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Surname [redacted]

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[redacted]

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[redacted]

NOV 06 1992

Employer Identification Number: [redacted]
Key District: [redacted]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [redacted], under the laws of the State of [redacted]. Your Articles of Incorporation state that your purposes are: to contract for, operate and manage a simulcast network for horse racing within and outside of the State of [redacted]; to coordinate facilities and services that will permit parimutuel wagering on horse racing within and outside of the State of [redacted]; to administer, coordinate and carry on activities intended to benefit horse racing within the State of [redacted]; to administer, contract for, coordinate and carry on activities and services that will promote the breeding of race horses within the State of [redacted]; and to promote improvements to county fairgrounds facilities and live race facilities within the State of [redacted].

You state that all county fair boards in those counties in [redacted] conducting live racing are eligible for your membership and all do belong. You were given starting capital by these [redacted] county fair boards, and each fair board has one representative as one of your directors.

In your application you state that your sole activity is to conduct and operate a simulcast wagering network in [redacted] for horse racing during the months when live racing is not available in the State, as licensed by the State. You state that your source of financial support is solely from the conduct of simulcasting pari-mutuel wagering. Specifically, your funds come from the pari-mutuel handle wagered on the simulcast races. Pursuant to State regulations, a statutory percentage of your

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proceeds are distributed to county fairground facilities, to the [redacted], to the [redacted], and to the [redacted]. You also set aside a percentage of your proceeds for purse monies to be added to the live racing purse monies.

In [redacted], if a live track is running, it has the option of simulcasting in races to help supplement its race cards. You have no control or involvement with the live race meets simulcasting races. However, once the live season has been completed, you are the vehicle used to coordinate the simulcasting in the winter months. You contract with various individual facilities in the State to carry the simulcasting. Each facility must first obtain permission from its local fair board before it is able to approach you for the opportunity to operate a site. It then has to be licensed by the State, the [redacted], and then a contract with you is drawn up. Each facility must provide, among other items, a separate fax line located close to the betting area, a facsimile machine, a satellite dish, an adequate number of monitors or big screen television sets, a public address system, adequate cash on hand to pay pari-mutuel payoffs, and liquor license and food service. You provide totalisator terminals, satellite decoders, and an approved telephone system including analog data lines. From each facility monthly, you receive your approximate month's operation costs, which is based on the following scale: if the facility handles per day average between $[redacted] and $[redacted] you receive [redacted]% of the difference between $[redacted] and the amount handled per day average by the facility, multiplied by the number of days in the current month. The $[redacted] limit has been set as a trial case based on current data. The facility also pays you for past performance race programs and general statistics. You contract with out-of-state racetracks to supply the line audio-visual signal of the races to the various facilities you have contracted with.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as

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distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 68-505, 1968-2 C.B. 248, holds that a county fair association exempt under section 501(c)(3) of the Code is engaged in unrelated trade or business within the meaning of section 513 where it conducts a horse racing meet with pari-mutuel betting. The organization described in the revenue ruling, in conjunction with its annual fair, also conducted a two week horse racing meet featuring pari-mutuel betting. The races were conducted in the same general manner as at commercial tracks, and under the pari-mutuel system, the organization received a commission on the total amount wagered.

Rev. Rul. 73-411, 1973-2 C.B. 180, states that in the case of a chamber of commerce or similar organization, the common business interest is usually the general economic welfare of a community. Membership is voluntary and open generally to all business and professional men and women in the community. The revenue ruling also defines trade associations or business leagues as similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry. The revenue ruling further states that it has been established as a matter of statutory construction that in employing popular names in describing many of the organizations exempted under Subchapter F of the Code, such as "labor organizations," "chambers of commerce," and others, Congress is presumed to have had reference to organizations as they actually exist and are commonly known. This means that where the requisite characteristics of the organizations exempted by such terms are not otherwise fixed by regulations or statute, the Service is required to look to the characteristics of such organizations as they have commonly come to be known in actuality. It means also that successful applicants for exemption must be shown to possess at least the essential characteristics of the class of organizations commonly known by such names.

Rev. Rul. 80-294, 1980-2 C.B. 187, holds that the status of an organization exempt under section 501(c)(6) of the Code, created to promote interest in, elevate the standards of, and conduct tournaments in, a certain professional sport will not be adversely affected merely because its primary support is derived from the sale of television broadcasting rights to the tournament it conducts. The revenue ruling states that the sponsorship of

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tournaments and the sale of broadcasting rights with respect thereto by the organization directly promotes the interests of those engaged in the sport by encouraging participation in the sport and by enhancing awareness by the general public of the sport as a profession. The amount of income derived from the sale of broadcasting rights is not, by itself, determinative of whether the activity furthers the purposes specified in section 501(c)(6).

Rev. Rul. 80-295, 1980-2 C.B. 194, holds that the sale of television and radio broadcasting rights to an independent producer by an organization which was created as a national governing body for amateur athletics and which is exempt under section 501(c)(3) of the Code, is not unrelated trade or business under section 513. The revenue ruling states that the broadcasting of the organization's sponsored, supervised, and regulated athletic events promotes the various amateur sports, fosters widespread public interest in the benefits of its nationwide amateur athletic program, and encourages public participation. Therefore, the organization's sale of broadcasting rights and the resultant broadcasting of its athletic events contributes importantly to the accomplishment of its exempt purposes.

Based on the statutory construction of section 501(c)(6) of the Code, it is a well established principle that section 501(c)(6) is intended to apply only to membership organizations which further the common business interests of their members and which are financed through membership dues. The legislative history of the statute, and the rules of statutory construction applicable to that section of the Code dealing with exempt organizations, provide that only membership organizations supported by membership dues or assessments are included in the term of the exemption under section 501(c)(6). Thus, an organization which is not in fact membership supported lacks the most significant characteristic common to organizations for which exemption was provided under section 501(c)(6). Although you were given starting capital by your members, your ongoing financial support is derived solely from your conduct of simulcasting pari-mutuel wagering rather than from your members. Accordingly, as explained in Rev. Rul. 73-411, supra, you have demonstrated a pattern of non-membership support and thus fail a critical test of exemption under section 501(c)(6).

Although your stated purposes include the benefiting of horse racing and the promotion of the breeding of race horses, your sole activity and the sole source of your financial support is the operation and management of the simulcast wagering network. As explained in Rev. Rul. 68-505, supra, the activity of conducting horse racing meets with pari-mutuel betting is

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unrelated trade or business, which is considered to be the same as the operation of a business ordinarily carried on for profit. Simulcasting, since it is usually performed by for-profit tracks supplementing their race cards, is similarly a business ordinarily carried on for profit. (See also Forest City Live Stock and Fair Company, BTA Op. Doc. 362-36 (1932)). As stated in section 1.501(c)(6)-1 of the regulations, an organization engaged in a regular business of a kind ordinarily carried on for profit is not a business league within the meaning of section 501(c)(6) of the Code. The facts that your operation of the simulcast wagering network may only produce sufficient income to be self-sustaining and that a portion of your proceeds is statutorily required to go to fair boards, race horse owners and breeders, and purses for winning horses is insufficient to meet the requirements under section 501(c)(6).

You are not like the organizations described in Rev. Ruls. 80-294 and 80-295, supra, because you are not operating or sponsoring the races you simulcast. Although the revenue rulings provide that the sale of broadcasting rights by an organization described in section 501(c) of the Code is not necessarily unrelated trade or business, the primary activity of the organizations and the basis for their exemption is the conduct of the event(s) being broadcast.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(6) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to your key District Director.

[redacted]

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: [redacted]. These symbols do not refer to your case but rather to its location.

Sincerely yours,

[redacted]

[redacted]
Chief, Exempt Organizations
Rulings Branch 4

cc: [redacted]

[redacted] [redacted]

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