

Internal Revenue Service
Appeals Office
4050 Alpha Road
Suite 517, MC:8000NWSAT
Dallas, TX 75244

Release Number: 200921041
Release Date: 5/22/09

Date: FEB 24 2009

A
B
C

LEGEND:

A =

B =

C =

D =

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Refer Reply to:

AP:FE:DAL:

In Re:

EO Revocation

SSN/EIN Number:

Tax Period(s) Ended:

UIL 501.05-00

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (IRC) section 501(a) as an organization described in IRC section 501(c)(5).

Our adverse determination was made for the following reason(s): A labor organization exempt under section 501(c)(5) is an organization that primarily serves the interests of employees as distinguished from serving the interests of self-employed persons. Your primary activity is to promote harness racing in D, improve working conditions and provide welfare insurance for an on behalf of your members, none of whom are employees organized under a collective bargaining agreement. You are, therefore, not a labor organization as defined under section 501(c)(5).

You are required to file Federal income tax returns on Form 1120 for the tax periods indicated above. You should file these returns within 30 days from the date of this letter, unless a request for an extension of time is granted. 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.

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.

Sincerely,

TEAM MANAGER

cc:



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
230 S. Dearborn Street
TE/GE 7842: 4929CHI
Chicago, IL 60604

FEB 24 2009

XXXXX
XXXXX
XXXXX

Taxpayer Identification Number:

Form:

990

Tax Year(s) Ended:

December 31,

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

Letter 3810 (04-2002)
Catalog Number 34801V

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Local Taxpayer Advocate

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Internal Revenue Agent

**Enclosures:
Publication 892
Publication 3498
Form 6018
Report of Examination
Envelope**

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31,

ISSUE:

Should the Federal tax exempt status under IRC 501(C) (5) as a labor union be revoked?

FACTS:

Pursuant to the Articles of Incorporation, the was formed for the following purposes:

- A. To provide and improve harness racing interest in the State of ; to secure friendly cooperation of racing associations, owners, breeders, trainers, drivers and grooms or any other help employed by a racing stable at harness racing tracks.
- B. To assist in improving moral and social conditions or owners, drivers, grooms and other employees of such racing stables.
- C. Sponsor and promote colt races, stake and closing events.
- D. Corporation is to be in the nature of a trade association, and is not to in any way function as a labor union.

All of the members of the are self employed, independent contractors. During the year ending December 31, received approximately 89% of its revenues through contracts with the harness horse race tracks in . In June of established the Benefit Trust to provide health and welfare benefits for eligible members of periodically transfer funds to the welfare benefit trust account for the purpose of partially funding these insurance and administrative expenses. During the year ending approximately 72% of total expenses are expended toward insurance premiums.

LAW:

Section 501(c) (5) of the Internal Revenue Code provides for the exemption of labor, agricultural, or horticulture organizations, which have no net earnings inuring to the benefit of any member, and have as their objects the betterment of the conditions of persons engaged in the pursuits of labor, agriculture, or

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		Year/Period Ended
Name of Taxpayer		December 31,

horticulture, the improvements of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Revenue Ruling 78-288, 1978-2 CB 179, provides, an organization whose members are engaged in harness racing in a specific geographic area as drivers, trainers, and horse owners, most of whom are independent contractors or entrepreneurs, and that negotiates with operators of area raceways for larger purses, better hours, and safer operating conditions does not qualify for exemption as a labor organization under section 501(c) (5) of the code.

Revenue Ruling 74-167, 1974-1 CB 134, provides the inclusion of some self-employed persons in the membership of a qualified labor organization does not affect the organization's exempt status under section IRC 501(c) (5) of the Code.

Conclusion:

The primary activities are to promote harness racing in improve working conditions and provide welfare insurance for and on behalf on its members. However, none of the organization's members are employees, organized under a collective bargaining agreement. To be a labor organization under IRC 501(c)(5), an organization must primarily serve the interest of labor. The term "labor" is commonly accepted as meaning the performance of service as employees and not independent contractors. In addition, IRC section 530 is only applicable for payroll tax purposes and not applicable to Federal tax exemption. Accordingly, it is held that you are not a labor organization within the meaning of section 501(c)(5) of the Internal Revenue Code. Therefore, the ruling letter dated which held you exempt from Federal income tax under IRC 501(c)(5) of the Code is hereby revoked effective for taxable years beginning December 31. You are required to file income tax return on Form 1120.