

Rev. Rul. 85-123, 1985-2 C.B. 168

Unrelated income; convention display space rental; trade show selling activity. Certain revenue rulings that hold that income from the rental of booth space at a show or convention is unrelated business taxable income are revoked. Certain rulings that imply that selling activity at a trade show would result in unrelated trade or business are obsoleted. Rev. Ruls. 75-517, 75-518, 75-519 and 75-520 revoked. Rev. Rul. 67-219 and 75-516 obsoleted.

PURPOSE

The purpose of this revenue ruling is to revoke Rev. Ruls. 75-517, 75-518, 75-519, and 75-520, 1975-2 C.B. 222-226 for taxable years beginning after October 4, 1976, because they are inconsistent with section 513(d) of the Internal Revenue Code and the regulations thereunder relating to the treatment of income from qualified convention and trade show activities. This revenue ruling also obsoletes Rev. Rul. 67-219, 1967-2 C.B. 210, and Rev. Rul. 75-516, 1975-2 C.B. 221 for taxable years beginning after October 4, 1976, because those ruling positions are covered in the regulations under section 513(d).

BACKGROUND AND LAW

Section 513(d) was added to the Code by section 1305 of the Tax Reform Act of 1976, 1976-3 C.B. Vol. 1, 192. It excludes from the computation of unrelated business taxable income amounts received from certain convention and trade show activities. The legislation was prompted by dissatisfaction with revenue rulings that held that income from trade shows where selling or order-taking is permitted resulted in unrelated business taxable income. These amendments regarding qualified convention and trade show activities are effective for taxable years beginning after October 4, 1976.

Rev. Rul. 67-219 describes certain trade shows conducted by organizations described in Section 501(c)(6) of the Code. The trade shows described are those commonly conducted by associations in which members of an industry, and sometimes members of related industries, join in an exhibition of the products and services of their industries or lines of business. Their object is the promotion and stimulation of interest in, and demand for, the industries' products and services in general rather than the operation of a facility for making sales to persons attending the shows. While representatives of exhibitors are present to explain the products and services, they do not sell or take orders. Rev. Rul. 67-219 holds that income derived from the activities involved in presenting the show is from unrelated trade or business and is not subject to the tax imposed by section 511.

Rev. Rul. 75-516 describes a membership organization exempt

under section 501(c)(6) of the Code that derives income from rental of display space at the organization's convention. The display space is made available to exhibitors to exhibit and demonstrate products and services used by the members in their businesses. The exhibits are solicited on the basis of their potential informational value and on the understanding that exhibits would not be oriented to order-taking or selling. There is a 'no-sales' clause in the contract with exhibitors and the organization vigorously enforces the clause to prevent selling and order-taking from occurring in the display area or within the convention facility. Rev. Rul. 75-516 holds that income derived from the rental of this space does not constitute unrelated business taxable income.

Rev. Rul. 75-517 describes an organization exempt under section 501(c)(6) of the Code that conducts a convention where its members participate in meetings concerning the general improvements and technical advances in their industry. As part of the convention the organization conducts a display show and derives income from the rental space to exhibitors who exhibit and demonstrate products and services used by the members in their businesses. The organization's rental contracts are silent on whether selling or order-taking is permissible at the show. However, the organization's promotional materials encourage selling and order-taking by emphasizing the convenience and economy of purchasing needed products and services at the convention facility. Rev. Rul. 75-517 holds that the rental of display space constitutes unrelated business taxable income because the facts indicate that the organization is regularly providing a sales facility.

Rev. Rul. 75-518 describes an organization exempt under section 501(c)(5) of the Code that derives income from the rental of display space at the organization's convention under circumstances similar to those described in Rev. Rul. 75-516 except that the 'no-sales' contracts are not enforced. Rev. Rul. 75-518 holds that such income is derived from unrelated trade or business.

Rev. Rul. 75-519 describes an organization exempt under section 501(c)(6) of the Code that derives income from the rental of display space at its convention under circumstances similar to those described in Rev. Rul. 75-517 except that sales are specifically permitted within the space assigned. Rev. Rul. 75-519 holds that such income is from unrelated trade or business.

Rev. Rul. 75-520 describes an organization exempt under section 501(c)(6) of the Code that derives income from rental or display space at its trade show under contracts that permit sales as well as contracts that prohibit sales altogether. Rev. Rul. 75-520 holds that rental income derived from the contracts with the 'no-sales' clauses is income from related trade or business. However, the income from the contracts permitting selling is

unrelated business taxable income because providing a sales facility does not contribute importantly to the organization's exempt purposes.

Section 513(a) of the Code defines 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 the organization of its exempt purposes.

Section 513(d) of the Code states that the term unrelated trade or business does not include qualified convention and trade show activities of a qualifying organization. It 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 organization's purposes in sponsoring the activity is the promotion and stimulation of interest in, and demand for, the products and services of that industry in general, 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) of the Income Tax Regulations provides that convention and trade show activities carried on by a qualifying organization in connection with a qualified convention and trade show will not be treated as unrelated trade or business.

A qualifying organization is defined in section 1.513-3(c)(1) of the regulations as an organization described in section 501(c)(5) or (6) of the Code which regularly conducts as one of its substantial exempt purposes a qualified convention or trade show.

Section 1.513-3(c)(4) of the regulations provides that convention and trade show activity means any activity of a kind traditionally carried on at shows.

Section 1.513-3(c)(2)(ii) and (iii) of the regulations indicate that to be a qualified convention or trade show at least one purpose of the sponsoring organization in conducting the show must be the education of its members or the promotion and stimulation of interest in, and demand for, the products or services of the industry of the members of the qualifying organization, and the show must be designed to achieve either one of those purposes 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) of the regulations states that the rental of display space to exhibitors (including exhibitors who are

suppliers) 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.

HOLDINGS

Based on section 513(d) of the Code and the regulations thereunder, it is clear that under the facts of Rev. Ruls. 75-517, 75-518, 75-519, and 75-520 the rental of display space would no longer result in unrelated trade or business. Since the conclusion under present law is contrary to the conclusions reached in those revenue rulings, they are revoked for taxable years beginning after October 4, 1976.

The conclusions reached in Rev. Rul. 67-219 and Rev. Rul. 75-516 are not inconsistent with section 513(d), but those revenue rulings imply that had there been selling at the show it could result in the receipt of unrelated business taxable income.

Since that implication is no longer correct and since the positions of those revenue rulings are sufficiently covered in the regulations, Rev. Rul. 67-219 and Rev. Rul. 75-516 are obsoleted for taxable years beginning after October 4, 1976.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 67-219 and Rev. Rul. 75-516 are obsoleted for taxable years beginning after October 4, 1976.

Rev. Rul. 75-517, Rev. Rul. 75-518, Rev. Rul. 75-519, and Rev. Rul. 75-520 are revoked for taxable years beginning after October 4, 1976.

Rev. Rul. 58-224, 1958-1 C.B. 242, and Rev. Rul. 78-240, 1978-1 C.B. 170, are not affected by section 513(d) of the Code, section 1.513-3 of the regulations, or this revenue ruling and remain in full force and effect.