

regulations contained amendments to the regulations previously proposed under sections 6042 and 6044.

In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing final regulations relating to backup withholding that were proposed in INTL-52-86 and IA-224-82. Those final regulations do not include proposed §§ 1.6042-5 and 1.6044-6. Further, when the IRS issues additional final regulations that were proposed under INTL-52-86, those additional final regulations will not include proposed §§ 1.6042-5 and 1.6044-6. Accordingly, this document withdraws those proposed regulations sections. See §§ 1.6042-4 and 1.6044-5 of the final regulations for substantive rules proposed under the withdrawn sections.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Portion of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, proposed §§ 1.6042-5 and 1.6044-6 that were published in the Federal Register on February 29, 1988 (53 FR 5991) and amended in the Federal Register on September 27, 1990 (55 FR 39427) are withdrawn.

Margaret Milner Richardson,
Commissioner of Internal Revenue
[FR Doc. 95-30735 Filed 12-20-95; 8:45 am]
BILLING CODE 4830-01-U

26 CFR Part 1

[EE-53-95]

RIN 1545-AT95

Requirements for Tax Exempt Section 501(c)(5) Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations clarifying certain requirements of section 501(c)(5). The requirements are being clarified to provide needed guidance to organizations as to the requirements an organization must meet in order to be exempt from tax as an organization described in section 501(c)(5).

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE-53-95), room 5228, Internal Revenue Service, POB

7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE-53-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg, (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking clarifies the scope of the exemption provided in section 501(c)(5) of the Internal Revenue Code for labor, agricultural and horticultural organizations.

An income tax exemption for labor organizations was first provided in the Corporation Excise Tax Act of 1909, Public Law No. 61-5, 36 Stat. 11, 112-118, and has been in effect continuously since that time. A labor organization is an entity that is organized "to protect and promote the interests of labor." *Portland Cooperative Labor Temple Association v. Commissioner*, 39 B.T.A. 450 (1939), acq., 1939-1 C.B. 28. The principal purpose of the organization must be to better the working conditions of people engaged in a common pursuit. See, *Treas. Reg. § 1.501(c)(5)-1*. Organizations meeting this requirement have traditionally engaged in collective action directed toward the workers' common objective of improving working conditions. They include labor unions that negotiate with employers on behalf of workers for improved wages, fringe benefits, hours and similar working conditions, and certain union-controlled organizations, like strike funds, that provide benefits to workers that enhance the union's ability to bargain effectively. See *Rev. Rul. 67-7* (1967-1 C.B. 137). They do not include strike funds that provide income to union members but are not controlled by unions. See *Rev. Rul. 76-420* (1976-2 C.B. 153). Such an organization will not pay the strike benefits "with the objective of bettering conditions of employment, but by reason of its contractual agreements with the workers."

Labor organizations may also meet the requirements of section 501(c)(5) by providing benefits that directly improve working conditions or compensate for unpredictable hazards that interrupt work. Examples of such benefits include operating a dispatch hall to match union members with work assignments and providing industry stewards who represent employees with grievances

against management. See *Rev. Rul. 75-473* (1975-2 C.B. 213); *Rev. Rul. 77-5* (1977-1 C.B. 148). On the other hand, managing saving and investment plans for workers, including retirement plans, does not bear directly on working conditions. See *Rev. Rul. 77-46* (1977-1 C.B. 147). Accordingly, section 501(c)(5) has not been applied to organizations that manage retirement savings plans as their principal activity.

Nevertheless, in *Morganbesser v. United States*, 984 F.2d 560 (2d Cir. 1993), the court held that a trust managing a pension benefit plan pursuant to a collective bargaining agreement qualified as a labor organization described in section 501(c)(5). The IRS and the Treasury Department believe that this decision is contrary to existing law, and the IRS is issuing an action on decision reflecting its view that the *Morganbesser* court erred in its holding. These proposed regulations are a clarification of the existing legal standard.

Like labor organizations, agricultural and horticultural organizations must also better the conditions of those engaged in a common pursuit in order to be described in section 501(c)(5). See § 1.501(c)(5)-1. There is no authority indicating that the law is to be interpreted differently for agricultural and horticultural organizations than for labor organizations. Accordingly, the proposed regulations clarify the law as it applies to all section 501(c)(5) organizations.

Certain organizations have taken the position in refund actions that they are labor organizations described in section 501(c)(5) even though their principal activity was to manage retirement savings plans for workers. In addition, some such foreign organizations have claimed exemption from withholding on dividend, interest and similar income that they have earned. The IRS will continue to oppose these claims for refund and exemption from withholding.

A health plan is not a retirement savings plan. Thus, the IRS will continue to follow *Rev. Rul. 62-17* (1962-1 C.B. 87) (regarding a labor organization providing health benefits) even in circumstances where a majority of the organization's members are retired. Furthermore, the IRS will continue to recognize that negotiating the terms of a retirement plan and other postretirement benefits and designating one or more representatives to the board of a multiemployer pension trust are proper activities for a labor organization. The proposed regulations are not intended to apply to or affect