

U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D. C. 20210	CLASSIFICATION
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	May 20, 1983
RESCISSIONS	EXPIRATION DATE
None	May 31, 1984

DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER 23-92, Change 1

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: BARBARA ANN FARMER, Administrator for Regional Management

SUBJECT: Unemployment Compensation for Federal Employees (UCFE)--Coverage Ruling for Employees and Members of Agricultural Promotion Boards and Marketing Agreement and Order Administrative Committees

1. **Purpose:** To ensure that a UCFE program coverage ruling, dated March 24, 1992, relating to employees and members of Agricultural Promotion Boards and Marketing Agreement and order Administrative committees is distributed to State agency tax and appellate staff.
2. **Reference.** UIPL No. 23-92, dated April 21, 1992.
3. **Background:** The routing instructions in the above referenced UIPL issued last year did not include state agency tax and appellate staff. This has created some confusion relating to state coverage provisions and FUTA tax liability of these boards and committees. It has been ruled that the employees (not members) of these boards and committees are Federal employees and perform "Federal service" for UCFE program purposes. These boards and committees are wholly owned instrumentalities of the United States and , therefore, are exempt from FUTA under Section 3306(c)(6) of the Internal Revenue code of 1986.
4. **Action Required** SESA administrators are requested to distribute this ruling immediately to the appropriate State agency staff responsible for UCFE, tax, and appellate operations.
5. **Inquiries:** Questions should be directed to the appropriate Regional Office.
6. **Attachment.** UCFE Program Coverage Ruling No . 92-1 for Agricultural Promotion Boards and Marketing Agreement and Order Administrative Committees.

Attachment to UPL No. 23-92,
Change 1

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue NW
Washington, DC 20210



UCFE Program Coverage Ruling No. 92-1

Agricultural Promotion Boards and Marketing Agreement
and Order Administrative Committees

Ruling: Each of the below listed boards and committees is an "instrumentality of the United States" and services performed in the employ of all such boards and committees is "Federal service" within the meaning of 5 U.S.C. 8501(1); the National Dairy Promotion and Research Board (7 U.S.C. 4501-4513; 7 CFR Part 1150), the Honey Board (7 U.S.C. 4601-4612; 7 CFR Part 1240), the National Potato Promotion Board (7 U.S.C. 2611-2627; 7 CFR Part 1207), the Cotton Board (7 U.S.C. 2101-2118; 7 CFR Part 1205), the National Pork Board (7 U.S.C. 4801-4819; 7 CFR Part 1250), the Cattlemen's Beef Promotion and Research Board (7 U.S.C. 2901-2911; 7 CFR Part 1260), the Egg Board (7 U.S.C. 2701-2718; 7 CFR Part 1250) and 44 marketing agreement and order administrative committees (see enclosed list) established under 7 U.S.C. 601-674 (7 CFR Parts 905-998). Members of such boards and committees who are appointed by the Secretary of Agriculture are excluded from program coverage by 5 U.S.C. 8501(1)(K).

Prior Ruling: A ruling on UCFE program coverage of marketing agreement and order administrative committees was issued on June 20, 1957. This 1992 ruling supersedes the 1957 ruling and is now controlling for UCFE program coverage purposes of these agricultural promotion boards and marketing agreement and order administrative committees. No subsequent amendments to title 7 of the United States Code have altered the nature or characteristics of these boards and committees upon which our ruling was based. Nor have there been any amendments to 5 U.S.C. 8501(1) which are relevant to the coverage of such boards and committees. The addition of Section 8509 by Section 1023(b) of the Omnibus Reconciliation Act of 1980 (P.L. 96-499) did not affect coverage of the UCFE program.

Statement of Facts: In holding that employees of such committees perform "Federal service," I have relied on the following factors:

1. The primary function of these committees is to act as agents for the Secretary of Agriculture in carrying out the policy declared by Congress at 7 U.S.C. 602.

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2. Such committees have the authority to appoint employees, agents, and representatives, and to determine the salaries and duties of such individuals.

3. The members of such committees, as well as employees and agents, are subject to removal by the Secretary of Agriculture.

4. Every act of such committees is subject to approval by the Secretary of Agriculture.

5. On November 29, 1945, the Internal Revenue Service ruled that services performed in the employ of certain administrative committees established by the Secretary of Agriculture under the Agricultural Marketing Agreement Act were exempt from the provisions of the Federal Unemployment Tax Act by reason of the exclusion from the definition of "employment" in 26 U.S.C. 1607(c) (now, without relevant change, Section 3306(c)(6) of the Internal Revenue Code of 1986). Also, on October 15, 1952, the Director of the Bureau of Employees' Compensation (now the Office of Workers' Compensation Programs) ruled that personnel of the Federal Milk Market Administrators are "employees" within the meaning of the Federal Employees' Compensation Act.

6. Such committees are authorized to incur such expenses as the Secretary of Agriculture finds reasonable.

7. The funds to cover the expenses of such committees are raised by assessments, paid to the committees by the covered industries and enforceable by the Secretary of Agriculture in the District Courts of the United States.

8. The decision in United States v. Levine, 129 F.2d 745 (2d Cir. 1942) found that a Market Administrator (established by order of the Secretary of Agriculture under the Agricultural Marketing Agreement Act) was an agency of the United States. Further, as recently as 1984, the Supreme Court cited with approval the Levine opinion finding that a Market Administrator was an agency of the United States (Dixon v. United States, 104 S.Ct. 1172, 1179-1180 (1984)).

9. The Internal Revenue Service affirmed, in a letter from Jerry E. Holmes to Mary Ann Wyrsh, dated November 26, 1990, that there is no change in the positions taken in the above cited rulings.

Discussion/Analysis: With regard to the promotion boards, the purpose of these entities is to carry out coordinated programs of research and promotion designed to strengthen the competitive position of each covered commodity and to maintain and expand domestic and foreign markets for American producers of each such commodity (e.g., 7 U.S.C. 2101 with respect to the Cotton Board). Although the purpose and authorizing statutes of these

entities are different from the marketing committees, their manner of creation and method of operation are nearly identical.

As with the marketing committees, the promotion boards are created by order of the Secretary of Agriculture (e.g., 7 U.S.C. 2104 and 2106(a) with respect to the Cotton Board). Their members are selected by the Secretary of Agriculture (e.g., 7 U.S.C. 2106(b) and are subject to removal by the Secretary (e.g., 7 CFR 1205.323). The boards have authority to appoint employees and to determine the salaries and duties of such individuals (e.g., 7 CFR 1205.328(b)). The actions of these boards are subject to the approval of the Secretary of Agriculture (e.g., 7 U.S.C. 2106(c)). These boards are authorized to incur such expenses as the Secretary of Agriculture finds reasonable (e.g., 7 CFR 1205.330(a)). The funds to cover the expenses of these boards are raised by assessments paid to the boards by the covered industry and enforceable by the Secretary of Agriculture in the District Courts of the United States (e.g., 7 U.S.C. 2106(e) and 2112(b); 7 CFR 1205.515(d)).


In the Internal Revenue Service's letter of November 26, 1990, referenced above, the Department of Labor was informed that:

. . . it appears that an administrative committee established under the Agricultural Marketing Agreement Act of 1937 would qualify as a wholly owned instrumentality of the United States Government under current law. Under section 3306(c)(6) of the Internal Revenue Code of 1986 . . . , services performed in the employ of an instrumentality of the United States wholly or partially owned by the United States are excepted from the definition of employment for FUTA [Federal Unemployment Tax Act] purposes. If a committee is similar to the committee described in the 1945 ruling, it appears that the committee would constitute a wholly or partially owned instrumentality of the United States under section 3306(c)(6). . . . An examination of the relevant Code of Federal Regulations provisions discloses that organizations created under the Agricultural Marketing Agreement Act of 1937 are subject to the same overriding authority of the Secretary of Agriculture. In addition to the factors enumerated in the 1945 ruling, we note the extensive control over the assets of the committees that the Secretary of Agriculture may exercise under the applicable regulations. Therefore, . . . it appears that service performed in the employ of such committees are excepted from employment as service performed in the employ of an instrumentality of the United States Government. Thus, with regard to the conclusions in the 1945 ruling, our conclusion with respect to entities similar to the entity described in the ruling would appear to be that

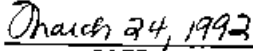
services for the entities would be excepted from employment by section 3306(c)(6) of the Internal Revenue Code as services performed for a wholly or partially owned instrumentality of the United States.

The reasons stated above support the conclusion stated in the first paragraph of this ruling that employees hired by the boards and committees (as distinguished from members) of all of the agricultural boards and committees referred to herein are covered by the UCFE program. The employing agency may not participate in the UCFE program for the board and committee members due to the exclusion at 5 U.S.C. 8501(l)(k).

This coverage ruling is issued pursuant to redelegation of authority from the Assistant Secretary of Labor, in Employment and Training Order No. 2-92, dated March 20, 1992, which is authorized by Section 6 of Secretary's Order No. 4-75 (40 Fed. Reg. 18515) (as amended by Secretary's Order No. 14-75).



MARY ANN WYRSCH
Director
Unemployment Insurance Service



DATE

List of 44 Agricultural Marketing Agreement and Order Administrative
Committees As of March 1, 1991 (7 USC parts 905-998)

905 Citrus Administrative Committee - Florida
906 Texas valley citrus Committee
907 Navel orange Administrative Committee - California & Arizona
908 Valencia Orange Administrative Committee - California and Arizona
910 Lemon Administrative Committee - California and Arizona
911 Florida Lime Administrative
915 Florida Avocado Administrative Committee
916 Nectarine Administrative Committee - California
917 Control Committee - California Pear Commodity Committee
Plum Commodity Committee
Peach Commodity Committee
918 Georgia Peach Industry Committee
919 Colorado Peach Administrative Committee
920 Kiwi fruit l\ministratlve Committee - California
921 Washington Fresh Peach Marketing Committee
922 Washington Apricot Marketing Committee
923 Washington Cherry Marketing Committee
924 Washington-Oregon Fresh Prune Marketing Committee
925 California Desert Grape Administrative Committee
926 Tokay Grape Industry Committee - California
927 Wlnter pear control Committee - Oregon, Washington, and California
928 Papaya Administrative Committee - Hawaii
929 Cranberry Marketing Committee - Massachusetts, Rhode Island,
Connecticut, New Jersey, Wisconsin, Michigan, Oregon, Minnesota,
Washington, and Long Island, New York 931 Northwest Fresh Bartlett
Marketing Committee - Oregon and Washington
932 California Olive Committee
945 Idaho Eastern Oregon Potato Committee
946 State of Washington Potato Committee
947 Oregon-California Potato committee
948 Colorado Potato Administrative Committee
950 Maine Potato Committee (currently inactive)
953 Southeastern potato committee - Virginia and North Carolina
955 Vidalia Onion committee - Georgia
958 Idaho-eastern Oregon Onion Committee
959 South Texas Onion Committee
965 Texas Valley Tomato Committee
966 Florida Tomato committee
967 Florida Celery Committee
971 South Texas Lettuce Committee
979 South Texas Melon Committee
981 Almond Board of California
982 Filbert/Hazelnut Marketing Board - Oregon and Washington
984 Walnut Marketing Board-California
985 Far West Spearmint Oil Administrative Committee
987 California Date Administrative Committee
989 Raisin Administrative Committee - California
993 Prune Marketing Committee California
998 Peanut Administrative Committee - Georgia