

The regular sale of membership mailing lists by an exempt educational organization constitutes unrelated trade or business under section 513 of the Code.

Advice has been requested whether an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 carries on unrelated trade or business within the meaning of section 513 where it conducts a sales activity as described below.

The organization's purpose is to increase and disseminate knowledge pertaining to management philosophy and methods. Its main activities include the publication of journals, the conduct of local, regional, national, and international meetings, and the encouragement and sponsorship of research and publication.

As one of its lesser activities, the organization regularly sells lists of its members' names and mailing addresses to universities and business firms. These organizations mail advertisements for their course, seminars, and books pertaining to management to the individuals on the lists. Although the organization reviews the material which advertisers propose to mail to assure that the material pertains to the field of management, it does not otherwise control the content of the advertising. The content of the advertising the advertisers to promote the sale of the advertised products and services. is governed by the basic objective of

An organization otherwise exempt from Federal income tax under section 501(c)(3) of the Code is subject to a tax on unrelated business income imposed by section 511 of the Code.

Section 513(a) of the Code defines the term 'unrelated trade or business' as any trade or business the conduct of which is not substantially related (aside from need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its exempt functions.

Section 513(c) of the Code provides that for the purpose of this section, the term 'trade or business' includes any activity that is carried on for the production of income from the sale of goods or the performance of services.

Section 1.513-1(d)(2) of the Income Tax Regulations provides that a trade or business is 'substantially related' or exempt purposes when the business activity has a substantial causal relationship to the achievement of exempt purposes. Thus, the conduct of trade or business from which income is derived must contribute importantly to the accomplishment of the organization's exempt purposes.

Section 1.513-1(d)(4)(iv) of the regulations recognizes that in certain cases, activities carried on by an organization in the performance of exempt functions may generate good will or other intangibles which may be exploited in commercial endeavors. Where an organization exploits such an intangible in commercial activities, the mere fact that the resultant income depends in part upon an exempt function of the organization does not make it gross income from related trade or business. In such cases, unless the commercial activities themselves contribute importantly to the accomplishment of an exempt purpose, the income which they produce is gross income from the conduct of unrelated trade or business. Example 7 of this section describes advertising by business firms in an exempt organization's journal that promotes only products that are within the general area of interest of the organization's members. The Example indicates that the advertising is not an educational activity of the kind contemplated by the exemption statute and that, therefore, the organization's publication of advertising does not contribute importantly to the accomplishment of its exempt purposes.

The regular sale of membership mailing lists, an activity that is carried on for the production of income from the sale of goods, constitutes trade or business for purposes of section 513 of the Code. In addition, although the continuing education of its members in matters pertaining to the field of management is one of the exempt functions of the organization and the advertising sent to its members is a source of additional information in this field, Example 7 of section 1.513-1(d)(4)(iv) of the regulations indicates that the publication of advertising is not an educational activity contemplated by the exemption statute. Therefore, the sale of mailing lists by the organization to facilitate the mailing of advertising to its members does not contribute importantly to the accomplishment of the organization's exempt purposes.

Accordingly, it is held that the sale of the mailing lists by this organization constitutes unrelated trade or business under section 513 of the Code.