income from an unrelated business must file Form 990-T.
- (3) During the Interview, discuss all the organization's activities and how they are related to the exempt purpose.
- (4) Tour facilities to identify offices or areas rented to other entities.
- (5) Read newsletters and other publications to check for taxable advertising.
- (6) Check revenues from sales to determine whether the organization is conducting a business operation, for example, a labor temple with a bar or catering facility.
- (7) Review the dues account in the cash receipts journal for associate member dues. See *National Association of Postal Supervisors v. United States*, 944 F. 2d 859 (Fed. Cir. 1991), and *American Postal Workers Union, AFL-CIO v. United States*, 925 F. 2d 480 (D.C. Cir. 1991).

A.4. Compensation

- (1) Officers and employees of Section 501(c)(5) labor organizations receive various forms of compensation. Under-reporting compensation is a common problem with exempt labor organizations.
- (2) Under-reporting results from an organization's failure to properly include the correct taxable amount of compensation in an employee's wages.
- (3) Likely sources include:
 - a. Bonuses
 - b. Expense reimbursements under a nonaccountable plan
 - c. Employer provided vehicles
 - d. Taxable fringe benefits
- (4) Expenses reimbursed under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes.
- (5) To be excludable from an employee's gross income and wages under an accountable plan, an employer's reimbursement of a work-related expense must meet three requirements:
 - a. Business connection: The expense must be paid or incurred by the employee while performing services as an employee of the organization and the expense must be an otherwise deductible trade or business expense. Also, the employer's payment to the employee must either be separate from the employee's wages or be specifically identified.

- b. Substantiation: The employee must submit documentation to substantiate the amount of the expense and its business purpose within a reasonable period.
 - c. Return of excess: If the employer gives the employee an expense allowance before the employee incurs the expense, or the employee is reimbursed an amount that otherwise exceeds the properly substantiated amount, the employee must return any amount in excess of the substantiated expense within a reasonable period.
- (6) A non-accountable plan is a reimbursement arrangement that doesn't meet one or more of the three requirements listed above.
- (7) Expenses reimbursed under a non-accountable plan are included in employee income and wages and subject to withholding and payment of employment taxes and FUTA tax under Section 3301. See Treas. Reg. 1.62-2(c)(5).
- (8) During the initial interview, ask about bonuses, fringe benefits, and expense reimbursements for employees.
- (9) Look for discussions about the payment of bonuses in the minutes. Common examples include:
 - a. Holiday bonuses
 - b. Performance related bonuses
 - c. Non-cash bonuses
- (10) Review the employee handbook for information about the organization's expense reimbursement policy. Determine whether the organization maintains an accountable plan. Pay close attention to expense allowances, expense accounts, and similar arrangements.
- (11) Inspect vouchers and other employee provided documentation. Check the disbursement journal for payments made to employees in addition to payroll checks. Look for payments with the following characteristics:
 - a. The same amount each month
 - b. Even dollar amounts (for example, \$50.00, \$120.00, etc.)
- (12) Review any restrictions on using employer-provided vehicles for personal purposes. See Treas. Reg. 1.61-21 for a discussion of the value of the personal use of an employer-provided vehicle.
- (13) Review employment contracts, employee handbooks, etc. for benefits the organization offers to identify taxable fringe benefits. Section 61 indicates that fringe benefits are taxable unless specifically excluded. Examples of taxable fringe benefits include:
 - a. Club dues
 - b. Deferred compensation (nonqualified arrangements)

- c. Group term life insurance in excess of \$50,000
- d. Employer provided meals and lodging (but see Section 119)
- e. Benefit plans (certain employee and employer contributions)

A.5. Payments to Members

- (1) Payment of certain benefits by Section 501(c)(5) labor organizations to their members or their members' families aren't considered inurement. These benefits include:
 - a. Strike fund benefits and lockout benefits
 - b. Payment for sick, accident, and death benefits
 - c. Lost time payments to union officials

A.5.a Strike Fund and Lockout Benefits

- (1) Strike fund benefits may be wages subject to Federal Insurance Contribution Act (FICA), FUTA, and federal income tax withholding if the labor organization directs the members' activity. See Rev. Rul. 75-475, 1975-2 C.B. 406.
- (2) Strike fund benefits may be compensation to the member, but not subject to FICA, FUTA, and federal income tax withholding, if the payment is per the union's constitution and not remuneration for services an employee performed for the employer. See Rev. Rul. 68-424, 1968-2 C.B. 419 and Section 3401, distinguished as in Gregory v. United States, 637 F.Supp. 624 (E.D. N.C 1986).
- (3) Strike fund benefits may be excludable from the member's income as a gift, based on the circumstances of the payments. Issues such as form and amount of the payments and whether the payments were based on the member's needs are considered. See Rev. Rul. 61-136, 1961-2 C.B. 20, and United States v. Allen Kaiser. 363 U.S. 299 (1960), 1960-2 C.B. 33.

Note: There are numerous cases where Kaiser was distinguished and strike benefits were held to be includable as gross income under Section 61. See Woody v. United States, 368 F.2d 668 (9th Cir.1966); Halsor v. Lethert, 240 F. Supp. 738 (D.Minn.1965); Godwin v. United States, 65-1U.S.T.C. 65-1 par 9121, 15 A.F.T.R.2d 258 (W.D.Tenn.1964); Placko v. Commissioner, 74 T.C. 452 (1980); Colwell v. Commissioner, 64 T.C. 584 (1975); Brown v. Commissioner, 47 T.C. 399 (1967); Hagar v. Commissioner, 43 T.C. 468 (1965); Stone v. Commissioner, T.C.M. (P-H) par. 85-544 (1985); Jernigan v. Commissioner, T.C.M. (P-H) par. 68-268 (1968). All of these cases refer to the legal standards the Supreme Court set in Duberstein for determining excludable income as gifts.

- (4) Lockout benefits are treated like strike fund benefits. They are generally included in gross receipts, but may be excludable from the member's income as a gift based on the circumstances of the payments. Issues such as form and amount of the payments and whether the payments were based on the

member's needs are considered. See Rev. Rul. 61-136, 1961-2 C.B. 20, and United States v. Allen Kaiser. 363 U.S. 299 (1960), 1960-2 C.B. 33(5) Review the organization's constitution, articles, bylaws, etc. for the terms and conditions under which they pay strike fund benefits and lockout benefits.

- (5) Check the organization's minutes for any references indicating the intent of the payment. Examine the disbursement journals to determine whether the members received the same amount. Inspect any member provided documentation.
- (6) Review Forms W-2 and 1099 to determine whether payments were reported to the members.

A.5.b Lost Time Payments

- (1) Payments made by a labor organization to its members for lost time from their regular employment are includable in income and may be subject to FICA, FUTA, and federal income tax withholding. Payments for lost time are generally considered wages under Section 811(a) of the Social Security Act and therefore included in gross income.
- (2) Payments for lost time while conducting negotiations for the union are wages subject to FICA, FUTA, and federal income tax withholding. See Rev. Rul. 68-539, 1968-2 C.B. 422.
- (3) Payments for lost time while attending the union's annual convention are reportable as income by the recipient as lost salary, but aren't wages subject to FICA, FUTA, and federal income tax withholding. See Rev. Rul. 80-348, 1980-2 C.B. 31.

Note: Amounts an international labor union pays to reimburse delegates from local chapters for travel expenses to attend the annual convention are excluded from gross income, and the employee may not deduct the reimbursed expenses under Section 162, even though the employee receives it in a later year. Amounts the delegates receive as reimbursement for lost salary are includible in gross income but are not "wages" under Sections 3121, 3306, and 3401. See Rev. Rul. 80-348, 1980-2 C.B. 31.

- (4) Read the organization's constitution or other documents governing payments to members for lost wages.
- (5) Examine the disbursement journals for payments made to members and determine the reason for them.
- (6) Check Forms W-2 and 1099 to determine whether the payments were reported to the member.

A.6. Legislative Activities

- (1) A Section 501(c)(5) labor organization may participate in lobbying activities if the legislation is relevant to accomplishing the organization's exempt purpose.

- (2) Review personal service and employment contracts, minutes, and publications to determine if the organization engages in lobbying activities.
- (3) If the organization engaged in lobbying activities, determine whether the legislation is related to the organization's exempt purpose.

A.7. Political Activities

- (1) A labor organization which otherwise qualifies for exemption under Section 501(c)(5) isn't disqualified merely because it engages in some political activity.
- (2) Section 527(f) imposes a tax on the direct political expenditures of organizations exempt from tax under Section 501(a) including labor organizations in Section 501(c)(5).
- (3) Interview the officers to identify possible political activity by the organization or the existence of a separate segregated political fund.
- (4) Review the minutes, newsletters, web sites, and correspondence to identify possible political activity by the organization or the existence of a separate segregated political fund.
- (5) Analyze the following accounts for possible political expenditures:
 - a. Legal fees
 - b. Bonuses
 - c. Printing
 - d. Advertising
 - e. Entertainment
- (6) Analyze the disbursement journals, bank statements, canceled checks and other supporting documents to identify transfers of funds to a separate segregated political fund.
- (7) Determine whether a Section 501(c)(5) labor organization's political committee is engaged in political campaign and voter education/registration activities. Trace funds used for voter education/registration to their ultimate use to verify they weren't used for political campaign purposes. If so, this could constitute an indirect political expenditure.

B. Agricultural and Horticultural Organizations

- (1) Agricultural or horticultural organizations are associations of persons who have combined to promote the interests of persons engaged in the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock. See Section 501(g).

B.1. Membership

- (1) Agricultural or horticultural organizations are membership organizations primarily made up of persons seeking to better the conditions of those engaged in agricultural or horticultural pursuits.
- (2) All of the organization's members don't have to be engaged in agricultural or horticultural pursuits.
- (3) Ask the following questions and any follow-up questions during the initial contact or initial interview:
 - a. What are the membership requirements?
 - b. Does the organization have different classes of memberships?
 - c. If so, what are the membership requirements for each class of members?
 - d. What benefits are the various classes of members entitled to?
- (4) Review the articles of organization to determine the written membership requirements. Review membership solicitation materials to determine requirements, benefits, and different classes of memberships.
- (5) Check dues solicitations issued by the organization. Verify that fundraising solicitations state that contributions are nondeductible, as required by Section 6113 for certain non-Section 501(c)(3) organizations.

B.2. Inurement

- (1) No part of the net earnings of a Section 501(c)(5) organization may inure to the benefit of any member. See Treas. Reg. 1.501(c)(5)-1(a)(1).
- (2) The refund of excess dues in the same proportion as the dues are paid isn't inurement. See Rev. Rul. 81-60, 1981-1 C.B. 335.
- (3) Examples of inurement include the provision of welfare, aid, and financial assistance to the members of agricultural or horticultural organizations exempt from tax under Section 501(c)(5).
- (4) The concept of inurement under Section 501(c)(5) differs somewhat from that applied under Section 501(c)(3) and Section 501(c)(4).
- (5) Ask about member benefits during the initial interview.
- (6) Review the organizational documents, membership solicitation materials, minutes, etc. to identify any benefits provided to members.
- (7) Inspect the organization's employment contracts, Forms W-2 and other employment records to determine the number and duties of the organization's employees and the reasonableness of salaries and benefits.
- (8) Review records related to the use of the organization's assets to determine whether related entities, members, or other persons are using the facilities for nonexempt purposes.

- (9) Analyze changes in assets. Disposition of assets to officials or members at less than fair market value could indicate inurement.
- (10) Review the cash disbursement record, “PayPal” accounts, and supporting documents for unexplained payments to individuals, unusual purchases of supplies, materials, or assets or unusual payments for services.

B.3. Unrelated Business Income (UBI)

- (1) Agricultural or horticultural organizations frequently have UBI from the following sources:
 - a. Rental of debt financed property
 - b. Winter storage fees
 - c. Commercial advertising in the organization’s publications
 - d. Provision of goods or services to others
- (2) Associate member dues are excluded from UBI for exempt agricultural or horticultural organizations if they are \$100 or less. See Section 512(d).

Caution: Beginning with taxable years starting in 2010, the excludable amount may be indexed for inflation. See Rev. Proc. 2009-50. For 2021, the most current period noted, the adjusted limitation for annual dues under this paragraph is \$173. See Rev. Proc 2020-45.
- (3) Tour facilities to identify possible sources of rental income and winter storage fees.
- (4) Read newsletters and other publications to check for taxable advertising.
- (5) Check revenues from sales. Determine whether the organization is conducting a business operation.

B.4. Legislative Activities

- (1) Section 501(c)(5) agricultural or horticultural organizations may participate in legislative activity that is related to accomplishing their exempt purpose.
- (2) Section 501(c)(5) agricultural or horticultural organizations’ lobbying expenditures may be subject to the requirements of Section 6033(e).
- (3) Section 6033(e) imposes a notice requirement and proxy tax on the lobbying expenditures of certain agricultural or horticultural organizations.
- (4) Review lobbying expenditures to verify the lobbying is related to the organization’s exempt purpose. Review the minutes, newsletters, web sites, and correspondence to identify legislative activity.
- (5) Determine whether any officials of the organization are registered lobbyists. Review any contracts with outside lobbyists to determine the extent and the nature of such lobbying.

- (6) Determine whether an agricultural or horticultural organization is subject to the reporting requirements of Section 6033(e).
- (7) Review dues statements of agricultural or horticultural organizations subject to these requirements to determine if they properly reported amounts used for lobbying.
- (8) Inspect Form 990-T of agricultural or horticultural organizations that elected not to or didn't provide this notification to verify the proxy tax under Section 6033(e)(2)(A) was properly calculated.

B.5. Political Activities

- (1) An agricultural or horticultural organization that otherwise qualifies for exemption under Section 501(c)(5) isn't disqualified merely because it engages in some political activity.
- (2) Section 527(f) imposes a tax on the direct political expenditures of organizations exempt from tax under Section 501(a) including agricultural or horticultural organizations described in Section 501(c)(5).
- (3) A Section 501(c)(5) agricultural or horticultural organization's separate segregated fund maintained to conduct its political activities is treated as a separate organization subject to Section 527.
- (4) Political expenditures made by Section 501(c)(5) agricultural or horticultural organizations may be subject to Section 6033(e) requirements.
- (5) During the interview with the officers, ask about possible political activity by the organization or the existence of a separate segregated political fund.
- (6) Review the minutes, newsletters, websites, and correspondence to identify possible political activity by the organization or the existence of a separate segregated political fund.
- (7) Analyze the following accounts for possible political expenditures:
 - a. Legal fees
 - b. Bonuses
 - c. Printing
 - d. Advertising
 - e. Entertainment
- (8) Analyze the disbursement journals, bank statements, canceled checks and other supporting documents to identify transfers of funds to a separate segregated political fund.
- (9) Determine whether a political committee set up by a Section 501(c)(5) agricultural or horticultural engaged in both political campaign and voter education or registration activities.

- (10) Trace funds used for voter education or registration activities to their ultimate use to verify they weren't used for political campaign purposes, because doing so could constitute an indirect political expenditure.

VI. Additional Examination Considerations

A. Section 527 Requirements for Separate Fund

- (1) If the organization made expenditures for political purposes or maintained a separate segregated political fund, determine whether all returns and/or reports required by Section 527 were filed.

Caution: Public Law 106-230, 106th Congress, 2nd Session (2000) made substantive changes to the filing and notice requirements of Section 527 political organizations and funds. Review Section 527 and Treas. Reg. 1.527-1. Research to determine whether there have been any new developments in this area subsequent to this TG's publication date.

A.1. Filed Reports

- (1) Inspect the organization's copies of the returns and/or reports and determine whether an examination is warranted.

A.2. Did Not File Reports

- (1) Secure the delinquent returns and/or reports and forward to the FAST team to process.
- (2) Determine whether an examination of the delinquent returns and/or reports is warranted.
- (2) Organizations that collect political contributions or membership dues earmarked for a separate segregated fund and promptly and directly transfer them to the fund per Treas. Reg. 1.527-6(e), should:
 - a. not report them in Part I-A lines 1 or 2 of Schedule C, Political Campaign and Lobbying Activities, of Form 990 or 990EZ.
 - b. report them on line 5e, Part I-C of Schedule C.

B. Sections 162(e) Section 6033(e) – Notification Requirements

B.1. Explanation of Sections

- (1) Certain legislative and political expenditures and dues payments made to Section 501(c)(5) organizations for these expenditures are not deductible as ordinary and necessary business expenses. See Section 162(e).
- (2) Certain Section 501(c)(5) organizations must disclose the amount of legislative and political expenditures to which Section 162(e)(1) applies and provide a notice to any person paying dues to which those expenditures are allocable. See Section 6033(e).

B.2. Requirements for Labor Organizations

- (1) Labor organizations described in Section 501(c)(5) aren't subject to the notice requirements under Section 6033(e) or the related proxy tax because they're deemed to be an organization in which substantially all of the dues are not deductible without considering Section 162(e). See Rev. Proc. 98-19 and refer to Schedule C (Form 990 or 990-EZ) Instructions, & Part III-A.

B.3. Requirements for Agricultural & Horticultural Organizations

- (1) Some agricultural or horticultural organizations are subject to the notice and proxy tax requirements of Section 6033(e). See Rev. Proc. 98-19.
- (2) The notice must contain an estimate of the portion of the dues allocable to those expenditures or the organization must pay a proxy tax, as described above. Refer to Schedule C (Form 990 or 990-EZ) Instructions, Part III, Section 6033(e) Notice & Reporting Requirements & Proxy Tax.

C. Violations of Other Federal Statutes

C.1. Review for Possible Violations

- (1) Be alert to the activities of the organization, any affiliated organization, and/or of any officer or trustee that would violate either:
 - a. 18 USC 664 or 18 USC 1954 (concerning theft, embezzlement, and manipulation of trustee funds), or
 - b. 52 USC 30118 (transferred from 2 USC 441(b)) (concerning illegal political contributions)

Note: If you find possible violations of these statutes, prepare a Form 5666, EP/EO Information Report, and send to EO Classification.

- (2) Form 13909, Tax-Exempt Organization Complaint (Referral) Form, is an online referral form the general public, state, and local government regulators use to report tax-exempt organizations' noncompliance and questionable activities. EO Classification uses information on Form 13909 to set up compliance reviews and field examinations. The form is published on IRS.gov on the "Charities and Nonprofits" homepage and may be emailed, faxed, or mailed to the EO Classifications Unit. Refer to EO Examination Classification Alert dated 08-30-2010, for Online Referral Form 13909.
- (3) If fraud is detected, (1) discuss with your manager and the fraud technical advisor, (2) complete Form 11661, Fraud Development Recommendation, and (3) refer to IRM 4.70.13.13, Fraud and Abusive Transaction Procedures.

D. Other Filings and Tax Compliance

D.1. Other Considerations

- (1) Be alert to any foreign bank accounts. Organizations may be required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts, annually, before June 30th.
- (2) Look for any prohibited tax shelter transactions at any time during the tax year. The organization may be required to file Form 8886-T, Disclosure by Tax-Exempt Entity regarding Prohibited Tax Shelter Transactions.
- (3) Check to see whether the organization complied with backup withholding rules for reporting payments to vendors and reportable gaming (gambling) winnings to prize winners, as may be found in an agricultural organization.
- (4) Refer to the questions on Form 990, Part V, Statements Regarding Other IRS Filings & Tax Compliance, to provide information on the above issues.