

The trustee of an employees' trust described in section 401(a) of the Internal Revenue Code of 1954 and exempt under section 501(a) of the Code purchased railroad tank cars in the name of the trust. These cars were leased to an industrial company for a period of years with options for renewal. The sole activity with respect to this venture of the trustee is to receive the periodic rental income, the lessee having the responsibility for operation and maintenance of the cars. Under these circumstances the trust is subject to tax on the rental income from the personal property as unrelated business taxable income.

Advice has been requested whether rental income received from the lease of personal property by an employees' trust described in section 401(a) of the Internal Revenue Code of 1954 and exempt under section 501(a) of the Code will constitute unrelated business taxable income.

The trustee of the employees' trust purchased a number of railroad tank cars, taking title to them in the name of the trust. The cars were leased to an industrial company for use in conducting its business, for a period of years with the option in the lessee for renewal for an additional period of years. The sole activity of the trustee with respect to this venture is to receive the periodic rental income, the lessee having the full responsibility for the operation, maintenance of their cars, and their replacement in case of destruction or loss. The rent during the initial lease period will be sufficient to recover the original cost of the bank cars and to provide the trust with some additional income.

Section 511 of the Code imposes a tax on unrelated business taxable income of certain organizations, including employees' trusts which are otherwise exempt from tax under section 501(a) of the Code, that are engaged in an unrelated trade or business.

Under Section 513(b) of the Code, the term 'unrelated trade or business' means, in the case of a trust described in section 401(a) which is exempt from tax under section 501(a), any trade or business regularly carried on by such trust.

Section 1.513-1(a)(3) of the Income Tax Regulations provides that a trade or business is regularly carried on when the activity is conducted with sufficient consistency to indicate a continuing purpose of the organization to derive some of its income from such activity.

Section 512(b) of the Code excludes from unrelated business taxable income certain rents derived from real property, including personal property leased with the real property.

In the instant case, the leasing or renting of the railroad

tank cars for a period of years with an option to renew is a business of a kind ordinarily carried on for profit. This activity would be regularly carried on by the trust for the purpose of earning income. Consequently, the leasing of the railroad tank cars constitutes an unrelated trade or business within the meaning of section 513(b) of the Code. The income therefrom constitutes unrelated business taxable income since rentals derived from personal property are not within the exception provided by section 512(b) of the Code.

Accordingly, it is held that rental income from the lease of personal property by an exempt employees' trust under the circumstances described is subject to tax as unrelated business taxable income.