

Sale of space in journal. Income derived by an association of law enforcement officials, exempt under section 501(c)(6) of the Code, from the sale of space in its journal either for conventional advertising or merely to identify the purchasing organization without a further advertising message constitutes unrelated trade or business income under section 513 of the Code.

Advice has been requested whether the amounts realized in connection with the publishing activities described below constitute income from the conduct of unrelated trade or business within the meaning of section 513 of the Code.

The organization is exempt from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954. It is an association whose membership is principally made up of highway patrolmen and other professional law enforcement officials who are actively employed within a single state. It publishes a monthly journal containing articles and other editorial material of professional interest to its members. The organization derives income from the sale of space in its journal for conventional advertising or such other messages as the purchasers direct. Most of the space so sold for such purposes is devoted to ordinary advertising which features the products or services of a commercial enterprise. Some of the space, however, is merely used to identify the purchasing organization or individual without any further advertising message. Typical of this letter usage are insertions such as the following:

Compliments

ABC Manufacturing Corporation

Central City

X State, U.S.A.

*% *% *

Y Restaurant

10 Main Street

Northwest Town

X State, U.S.A.

In some instances, the messages are those of noncommercial organizations such as churches, labor unions, and farmers' cooperatives.

The question is whether and to what extent amounts realized from the foregoing activities constitute income from the conduct

of unrelated trade or business within the meaning of section 513 of the Code.

Section 511(a) of the Code imposes a tax upon the unrelated business taxable income (as defined in section 512) of organizations exempt from Federal income tax under section 501(c)(6). Section 512(a) defines 'unrelated business taxable income' as the gross income from any 'unrelated trade or business' regularly carried on by the organization as computed in the manner provided in section 512.

The term 'unrelated trade or business' is defined in section 513(a) of the Code as any trade or business the conduct of which is not substantially related (aside from the 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 purposes of this section the term 'trade or business' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization.

Section 1.513-1(d)(4)(iv) of the Income Tax Regulations provides that in certain cases activities carried on by an organization in the performance of exempt functions may generate good will or intangibles which may be exploited in commercial endeavors. Where an organization exploits such intangibles 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. Example 6 of this section provides that income from commercial advertising in a journal of an association exempt under section 501(c)(6) of the Code is gross income from unrelated trade or business.

The publication and distribution of advertising and other messages in periodicals is a recognized form of commercial service. The regular sale of space for such purposes is carried on for the production of income and constitutes the conduct of trade or business. The fact that the message published may not be of a commercial nature is not determinative. There are many forms of institutional messages designed for the promotion of good will which do not directly refer to any commercial product or service, but merely identify the particular enterprise or institution involved. The controlling factor in this case is that the activities giving rise to the income in question constitute the sale and performance of a valuable service on the

part of the publisher, and the purchase of that service on the part of the other party to the transaction.

Since the publication of the advertising and other messages in question is regularly carried on, and is not substantially related to the exercise or performance of the organization's exempt functions, the income derived therefrom constitutes gross income from unrelated trade or business within the meaning of section 513 of the Code.