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September 25, 2007

Eddie Gordon
Wild American Shrimp, Inc.
Charleston Maritime Center
10 Wharfside Street
Charleston, SC 29401

RE: 501(c)(5) organizations (MASGP 07-007-010)

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Dear Eddie,

Thank you for again turning to the National Sea Grant Law Center for assistance with your legal questions. As I understand it, you recently discovered that WASI is classified as a 501(c)(5) organization, as opposed to the more common tax-exempt 501(c)(3) organization, and need more information about the legal requirements for these organizations. This letter contains the results of our research into the applicable law. Please be aware that the National Sea Grant Law Center does not offer formal legal advice, and that this letter is intended for informational purposes only.

Section 501(c)(5) of the Internal Revenue Code provides tax-exempt status to qualifying labor, agricultural, and horticultural organizations. Agricultural includes "the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock." IRC Sec. 501(g). An agricultural organization is entitled to an exemption if no net earnings inure to the benefit of any member and it has as its primary purpose "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." 26 CFR 1.501(c)(5)-1(a). Agriculture organizations are generally membership organizations, which means that those served by the organization must represent a significant portion of the interested agricultural community.

The following is an example of an exempt agricultural organization. The IRS has ruled that an organization formed to encourage better methods of raising fur bearing animals, provide an orderly

system for marketing the pelts, and create public demand for the products by providing members with educational materials on breeding and marketing and conducting advertising is exempt under 501(c)(5). Rev. Rul. 56-245. However, an organization formed by processors, packers, and distributors of agricultural products to promote the sale and use of a processed agricultural product does not qualify for an exemption under section 501(c)(5). Rev. Rul. 67-252.

Such an organization may qualify for exemption as a business league under Code section 501(c)(6). IRS Publication 557 states that “when the activities are directed toward the improvement of marketing or of other business conditions in one or more lines of businesses, rather than the improvement of production techniques or the betterment of the condition of persons engaged in agriculture, the organization must qualify for exemption as a business league, board of trade, or other [501(c)(6)] organization.”

Lobbying

501(c)(5) organizations may, consistent with their exempt purpose, publicly advocate positions on public policy issues, including legislation, and engage in an unlimited amount of lobbying, so long as that lobbying is related to the organization’s exempt purpose. The exempt purposes of an agricultural organization are not broad enough to include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(5) agricultural organization may engage in some political activities, provided this is not the organization’s primary activity.

Contributions

Unlike contributions to 501(c)(3) organizations, contributions to agricultural organizations are not generally deductible as charitable contributions. However, they may be deductible as trade or business expenses, if ordinary and necessary in the conduct of the taxpayer’s trade or business. There are a few caveats, however. First, “amounts paid for intervention or participation in any campaign may not be deductible as a business expense.” IRC Sec. 162(e)(2)(A).

In addition, no deduction shall be allowed for any amount paid or incurred in connection with--

- (A) influencing legislation,
- (B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,
- (C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or
- (D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official. IRC Sec. 162(e)(1).

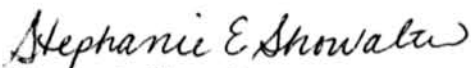
Tax-exempt organizations incurring expenditures to which IRC 162(e) applies have a couple of options. First, it can choose to notify its members regarding the non-deductibility of certain payments. No deduction is allowed for the portion of dues or other similar amounts paid by the taxpayer to an organization to the extent that, at the time the dues are assessed or paid, the organization notifies the taxpayer that the dues are allocable to nondeductible lobbying and political expenditures of the type described in IRC 162(e)(1). In this notice, the organization should provide a reasonable estimate of the

amount allocable to lobbying and political campaign expenditures. If an organization fails to provide the required notices or if the notices underestimate the actual amount of dues allocable to nondeductible lobbying expenditures, the organization is subject to a proxy tax. IRC 6033(e)(2)(A).

Some agricultural organizations are exempt from the requirements of IRC 6033(e)(3) if either (i) more than 90 percent of all annual dues (or similar amounts) are received from persons, families, or entities who each pay annual dues of \$75 or less, or (ii) more than 90 percent of all annual dues are received from 501(c)(3) organizations, state governments, local governments, and certain other tax-exempt entities. Rev. Proc. 98-19.

I hope you find this information helpful. In this letter, I've focused on highlighting the main differences between 501(c)(3) and 501(c)(5). Determining an organization's tax-exempt status is very fact-specific and at some point you may want to seek assistance from the IRS. Organizations may request private letter rulings to clarify the tax consequences of their activities. If you have additional questions or concerns, please let me know. I would be happy to provide information on seeking private rulings and present the above information during a board meeting.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie E. Showalter".

Stephanie Showalter

Director, National Sea Grant Law Center