



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Release Number: **200834022**  
Release Date: 8/22/08  
Date: March 5, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

M= Applicant  
N= State  
O= Date  
x= Dollar Amount

**UIL Index:**

521.01-00  
501.05-01

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 521.

We have also considered whether you have qualified as an agricultural or horticultural organization under section 501(c)(5) of the Code and have determined that you do not. The basis for our conclusion is set forth below.

**Issue:**

1. Does the organization (hereinafter 'M') qualify for exemption under section 521 of the Internal Revenue Code?
2. If Issue 1 is NO, does M qualify for exemption under section 501(c)(5) of the Code as an agricultural organization?

**Facts:**

M was incorporated in the state of N on O date. Article III of its Articles of Association states the following purpose: "To assist the membership in all areas of procurement to obtain the most beneficial cost for services, supplies and equipment, and to exercise all such powers in any capacity and on any cooperative basis that may be agreed upon." Article VII of M's Articles states that the association "...shall be operated on a cooperative basis for the mutual benefit of

its members as harvesters of timber. Membership in the association shall be restricted to harvesters and associations of timber harvesters who shall patronize the association."

Article I, Section 1 of M's Bylaws discusses the qualifications for membership in the association. This section states: "Any person, firm, partnership, corporation or association, who is a bona fide harvester [sic] of timber products, and who agrees to be a patron of the association, signs a purchasing agreement with the association, pays a membership fee of x dollars, and meets such other conditions as may be prescribed by the board of directors, may become a member of the association."

M's correspondence, dated June 14, 2005, states: "... (M) as an entity does not harvest timber or market timber products. Members are independent business people that are in the timber harvesting business, the haulers of forest products in their natural state (logs or chips), forest road contractors, or those businesses that prepare forest sites for planting, plant trees, do fertilization, or other on site work that enhances the forest stand." M goes on to state that M "... is not a marketing association. The only products which (M) produces are contracts for goods and services for its [sic] members. M further states that "The reason that the (M) was formed was to meet the rising cost of doing business. Fuel, oil, equipment, insurance, etc. cost has risen at drastic rates and the (M) was organized to deal with these cost [sic] as a purchasing cooperative."

Correspondence dated January 23, 2006 from M states it believes it meets the requirements for exemption under section 501(c)(5) of the Code as an agricultural organization.

**Law:**

Section 521(b)(1) of the Code provides exemption for farmers' cooperatives that are "farmers', 'fruit growers', or like associations organized and operated on a cooperative basis... (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses."

Section 501(c)(5) of the Code provides for exemption from income tax for "Labor, agricultural, or horticultural organizations."

Section 464(e)(1) of the Code provides that the term farming "... means the cultivation of land or the raising or harvesting of any agricultural or horticultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. For purposes of the preceding sentence, trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity."

Section 1.521-1(b) of the Income Tax Regulations states that: "Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc. and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt."

Section 1.521-1(d) of the Income Tax Regulations states that "Cooperative organizations engaged in occupations dissimilar from those of farmers, fruit growers, and the like, are not



exempt."

Section 1.61-4(d) of the Income Tax Regulations states: "...the term 'farm' embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit, and truck farms; also plantations, ranches, and all land used for farming operations."

Section 1.175-3 of the Income Tax Regulations states: "A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the business of farming." It further goes on to state that the "...term 'farm' is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards."

Revenue Ruling 55-611, 1955-2 C.B. 270, states, in part, that an association which is not composed of farmers, fruit growers, or persons engaged in similar pursuits is not exempt under section 521 of the Code unless it could be considered a "like association" within the intentment of that section.

In Revenue Ruling 70-372, 1970-2 C.B. 118, an organization composed of agricultural producers was formed to process production data for farmers for use in improving the milk production of their dairy herds. Each farmer sent the organization his milk production and test records for each cow in the herd. The sole activity of the organization processed the records and produced statistical analyses that enabled farmers to make comparisons with standards established by the State college of agriculture. The analyses were sent to each farmer on a fee basis. The farmer used the analyses in the management of his herd for the purpose of improving the quantity and quality of the milk production. The costs of the organization's operations were met solely from the fees charged. The Service held that the organization was not exempt under section 501(c)(5) of the Code because the processing of production and test records for individual farmers does not better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operations. The Service went on to say that the services provided simply relieve the individual farmer of work that he would either have to perform himself or have performed for him.

In Revenue Ruling 73-308, 1973-2 C.B. 193, the Service held that a corporation organized by persons engaged in the lumber business for the purpose of marketing building materials on a cooperative basis is not an exempt farmers', fruit growers, or like cooperative organization within the meaning of section 521 of the Code.

In Revenue Ruling 73-570, 1973-2 C.B. 195, the Service holds that an incorporated organization marketing lumber for independent lumber producing companies controlling the organization does not qualify for exemption under section 521 of the Code. This ruling relied on sections 1.61-4(d) and 1.175-3 of the regulations as supporting the exclusion of lumbering from the generally accepted definition of farming. Lumbering is the business of cutting and converting the cut by the forest industry into lumber.

In Revenue Ruling 74-195, 1974-1 C.B. 135, an organization formed under State law as a nonprofit, non-stock cooperative corporation to handle, graze, care for, and manage the cattle of its members. The organization carries out these operations on a range which it operates under a permit from a governmental agency. In actual operation the organization provided such supplies, materials, feed, and equipment as may be useful or necessary for the handling and

breeding of said livestock. The Service held that the organization did not meet the requirements for exemption under section 501(c)(5) of the Code because the principal purpose of the organization was to provide a direct business service for its members' economic benefit.

### **Application of Law:**

M originally requested exemption under section 521 of the Code as a farmers' cooperative for the purpose of purchasing supplies and equipment for the use of its members.

M does not qualify for exemption under section 521 because it is not a farmers', fruit growers, or other like organization. M's membership consists of persons involved in the harvesting of timber, hauling of forest products in their natural state, forest road contractors and those businesses that prepare forest sites for planting, plant trees, do fertilization, or other site work that enhances the forest stand.

As referenced above, section 464(e)(1) of the Code states that trees (other than those that bear fruit or nuts) shall not be treated as an agricultural commodity. Also, Treas. Reg. 1.175-3 states a taxpayer engaged in forestry or the growing of timber is not engaged in the business of farming. Treas. Regs. 1.521-1(b), 1.521-1(d) and 1.61-4(d) all support our contention that the harvesting of timber is not a farming activity.

In Rev. Rul. 55-611, the Service ruled that an association which is not composed of farmers, fruit growers, or persons engaged in similar pursuits is not exempt under section 521 of the Code unless it could be considered a "like association." Since harvesting timber is not a "like association," M cannot qualify as a farmers' cooperative.

M is similar to the organization described in Rev. Rul. 73-308. In that ruling, a corporation was organized by persons engaged in the lumber business for the purpose of marketing building materials on a cooperative basis. The Service held that the organization was not a farmers' cooperative because lumber was not a farmers', fruit growers, or other like association.

A similar ruling was held in Rev. Rul. 73-570 in which a corporation that markets products of its members who were independent lumber producing companies was held not to be a farmers' cooperative. The ruling cited Treas. Regs. 1.521-1(d), 1.61-4(d) and 1.175-3 in determining that lumber is not considered a farming activity.

The first hurdle in becoming a farmers' cooperative is being engaged in farming; since the harvesting of trees does not come within the meaning of farming, M cannot be recognized as exempt as a farmers' cooperative under section 521 of the Code.

### **Applicant's Position:**

After receiving notice from the Service that it may not qualify as exempt under section 521 of the Code, M's letter dated January 23, 2006 stated it believes it could qualify as an agricultural organization under section 501(c)(5) of the Code. M states: "...although not clearly stated in the articles and by-laws, a primary purpose of the coop is, through the exchange of ideas,



information, and availability of a central fund of knowledge, experience and resources (including access to superior equipment and technology at reduced prices to membership) to improve the products of its members, provide education and instruction in the art and science of timber harvesting to the surrounding community and the development of greater efficiency in such harvesting functions." M cites Campbell v. Big Spring Cowboy Reunion, 210 F.2d 143 (5<sup>th</sup> Cir. 1954), in support of its position that the purpose listed above need not be part of the articles and bylaws submitted with the application.

M cites Rev. Rul. 57-466, 1957-2 C.B. 311, in support of its contention that it is exempt under section 501(c)(5). In Rev. Rul. 57-466, the Service held that a farm bureau, incorporated under state law for the county-wide advancement and improvement of agriculture, which in addition to the activities in furtherance of its purposes purchases supplies and equipment for resale to members is exempt under section 501(c)(5). The Service goes on to state that the resale of supplies and equipment is subject to unrelated business income tax under section 511 of the Code.

#### **Government's position:**

The Government does not disagree with M citing Campbell in this case. The change in M's purpose is not fatal to exemption just because it is not a part of its articles and bylaws.

What is fatal to M exemption under section 501(c)(5) of the Code is that M is not a farm bureau. Farm bureaus are typically organized at the state and county level and work on behalf of members at the state capital and the local county seat as well as various government regulatory agencies. M is neither organized at the state or county level nor does it represent the interests of its members at various governmental regulatory agencies. M's membership consists solely of those persons who are in the timber-harvesting business, including haulers of forest products in their natural state, forest road contractors and those businesses that prepare forest sites for planting, fertilizing, etc. As stated in M's letter dated June 24, 2005: "The reason that (M) was formed was to meet the rising cost of doing business."

Organizations described under section 501(c)(5) include labor, agricultural and horticultural organizations. For reasons stated previously in this letter, harvesting timber is not an agricultural activity and therefore, M cannot be described under section 501(c)(5) as an agricultural organization.

M is similar to the organization described in Rev. Rul. 70-372 in that the services provided by M to its members relieves the individual timber harvester of work that it would either have to perform itself or have performed for it.

M is also similar to the organization describe in Rev. Rul. 74-195 in that the principal purpose of the organization was to provide a direct business service for its members' economic benefit.

#### **Conclusion:**

Based on the information submitted, it is the position of the Internal Revenue Service that M

does not qualify for exemption under section 521 as a farmers cooperative nor as an agricultural organization under section 501(c)(5) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:  
Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:  
Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.



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DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: MAY 27 2008

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear ,

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 521 as a farmers' cooperative. Nor do you qualify for exemption as an agricultural organization under section 501(c)(5) of the Code

We made this determination for the following reason(s):

You are not a farmers', fruit growers or other like organization. In addition, the harvesting of timber is not considered an agricultural activity which precludes you from being exempt under section 501(c)(5) as an agricultural organization.

You must file Federal income tax returns on the form and for the years listed above within 90 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

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If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosures