

## **IRC 501(c)(5) Organizations**

By John Francis Reilly, Carter C. Hull, and Barbara A. Braig Allen



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### Overview

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#### Purpose

IRC 501(c)(5) provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations. As of March 31, 2002, there were 58,962 organizations recognized as tax-exempt under IRC 501(c)(5). This article will address the requirements an organization must meet to qualify for recognition as exempt under IRC 501(c)(5).

The Appendices contain checksheets and instructions for Project Code #207, 501(c)(5) Labor Organizations.

Rules relating to the political campaign and lobbying activities of IRC 501(c)(5) are the subject of a separate article.

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## **Overview, Continued**

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## **A. Statutory History**

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### **Tariff Act of 1909**

An income tax exemption for labor agricultural or horticultural organizations was first provided in the Corporation Excise Tax Act of 1909.

The legislative history of IRC 501(c)(5) and other relevant tax statutes provide a useful definition of labor organizations for purposes of applying IRC 501(c)(5). Congress first exempted labor organizations from the general corporate tax levied by the Tariff Act of 1909. Tariff Act of 1909, ch. 6, § 38, 36 Stat. 113. The bill, as sent to the Senate Finance Committee, included the term "labor organization." The term was eliminated in committee as unnecessary. At the time the committee felt that the wording "fraternal beneficiary societies, \*\*\* operating under the lodge system and providing for the payment of life, sick, accident, and other benefits" was sufficient. 44 Cong. Rec. at 4148-49.

Among others, the Brotherhood of Local Firemen expressed concern that their organization would not be exempt. These organizations, which did not provide life, sick, accident, and other benefits to their members, might not be considered "beneficiary societies." 44 Cong. Rec. at 4154. The phrase "labor organization" consequently was added to the statute to cover organizations that do not "make such provisions, and are not organized for those purposes." 44 Cong. Rec. at 4155. In 1913, passage of the first income tax act excluded "labor, agricultural, or horticultural organizations" from income tax liability. Tariff Act of 1913, ch. 16, § 11(G), 38 Stat. 172. Subsequent tax bills and revisions have maintained this language.

In 1976, IRC 501(g) was added to the Code to define "agriculture" as the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock. The provision was enacted to clarify that harvesting aquatic resources should be recognized as an agricultural pursuit. The legislative history indicates that organizations engaged in harvesting aquatic food were encountering difficulty in qualifying for reduced postal rates. See S. Rep. No. 94-938 at 419, 420, reprinted in 1976-3 C.B. (vol. 3) 457-458.

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## **B. Labor Organizations**

### **1. Definition**

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**What Is a  
"Labor  
Organization?"**

The term "labor" is commonly accepted as meaning the performance of service as employees. Rev. Rul. 78-288, 1978-2 C.B. 179, citing Rev. Rul. 76-420, 1976-2 C.B. 153.

General usage defines a labor organization as:

- An association of workers
- Who have combined to protect or promote the interests of the members
- By bargaining collectively with their employers
- To secure better working conditions, wages, and similar benefits.

The term embraces labor unions, councils, and committees.

"Labor union" is a somewhat narrower term than "labor organization."

Labor unions are labor organizations, but not all labor organizations are labor unions. IRC 501(c)(5) labor organizations do not need to be recognized labor unions.

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## **B. Labor Organizations**

### **2. Membership**

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#### **Composition**

A labor organization is generally composed of employees or representatives of the employees (collective bargaining agents) and similar groups.

The composition of the organization is not as important as are the purposes for which it is formed and operated.

#### **Example:**

An apprenticeship committee consisted of representation by both employees and employers equally. The committee was organized primarily:

- To establish standards of employment for apprentices in various skilled crafts,
- To determine the qualifications necessary to become a journeyman,
- To aid in adjusting and settling disputes between the employer and the apprentice, and
- To cooperate with the local board of education in establishing supplementary classroom instruction pertaining to the apprentice's vocation.

The composition of the committee was not within the usual meaning of "labor organization," i.e., representatives of employees in the form of collective bargaining agents or similar employees.

The primary objectives of the apprenticeship committee improved the lot of the apprentices by:

- Establishing standards as to wage requirements,
- Improving working conditions,
- Helping to settle disputes between apprentices and employers,
- Establishing the number of apprentices which will be employed in a trade, and
- Providing for on-the-job training with required supplemental education in the classroom.

In addition, the committee was not operated for the profit of any individual.

Because the committee meets the requirements of Reg. 1.501(c)(5)-1, i.e.,

- Has no net earnings inuring to the benefit of any member, and,
- Has as its objectives:
  - 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 occupation;

it is exempt from taxation as a labor organization. Rev. Rul 59-6, 1959-1 C.B. 121.

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## **B. Labor Organizations**

### **2. Membership, Continued**

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**Self-employed Members**

An organization was formed to better the conditions of its members, all of whom were engaged in a particular trade.

- The organization worked for better wages and working conditions of its members.
- Most of the members were employees, though the membership did include some self-employed persons.
- The organization stated that the self-employed were members, since they believed the organization's activities better their conditions as well.

The organization is exempt under IRC 501(c)(5). Rev. Rul. 74-167, 1974-1 C.B. 134.

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**Nurses: Self-employed**

An organization of nurses opened membership to all persons:

- Engaged in the profession,
- Who were graduates of an accredited school of nursing, and
- Who were licensed to practice in at least one state.

The purpose of the organization was to promote the professional and educational advancement of nurses, and to promote the improvement of nursing services.

- The members of the organization were employed by various institutions, organizations, and doctors in the state.
- A small percentage of the nurses were independent contractor private duty nurses.
- The primary activity of the organization was to act as a collective bargaining agent for its members in contract negotiations between the various institutions and the nurses employed by them.
- The organization also operated a health and welfare fund funded by member dues.
- The organization:
  - Sponsored a biennial convention,
  - Operated periodic workshops, conferences and institutes, and
  - Provided scholarships for continuing education.

The organization meets the requirements of IRC 501(c)(5). The inclusion of a small percentage of independent contractors in its membership does not affect its exempt status. Rev. Rul. 77-154, 1977-1 C.B. 148.

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## **B. Labor Organizations**

### **2. Membership, Continued**

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**Entrepreneurs  
and Independent  
Contractors**

An organization was formed to advance the interests of its members who were drivers, trainers and horse owners engaged in harness racing in a specific geographic area.

- The organization negotiated with the operators of area raceways for larger purses, better hours and safer operating conditions.
- In addition to agreed amounts received from horse owners for feeding, care-taking, exercising, and managing a horse, or for driving a horse, the trainer and driver of a winning horse each received a percentage of the owner's purse.
- Most of the trainers and drivers were entrepreneurs or independent contractors for purposes of IRC 1402 rather than employees.

Where most of an organization's members are entrepreneurs or independent contractors, the organization does not meet the requirements of IRC 501(c)(5). Rev. Rul. 78-288, 1978-2 C.B. 179.

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**Retired Members**

An organization composed of retired employees can qualify for exemption as a labor organization under IRC 501(c)(5) where it acts to secure and maintain retirement benefits for its members.

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## **B. Labor Organizations**

### **3. Principal Purposes**

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**What Is the  
Principal  
Purpose of a  
Labor  
Organization?**

The principal purposes of a labor organization must be:

- The betterment of the conditions of those engaged in a common pursuit,
- The improvement of the grade of their products, and
- The development of a higher degree of efficiency in their respective occupations. Reg. 1.501(c)(5)-1.

These purposes may be accomplished by a single labor organization acting alone, or by several organizations acting together through a separate organization.

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## B. Labor Organizations

### 4. Qualifying Activities

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#### Labor Newspaper

A corporation owned by several labor unions engaged solely in publishing a newspaper containing only matters concerning union activities (organized labor).

- The paper carried no advertising.
- It was distributed to the members of the unions and other interested members of the public.
- Publication costs were borne pro rata by several labor organizations.

The Service determined that:

- Furnishing information about union activities to members is an appropriate function for a labor union, and
- Publishing a newspaper of this type is an exempt function of an exempt organization.

The nature of the activities is the controlling factor, not the fact that the activities are carried out on behalf of several labor organizations. Rev. Rul. 68-534, 1968-2 C.B. 217.

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#### "Labor Temple"

A corporation operated a "labor temple" containing offices, meeting and recreation halls, a barber shop, etc., and otherwise "provided a home" for several labor unions in the community.

All the stock of the corporation was owned by the unions and their members. While the corporation did not maintain employment facilities, the shareholder unions did. Individual members of the unions frequently used the building as their headquarters for the purpose of obtaining seasonal employment through facilities offered by the unions.

The corporation's affairs were conducted with a view toward making receipts and expenses equal, so that the operation as a whole would not produce a profit.

The Board of Tax Appeals ruled that the organization was exempt under IRC 501(c)(5) as a labor organization organized to protect and promote the interests of labor. The court added, however, that exemption would be retained only so long as the organization confined its circumstances and activities within the limits described above. It is significant to note that the use of the facilities by casual guests (less than 2 percent) was regarded as immaterial. Portland Cooperative Labor Temple Association v. Commissioner, 39 B.T.A. 450 (1939).

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## **B. Labor Organizations**

### **4. Qualifying Activities, Continued**

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#### **Dispatch Hall**

An organization was established:

- Pursuant to a collective bargaining agreement between a labor union and an association of employees
- For the principal purpose of operating a dispatch hall
- To allocate work assignments among eligible union members.

Union members operated the dispatch hall under the supervision of a joint committee.

The committee was composed of an equal number of employer and union representatives.

The parent labor union and the parent employer association provided funding on an equal basis.

In addition to maintaining and operating the dispatch hall, the organization

- Decided questions regarding rotation of work crews and extra men
- Investigated and adjudicated grievances and disputes that arise
  - In connection with working conditions
  - The job performance of union members
  - The operations of the hall.

So long as the organization's activities are not an independent undertaking, but are conducted in conjunction with and in furtherance of the objectives and activities of a parent labor union to benefit the union members, they are appropriate and traditional union functions.

The fact that the dispatch hall, operated by union members, is under the supervision of a joint committee composed of an equal number of employer and union representatives and jointly funded by equal annual contributions of the parent labor organization and the employer association, does not preclude exemption under IRC 501(c)(5). Rev. Rul. 75-473, 1975-2 C.B. 213.

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## **B. Labor Organizations**

### **4. Qualifying Activities, Continued**

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**Public  
Employees  
Representative**

An organization was created by exempt labor unions representing public employees.

- The primary purpose of the organization was to better the conditions of public employees throughout the United States.
- Its membership was composed of exempt labor organizations that controlled the organization by electing its directors.
- The organization coordinated legislative, legal, and public relations efforts of its member organizations.
- Its activities included working for the enactment of legislation favorable to all public employees.
- The organization held meetings, and published documents expressing the interest of such employees.
- The primary activity of the organization was supporting litigation of common interest.
- The organization filed amicus curiae briefs on behalf of its member organizations or individual employees where the litigation was in the interest of all public employees.

Litigation support for the purpose of improving the conditions of public employees is consistent with the statutory requirements of IRC 501(c)(5). Therefore, the organization qualifies for exemption under that subparagraph. Rev. Rul. 74-596, 1974-2 C.B. 167.

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**Legal Defense  
Fund**

An organization, composed of law enforcement officers, was formed to promote the welfare of these officers.

- The organization advanced programs for improved working conditions and mitigating the hazards inherent in law enforcement.
  - Membership dues provided support for office expenses, salaries and legal fees.
  - The organization also represented members in matters of wages and hours of labor.
  - As a minor activity, it provided funds for counsel when legal action was brought against members in the execution of official duties.
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## **B. Labor Organizations**

### **4. Qualifying Activities, Continued**

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**Legal Defense Fund, continued**

Providing funds for counsel in these cases of legal action does not adversely affect the organization's IRC 501(c)(5) exemption. Rather, by providing such fees the organization was attempting to improve the conditions of employment. This effort also encouraged the development of a higher degree of efficiency among law enforcement officers. Thus, paying legal defense of this type is a proper activity of a labor organization. Rev. Rul. 75-288, 1975-2 C.B. 212.

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**Association of Teachers**

Teachers employed by the school system of a certain city who taught in the city's school system formed an association.

It was formed:

- To improve the professional abilities of its members, and
- To secure better salaries and working conditions for them.

To accomplish these purposes, the organization:

- Sponsored seminars and courses for its members
- Participated in state and national conventions of teachers
- Bargained collectively
- Processed grievances on behalf of its members pursuant to a labor contract with the local school board.

The association also sent out a monthly newsletter to keep its members informed of these activities.

The association, by bargaining collectively and processing grievances on behalf of its members, has as its object the betterment of the conditions of its members. Further, by sponsoring seminars and courses, it promotes a higher degree of efficiency in the teaching profession.

Thus, the association qualifies for exemption under IRC 501(c)(5). Rev. Rul. 76-31 1976-1 C.B. 157

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## **B. Labor Organizations**

### **4. Qualifying Activities, Continued**

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**Union and  
Employer  
Stewardship  
Trust**

A trust was organized pursuant to the terms of a collective bargaining agreement.

It was intended to foster, promote, and maintain the conditions and provisions contained in the collective bargaining agreement between certain employers and employees through the use of a single stewardship system encompassing several firms in a particular industry.

The trust's purposes included the advancement and growth of the industry and the promotion and maintenance of high production and wage standards with optimum quality of product and craftsmanship.

These purposes were accomplished by maintaining a fund for hiring and compensating a full-time, multi-company steward who was responsible for:

- Investigating complaints filed by employees
- Assisting in the settlement of disputes
- Assuring that employers complied with the terms of the collective bargaining agreement.

Because the primary activity of the trust was to furnish a multi-company stewardship system that operated essentially to represent employees and to promote the betterment of their working conditions, it qualifies for exemption under IRC 501(c)(5). Rev. Rul. 77-5, 1977-1 C.B. 146.

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**Apprenticeship  
and Training  
Committee**

A trust was founded by the local chapters of a union and an employers' association of a particular industry in connection with a collective bargaining agreement.

- It regularly conducted educational courses and programs at the union hall in various aspects of the trade for the local union members, employees, or associations of the industry.
  - Experienced journeymen served as instructors.
  - The trust also selected apprentices and supervised their training program.
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## **B. Labor Organizations**

### **4. Qualifying Activities, Continued**

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**Apprenticeship  
and Training  
Committee,  
continued**

- The aim of these activities was to ensure that local standards on the quality of work conformed with national codes for the industry.
- The trust also had an affirmative action plan that was approved by the U.S. Department of Labor.

The trust was devoted to improving the grade of the industry's products and developing a higher degree of occupational efficiency. Accordingly, it qualifies for exemption under IRC 501(c)(5). Rev. Rul. 78-42, 1978-1 C.B. 158.

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**Strike and  
Lockout Fund**

An organization was formed by a labor union to provide financial assistance to members of the union during strikes and lockouts.

- The executive board of the union also controlled the organization.
- Members of the union supported the organization.
- The organization disbursed funds to members who were not working as a result of a strike or lockout.

Strike benefits may further a labor union's primary purpose of representing members in matters of wages, hours of labor, working conditions, etc. Therefore, the organization is exempt as a labor organization described in IRC 501(c)(5). Rev. Rul. 67-7, 1967-1 C.B. 137.

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## **B. Labor Organizations**

### **5. Non-qualifying Activities**

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**Providing  
Employment to  
Members  
Through a  
Business  
Activity**

An organization carried on a business activity owned and controlled by a labor union.

- It was organized to furnish employment to members of the union.
- Wages were paid to the union members employed and the profits were turned over to the union treasury.

A business formed to employ union members is not a labor organization in the commonly accepted sense, and is not exempt under IRC 501(c)(5). Furthermore, because of IRC 502, which addresses “feeder organizations,” the organization cannot be exempt simply on the grounds that the profits from its business activity are paid over to an exempt organization. Rev. Rul. 69-386, 1969-2 C.B. 123.

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**Collection of  
Employment  
Taxes**

An association of manufacturers and a labor union, created through a collective bargaining agreement, an organization to receive employment taxes.

- The manufacturers were required to deduct these taxes from their union employees and pay the amounts to federal and state revenue departments.
- A committee, consisting of representatives of the manufacturers’ associations and the labor union, administered the organization.

The organization is not exempt under IRC 501(c)(5) because it does not serve any of the exempt purposes articulated in that section. Rev. Rul. 66-354, 1966-2 C.B. 207.

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## **B. Labor Organizations**

### **5. Non-qualifying Activities, Continued**

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#### **Savings Plan**

A union and an employers' association with equal representation established a savings plan pursuant to a collective bargaining agreement.

- Under the plan, a set amount was withheld from each union member's pay and deposited in a bank account.
- These amounts earned interest during the course of the year.
- The organization paid administrative expenses from the fund.
- Any amounts that remained after administrative expenses were paid, were paid to the members annually on a fixed date.

This organization does not qualify for exemption under IRC 501(c)(5) because its activities are not those commonly or historically recognized as those characteristic of labor organizations.

These traditional characteristics are negotiating wages, hours, and working conditions. In addition, labor organizations may provide death, sickness, and accident benefits to members. Rev. Rul. 77-46, 1977-1 C.B. 147.

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#### **Strike Fund Controlled by Private Individuals**

Private individuals controlled a particular organization that paid weekly income to its members in the event of a lawful strike called by the member's labor union.

- Members paid an annual fee to the organization.
- The organization had no authority to represent or speak for its members in matters relating to their employment, such as wages, hours of labor, working conditions, or economic benefits.

The organization was not controlled by, or connected with, any of the labor organizations to which the members belonged.

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## B. Labor Organizations

### A. Statutory History

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**Strike Fund  
Controlled by  
Private  
Individuals,  
continued**

The organization is not a “labor organization” in the commonly accepted sense of the term. Furthermore, it did not make the weekly payments with the objective of bettering the conditions of employment. Accordingly, it does not qualify for exemption under IRC 501(c)(5). Rev. Rul. 76-420, 1976-2 C.B. 153.

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**Pension Trust  
Funds**

On July 29, 1997, T.D. 8726 was issued. It contained new Reg. 1.501(c)(5)-1(b)(1) to clarify the status of pension trust funds under IRC 501(c)(5).

Reg. 1.501(c)(5)-1(b)(1) provides that an organization whose principal activity 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 program is not a labor organization. This regulation became effective December 21, 1995. However, if an organization meets all of the following requirements, it will be considered a labor organization under 501(c)(5).

- (i) It is established and maintained by another labor organization described in section 501(c)(5), (determined without regard to this paragraph (b)(2));
  - (ii) It is not directly or indirectly established or maintained in whole or in part by one or more –
    - (A) Employers;
    - (B) Governments, agencies or instrumentalities thereof; or
    - (C) Government controlled entities;
  - (iii) It is funded by membership dues from members of the labor organization described in this paragraph (b)(2) and earnings thereon;
  - (iv) It has not at any time after September 2, 1974 (the date of enactment of the Employee Retirement Income Security Act of 1974 [ERISA], Pub. L. No. 93-406, 88 Stat. 829) provided for, permitted, or accepted employer contributions.
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## **B. Labor Organizations**

### **A. Statutory History, Continued**

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**Pension Trust Funds, continued**

Reg. 1.501(c)(5)-1(b)(2) contains an example of a trust whose principal activity is to hold, invest, disburse or otherwise manage funds associated with a retirement savings plan and which does not satisfy all the requirements of Reg. 1.501(c)(5)-1(b)(2) exception. For example, it accepts contributions from employers. The example provides that the trust is not a labor organization under IRC 501(c)(5).

Reg. 1.501(c)(5)-1(b) reflects the government's nonacquiescence in Morganbesser v. United States, 984 F.2d 560 (2d Cir. 1993), nonacq. 1995-2 C.B. 2, A.O.D. CC-1995-016 (Dec. 26, 1995).

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**ERISA**

IRC 501(a) exempts from federal income tax, organizations described in IRC 401(a) or 501(c). Therefore, IRC 401(a) and 501(c)(5) should be read as enactments of Congress that comprise one consistent body of law. Pacific Co. v. Johnson, 285 U.S. 480, 495 (1932).

ERISA imposed more stringent rules on pension plan trusts that sought exemption from federal tax. Congress intended that pension trusts satisfy the comprehensive requirements of IRC 401(a), as amended by ERISA. See S. Rep. No. 383, 93d Cong., 1<sup>st</sup> Sess., at 33, reprinted in 1974-3 C.B. (Supp.) 112; H. Rep. No. 807, 93d Cong., 1<sup>st</sup> Sess., at 33, reprinted in 1974-3 C.B. (Supp.) 236, 266.

Under this regime, an organization whose principal purpose is managing employer-sponsored retirement plans is not an exempt labor organization described in IRC 501(c)(5). However, an employer-sponsored pension plan may nevertheless qualify for exemption under IRC 501(a) if it meets the requirements of IRC 401(a).

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## **B. Labor Organizations**

### **A. Statutory History, Continued**

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**ERISA,  
continued**

Accordingly, consistent with ERISA and interpreting IRC 401(a) and IRC 501(c)(5) as part of a consistent whole, Reg. 1.501(c)(5)-1(b)(1) provides a general rule. The rule enunciated in the regulation is that an organization is not described in IRC 501(c)(5) if its principal activity 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.

- Under ERISA, pension trusts established under IRC 401(a) are recognized as exempt under IRC 501(a).
  - Employers' contributions to these plans are immediately deductible to the employer. IRC 404(a).
  - Employees do not declare the amounts as income until actual distribution. IRC 402(a).

**Note:** Reg 1.892-2T(c) governs the tax status of a pension trust that is wholly owned and controlled by a foreign sovereign.

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**PGGM**

Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen [PGGM] v. United States, 950 F. Supp. 373 (D.D.C. 1996) aff'd 129 F.3d 195 (D.C. Cir. 1997), cert. denied, 525 U.S. 811 (1998), involved a multi-employer pension plan ["Fund"] for Dutch health care workers.

- Negotiations between the Dutch National Hospital Employers' Association and three labor unions established the Fund in June 1969.
  - The Fund collected pension fund contributions paid by employers and employees.
  - The Fund invested in U.S. stocks and mutual funds.
  - A Board of Directors, half appointed by the principal employers and half appointed by the three principal unions represented, governed the Fund.
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## **B. Labor Organizations**

### **A. Statutory History, Continued**

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**PGGM,  
continued**

The district court first looked at the statute and determined that the language and legislative history did not suggest that the Fund qualified for exemption as a labor organization.

- The statute itself did not provide a definition for the term “labor organization.”
- The legislative history did not provide the court much help in determining a useful definition of labor organizations for purposes of applying IRC 501(c)(5).
- The “drafters more likely found that the provision of monetary benefits was not a defining function of a labor organization, but rather, was an activity engaged in by some labor organizations and not by others.” PGGM at 375.

The court then analyzed the requirements of Reg. 1.501(c)(5)-1(a)(2).

- The court stated that because the requirement clauses thereunder are connected by “and” an organization must meet all three specified requirements to be recognized as exempt under IRC 501(c)(5).
- The PGGM Fund, by providing retirement benefits, did operate toward the betterment of the conditions of the employees.
- It did not have as objectives, the improvement of the grade of products nor the development of a higher degree of efficiency. Id. at 376.

The court also discussed other situations, including Morganbesser and the Tupper case (Tupper v. United States, 134 F.3d 444 (1st Cir. 1998)), which was pending at the time. Id.

The court determined that an organization that provides no representational role on behalf of labor, nor is controlled by a labor organization does not fall within the common understanding of the term “labor organization.” Id.

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## **B. Labor Organizations**

### **A. Statutory History, Continued**

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**PGGM,  
continued**

1. The Service ruled that organizations that provided traditional labor union services, such as collective bargaining representation or apprenticeship training as meeting the requirements for exemption under IRC 501(c)(5). Id. at 378.
2. If the organizations did not provide traditional labor representation, the rulings suggested further inquiry. Id.
  - a) Are the organization's activities appropriate undertakings?
  - b) If so, is the organization controlled and funded by an exempt organization?
3. If organizations satisfied the first test, the revenue rulings recognized as exempt only those that also satisfied the second part. Id.
4. Since the Fund did not provide labor representation, it came under the category requiring further inquiry. Because it was neither controlled nor funded by an exempt labor organization, exemption for the Fund should be denied. Id.

The court held that:

Because the Fund is neither controlled by nor represents the interests of traditional labor organizations, ... there is not an adequate nexus between the Fund and another tax-exempt labor organization for the Fund to qualify as a tax-exempt labor organization under § 501(c)(5). Id. at 379-380.

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## **B. Labor Organizations**

### **A. Statutory History, Continued**

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#### **Tupper**

Tupper v. United States, 134 F.3d 444 (1st Cir. 1998), also involved a multi-employer pension plan trust as well as an annuity plan trust.

- The employers and the local union entered into collective bargaining agreements in 1959 and 1983.
- The agreements provided for creation of a defined benefit pension plan and a money purchase plan.
- Employer contributions provided the funds for the plans.
- The sole purpose of the trusts was to provide pension and annuity benefits for plan participants and beneficiaries.
- The employers and union each appointed half of the trustees.
- IRS audits of tax years 1986 through 1987 revealed that the plans failed to meet IRC 401(a).
- The trustees paid back taxes and filed claims in federal court for refund.
- The trustees claimed that although the plans failed to qualify under IRC 401(a), they qualified under IRC 501(c)(5) as a labor organization.

The court looked at Congressional treatment of jointly-controlled pension funds under other IRC provisions. It noted:

Under present law, a pension trust is qualified for income tax exemption only if it meets certain requirements relating to coverage of employees and nondiscrimination of contributions or benefits. S. Rep. No 87-1881, at 300, reprinted in 1962-3 C.B. 707, 837. This statement implies that Congress intended § 401(a) as the only umbrella under which pension trusts might shield themselves from tax liability.

Congress again spoke on this issue when enacting ERISA. The House Ways and Means Committee explained that employer-provided plans are "required to comply with the new coverage, vesting, and funding standards in order to qualify for the favored tax treatment [i.e. tax exemption] under the Internal Revenue Code." H.R. Rep. No. 93-807 at 3, 31, reprinted in 1974-3 C.B. (Supp.) 238, 266. At the very least, these statements reveal that Congress was not anticipating a section 501(c)(5) "end run" around § 401(a)'s requirements for employer-provided pension funds. At most, these statements imply an affirmative intent to exclude these plans from the 501(c)(5) exemption. Tupper at 449.

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*Continued on next page*

## **B. Labor Organizations**

### **A. Statutory History, Continued**

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**Tupper,  
continued**

In both PGGM and Tupper, the courts referenced ERISA. Tupper also mentioned the legislative history.

- The PGGM court noted that under ERISA, if a plan fails to qualify for exemption, the employer may not immediately deduct contributions, and the employees must report such contributions as income. The court further noted that there is no enforcement tool for exemption under IRC 501(c)(5). PGGM at 380.

- Finally, the PGGM court noted:

Congress most likely did not seek to establish the weaker set of inducements for compliance with ERISA. ERISA is a proactive statute designed to encourage plans to adopt its rigorous requirements. If the Tax Code allows the § 501(c)(5) exemption for employer-funded plans, the plans may purposefully discriminate among employees or fail in other ways to qualify under § 401 and still realize tremendous benefits as a tax-exempt organization. In discrimination cases, especially, sheltering retirement plans behind § 501(c)(5) frustrates congressional intent, and should not be permitted. Id.

- The Tupper court expressed a similar opinion:

Presented with no authority which clearly establishes an exemption under 501(c)(5) for the plan trusts at issue, and recognizing that such an interpretation would be at odds with, if not directly contrary to, the statements Congress has made regarding the proper taxation of such entities, we conclude that the trustees have failed to "unambiguously" establish their entitlement to a tax exemption. Tupper at 449.

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## **B. Labor Organizations**

### **6. Financial Aid to Members**

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**Union  
Controlled  
Strike and  
Lockout  
Financial  
Assistance**

An organization established by a labor union provided financial assistance to its members who were involved in strikes or lockouts.

- The Service determined that strike benefits are directed to furthering a labor union's primary purpose of representing its members in matters of wages, hours of labor, working conditions, and economic benefits.
- Since the organization engaged solely in activities that were appropriate under IRC 501(c)(5), it qualifies for exemption under IRC 501(c)(5). Rev. Rul. 67-7, 1967-1 C.B. 137. See Strike and lockout benefits, discussed above. See also, Rev. Rul 62-17, 1962-1 C.B. 87, below.

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**Death, Sick,  
Accident, and  
Similar  
Benefits.**

Members contributed funds to an exempt labor organization.

- The plan under which the payments were made had as its objective the betterment of the conditions of the employee members.

Since the legislative history discloses that labor organizations were exempted from income taxation, in part, as mutual benefit organizations that provide death, sick, accident and similar benefits to members, the plan does not preclude exemption under IRC 501(c)(5). Rev. Rul 62-17, 1962-1 C.B. 87.

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## C. AGRICULTURAL AND HORTICULTURAL ORGANIZATIONS

### 1. Purpose Issues

#### a) Definitions

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- IRC 501(g)** IRC 501(g) was added to the Code to explain the meaning of "agricultural" in IRC 501(c)(5).
- It provides that "agricultural" includes:
    - The art or science of cultivating land,
    - Harvesting crops or aquatic resources, or
    - Raising livestock.
  - Congress intended that the term, "harvesting \*\*\* aquatic resources," include fishing and related pursuits (such as the taking of lobsters and shrimp). Both fresh water and salt water 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.
  - The operation of "fish farms" is also considered agricultural under this new definition. However, aquatic resources are only to include animal or vegetable life, not mineral resources. (S. Rep. No 94-938, at 470, reprinted in 1976-3 (Vol. 3 C.B. 457)).
- 

**What Is "Livestock?"** "Livestock" includes fur-bearing animals raised in captivity for their pelt, as well as domestic farm animals such as sheep cattle, hogs, etc. It does not include dogs that are not used as farm animals. Rev. Rul. 73-520, 1973-2 C.B. 180.

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*Continued on next page*

## **1. Purpose Issues**

### **a) Definitions, Continued**

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**Definition of  
"Horticulture"**

"Horticulture" is the cultivation of a garden or orchard, the science or art of growing fruits, vegetables, and flowers or ornamental plants. Guerrero v. United States Fidelity and Guaranty Co., 98 S.W. 2d 796, 128 Tex. 407 (1936).

It is a branch of plant production, which is one of the main divisions of agriculture. Thus,

- Agriculture and horticulture are not words of coequal magnitude;
- Agriculture covers the much larger area, embracing horticulture as one of a number of its divisions.

In short, a horticultural organization is necessarily agricultural; the converse is not true. The two words are used in tandem in IRC 501(c)(5) and the related regulations, but, for purposes of brevity, the word "agricultural" is used throughout the remainder of this Article to denote both agricultural and horticultural organizations.

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**In Summary**

"Agricultural organizations" described in IRC 501(c)(5) are organizations promoting the interest of persons engaged in raising livestock, harvesting crops or aquatic resources, cultivating useful or ornamental plants, or similar pursuits.

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## 1. Purpose Issues

### b) Principal Purposes

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**What Are the Principal Purposes of Agricultural Organizations?**

Agricultural organizations exempt under IRC 501(c)(5) are those that have as their principal purposes

- The betterment of the conditions of those engaged in agriculture,
- The improvement of their products, and
- Their occupational efficiency.

An organization's members do not have to be engaged in agricultural pursuits. However, the organization must have as its primary purpose the betterment of the conditions of those engaged in agricultural pursuits. A qualifying IRC 501(c)(5) agricultural organization may engage in various educational programs in furtherance of agriculture. Rev. Rul. 67-216, 1967-2 C.B. 180.

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**Remoteness of Purpose**

Activities that only remotely promote the interests of those engaged in agricultural pursuits will not qualify an organization for exemption.

The Board of Tax Appeals considered a situation where a corporation was organized for the purpose of holding agricultural fairs, stock shows, and horse race meets, but had discontinued the holding of agricultural fairs and stock shows.

The Board concluded that when the organization ceased to conduct the agricultural fairs and thereafter devoted itself solely to horse racing, it lost its chief claim to an agricultural classification. Forest City Livestock and Fair Co. v. Commissioner, B.T.A.M. 32,215 (P-H) (1932).

Additional discussion under **d) Non-Qualifying Activities**.

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## **1. Purpose Issues**

### **c) Qualifying Activities**

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**Farm Bureaus** An organization incorporated under state laws generally to provide a county-wide medium for the advancement and improvement of agriculture may be recognized as tax-exempt under IRC 501(c)(5).

In addition to its education activities, the organization also marketed agricultural products for the producers. Rev. Rul. 57-466, 1957-2 C.B. 311.

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**Soil Testing** A corporation was organized by a separate organization of farm bureaus and governed by the farm bureau boards.

- The purpose of the organization was to test soil for farmers and other members of the community, including non-members of the farm bureau.
- The corporation maintained a laboratory and conducted soil tests on a cost basis.
- The test results were verified by the State university.
- The university also supplied research information on testing procedures and soil treatment based on the results of the tests.
- Results of the tests, explanations and other recommendations were furnished to educate the community in soil treatment and application of plant food.

The corporation qualifies as exempt under IRC 501(c)(5). Rev. Rul. 54-282, 1954-2 C.B. 126.

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*Continued on next page*

## 1. Purpose Issues

### c) Qualifying Activities, Continued

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#### **Breeders' Association**

An association was organized

- To maintain the purity of the Welsh pony breed,
- To promote interest in the breed, and
- To establish, maintain, and publish authoritative records, registers and transfers of ownership of the breed.

Membership in the association was open to any person, firm or corporation interested in improving or raising these Welsh ponies.

The Service held that persons engaged in raising Welsh ponies are livestock producers engaged in agricultural pursuits. The association, therefore, qualifies as exempt under IRC 501(c)(5). Rev. Rul. 55-230, 1955-1 C.B. 71.

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#### **Rodeos**

The Court of Appeals of the 5th Circuit affirmed the judgment of the lower court, which held that a rodeo show qualified as exempt under IRC 501(c)(5). The court determined that the rodeo met the three statutory requirements:

1. The organization was nonprofit.
2. The rodeo show was educational.
3. It promoted agriculture.

Campbell v. Big Spring Cowboy Reunion, 210 F.2d 143 (5th Cir. 1954).

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#### **Farmers' Wives**

The membership of an organization consisted of farmers' wives. The organization was formed:

- To advance the farming interests of the members' husbands, and
  - To insure the survival of agriculture as a way of life in a particular state.
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*Continued on next page*

## **1. Purpose Issues**

### **c) Qualifying Activities, Continued**

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**Farmers' Wives, continued**

Its activities were:

- Recommending legislation favorable to person engaged in agriculture,
- Conducting programs to inform the public about problems facing farmers, and
- Participating in and supporting activities designed to obtain higher prices for farm products, e.g. urging local farmers not to sell their products to processors at prevailing prices.

Because the organization's activities were directed toward enhancing and improving farming as a way of life, it qualifies for exemption under IRC 501(c)(5). Rev. Rul. 74-118, 1974-1 C.B. 134.

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**Other Rulings Not Interpretive of IRC 501(c)(5), but Useful in Working IRC 501(c)(5) Cases**

For the purposes of IRC 471 and 446 of the Internal Revenue Code of 1954 and sections 39.22(c)-6 and 39.41-3 of the Reg. 118 applicable to the 1954 Code by virtue of T.D. 6091, C.B. 1954-2, 47, the word "farmer" includes a taxpayer engaged in the business of breeding and raising chinchillas, minks, foxes, or other fur-bearing animals. Such animals constitute "livestock." Rev. Rul 57-588, 1957-2 C.B. 305.

A ruling request asked whether a taxpayer who engaged in operation of a nursery that specialized in growing ornamental plants was in the business of farming. The Service stated: "The term 'farming' as used in IRC 175 includes the operation of a nursery." Rev. Rul. 59-12, 1959-1 C.B. 59.

- IRC 175(c)(2) defines the term "land used in farming" as land used by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.
  - Reg. 1.175-3 provides that the term "farm" is used in its ordinary, accepted sense and includes stock, dairy, poultry, fruit and truck farms, and also plantations, ranches, ranges, and orchards.
-

## **1. Purpose Issues**

### **d) Non-Qualifying Activities**

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#### **Horse Racing**

An organization was formed as a for-profit entity. The purpose of the organization was to hold fairs, stock shows, and race meetings.

- The organization:
  - Purchased land,
  - Constructed a race track, and
  - Built a number of buildings.
- The organization conducted fairs on the facility for a number of years before discontinuing these events.
- The organization belonged to the Grand Circuit of race meets and held races during and after conducting the fairs.
- The organization held regular horse races and occasional automobile and motorcycle races.
- The organization realized a percentage of the profits that betting on the races generated.

The Board of Tax Appeals upheld the Service's denial of exemption as an agricultural organization. The court stated:

That it bore some resemblance to such an organization is apparent. But, when ... it ceased to conduct a "fair" where exhibitions of live stock, farm produce and farm machinery were held, and thereafter devoted itself solely to horse racing it lost its chief claim to agricultural classification....

It is presumed that Congress used the word "agricultural" in its generally accepted sense. It would be a far stretch of the imagination that would allow it 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 race horses, which are raised on a farm is not enough. The connection to agriculture should be more immediate than this.

Forest City Livestock and Fair Co. v. Commissioner, B.T.A.M., 32,215 (P-H) (1932).

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*Continued on next page*

## **1. Purpose Issues**

### **d) Non-Qualifying Activities, Continued**

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#### **Benefiting Manufacturers**

An organization was formed by processors, packers and distributors of agricultural products to:

- Promote the sale and use of a processed agricultural product,
- Conduct research in processing and marketing, and
- Conduct advertising campaigns to encourage consumers to buy and use the product.

The members of the organization were not engaged in agriculture, but rather in the manufacture of a processed agricultural product.

The organization fails to qualify for exemption under IRC 501(c)(5) because its primary objective was not to better the conditions of persons engaged in agriculture. Rev. Rul. 67-252, 1967-2 C.B. 195.

See discussion under **4. Classification Problems, b) IRC 501(c)(5) v. IRC 501(c)(6)**.

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#### **Providing Laborers**

A group of farmers formed an organization to supply laborers for individual farmers.

The organization:

- Received requests for laborers from member farmers,
- Assigned laborers to the farm,
- Received payment from the farmer, and
- Paid the laborer or representative.

Furnishing laborers to individual farmers provides a service to farmers that they would have to provide themselves. The organization, therefore, does not meet the requirements to qualify for exemption under IRC 501(c)(5). Rev. Rul. 72-391, 1972-2 C.B. 249.

---

## **2. Membership Issues**

### **a) Qualifying Activities**

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**Definition** An exempt agricultural organization is a membership organization. Those served by the entity must represent a significant portion of the interested agricultural community.

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**Department of Agriculture Milk Production Program** An organization, a local association of dairy farmers, was a member of the National Cooperative Dairy Herd improvement program sponsored by the U.S. Department of Agriculture.

The organization:

- Derived its income from testing fees and membership assessments,
- Weighed and tested milk of members' cows,
- Generated statistical information based on the tests, and
- Made the results available to members, nonmembers and governmental agencies for use in improving milk production.

Government agencies use the data:

- To compile statistical information for research and education, and
- For use by extension agents in rendering advice to farmers.

Individual dairy farmers use the test results to measure the productivity of his cattle. This enabled the farmer to:

- Cull the herd for maximum efficiency current production, and
- Select the best animals for breeding to increase future production.

The association is an integral and necessary part of a nationwide program to improve milk production. Therefore, it betters the condition of those engaged in agricultural pursuits. Since the data was made available to all dairy farmers, the organization qualifies for exemption under IRC 501(c)(5). Rev. Rul. 74-518, 1974-2 C.B. 166.

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*Continued on next page*

## **2. Membership Issues**

### **a) Qualifying Activities, Continued**

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#### **Pest Control**

A local association of farmers formed an organization to promote more effective agricultural pest control.

As its primary activity, the organization employed pest management scouts who would:

- Periodically inspect members' fields,
- Identify and count agricultural pests, and
- Compile data on agricultural pest infestation.

Data collected are disseminated to:

- The member farmer,
- The county extension agent,
- The local university, and
- The U.S. Department of Agriculture.

The members use the data to make decisions on pesticide application in their own fields.

The extension agent use the data:

- To estimate the severity of pest infestation in the local area, and
- To make general recommendations on pesticide use to all local farmers.

Although members of the organization receive individual benefits from the data collected, the benefits are incidental to the objectives of the program as a whole. Therefore, the organization qualifies for exemption under IRC 501(c)(5). Rev. Rul. 81-59, 1981-1 C.B. 334.

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## **2. Membership Issues**

### **b) Non-Qualifying Activities**

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**Livestock  
Facility**

A group of farmers, members of a non-exempt association, formed a corporation that owned and operated a livestock facility.

- The farmers were members of a non-exempt national association that represented its membership in collective bargaining.
- The collective bargaining agreements dealt with contracts with processors that covered selling prices and other conditions of disposal of livestock produced by the farmers.
- The livestock facility provided a center through which livestock, marketed through the bargaining program was collected, weighed, sorted, graded and shipped to buyers.

The principal activity of the corporation was the operation and leasing of the facility to local members of the national association.

The operation and leasing of the facility provided a business service to members. (Absent the facility, they would have to perform the service themselves, or have someone perform it for them.) Therefore, the corporation does not qualify for exemption under IRS 501(c)(5). Rev. Rul. 77-153, 1977-1 C.B. 147.

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## **2. Membership Issues**

### **c) Sales Activities**

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#### **Livestock Auction**

Agricultural producers formed an organization with the principal of activity to market livestock for members.

- The organization furnished labor, advertising, bookkeeping services, and physical facilities for livestock auctions.
- The organization retained a percentage of the sales process for expenses and establishment of a reserve for future acquisitions of land and buildings.
- The remainder was paid to members for their livestock.

Since the principal purpose of the organization was to act as a sales agent for the members, it does not qualify for exemption under IRC 501(c)(5). Rev. Rul. 66-105, 1966-1 C.B. 145. Compare with Rev. Rul. 76-399, 1976-2 C.B. 152, below, under **Price negotiations**.

---

#### **Price Negotiations**

Growers and producers of an agricultural commodity formed a non-profit organization.

- The purpose of the organization was to negotiate with processors of the crop for the price paid to members for the crop.
- Membership dues supported the organization.
- The organization did not receive any payment from the processors

The prices that the organization negotiated for the crops could be used by the members in contracts with the processors.

- Members were free to negotiate their own prices.
- Members and processors dealt directly in regard to the harvesting, inspecting, delivery and payment of the crops.

The organization qualifies for exemption under IRC 501(c)(5). Rev. Rul. 76-399, 1976-2 C.B. 152

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## D. Classification Problems

### 1) IRC 501(c)(5) v. IRC 501(c)(3)

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#### Overlap

Because of the rather broad language of the subparagraphs of IRC 501(c), there are situations where a certain amount of overlap occurs, thus creating a question whether an organization should be classified under IRC 501(c)(5) or under some other subparagraph of IRC 501(c). The following discussion provides some general guidelines.

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#### IRC 501(c)(3) Purposes

If an organization is organized and operated exclusively for IRC 501(c)(3) purposes, it will qualify for exemption under IRC 501(c)(3) even if the organization's activities result in the improvement of agricultural or labor interests.

#### 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 IRC 501(c)(3). Amusement features presented to increase attendance do not prevent an IRC 501(c)(3) exemption, provided these presentations are merely incidental. Rev. Rul. 67-216, 1967-2 C.B. 180.

See also Rev. Rul. 72-101, 1972-1 C.B. 144, which describes an organization set up under a collective bargaining agreement in an industry. The purpose of the organization was to train individuals working or desiring to work in the industry. The apprenticeship-training program is exempt from federal tax under IRC 501(c)(3).

---

#### Instructing the Public on Agricultural Matters

Because the activities of agricultural organizations usually have a certain amount of educational value, there are logical grounds for seeking the preferred treatment accorded by IRC 501(c)(3).

- However, the organization will have to satisfy the requirements of the organizational and operational tests of IRC 501(c)(3). See Reg. 1.501(c)(3)-1(a)(1).
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*Continued on next page*

## **D. Classification Problems**

### **1) IRC 501(c)(5) v. IRC 501(c)(3), Continued**

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**Garden Clubs**      Depending upon how it is organized and operated, a "garden club" may qualify for exemption under IRC 501(c)(3), (4), (5), or (7).

A nonprofit corporation will qualify for exemption under IRC 501(c)(5) where it is formed by 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 flowers through a system of awards.

Rev. Rul. 66-179, 1966-1 C.B. 139.

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## **D. Classification Problems**

### **2) IRC 501(c)(5) v. IRC 501(c)(6)**

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#### **Overview**

IRC 501(c)(6) includes 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 agricultural 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.

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#### **Manufacturers of Agricultural Products**

An organization formed to promote the sale and use of a processed agricultural product, conducted research in processing and marketing, and conducted advertising campaigns to encourage consumers to buy and use the product. Results of the research are sometimes used to substantiate advertising claims.

- The organization's members were processors, packagers, and distributors of the processed agricultural product.
- Income was derived from membership dues, fees, and assessments.

In this case, improvement of the conditions of persons engaged in agriculture arose only indirectly from the activities of this organization whose purpose was to improve business conditions among its members. These persons are not engaged in agriculture.

The organization does not qualify for exemption as an organization described in section 501(c)(5) of the Code, but it does qualify for exemption as an organization described in section 501(c)(6) of the Code. Rev. Rul. 67-252, 1967-2 C. B. 194.

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*Continued on next page*

#### **4. Classification Problems**

##### **2) IRC 501(c)(5) v. IRC 501(c)(6), Continued**

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###### **Fur Ranchers**

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 principally occupied with improving the conditions and products of persons engaged in agriculture, and, therefore, is exempt under IRC 501 (c)(5). Rev. Rul. 56-245, 1956-1 C.B. 204.

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## **D. Classification Problems**

### **3) Other Conflicts in Classification**

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**Broad Charter  
and Numerous  
Activities**

An organization's charter may be so broad and its activities so numerous as to cause it to touch several of the paragraphs under IRC 501(c) but qualify under none of them.

For example, an organization might have some of the attributes of a social welfare organization (IRC 501(c)(4)) and a business league (IRC 501(6)). In a case of this kind, there could be considerable relevance in a claim for exemption under any one of these sections, but in the final analysis the organization may fail to meet the minimum standards for exemption under any of them. Though rare, such a situation is not unique.

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## **E. Inurement**

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### **Inurement Prohibition**

Reg. 1.501(c)(5)-1(a)(1) prohibits the inurement of earnings to the benefit of any member of the IRC 501(c)(5) organization.

What constitutes inurement of earnings to a member of an IRC 501(c)(5) agricultural or horticultural organization may not constitute the inurement of earnings to a member of an IRC 501(c)(5) labor organization. This is illustrated as follows:

- a) A labor organization described in IRC 501(c)(5) can pay death, sick, accident and similar benefits to its members because the payment of such benefits serves the members mutual interest in improving their shared working conditions. Rev. Rul. 62-17, 1962-1 C.B. 87.
- b) On the other hand, the exempt purposes of an IRC 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. Therefore, 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 an IRC 501(c)(6) organization constitutes proscribed inurement, applies to IRC 501(c)(5) agricultural organizations but does not apply to IRC 501(c)(5) labor organizations. Rev. Rul. 67-7, 1967-1 C.B. 137.
- c) 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 IRC 501(c)(5). Rev. Rul. 81-60, 1981-1 C.B. 335.

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### **IRC 4958 Not Applicable**

The IRC 4958 taxes on excess benefits do not apply to transactions involving IRC 501(c)(5) organizations.

IRC 4958(e) states:

For purposes of this subchapter, the term "applicable tax-except organization " means--

(1) any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of IRC 501(c) and exempt under IRC 501(a), and

(2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

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Appendix A

Project #207 Checksheet  
501(c)(5) Labor Organizations

1. Agent's Name \_\_\_\_\_
2. Group number \_\_\_\_\_
3. Phone number (\_\_\_\_)\_\_\_\_-\_\_\_\_\_

Entity Questions

4. Organization Name: entered by EPP
5. EIN: entered by EPP
6. Tax Period: entered by EPP
  - a. If you audited a different tax period than the one shown, enter the tax period of the primary return you audited. \_\_\_\_\_(YYYYMM)
7. Based on information secured during your initial contact, is this organization properly classified as a labor organization? Yes \_\_\_ No \_\_\_
  - a. If not, what is the correct subsection? (\_\_\_\_)(\_\_\_\_\_)

***If you answered "No" to Question # 7, STOP HERE. Do not complete the rest of the checksheet. Return the checksheet to your manager, to be forwarded to Exam Planning & Projects (EPP).***

8. Is the organization active? Yes \_\_\_ No \_\_\_

If no, enter the last year of activity \_\_\_\_\_(YYYYMM), and check all that apply:

- a. \_\_\_ Terminated
- b. \_\_\_ Formally dissolved by board resolution
- c. \_\_\_ State was notified of termination or dissolution
- d. \_\_\_ Went out of existence, no formal dissolution
- e. \_\_\_ Unable to locate
- f. \_\_\_ Inactive but not dissolved. Organization plans to become active in future.

***If you answered "No" to Question #8, STOP HERE. Do not complete the rest of the checksheet. Return the checksheet to your manager, to be forwarded to Exam Planning & Projects (EPP). See Project Instructions.***

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**Appendix A, continued**

9. NTEE Code or Activity code of record: **entered by EPP**
- a. If the NTEE Code is incorrect, what should it be?  
\_\_\_\_ (enter one letter + 2 digits)
  
  - b. If the Activities Codes were incorrect, what should they have been?  
\_\_\_\_, \_\_\_\_, \_\_\_\_ (enter 3-digit activity codes, primary, secondary and tertiary)  
This question refers to the BMF activity code, not the AIMS activity code.

**Note: Form 2363-A must be completed and submitted with the closed case file if any of these EO-BMF data elements are incorrect:**

EIN	NTEE code
Primary Name	Area Office Code
Current Address	Accounting Period
Affiliation Code	Filing Requirement Code
Group Exemption Number	Asset Code
Ruling Date	Income Code
Organization Code	Status Code
Activity Code	

**Census Questions**

10. What type of information would the organization's officers like to see added to the IRS website?

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11. How do officers and board members prefer getting information from the IRS? (Check all that apply):

- a.  Website
- b.  Customer Service call-in site
- c.  Walk-in site
- d.  Publications, brochures, pamphlets
- e.  Notices, announcements
- f.  Direct Correspondence
- g.  Seminars, workshops
- h.  EO conferences

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**Appendix A, continued**

12. Would officers of the organization be interested in attending an IRS workshop about labor organizations, or exempt organizations in general? Yes \_\_\_ No \_\_\_
- a. If so, what topics would they like to see covered?
- 
- 
- 
13. What type of organization is this? (Check one)
- a. \_\_\_ A labor union that collectively bargains on behalf of members
- b. \_\_\_ Other labor organization
14. What is the primary focus of the organization? (Check one)
- a. \_\_\_ Representation of members
- b. \_\_\_ Social activities
- c. \_\_\_ Provide insurance and/or other benefits to members
- d. \_\_\_ Apprenticeship or other training
- e. \_\_\_ Political activities
- f. \_\_\_ Strike benefits
- g. \_\_\_ Pension benefits
- h. \_\_\_ Communication with members (newsletters, publishing)
- i. \_\_\_ Own or operate a building
- j. \_\_\_ Other
15. Approximately how many members did the organization have during the primary year under audit?
- a. \_\_\_ Less than 50
- b. \_\_\_ 51-100
- c. \_\_\_ 101-500
- d. \_\_\_ 501-1,000
- e. \_\_\_ 1,001-5,000
- f. \_\_\_ 5,001-10,000
- g. \_\_\_ More than 10,000
16. Who prepared the Form 990?
- a. \_\_\_ CPA
- b. \_\_\_ Attorney
- c. \_\_\_ Enrolled Agent
- d. \_\_\_ Un-enrolled preparer
- e. \_\_\_ Organization officer
- f. \_\_\_ Volunteer member of the organization, not an officer
- g. \_\_\_ Other

**Appendix A, continued**

17. Does the organization have a website? Yes \_\_\_ No \_\_\_
- a. If yes, did the website reveal any noncompliance? Yes \_\_\_ No \_\_\_

**Organizational Questions**

18. How is the entity organized? (check one)  
\_\_\_ Corporation    \_\_\_ Association    \_\_\_ Trust
19. How is this organization related to other organizations?
- a. \_\_\_ Parent organization, part of a group exemption  
b. \_\_\_ Subordinate organization, part of a group exemption  
c. \_\_\_ Affiliate, not part of a group exemption  
d. \_\_\_ Stand-alone organization
20. Have the articles of incorporation or association, or the by-laws, been amended since the organization received its determination letter? Yes \_\_\_ No \_\_\_
- a. Have the amendments been reported to the IRS? Yes \_\_\_ No \_\_\_
- b. Did the changes result in disqualifying features? Yes \_\_\_ No \_\_\_

**Operational Questions**

21. Did the organization conduct gaming? Yes \_\_\_ No \_\_\_  
If yes, check all that apply:
- a. \_\_\_ Gaming was conducted directly by the organization  
b. \_\_\_ A promoter conducted gaming activities  
c. \_\_\_ Gaming activities were for members only  
d. \_\_\_ The organization was liable for filing Forms 730 and/or 11-C  
e. \_\_\_ The organization filed all Forms 730 and 11-C for which it was liable
22. Enter the AIMS disposal code you used, or expect to use, to close the case: \_\_\_\_\_
- a. If the case was closed No Change with Advisory, please give a BRIEF description of the advisory, or send a copy of the closing letter with the checksheet
- \_\_\_\_\_
- \_\_\_\_\_
23. Did the organization earn gross income from non-member sources totaling in excess of \$1,000 during the year under audit? Yes \_\_\_ No \_\_\_

**Appendix A, continued**

***If the answer to Question #23 is “No”, skip ahead to Question #30.***

24. What was the source of the non-member income? (Check all that apply)

- a.  Debt financed rental income
- b.  Rental income – personal services rendered
- c.  Sales of merchandise
- d.  Fees for services
- e.  Tickets to organization events sold to non-members
- f.  Dues and other income from associate members
- g.  Gaming proceeds
- h.  Advertising
- i.  Other

25. Has the organization incurred continuing UBI losses over the 3 years ending with the year under audit? Yes  No

26. Did the organization file Form 990-T prior to the audit? Yes  No

***If the answer to Question #26 is “No”, skip ahead to Question #29.***

27. Were adjustments made to the Form 990-T as a result of the audit?

Yes  No

***If the answer to Question #27 is “No”, skip ahead to Question #30.***

28. What were the reasons for the adjustments to the Form 990-T? (Check all that apply)

- a.  Improper expense allocation
- b.  Unreported income
- c.  Unsubstantiated or non-deductible expenses
- d.  Other

***If you answered Question #28, skip Question #29 and go directly to Question #30.***

29. What reason did the organization give for not filing voluntarily? (Check all that apply)

- a.  Not aware of F990-T requirements
- b.  Relied on tax professional
- c.  Incorrectly applied rules on non-member income
- d.  Poor record-keeping
- e.  Other

30. Did the organization have employees? Yes  No

**Appendix A, continued**

***If the answer to Question #30 is “No”, skip ahead to Question #35.***

31. Did the organization timely and accurately file all employment tax returns?  
Yes \_\_\_ No \_\_\_

***If the answer to Question #31 is “Yes”, skip ahead to Question #35.***

32. What was the reason for the noncompliance? (Check all that apply)

- a. \_\_\_ Not aware of 941 or 940 filing requirements
- b. \_\_\_ Relied on tax professional
- c. \_\_\_ Incorrect application of law
- d. \_\_\_ Other

33. What generated the employment tax issue?

- a. \_\_\_ Officers’ personal use of organizations’ vehicle(s)
- b. \_\_\_ Non-accountable travel plan
- c. \_\_\_ Lost wages
- d. \_\_\_ Waiver of dues in exchange for services
- e. \_\_\_ Incorrectly classified workers
- f. \_\_\_ Incorrect treatment of fringe benefits, other payments
- g. \_\_\_ Other

34. Did any employment tax adjustment result in a discrepancy adjustment or referral?  
Yes \_\_\_ No \_\_\_

35. Did the organization make expenditures for the purpose of carrying out an exemption function as defined in IRC 527(e)(2)? Yes \_\_\_ No \_\_\_

***If the answer to Question #35 is “No”, skip ahead to Question #46.***

36. Did the organization have a Political Action Committee (PAC) or use a separate segregated fund to pay political expenditures? Yes \_\_\_ No \_\_\_

37. If “No”, what was the reason given by the officers for not setting up a segregated fund?  
(Check all that apply)

- a. \_\_\_ Unaware of law pertaining to political expenditure
- b. \_\_\_ Aware of law but confused about proper application
- c. \_\_\_ Intended to set up segregated fund, but the fund was incorrectly established and was not actually segregated
- d. \_\_\_ Chose not to set up segregated fund
- e. \_\_\_ Relied of professional advice
- f. \_\_\_ Other

38. If the answer to Question #35 is “Yes”, did the organization file Form 8871?  
Yes \_\_\_ No \_\_\_

**Appendix A, continued**

39. If the answer to Question #38 is "No", what was the reason given by the officers for the organization not filing the Form 8871?
- a.  No investment income
  - b.  Officers did not believe expenditures were political
  - c.  Not aware of Form 8871 filing requirements
  - d.  Relied on professional advice
  - e.  Other
40. If the answer to Question #36 is "Yes", did the PAC or fund have its own EIN?  
Yes  No
41. Did the PAC file Form 8871? Yes  No
42. If the answer to Question #41 is "No", what was the reason given by the officers for not filing the Form 8871? (Check all that apply)
- a.  Thought the organization had properly filed Form 8871
  - b.  No investment income
  - c.  Not aware of Form 8871 filing requirements
  - d.  Officers did not believe expenditures were political
  - e.  PAC is a Federal PAC and files with the FEC
  - f.  Gross receipts annually were less than \$25,000
  - g.  PAC's tax year ends prior to 7/1/2000
  - h.  Other
43. If the answer to Question #35 is "Yes", did the organization file Form 1120-POL?  
Yes  No
44. If the organization had established a PAC, did the PAC file a Form 1120-POL?  
Yes  No

**Appendix A, continued**

45. If the answer to Question #44 is “No”, what was the reason given by the officers for not filing Form 1120-POL?

- a.  No investment income
- b.  Officers did not believe expenditures were political
- c.  Not aware of Form 1120-POL filing requirements
- d.  Relied on professional advice
- e.  Other

46. If delinquent returns were secured, please check all that apply:

- a.  990-T
- b.  Prior year delinquent 990
- c.  941
- d.  940
- e.  945
- f.  1099/W-2/W-2G
- g.  730
- h.  11-C
- i.  8871
- j.  1120-POL
- k.  8872
- l.  990 for PAC

Thank you for completing the checksheet and participating in this project. Look for the results of the study in the EPR newsletter and the TE/GE website. Please return the checksheet to your manager as soon as you are able to respond to the questions with reasonable assurance.

**Appendix B**

**Special Processing Instructions  
Project Code 207 – Labor Organizations**

*This entity has been selected as part of a market segment study on 501(c)(5) labor organizations. The purpose of the study is to build a comprehensive profile of the labor organization community. Information gathered in the study will enable us to:*

1. Measure the level of compliance, so we can better allocate resources,
2. Identify compliance trends and emerging issues, so we can address non-compliance more quickly and effectively, and
3. Identify educational and outreach needs, so we can provide services to satisfy customers and increase compliance.

*The profile will provide a description of labor organizations from the perspective of compliance. The goal of the study is to answer a number of questions: What are the common characteristics of compliant labor organizations? How big are they? What are their activities? What are the characteristics of a typical non-compliant labor organization? Is the non-compliance due to a lack of education in a particular issue? Is there a type of labor organization that is more non-compliant than other types?*

Organizations selected for this study have been chosen at random from the entire population of labor organizations. The results of the study will be true for all labor organizations, so each organization represents a significant portion of the population. Your audit and the information you gather as part of the study are vitally important to the completion of a full and accurate profile.

Attached is a checksheet designed to gather the information needed to build the profile. Please read the entire checksheet carefully and become familiar with the questions before making your initial contact. Many of the questions should be asked during your initial interview, to prevent delay when you are ready to close the case. **Complete the checksheet as soon as you have enough information to respond to all the questions.** We are interested in learning about compliance, not about audit results per se, so it is not necessary that you know the final disposition on AIMS in order to complete the checksheet.

*Some of the questions will not be applicable to your audit. Leave those questions blank. For example, a follow-up question may only be applicable if you answered “yes” to the primary question. If you answered “no” to the primary question, you would leave the follow-up question blank.*

**Appendix B, continued**

All checksheets must be submitted by March 31, 2003. In most instances, the hardcopy checksheet will be part of your closed case, and will be transmitted through your group manager to the AIMS Closing Unit. Special Handling Notice, Form 3198, must be attached to the front of the file, indicating that the case is part of a market segment study. The Closing Unit will pull off the checksheet and forward it to the project coordinator in EO Exam Planning & Projects (EPP). A freeze code is attached to all cases included in this project. The cases will not close on AIMS unless a checksheet is submitted with the case file at closure.

In rare instances, a case will not be ready to close before the March 31, 2003 deadline. In these cases, the checksheet should be completed and submitted separately through the group manager directly to the project coordinator. You do not have to close the case on AIMS to submit the checksheet. You should be able to determine through your initial interview and review of books and records whether the club is compliant. Once the checksheet is received, the project coordinator will notify the Closing Unit that the case may be closed on AIMS when it is forwarded from the group.

*Due to errors in the EO-BMF, it is possible that an entity selected for this project is not actually a labor organization. It is important that you make this determination when you initially contact the organization. Telephone contact should be established before appointment letters are issued. If you find that the entity is not a labor organization, the return may be closed "Survey After Assignment" with the issuance of Letter 1024 to the organization. Complete the indicated portions of the checksheet, explain the reason for the survey on Form 1900, and forward both the checksheet and the Form 1900 with the return to the Closing Unit for non-examined closure. If a significant issue has been identified during pre-audit analysis, the audit may continue at the discretion of the group manager. If you decide to continue with the audit of a non-labor organization, complete the indicated portions of the checksheet and return it directly to the project coordinator. The project coordinator will then see that the freeze code is removed.*

*If the organization no longer exists, or if you are unable to locate the organization, complete the indicated portion of the checksheet and return it to the project coordinator, then follow IRM procedures regarding termination, dissolution, etc. Complete Form 2363-A to make the necessary corrections to the EO-BMF. The return should be closed on AIMS using Disposal Code 32, Survey After Assignment.*

*Thank you again for your efforts in helping us complete the Labor organization Market Segment Study. If you have any questions, please call Ray Dunlop at (203) 781-3051.*

Appendix C

Project #207 Checksheet  
501(c)(5) Labor Organizations – Non-filers

1. Agent's Name \_\_\_\_\_
2. Group number \_\_\_\_\_
3. Phone number (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

*Entity Questions*

4. Organization Name: entered by EPP
5. EIN: entered by EPP
6. Tax Period: entered by EPP
  - a. If you audited a different tax period than the one shown, enter the tax period of the primary return you audited. \_\_\_\_\_(YYYYMM)
7. Based on information secured during your initial contact, is this organization properly classified as a labor organization? Yes \_\_\_ No \_\_\_
  - a. If not, what is the correct subsection? (\_\_\_\_)(\_\_\_\_)

***If you answered "No" to Question # 7, STOP HERE. Do not complete the rest of the checksheet. Return the checksheet to your manager, to be forwarded to Exam Planning & Projects (EPP).***

8. Was the organization active in the year selected for this study? Yes \_\_\_ No \_\_\_

If no, enter the last year of activity \_\_\_\_\_(YYYYMM), and check all that apply:

- a. \_\_\_ Terminated
- b. \_\_\_ Formally dissolved by board resolution
- c. \_\_\_ State was notified of termination or dissolution
- d. \_\_\_ Went out of existence, no formal dissolution
- e. \_\_\_ Unable to locate
- f. \_\_\_ Inactive but not dissolved. Organization plans to become active in future.

***If you answered "No" to Question #8, STOP HERE. Do not complete the rest of the checksheet. Return the checksheet to your manager, to be forwarded to Exam Planning & Projects (EPP). See Project Instructions.***

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**Appendix C, continued**

The remaining questions should be answered based on your interview of the organization's officers and your audit of books and records. **An audit must be completed on books and records on all project cases.** This case may be worked as an OCEP with your group manager's approval, provided a telephone interview is used to secure answers to non-examination questions. If the organization claims to have gross income below \$25,000, your audit will focus on verifying that the organization has no filing requirement. You will also need to complete an audit of other issues sufficiently deep in scope to enable you to answer all applicable questions.

9. NTEE Code or Activity code of record: **entered by EPP**
- a. If the NTEE Code is incorrect, what should it be?  
\_\_\_\_\_ (Enter one letter + 2 digits)
  
  - a. If the Activities Codes were incorrect, what should they have been?  
\_\_\_\_, \_\_\_\_, \_\_\_\_ (Enter 3-digit activity codes, primary, secondary and tertiary)  
This question refers to the BMF activity code, not the AIMS activity code.

**Note: Form 2363-A must be completed and submitted with the closed case file if any of these EO-BMF data elements are incorrect:**

EIN	NTEE code
Primary Name	Area Office Code
Current Address	Accounting Period
Affiliation Code	Filing Requirement Code
Group Exemption Number	Asset Code
Ruling Date	Income Code
Organization Code	Status Code
Activity Code	

**Census Questions**

10. What type of information would the organization's officers like to see added to the IRS website?

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**Appendix C, continued**

11. How do officers and board members prefer getting information from the IRS? (Check all that apply):

- a.  Website
- b.  Customer Service call-in site
- c.  Walk-in site
- d.  Publications, brochures, pamphlets
- e.  Notices, announcements
- f.  Direct Correspondence
- g.  Seminars, workshops
- h.  EO conferences

12. Would officers of the organization be interested in attending an IRS workshop about labor organizations, or exempt organizations in general? Yes \_\_\_ No \_\_\_

If so, what topics would they like to see covered?

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13. What type of organization is this? (Check one)

- a.  A labor union that collectively bargains on behalf of members
- b.  Other labor organization

14. What is the primary focus of the organization? (Check one)

- a.  Representation of members
- b.  Social activities
- c.  Provide insurance and/or other benefits to members
- d.  Apprenticeship or other training
- e.  Political activities
- f.  Strike benefits
- g.  Pension benefits
- h.  Communication with members (newsletters, publishing)
- i.  Own or operate a building
- j.  Other

15. Approximately how many members did the organization have during the primary year under audit?

- a.  Less than 50
- b.  51-100
- c.  101-500
- d.  501-1,000
- e.  1,001-5,000
- f.  5,001-10,000
- g.  More than 10,000

**Appendix C, continued**

16. Who prepared the Form 990?
- a.  CPA
  - b.  Attorney
  - c.  Enrolled Agent
  - d.  Un-enrolled preparer
  - e.  Organization officer
  - f.  Volunteer member of the organization, not an officer
  - g.  Other
17. Does the organization have a website? Yes  No
- a. If yes, did the website reveal any noncompliance? Yes  No

**Organizational Questions**

18. How is the entity organized? (check one)
- Corporation       Association       Trust
19. How is this organization related to other organizations?
- a.  Parent organization, part of a group exemption
  - b.  Subordinate organization, part of a group exemption
  - c.  Affiliate, not part of a group exemption
  - d.  Stand-alone organization
20. Have the articles of incorporation or association, or the by-laws, been amended since the organization received its determination letter? Yes  No
- a. Have the amendments been reported to the IRS? Yes  No
  - b. Did the changes result in disqualifying features? Yes  No

**Operational Questions**

21. Did the organization conduct gaming? Yes  No
- If yes, check all that apply:
- a.  Gaming was conducted directly by the organization
  - b.  A promoter conducted gaming activities
  - c.  Gaming activities were for members only
  - d.  The organization was liable for filing Forms 730 and/or 11-C
  - e.  The organization filed all Forms 730 and 11-C for which it was liable

**Appendix C, continued**

22. Enter the AIMS disposal code you used, or expect to use, to close the case: \_\_\_\_\_
- a. If the case was closed No Change with Advisory, please give a BRIEF description of the advisory, or send a copy of the closing letter with the checksheet.
- \_\_\_\_\_
- \_\_\_\_\_
23. Did the organization earn gross income from non-member sources totaling in excess of \$1,000 during the year under audit? Yes \_\_\_ No \_\_\_

***If the answer to Question #23 is "No", skip ahead to Question #30.***

24. What was the source of the non-member income? (Check all that apply)
- a. \_\_\_ Debt financed rental income
- b. \_\_\_ Rental income – personal services rendered
- c. \_\_\_ Sales of merchandise
- d. \_\_\_ Fees for services
- e. \_\_\_ Tickets to organization events sold to non-members
- f. \_\_\_ Dues and other income from associate members
- g. \_\_\_ Gaming proceeds
- h. \_\_\_ Advertising
- i. \_\_\_ Other
25. Has the organization incurred continuing UBI losses over the 3 years ending with the year under audit? Yes \_\_\_ No \_\_\_
26. Did the organization file Form 990-T prior to the audit? Yes \_\_\_ No \_\_\_

***If the answer to Question #26 is "No", skip ahead to Question #29.***

27. Were adjustments made to the Form 990-T as a result of the audit? Yes \_\_\_ No \_\_\_

***If the answer to Question #27 is "No", skip ahead to Question #30.***

28. What were the reasons for the adjustments to the Form 990-T? (Check all that apply)
- a. \_\_\_ Improper expense allocation
- b. \_\_\_ Unreported income
- c. \_\_\_ Unsubstantiated or non-deductible expenses
- d. \_\_\_ Other

***If you answered Question #28, skip Question #29 and go directly to Question #30.***

**Appendix C, continued**

29. What reason did the organization give for not filing voluntarily? (Check all that apply)
- a.  Not aware of F990-T requirements
  - b.  Relied on tax professional
  - c.  Incorrectly applied rules on non-member income
  - d.  Poor record-keeping
  - e.  Other

30. Did the organization have employees? Yes\_\_\_ No\_\_\_

***If the answer to Question #30 is “No”, skip ahead to Question #35.***

31. Did the organization timely and accurately file all employment tax returns?  
Yes\_\_\_ No\_\_\_

***If the answer to Question #31 is “Yes”, skip ahead to Question #35.***

32. What was the reason for the noncompliance? (Check all that apply)
- a.  Not aware of 941 or 940 filing requirements
  - b.  Relied on tax professional
  - c.  Incorrect application of law
  - d.  Other

33. What generated the employment tax issue?
- a.  Officers’ personal use of organizations’ vehicle(s)
  - b.  Non-accountable travel plan
  - c.  Lost wages
  - d.  Waiver of dues in exchange for services
  - e.  Incorrectly classified workers
  - f.  Incorrect treatment of fringe benefits, other payments
  - g.  Other

34. Did any employment tax adjustment result in a discrepancy adjustment or referral?  
Yes\_\_\_ No\_\_\_

35. Did the organization make expenditures for the purpose of carrying out an exemption function as defined in IRC 527(e)(2)? Yes\_\_\_ No\_\_\_

***If the answer to Question #35 is “No”, skip ahead to Question #46.***

36. Did the organization have a Political Action Committee (PAC) or use a separate segregated fund to pay political expenditures? Yes\_\_\_ No\_\_\_

**Appendix C, continued**

37. If “No”, what was the reason given by the officers for not setting up a segregated fund?  
(Check all that apply)
- a.  Unaware of law pertaining to political expenditure
  - b.  Aware of law but confused about proper application
  - c.  Intended to set up segregated fund, but the fund was incorrectly established and was not actually segregated
  - d.  Chose not to set up segregated fund
  - e.  Relied of professional advice
  - f.  Other
38. If the answer to Question #35 is “Yes”, did the organization file Form 8871?  
Yes  No
39. If the answer to Question #38 is “No”, what was the reason given by the officers for the organization not filing the Form 8871?
- a.  No investment income
  - b.  Officers did not believe expenditures were political
  - c.  Not aware of Form 8871 filing requirements
  - d.  Relied on professional advice
  - e.  Other
40. If the answer to Question #36 is “Yes”, did the PAC or fund have its own EIN?  
Yes  No
41. Did the PAC file Form 8871? Yes  No
42. If the answer to Question #41 is “No”, what was the reason given by the officers for not filing the Form 8871? (Check all that apply)
- a.  Thought the organization had properly filed Form 8871
  - b.  No investment income
  - c.  Not aware of Form 8871 filing requirements
  - d.  Officers did not believe expenditures were political
  - e.  PAC is a Federal PAC and files with the FEC
  - f.  Gross receipts annually were less than \$25,000
  - g.  PAC’s tax year ends prior to 7/1/2000
  - h.  Other
43. If the answer to Question #35 is “Yes”, did the organization file Form 1120-POL?  
Yes  No
44. If the organization had established a PAC, did the PAC file a Form 1120-POL?  
Yes  No

**Appendix C, continued**

45. If the answer to Question #44 is “No”, what was the reason given by the officers for not filing Form 1120-POL?
- a.  No investment income
  - b.  Officers did not believe expenditures were political
  - c.  Not aware of Form 1120-POL filing requirements
  - d.  Relied on professional advice
  - e.  Other
46. Did you secure a delinquent Form 990 return? Yes  No
47. If the answer to Question #46 was yes, what was the reason given by organization’s officers for failing to file the Form 990 in a timely manner? (Check all that apply)
- a.  Thought gross receipts were under \$25,000
  - b.  Erroneously used net receipts to determine whether filing was required
  - c.  Thought a return was filed
  - d.  Change in officers
  - e.  High volunteer turn-over
  - f.  Poor record keeping
  - g.  Relied on tax professional
  - h.  Other
48. If the answer to Question #46 was “No”, were gross receipts under \$25,000 in the year(s) in question? Yes  No
49. If other delinquent returns were secured, please check all that apply:
- a.  990-T
  - b.  Prior year delinquent 990
  - c.  941
  - d.  940
  - e.  945
  - f.  1099/W-2/W-2G
  - g.  730
  - h.  11-C
  - i.  8871
  - j.  1120-POL
  - k.  8872
  - l.  990 for PAC

Thank you for completing the checksheet and participating in this project. Look for the results of the study in the EPR newsletter and the TE/GE website. Please return the checksheet to your manager as soon as you are able to respond to the questions with reasonable assurance.

**Appendix D**

**Special Processing Instructions  
Project Code 207 – Labor Organizations  
Non-filers**

*This entity has been selected as part of a market segment study on 501(c)(5) labor organizations. The purpose of the study is to build a comprehensive profile of the labor organization community. Information gathered in the study will enable us to:*

1. Measure the level of compliance, so we can better allocate resources,
2. Identify compliance trends and emerging issues, so we can address non-compliance more quickly and effectively, and
3. Identify educational and outreach needs, so we can provide services to satisfy customers and increase compliance.

*The profile will provide a description of labor organizations from the perspective of compliance. The goal of the study is to answer a number of questions: What are the common characteristics of compliant labor organizations? How big are they? What are their activities? What are the characteristics of a typical non-compliant labor organization? Is the non-compliance due to a lack of education in a particular issue? Is there a type of labor organization that is more non-compliant than other types?*

Organizations selected for this study have been chosen at random from the entire population of labor organizations, including:

1. Form 990 filers,
2. Those with Form 990 filing requirements who do not file, and
3. Those who are not required to file because gross receipts are below filing requirements.

*This organization falls into the second category. EOMF records show that it has a Form 990 or 990EZ-filing requirement, but no return has posted for the year in question. Your audit will have several components:*

1. Audit books and records to determine that the club is operating in an exempt manner,
2. Determine whether the organization has a Form 990 series filing requirement for the year in question,
3. If it does have a filing requirement, secure the delinquent return, and
4. Complete all applicable checklist questions.

**Appendix D, continued**

*Even if you secure a delinquent return as a result of your initial contact, an audit of the books and records is still required. You may not close the case based only on an inspection of the secured return. **At a minimum, you must complete an audit of the books and records to the extent necessary to answer all applicable checksheet questions.***

The results of the study will be true for all labor organizations, so each organization represents a significant portion of the population. Your audit and the information you gather as part of the study are vitally important to the completion of a full and accurate study.

Attached is a checksheet designed to gather the information needed to build the profile. Please read the entire checksheet carefully and become familiar with the questions before making your initial contact. Many of the questions should be asked during your initial interview, to prevent delay when you are ready to close the case. **Complete the checksheet as soon as you have enough information to respond to all the questions.** We are interested in learning about compliance, not about audit results per se, so it is not necessary that you know the final disposition on AIMS in order to complete the checksheet.

*Some of the questions will not be applicable to your audit. Leave those questions blank. For example, a follow-up question may only be applicable if you answered "yes" to the primary question. If you answered "no" to the primary question, you would leave the follow-up question blank.*

All checksheets must be submitted by March 31, 2003. In most instances, the hardcopy checksheet will be part of your closed case, and will be transmitted through your group manager to the AIMS Closing Unit. Special Handling Notice, Form 3198, must be attached to the front of the file, indicating that the case is part of a market segment study. The Closing Unit will pull off the checksheet and forward it to the project coordinator in EO Exam Planning & Projects (EPP). A freeze code is attached to all cases included in this project. The cases will not close on AIMS unless a checksheet is submitted with the case file at closure.

In rare instances, a case will not be ready to close before the March 31, 2003 deadline. In these cases, the checksheet should be completed and submitted separately through the group manager directly to the project coordinator. You do not have to close the case on AIMS to submit the checksheet. You should be able to determine through your initial interview and review of books and records whether the club is compliant. Once the checksheet is received, the project coordinator will notify the Closing Unit that the case may be closed on AIMS when it is forwarded from the group.

**Appendix D, continued**

*Due to errors in the EO-BMF, it is possible that an entity selected for this project is not actually a labor organization. It is important that you make this determination when you initially contact the organization. Telephone contact should be established before appointment letters are issued. If you find that the entity is not a labor organization, the return may be closed "Survey After Assignment" with the issuance of Letter 1024 to the organization. Complete the indicated portions of the checksheet, explain the reason for the survey on Form 1900, and forward both the checksheet and the Form 1900 with the return to the Closing Unit for non-examined closure. If a significant issue has been identified during pre-audit analysis, the audit may continue at the discretion of the group manager. Complete the indicated portions of the checksheet and return it directly to the project coordinator. The project coordinator will see that the freeze code is lifted.*

*If the organization no longer exists, or if you are unable to locate the organization, complete the indicated portion of the checksheet and return it to the project coordinator, then follow IRM procedures regarding termination, dissolution, etc. Complete Form 2363-A to make the necessary corrections to the EO-BMF. The return should be closed on AIMS using Disposal Code 32, Survey After Assignment.*

*Thank you again for your efforts in helping us complete the Labor organization Market Segment Study. If you have any questions, please call Ray Dunlop at (203) 781-3051.*

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