

INTERNAL REVENUE SERVICE

August 4, 2004

Number: **INFO 2004-0124**
Release Date: 9/30/04
UIL 3121.01-16
CONEX 136530-04/CC:TEGE:EOEG:ET1

The Honorable Christopher S. Bond
United States Senator
308 East High Street, Suite 202
Jefferson City, Missouri 65101

Attention: Janna Worsham

Dear Senator Bond:

This letter is in response to your inquiry dated June 30, 2004, on behalf of your constituents, _____ and _____. They asked for a change in the Internal Revenue Code (the Code) to include operators of dog kennels and their employees as "agricultural labor" for purposes of the Federal Unemployment Tax Act (FUTA). _____ also sent a letter to you about _____ situation and pointed out that the Code does not classify dog breeding as agricultural, while the Missouri State Tax Commission does. They believe this inconsistent treatment results in additional fees for dog breeders.

An amendment to change the Code would require legislative action by the Congress. However, I can provide some general information to help explain why the IRS does not consider these services agricultural labor.

The Code excludes from wages certain cash payments for agricultural labor. It defines agricultural labor that is exempt from FUTA as all services performed on a farm, in connection with cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and managing livestock, bees, poultry, and fur-bearing animals and wildlife. In 1968, the IRS published Revenue Ruling 68-340 to clarify the meaning of "agricultural labor" for federal employment tax purposes (copy enclosed), including FUTA. The ruling holds that services employees perform in connection with breeding, raising, and caring for dogs are not "agricultural labor." Therefore, the agricultural labor exemption would not apply to _____. The Congress has not passed any legislation since that would give us a basis to change our view.

I hope this information is helpful. If you have further questions, please call me at
or of my staff at .

Sincerely,

Catherine E. Livingston
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

Enclosure