

# NFL thrown for loss

## IRS ruling on drug agents could cost league millions

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Just as the NFL was about to change its drug testing program, the IRS has hit the league with a ruling that could cost it millions and could affect several sports leagues.

Drug Program Agents - the men who collect urine samples for drug testing - are employees, not independent contractors, the IRS declared in a Feb. 27 letter obtained by the Daily News, meaning the NFL could be liable for tens of millions in employment tax, pension and other benefits that were never paid. The costs of paying collectors as employees could end up adding millions to the drug program costs for other sports leagues, as well.

According to the ruling, which came after the NFL appealed an earlier determination, the NFL will have to contribute half the agents' 2006 employment taxes. The DPAs, as the drug agents are known, can file amended returns for the three previous years to recover taxes the NFL should have paid.

"That's the smallest part of what they're up for," said Manhattan attorney Robert Costello, who represents a number of the DPAs. "Pension, welfare and benefits are a much larger financial liability for the NFL."

That money will come from either a negotiated settlement with the NFL or through a possible class action lawsuit.

"We'll talk to the NFL shortly," Costello said. "We'll decide depending on their reaction" whether to file a lawsuit.

The NFL has long touted its drug-testing program, with collections handled by former law enforcement agents who enjoyed the pay and the flexibility of their jobs. But the agents were always paid as contractors without benefits, not employees.

When one DPA, Thomas Lavin, asked the IRS last year to determine whether he is an employee or not, the IRS said that he is and so informed the NFL. The NFL appealed the decision, but also decided last year to scrap its program and outsource collections to Comprehensive Drug Testing of Long Beach, Calif., which handles collections for Major League Baseball and the National Hockey League.

The News also discovered in interviews with DPAs and players last year that the NFL's program has massive gaps that can be easily exploited by drug cheats. For instance, there is a window from the end of a player's season until the start of minicamp in March when players are not tested. In quiet meetings with members of Congress, the NFL has pledged to toughen its program.

NFL lawyers are looking over their options, determining whether they have any other ways to appeal, but spokesman Greg Aiello said, "We have been aware of this issue for a long time and we will obviously comply with whatever the law is with respect to the DPAs."

One possible result of the IRS' decision is that CDT, scheduled to take over the NFL's specimen collections in April, may find its labor costs skyrocketing. CDT officials did not return several calls for comment, but the company also treats its collectors as independent contractors, not employees. If a CDT collector asks the IRS for a ruling and the IRS sides with the collector, CDT would also be liable for several years of employment tax and any benefits it pays to regular employees.

Costello, who would not say how many of the 72 current DPAs he is representing, said he hasn't figured out how much money is at stake, but based on the number of agents involved since the program began in 1987 and how much they are paid, the NFL could be forced to pay as much as tens of millions.

Several DPAs interviewed Friday said they have been contacted by CDT, and are considering going to work for the company as collectors. But several said they have been told they will be making less money than they did with the NFL and are unhappy that they will have to make collections at times specified by CDT, without the flexibility allowed by the NFL.

They were pleased, however, with the news that the IRS says the NFL owes them.

"A lot of guys are happy but it didn't have to be this way. The NFL brought it on themselves," said one DPA, speaking on condition of anonymity. "They could have said, 'We found out you guys are employees, let's sit down and talk about this,' instead of just (dismissing) us. They could have offered us 50 cents on the dollar, who knows. Some guys might have taken it."