

Internal Revenue Service

memorandum

CC:EBO-TR-45-2190-93

Br6:REhrenberg

date: 111 - 2 1995

to: Director, Exempt Organizations Technical Division CP:E:EO

from: Technical Assistant, Office of the Associate
Chief Counsel (Employee Benefits and Exempt Organizations)
CC:EBO

subject: [REDACTED]

You have asked for our assistance in evaluating whether the [REDACTED] pension plan may be recognized as an organization described in I.R.C. section 501(c)(5). In seeking our assistance, you forwarded to us the administrative file for the Application of the [REDACTED] and the [REDACTED] (the "Funds"). We have reviewed that file and have based our analysis and conclusions on the information contained in that file. We also have coordinated our response with CC:EBO:7.

BACKGROUND

The Funds have applied to be recognized as labor organizations exempt from tax under section 501(c)(5). The Funds conduct no activities in the United States other than investment of the Funds' assets. Under sections 871, 881, 1441 and 1442 of the Code, the Funds owe income tax on dividend income which is withheld at source at a rate established by treaty.¹

The Funds were organized to pay pension benefits to blue and white collar employees of [REDACTED]. Each of the Funds is administered by a committee of trustees, comprised equally of management and non-management employees. In addition to investing Fund assets and paying Fund benefits, the Funds' trustee committees serve as a forum to negotiate and debate pension benefits to be provided to workers.

¹ Because the applicants are foreign pension trusts we sought assistance from CC:INTL on this case. See memo from Chief, Branch 6, CC:EBO to Associate Chief Counsel, International dated January 3, 1994 (attached). A copy of CC:INTL's response, dated May 30, 1995, is also attached. Their response follows meetings held with representatives of our organizations, CC:INTL and A/C International concerning the international tax ramifications of recognizing foreign pension funds as exempt from tax under section 501(c)(5).

Director, Exempt Organizations Technical Division

As your memorandum indicates, the Service takes the position (as reflected in the [REDACTED] and [REDACTED] cases) that a domestic multiemployer pension plan is not an organization described in section 501(c)(5). CP:E:EO has suspended ruling on applications for exemption submitted by foreign pension funds pursuant to a memorandum dated July 31, 1992. The suspended cases request exemption as a labor organization under section 501(c)(5) where the organization's sole function is to provide benefits to employees; the benefits are at least partially employer funded; and the organization is not controlled by labor representatives. [REDACTED] contends that the Service's position in [REDACTED] does not apply to the Funds because (1) the Funds engage in employee representation and (2) the ERISA concerns present in allowing domestic multiemployer pension plans to be exempt under section 501(c)(5) are absent in the case of foreign pension funds.

LAW

Section 501(a) exempts from federal income taxation organizations described in section 501(c). Section 501(c)(5) describes labor, agricultural, or horticultural organizations.

Treas. Reg. section 1.501(c)(5)-1(a) states that exempt labor organizations must:

- (1) [h]ave no net earnings inuring to the benefit of any member, and
- (2) [h]ave as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

In Select Committee on Improper Activities in the Labor or Management Field (Senate), GCM 31206, A-629401 (Apr. 28, 1959), it was stated that the term "labor organization:"

[I]s used in section 501(c)(5) in its commonly accepted sense. [REDACTED]

... [T]he qualifying character of a labor organization, as the term is used in section 501(c)(5) is that it has as its principal purpose the representation of employees in such matters as wages, hours of labor, working conditions and economic benefits, and the general fostering of matters affecting the working conditions of its members.

Director, Exempt Organizations Technical Division

[REDACTED]

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[REDACTED]

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CONCLUSIONS

(1) Where an organization engages in employee representation, the Service, as explained in [REDACTED] has generally accorded recognition under section 501(c)(5). We agree with your conclusion that because the Funds apparently engage in employee representation, they satisfy one of the criteria under which the Service has accorded recognition as a section 501(c)(5) labor organization. The Funds' employee representation obviates the need for inquiry into whether the Funds are union-controlled; it should be noted however, that in the case of a foreign pension fund, the Taft-Hartley Act does not apply in determining the presence or absence of union control.

(2) The Funds' employee representation would seem to take them outside the scope of the rulings suspension. [REDACTED]

[REDACTED]

DP

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Director, Exempt Organizations Technical Division

Please contact Robin Ehrenberg at 622-6080 if you have any questions.


Elizabeth A. Purcell

Attachments
Memoranda
Administrative file