

## Part I

### Section 513.--Unrelated Trade or Business

26 CFR 1.513-3: Qualified convention and trade show activity.

Rev. Rul. 2004-112

#### ISSUE

Under the circumstances described below, do Internet activities conducted by trade associations described in § 501(c)(6) of the Internal Revenue Code fall within the specific exception for qualified convention and trade show activity under § 513(d)(3)(B)?

#### FACTS

**Situation 1.** A is a trade association that is exempt from federal income tax under § 501(a) as an organization described in § 501(c)(6). A improves business conditions in a certain industry and serves members that are part of this industry. A's purposes include supporting and enhancing activities within the industry, acting as a spokesperson for the industry, providing members with current information on technical developments, training methods, and economic issues, encouraging and fostering higher safety and technical standards, promoting technological advancements and improvements, and gathering and disseminating information about markets and products.

A conducts, as one of its substantial exempt purposes, semi-annual trade shows to promote and stimulate interest in and demand for the products of A's industry. Each trade show typically occurs at an exhibition facility, during a period of ten consecutive days. A undertakes the planning and direction of the show, secures the facility, and charges exhibitors a fee for use of space at the show. At each trade show, A sponsors conferences and seminars, and A's members and suppliers to A's industry display their products and services. The conferences, seminars, and exhibits offer a wide variety of information on products and developments in the industry. Sales and order taking are permitted. A's members, nonmembers, and potential customers attend the shows. Revenues from the shows are used by A to defray the shows' operating costs, and any excess of revenues over expenditures is used in furtherance of A's exempt purposes.

To serve its members throughout the year, A maintains a website with a variety of information, including dates, locations, and advance ticket information about A's trade

shows. In addition, in conjunction with each semi-annual trade show, A adds a section to its website that augments and enhances the trade show by allowing members and the interested public to access in an alternative medium the same information that is available at the show. The section contains information and visual displays, such as product directories and specific product listings, and links to the websites of exhibitors represented at the trade show, including members of A and those who are suppliers of goods and services to A's members. The section also contains order forms, and a function that allows on-line purchases from members and suppliers represented at the trade show. The supplementary section of the website typically is available on-line during the ten-day period in which the semi-annual trade show occurs, and during a three-day period prior to the beginning of the show and a three-day period subsequent to the end of the show. At the end of the final three-day period, the supplementary section is removed from the website. A charges a fee to exhibitors who wish to have information listed on the supplementary section of the website. A controls all the website's content.

**Situation 2.** B is a trade association that is exempt from federal income tax under § 501(a) as an organization described in § 501(c)(6), and whose purposes are the same as those of A. B establishes an Internet website that it makes available to the general public 24 hours a day, 7 days a week for a two-week period. At the end of the two-week period, the website is taken down. The two-week period does not overlap or coincide with any international, national, State, regional, or local convention, annual meeting, or show conducted by B.

Like the website operated by A, B's website permits members and the interested public to access information and visual displays, such as product directories and specific product listings. The website contains links to the websites of members of B and those who are suppliers of goods and services to B's members. The website also contains order forms, and a function that allows on-line purchases from members and suppliers appearing on the website. B charges a fee to those who wish to have information listed on the website. B controls all the website's content.

## LAW

Section 501(c)(6), in part, provides for the exemption from federal income tax of business leagues, chambers of commerce 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, in part, 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. The regulation provides that organizations otherwise exempt from tax under § 501(c) are taxable on their unrelated business taxable income.

Section 511(a) provides for the imposition of tax on the unrelated business taxable income (as defined in § 512) of organizations described in § 501(c)(6).

Section 512(a)(1) defines "unrelated business taxable income" as the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less certain deductions, but with the modifications provided in § 512(b).

Section 513(a) defines the term "unrelated trade or business" 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 charitable, educational, or other purpose or function constituting the basis for its exemption under § 501.

Section 513(c) defines the term "trade or business" broadly to include any activity that is carried on for the production of income from the sale of goods or the performance of services. For purposes of § 513(c), an activity, such as advertising, 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 that may, or may not, be related to the exempt purposes of the organization.

Section 513(d)(1) provides, in part, that the term "unrelated trade or business" does not include qualified convention and trade show activities of an organization described in § 513(d)(3)(C). Organizations described in § 513(d)(3)(C) include any organization described in § 501(c)(6) that regularly conducts as one of its substantial exempt purposes a show that stimulates interest in, and demand for, the products of a particular industry or segment of such industry or that educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization.

Section 513(d)(3)(A) defines the term "convention and trade show activity" as any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows. A convention and trade show activity includes, but is not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of (1) displaying industry products, (2) stimulating interest in, and demand for, industry products or services, or (3) educating persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

Section 513(d)(3)(B) defines the term "qualified convention and trade show activity" as a convention and trade show activity carried out by a qualifying organization in conjunction with an international, national, State, regional, or local convention, annual meeting, or show conducted by a qualifying organization, if one of the purposes of such organization in sponsoring the activity is (1) the promotion and stimulation of interest in, and demand for, the products and services of that industry in general, or (2) to educate persons in attendance regarding new developments or products and services related to

the exempt activities of the organization, and the show is designed to achieve such purpose through the character of the exhibits and the extent of the industry products displayed.

Section 1.513-3(b) provides that a convention or trade show activity will not be considered unrelated trade or business if it is conducted by a qualifying organization described in § 513(d)(3)(C), in conjunction with a qualified convention or trade show sponsored by the qualifying organization. Section 1.513-3(c)(1) provides that a qualifying organization includes an organization described in § 501(c)(6) that regularly conducts as one of its substantial exempt purposes a qualified convention or trade show.

Section 1.513-3(c)(2) provides that a qualified convention or trade show is a show that is (i) conducted by a qualifying organization described in § 513(d)(3)(C), (ii) has as at least one of its purposes the education of the qualifying organization's members or the promotion of interest in and demand for the products or services of the industry (or segment thereof) of the members of the qualifying organization, and (iii) is designed to achieve that purpose through the character of a significant portion of the exhibits or the character of conferences and seminars held at a convention or meeting.

Section 1.513-3(d)(1) provides that the rental of display space to exhibitors (including exhibitors who are suppliers) at a qualified trade show or at a qualified convention and trade show will not be considered unrelated trade or business even though the exhibitors who rent the space are permitted to sell or solicit orders.

## ANALYSIS

Activities that promote demand for industry products and services, like other advertising activities, generally would constitute a "trade or business" under § 513(c) if carried on for the production of income. Section 513(d) is a narrow exception to what constitutes an "unrelated trade or business" under § 513(a). Section 513(d) was added to the Code by the Tax Reform Act of 1976 (P.L. 94-455 § 1305), in response to a series of revenue rulings (Rev. Ruls. 75-516 through 75-520, 1975-2 C.B. 220-226) holding that income received by a § 501(c)(6) organization at its convention or trade show from renting display space may constitute unrelated business taxable income, if selling by exhibitors is permitted or tolerated at the show. S. Rep. 94-938, at 601-603, 1976-3 C.B. 639-641. The activities described in § 513(d)(3) are specifically excepted from the definition of an unrelated trade or business because they are conducted by a qualifying organization in furtherance of its exempt purposes and in connection with a convention, annual meeting, or trade show. The term "convention, annual meeting, or trade show" as used in § 513(d)(3) refers to a specific event at which individuals representing a particular industry and members of the general public gather in person at one location during a certain period of time. Not only must the activities be conducted at a "convention, annual meeting, or trade show," but the character of the exhibits and the extent of the industry products displayed at the show must be designed to stimulate interest in, and demand for, the products and services of the industry in general or to

educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization. It is the nature of the activities and their connection to a specific convention, annual meeting, or trade show that distinguishes “qualified convention and trade show activity” within the meaning of § 513(d)(3) and the regulations from other types of advertising and promotional activities conducted by organizations described in § 501(c)(6).

In ***Situation 1***, A is a “qualifying organization” within the meaning of § 513(d)(3)(C), because it is an organization described in § 501(c)(6) and regularly conducts as one of its substantial exempt purposes a trade show to promote public interest in A’s industry. A’s semi-annual trade shows include conferences, seminars and a wide variety of exhibits sponsored by members and suppliers with information useful to those in A’s industry and take place during a limited time, at one physical location, where A’s members, suppliers and potential customers meet together in person, and interact face to face. Thus, each of A’s semi-annual trade shows is a “show” within the meaning of § 513(d)(3).

The activities conducted on the premises of each of A’s semi-annual trade shows and on the special supplementary section of A’s Internet website during the 16-day period that coincides with each semi-annual trade show are of a kind traditionally conducted at trade shows, as required by § 513(d)(3)(A), because the activities are designed to attract to the show persons in A’s industry and members of the public to view industry products, to stimulate interest in, and demand for such products, and to educate persons in the industry about new products and services. Therefore, these activities are “convention and trade show activity.”

Although not conducted on the premises of A’s semi-annual trade shows, the activities conducted by A on the supplementary section of its Internet website during the 16-day period that coincides with each semi-annual trade show are carried out in conjunction with A’s semi-annual trade shows, as required by § 513(d)(3)(B). The supplementary section is no more than ancillary to the trade show. The content of the supplementary section serves to augment and enhance each semi-annual trade show by making available in an alternative medium the same information available at the show. The supplementary section of A’s Internet website is available to A’s members and the interested public during essentially the same limited time period that each semi-annual trade show is in operation. Although the supplementary section is available for a slightly longer period than the trade show itself, the additional time is reasonably brief and serves to allow for previewing the show before attending, or following up on information gathered at the show. Thus, the supplementary section is merely an extension of each semi-annual trade show.

Accordingly, both the activities conducted on the premises at A’s semi-annual trade show and the activities conducted on the supplementary section of A’s Internet website during the 16-day period that coincides with A’s semi-annual trade show meet the requirements to be a “qualified convention and trade show activity” under §

513(d)(3)(B). These activities, therefore, are not unrelated trade or business under § 513(a) because they meet the requirements for the limited exception under § 513(d)(3).

In **Situation 2**, B's operation of a website for a two-week period under the circumstances described is not "qualified convention and trade show activity" as defined in § 513(d)(3)(B), because, unlike the activities conducted on the supplementary section of A's Internet website, B's Internet activities are not carried out in conjunction with any international, national, regional, State, or local convention, annual meeting, or show conducted by B. B's website is not itself a "convention, annual meeting, or trade show" within the meaning of § 513(d)(3) because the website is not a specific event at which B's members, suppliers and potential customers gather in person at one physical location during a certain period of time and interact face to face. Moreover, B's Internet activities do not coincide with, nor do they augment and enhance, any such specific event conducted by B for one of the purposes described in § 513(d)(3)(B). Therefore, because B's website is not qualified convention and trade show activity, the operation of the website, even for a relatively short period of time, is not excepted from the definition of an unrelated trade or business under § 513(d)(1).

As B does not meet the specific exception under § 513(d)(3), whether its Internet activities constitute an unrelated trade or business must be determined under the requirements of § 513.

## HOLDINGS

In **Situation 1**, under the circumstances described, the Internet activities conducted by a trade association described in § 501(c)(6) on the special supplementary section of its Internet website do not constitute unrelated trade or business under § 513(a) because such activities meet the specific exception for qualified convention and trade show activity under § 513(d)(3)(B).

In **Situation 2**, under the circumstances described, the activities conducted by a trade association described in § 501(c)(6) on its Internet website do not meet the specific exception for qualified convention and trade show activity under § 513(d)(3)(B).

## DRAFTING INFORMATION

The principal author of this revenue ruling is Charles Barrett of the Tax Exempt and Government Entities Division, Exempt Organizations. For further information regarding this revenue ruling, contact Mr. Barrett at (202) 283-8944 (not a toll-free number).