

Spring 1968

Taxation: Unrelated Business Income Tax (Sections 511-13) and the 1967 Regulations

Terry Ahern

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Terry Ahern, *Taxation: Unrelated Business Income Tax (Sections 511-13) and the 1967 Regulations*, 33 Mo. L. REV. (1968)

Available at: <https://scholarship.law.missouri.edu/mlr/vol33/iss2/4>

This Comment is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

Comments

TAXATION: UNRELATED BUSINESS INCOME TAX (SECTIONS 511-13) AND THE 1967 REGULATIONS

I. INTRODUCTION

Tax-exempt organizations¹ conducting business activities long have been a problem in the field of income taxation. The problem can be stated generally as how to encourage the activities of organizations which are sufficiently beneficial to society to be granted tax exemption and, at the same time, to preclude the abuse of this special treatment by organizations engaged in business ventures. Originally efforts to deny the exemption to organizations conducting businesses were not successful because of the "destination of income" test derived from *Trinidad v. Sagrada Orden de Predicadores*.² *Trinidad* held that the destination of the income rather than the source of it was the ultimate test of exemption. In 1950 Congress amended the *Internal Revenue Code of 1939* in an effort to solve this problem.³ As a result, the income derived from unrelated businesses of certain exempt organizations was subject to tax. The next significant development in this area occurred in 1967 when the Treasury Department published new regulations on the unrelated business income tax.⁴ The effect of these regulations is to tax the income from advertisements in journals of exempt organizations.⁵ This article will—first, explain the unrelated business income tax, sections 511-13; second, discuss the changes made by the 1967 regulations; and third, discuss the validity of these regulations.

II. LEGISLATIVE HISTORY

Since there are few court decisions interpreting the unrelated business income tax, Congressional intent necessarily will be emphasized in future decisions. Several

1. Sections 501-04, INT. REV. CODE OF 1954, provide a list of the types of exempt organizations and the requirements for exemption.

2. 263 U.S. 578 (1924). This test was applied in *Willingham v. Home Oil Mill*, 181 F.2d 9 (5th Cir. 1950), *cert. denied*, 340 U.S. 852 (1950); *Commissioner v. Orton*, 173 F.2d 483 (6th Cir. 1949); *Debs Memorial Radio Fund v. Commissioner*, 148 F.2d 948 (2d Cir. 1945); *Bohemian Gymnastic Ass'n. v. Higgins*, 147 F.2d 774 (2d Cir. 1945); *Koon Kleek Klub v. Thomas*, 108 F.2d 616 (5th Cir. 1939); *Sico Co. v. United States*, 121 Ct. Cl. 373, 102 F. Supp. 197 (1952).

3. Revenue Act of 1950, §§ 301(a)(b), ch. 994, 64 Stat. 906.

4. Treas. Reg. §§ 1.511-1 to 1.514(c)-1 (1958), as amended T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17. Since the regulations were adopted in December of 1967, they are hereinafter referred as the 1967 regulations.

5. About 700 journals with gross annual advertising revenues approximating \$110,000,000 are affected. Weithorn and Liles, *Unrelated Business Income Tax: Changes Affecting Advertising Revenue*, 45 TAXES 791 (1967).

different explanations of the abuses to be corrected by the legislation can be found in the records of the hearings before the House of Representatives Committee on Ways and Means. President Truman's message recognized the competitive advantage enjoyed by exempt organizations:

Responsible educational leaders share in the concern about the fact that an exemption intended to protect educational activities has been misused in a few instances to gain competitive advantage over private enterprise through the conduct of business and industrial operations entirely unrelated to educational activities.⁶

Secretary of the Treasury John W. Snyder explained the abuse in terms of the general equity or fairness to the whole country: "The correction of present abuses, which shift additional burdens to the rest of the population, becomes essential for reasons of equity."⁷ Secretary Snyder mentioned the advantage an exempt organization enjoyed, but this was in reference only to the acquisition of rental property with borrowed funds. Congress was more impressed with the competition factor. Representative Doughton, Chairman of the Ways and Means Committee, said during the hearings:

You see, we not only have the purpose, as I understand it, of closing loopholes and of receiving additional revenue, but at the same time, as far as we can, equalizing competition among business people.⁸

This viewpoint, that the competitive advantage of exempt organizations was the problem to be solved, was adopted. The House and Senate Reports on the *Revenue Act of 1950* expressly stated that unfair competition was the problem at which the unrelated business income tax was aimed.⁹

Neither the hearings nor the committee reports indicate that journal advertising was one of the specific abuses which concerned Congress. While the presence or absence of different interest groups opposing legislation is not generally recognized as evidence of what Congress intended by a statute, it does provide an interesting insight into the understanding of the statute at the time it was passed. One group, at which the tax was aimed, was colleges and universities;¹⁰ and a number of universities had representatives present to express their views in the hearings.¹¹ Two organizations, the Chamber of Commerce of the United States and the Ameri-

6. *Hearings Before the House Committee on Ways and Means on Revenue Revision of 1950*, 81st Cong., 2d Sess., vol. 1, at 4.

7. *House Hearings*, *supra* note 6, at 19.

8. *House Hearings*, *supra* note 6, at 169.

9. H.R. REP. NO. 2319, 81st Cong., 2d Sess. 36 (1950); S. REP. NO. 2375, 81st Cong., 2d Sess. 28 (1950).

10. New York University was particularly notorious; it controlled the Mueller Corporation, a manufacturer of macaroni; the Ramsey Corporation, a manufacturer of piston rings; the American Limoges China Co.; and The Howes Leather Co. Comment, 60 *YALE L. J.* 851 (1951).

11. *House Hearings*, *supra* note 6, at 494 (Harvard University); *Hearings Before the Senate Committee on Finance on Revenue Revision of 1950*, 81st Cong., 2d Sess. at 498 (University of Pennsylvania); *id.* at 567 (Wesleyan University); *id.* at 555 (Union College).

can Bar Association, whose periodicals¹² are affected by the 1967 regulations, had representatives appear at the 1950 hearings.¹³ These representatives expressed opinions on various aspects of the *Revenue Act of 1950*, but neither representative indicated any concern that their organization would be affected by the unrelated business income tax. The lack of concern by these organizations and others whose advertising revenue would be affected leads to one conclusion. In 1950 there was no understanding that Congress intended the unrelated business income tax to reach the advertising revenue of exempt organizations.

III. PRE-1967 LAW AND REGULATIONS

In order to understand the changes made by the 1967 regulations, it is necessary to have in mind the prior law and regulations on the unrelated business income tax. The tax imposed on the unrelated business income of certain organizations is the tax applicable to corporations.¹⁴ Organizations subject to the tax¹⁵ include corporations, foundations or trusts organized exclusively for religious, charitable or educational purposes;¹⁶ labor, agricultural or horticultural organizations;¹⁷ business leagues, chambers of commerce, real estate boards or boards of trade;¹⁸ corporations operated to provide reserve funds for certain domestic building and loan associations, cooperative banks or mutual savings banks;¹⁹ trusts for the payment of supplemental unemployment compensation benefits;²⁰ and trusts which are a part of a stock bonus, pension or profit sharing plan.²¹ A corporation organized to hold title to property and to turn the income over to an exempt organization²² is subject to the tax if the organization to which the income is payable is subject to the tax, is a church, or is a convention or association of churches.²³ Colleges and universities owned or operated by a government or any political subdivision are subject to tax on their unrelated business income.²⁴ Churches and conventions or associations of churches are expressly excluded from

12. The Chamber of Commerce of the United States publishes NATION'S BUSINESS and the American Bar Association publishes AMERICAN BAR ASSOCIATION JOURNAL.

13. Ellsworth C. Alvord appeared for the Chamber of Commerce of the United States. *House Hearings, supra* note 6, vol. III at 2594; *Senate Hearings, supra* note 11 at 832. Cecil Kilpatrick and Allen H. W. Higgins appeared for the American Bar Association. *House Hearings, supra* note 6, vol. III at 2721, 2723.

14. INT. REV. CODE OF 1954, § 511(a)(1).

15. INT. REV. CODE OF 1954, § 511(a)(2)(A) and 511(b) is the control section which lists the organizations subject to the tax.

16. INT. REV. CODE OF 1954, § 501(c)(3) contains the precise description.

17. INT. REV. CODE OF 1954, § 501(c)(5).

18. INT. REV. CODE OF 1954, § 501(c)(6).

19. INT. REV. CODE OF 1954, § 501(c)(14)(B) and (C) contains the precise description.

20. INT. REV. CODE OF 1954, § 501(c)(17) contains the precise description.

21. INT. REV. CODE OF 1954, § 401(a) contains the precise description.

22. INT. REV. CODE OF 1954, § 501(c)(2).

23. INT. REV. CODE OF 1954, § 511(a)(2)(A).

24. INT. REV. CODE OF 1954, § 511(a)(2)(B).

those organizations subject to the tax.²⁵ *De LaSalle Institute v. United States*,²⁶ which concerned whether or not a religious order constituted a church, is the only case dealing with the question of which organizations are subject to the tax. *De LaSalle Institute* held that the Christian Brothers Order was not a church even though it carried out functions considered church functions by the Catholic Church.²⁷

The organizations described above are subject to tax on their gross income derived from any regularly carried on unrelated trade or business, less normal tax deductions directly connected to such trade or business.²⁸ Certain types of income are excluded, and deductions connected with these types of income are not allowed. These types of income are dividends, interest and annuities;²⁹ all royalties from property;³⁰ rents from real property, including personal property leased with the real property;³¹ and capital gains.³² A questionable dividend item will constitute a dividend if the investment is similar to investing in corporate stock and the distribution was from earnings and profits.³³ Rent from real property has no special meaning in the *Internal Revenue Code*, therefore state court cases may be determinative.³⁴ Income and deductions from research are to be excluded if received by a college, university or hospital³⁵ or by an organization operated for carrying on fundamental research.³⁶ Furthermore, all income from research for the United States, its agencies or instrumentalities or any state or political subdivision is excluded.³⁷ If a labor, agricultural or horticultural organization operates a retirement home for aged members, income derived from farming next to such home and used to operate such home will be excluded as long as such income does not

25. INT. REV. CODE OF 1954, § 511(a)(2)(A).

26. 195 F. Supp. 891 (N.D. Cal. 1961), 60 MICH. L. REV. 664 (1962).

27. Treas. Reg. § 1.511-2(a)(3)(ii) (1958) provides that a religious order is a church if it is an integral part of a church and was engaged in carrying out the functions of a church.

28. INT. REV. CODE OF 1954, § 512(a).

29. INT. REV. CODE OF 1954, § 512(b)(1).

30. INT. REV. CODE OF 1954, § 512(b)(2). Treas. Reg. § 1.512(b)-1(b) (1958) provides that if an organization owns a working interest in a mineral property and is not reimbursed for development costs, the income should not be excluded. *United States v. Robert A. Welch Foundation*, 228 F. Supp. 881 (S.D. Tex. 1963), *aff'd*, 334 F.2d 774 (5th Cir. 1964), held an arrangement constituted an overriding royalty rather than a working interest.

31. INT. REV. CODE OF 1954, § 512(b)(3).

32. INT. REV. CODE OF 1954, § 512(b)(5). See also Rev. Rul. 66-47, 1966-1 CUM. BULL. 149, holding that income derived from the sale of "call" options which are not exercised is unrelated business income rather than capital gain.

33. Rev. Rul. 66-106, 1966-1 CUM. BULL. 151.

34. *United States v. Myra Foundation*, 382 F.2d 107 (8th Cir. 1967). See also Rev. Rul. 67-218, 1967 INT. REV. BULL. No. 27 at 20, holding that amounts received from the lease of a pipe-line system constitute rent; Rev. Rul. 58-482, 58-2 CUM. BULL. 273, holding that amounts received from the lease of farms and orchards constitute rent.

35. INT. REV. CODE OF 1954, § 512(b)(8); Rev. Rul. 54-73, 1954-1 CUM. BULL. 160.

36. INT. REV. CODE OF 1954, § 512(b)(9). Fundamental research is to be distinguished from applied research. Treas. Reg. § 1.512(b)-1(f)(3) (1958).

37. INT. REV. CODE OF 1954, § 512(b)(7).

provide more than 75 per cent of the cost of maintenance and operation of the facility.³⁸

There are several limitations on deductions in addition to those applying to items directly connected with excluded income. The net operating loss deduction and the carryover or carryback are computed only on the organization's unrelated business income.³⁹ The years in which the organization was not subject to section 511 or its predecessor are disregarded in computing the net operating loss deductions;⁴⁰ and no carryover or carryback is allowed from a year in which the organization was not subject to the tax.⁴¹ The charitable deduction for any organization other than a trust is limited to 5 per cent of the unrelated business taxable income;⁴² trusts however, are allowed a charitable deduction within the limits specified for individuals⁴³ based on their unrelated business taxable income.⁴⁴ All organizations are allowed a specific deduction of \$1000.⁴⁵

For an organization to have an unrelated trade or business, two conditions must be present: 1) there must be a trade or business regularly carried on; 2) the trade or business must not be substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance of the purpose or function which constitutes the basis of the organization's exemption.⁴⁶ As to what constituted a trade or business, the regulations provided that the term "trade or business" had the same meaning as it had in section 162.⁴⁷ When a trade or business was conducted with sufficient consistency to indicate a continuing purpose to derive income from it, the trade or business was regularly carried on.⁴⁸ Examples of activities considered regularly carried on include the construction and sale of eighty houses,⁴⁹ the purchase and

38. INT. REV. CODE OF 1954, § 512(b)(14).

39. INT. REV. CODE OF 1954, § 512(b)(6).

40. Treas. Reg. § 1.512(b)-1(e)(2) (1958).

41. Treas. Reg. § 1.512(b)-1(e)(3) (1958). But such years are included in determining the span of years the net operating loss can be carried. Treas. Reg. § 1.512(b)-1(e)(4) (1958).

42. INT. REV. CODE OF 1954, § 512(b)(10). The contribution must be to another organization. Treas. Reg. § 1.512(b)-1(g)(3) (1958).

43. INT. REV. CODE OF 1954, § 170(b)(1)(A) and (B).

44. INT. REV. CODE OF 1954, § 512(b)(11). The contribution must be to another organization. Treas. Reg. § 1.512(b)-(g)(3) (1958).

45. INT. REV. CODE OF 1954, § 512(b)(12).

46. Treas. Reg. § 1.513-1(a)(2), 1958-2 CUM. BULL. 197. The statutory reference to "regularly carried on" is in § 512 rather than § 513.

47. Treas. Reg. § 1.513-1(a), 1958-2 CUM. BULL. 197 (1958). In what is apparently the only case touching the point, *Orange County Builders Ass'n. v. United States*, 65-2 U.S. Tax Cas. ¶ 9679 (S.D. Cal. 1965), concluded that the sponsorship of annual home shows by a business league, which was organized for the purpose of improving conditions in the construction industry, was not a trade or business. But see Rev. Rul. 67-219, 1967 INT. REV. BULL. No. 28 at 9, which discusses when trade shows are taxable under § 511 without any consideration of whether sponsorship of trade shows constitutes a trade or business. As to trade shows, see generally Webster and Lehrfeld, *Current Tax Treatment of Trade Shows: Attacks Now Being Made By the IRS*, 25 J. TAXATION 10 (1966).

48. Treas. Reg. § 1.513-1(a)(3), 1958-2 CUM. BULL. 197.

49. REV. RUL. 55-449, 1955-2 CUM. BULL. 599.

lease of railroad tank cars,⁵⁰ and the purchase and lease of manufacturing machines.⁵¹

The Regulations of 1958 stated the test to be used to determine if the trade or business was substantially related to the organization's exempt purposes and the factors relevant to the test.⁵² If the principal purpose of the trade or business (other than the production of income) was to further the purpose which formed the basis of the organization's exemption, the trade or business was substantially related. The nature and size of the trade or business compared to the nature and size of the organization's activities were relevant in determining the principal purpose of the trade or business. If the size of the trade or business was disproportionately large, the principal purpose was not considered to be the furtherance of the organization's purposes. Also if the trade or business was operated in the same manner as a commercial business, the trade or business was unrelated.⁵³

The following trades and businesses have been considered unrelated by the Service's rulings: an agricultural organization promoting and writing insurance policies;⁵⁴ an agricultural organization purchasing supplies and equipment for resale to its members;⁵⁵ a business league managing health and welfare plans for a fee;⁵⁶ a labor organization conducting bingo games;⁵⁷ a labor organization performing accounting and tax services for members;⁵⁸ an organization formed for medical research operating a medical illustration department and an electroencephalography clinic;⁵⁹ a university operating a radio station and a cinder block plant;⁶⁰ an agricultural association operating a restaurant, bar and cocktail lounge for members;⁶¹ and a blood bank selling blood and blood products to commercial laboratories.⁶² The trade or business was substantially related in the following Service rulings: an organization, which was organized to conserve the true spirit of a game, sponsoring tournaments and selling rule books and radio and television rights;⁶³ a professional association conducting educational classes for its members;⁶⁴ and a business league conducting a trade show when it was not conducted as a mart for exhibitors to make sales.⁶⁵ In what are apparently the only instances when organizations have litigated the question of whether or not the activity was substantially related, the organizations have won. In *Maryland State Fair and*

50. REV. RUL. 60-206, 1960-1 CUM. BULL. 201.

51. *Cooper Tire and Rubber Co. Employees Retirement Fund v. Commissioner*, 306 F.2d 20 (6th Cir. 1962).

52. Treas. Reg. § 1.513-1(a)(4), 1958-2 CUM. BULL. 197.

53. Treas. Reg. § 1.513-1(a)(4), 1958-2 CUM. BULL. 197.

54. Rev. Rul. 60-228, 1960-1 CUM. BULL. 200.

55. Rev. Rul. 57-466, 1957-2 CUM. BULL. 311.

56. Rev. Rul. 66-151, 1966-1 CUM. BULL. 152.

57. Rev. Rul. 59-330, 1959-2 CUM. BULL. 153.

58. Rev. Rul. 62-191, 1962-2 CUM. BULL. 146.

59. Rev. Rul. 57-313, 1957-2 CUM. BULL. 316.

60. Rev. Rul. 55-676, 1955-2 CUM. BULL. 266.

61. Rev. Rul. 60-86, 1960-1 CUM. BULL. 198.

62. Rev. Rul. 66-323, 1966-2 CUM. BULL. 216.

63. Rev. Rul. 58-502, 1958-2 CUM. BULL. 271.

64. Rev. Rul. 67-296, 1967 INT. REV. BULL. No. 36 at 21.

65. Rev. Rul. 67-219, 1967 INT. REV. BULL. No. 28 at 9.

*Agricultural Soc'y v. Chamberlain*⁶⁶ an organization whose purpose was the development of better agriculture and livestock derived income from racing activities at the state fair. The issue of whether or not the activity was substantially related to the purposes of the organization was submitted to the jury; the jury found for the organization. In *Mobile Arts and Sports Ass'n v. United States*⁶⁷ an organization exempt as an educational and civic organization derived all its income from the annual "Senior Bowl Classic." The court found a close and intimate relationship between the Bowl game and the civic and educational objects for which the organization was formed.⁶⁸ In *Orange County Builders Ass'n v. United States*⁶⁹ a business league organized to improve conditions in the construction industry sponsored trade shows. The court found that the purpose and effect of the trade shows coincided with the association's exempt purposes.

There are three statutory exceptions to the definition of an unrelated trade or business: 1) substantially all work in carrying on the trade or business is performed without compensation;⁷⁰ 2) in the case of a section 501 (c) (3) organization⁷¹ or a college or university, the trade or business is carried on primarily for the convenience of its members, students, patients, officers or employees;⁷² and 3) the selling of merchandise substantially all of which has been received by the organization as gifts or contributions.⁷³

Finally, a portion of the gross income from business leases of real property by exempt organizations will be included in the unrelated business income.⁷⁴ The reason for this provision was to correct the abusive practice of organizations trading on their exemption by purchasing property with borrowed funds and leasing the property to the party from whom it was purchased.⁷⁵ The general effect of this part of the unrelated business income tax is that a percentage (the amount of the

66. 55-1 U.S. Tax. Cas. ¶ 9399 (D. Md. 1955).

67. 148 F. Supp. 311 (S.D. Ala. 1957).

68. The fact that the court also found the half-time show presented by the Rangerettes of Kilgore College and the Dixie Darlings of Mississippi Southern College to have educational value may lessen the persuasiveness of the case.

69. 65-2 U.S. Tax. Cas. ¶ 9679 (S.D. Cal. 1965).

70. An example of this exception is Rev. Rul. 56-152, 1956-1 CUM. BULL. 56, where an insurance board advised a board of education concerning the board's insurance program and the work for the insurance board was performed without compensation. See also *Cooper Tire and Rubber Co. Employees Retirement Fund v. Commissioner*, 306 F.2d 20 (6th Cir. 1962), holding that this exception does not apply to trusts.

71. A § 501(c)(3) organization is one operated for religious, charitable, scientific or educational purposes; for the precise requirements see § 501(c)(3).

72. An example of this exception is a laundry operated by a college for the convenience of students. Rev. Rul. 55-676, 1955-2 CUM. BULL. 266.

73. An example of this exception is an exempt organization's "thrift shop" which sells to the general public old clothes, books, furniture, etc., which are contributed to the organization. Treas. Reg. § 1.513-1(b)(3), 1958-2 CUM. BULL. 197.

74. INT. REV. CODE OF 1954, § 512(b)(4) is an exception to the exclusion of rents from real property and personal property leased with real property from the unrelated business taxable income. § 514 is the control section determining which leases by exempt organizations are subject to the unrelated business income tax.

75. H.R. REP. NO. 2319, 81st Cong., 2d Sess. 38-9 (1950).

business lease indebtedness pertaining to the property divided by the adjusted basis of the property) of the income from certain business leases is included in the unrelated business income. Since this part of the unrelated business income tax is not affected by the 1967 regulations, it will not be explained in detail.⁷⁶

IV. 1967 REGULATIONS

The 1967 regulations affect four aspects of the unrelated business income tax: 1) the definition of trade or business; 2) the regularly carried on requirement; 3) the substantially related requirement; and 4) the allowance of deductions. The 1958 regulations remain in effect for all other parts of the unrelated business income tax.

A. *Trade or Business*

The 1967 regulations once again provide that the term has the same meaning as in section 162. But the 1967 regulations go beyond the prior regulations by interpreting the term broadly:

. . . trade or business generally includes any activity carried on for the production of income from the sale of goods or performance of services. Thus, the term "trade or business" in section 513 is not limited to integrated aggregates of assets, activities and good will which comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. Activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or business merely because they are 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.⁷⁷

B. *Regularly Carried On*

The considerations involved in determining if a trade or business is regularly carried on were also changed by the 1967 regulations. Previously, a trade or business was regularly carried on if it were conducted with sufficient consistency to indicate a continuing purpose to derive income from it.⁷⁸ Now the frequency, continuity, and the manner with which the activities are conducted are to be considered in light of the purpose of placing an exempt organization's business activities upon the same tax basis as nonexempt businesses.⁷⁹ If the activity is of a kind normally conducted on a year around basis by taxable businesses, the frequency and continuity of the exempt organization's conduct of the activity is determinative. For example, the operation of a sandwich booth two weeks each

76. For an explanation of the predecessor of § 514 see 60 YALE L. J. 879 (1951).

77. Treas. Reg. § 1.513-1(b) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

78. Treas. Reg. § 1.513-1(a)(3) (1958), 1958-2 CUM. BULL. 197.

79. Treas. Reg. § 1.513-1(c)(1) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

year at a state fair would not be regularly carried on, but the operation of a commercial parking garage one day each week would be regularly carried on.⁸⁰ Activities conducted only intermittently will not be considered regularly carried on if they lack the promotional efforts typical of commercial endeavors.⁸¹ Activities conducted only infrequently, such as an annual dance or similar fund raising event, will not be considered regularly carried on.⁸²

C. *Substantially Related*

The question of whether or not a trade or business is substantially related to the exempt purpose is no longer dependent on the principal purpose of the business activity. It now requires an analysis of the relationship between the business activities and the accomplishment of the organization's exempt purposes.⁸³ A trade or business is related if there is a causal relationship between the conduct of the business activities and the achievement of exempt purposes. The causal relationship must be a substantial one.⁸⁴ The test is that the activities must contribute importantly to the accomplishment of an exempt purpose.⁸⁵ The size and extent of the trade or business is still compared to the nature and effect of the exempt function, but a new conclusion can result from this comparison under the 1967 regulations. If the trade or business is related to the exempt function but conducted on a larger scale than reasonably necessary for the performance of exempt functions, the gross income, derived from conducting the business beyond the reasonably necessary level, is not substantially related to the exempt purposes. The reason given is: "Such income is not derived from the production or distribution of goods or the performance of services which contribute importantly to the accomplishment of any exempt purpose of the organization."⁸⁶ The utilization of a product resulting from an exempt activity in a further business endeavor may indicate the trade or business is not substantially related to the exempt purposes. The example given is that of a research organization maintaining an experimental dairy herd. The sale of the milk and cream is substantially related to the exempt purpose, but the utilization of the milk and cream to produce ice cream or pastries is not substantially related unless the manufacturing activities themselves contribute importantly to the accomplishment of an exempt purpose.⁸⁷ The dual use

80. Treas. Reg. § 1.513-1(c)(2)(i) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

81. Treas. Reg. § 1.513-1(c)(2)(ii) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

82. Treas. Reg. § 1.513-1(c)(2)(iii) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

83. Treas. Reg. § 1.513-1(d)(1) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

84. Treas. Reg. § 1.513-1(d)(2) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

85. *Ibid.*

86. Treas. Reg. § 1.513-1(d)(3) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

87. Treas. Reg. § 1.513-1(d)(4)(ii) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

of an asset or facility in exempt functions and in a trade or business will not change the basic test; it still will be whether or not the trade or business contributes importantly to the accomplishment of exempt purposes.⁸⁸ Similarly where good will or other intangibles of the exempt organization are used in the trade or business, the basic test remains the same.⁸⁹

D. Deductions

The question of when a deduction is allowed in computing unrelated business taxable income is developed more fully under the 1967 regulations. The prior regulations merely repeated the statutory requirement that deductions be "directly connected to the trade or business."⁹⁰ Under the 1967 regulations, the test for directly connected is whether or not the deduction has a proximate and primary relationship to the carrying on of that business.⁹¹ Allocation of a deduction between the unrelated trade or business and exempt activities is required for facilities or personnel with a dual use.⁹² When the unrelated trade or business exploits an exempt function of the organization, expenses attributable to the exempt function are not allowed.⁹³ An example is given by the regulations. W is an exempt business league. It regularly mails advertising material to its members for an advertising agency. The expenses of developing and maintaining a membership list are not deductible since they are attributable to W's exempt function.⁹⁴ But if the exempt activity is one which a taxable enterprise would conduct in such a trade or business, the expenses are deductible with limitations. The limitations are 1) the deduction is allowed only to the extent the aggregate of expense items exceeds the income from the exempt activity, and 2) the excess can not result in a loss for the unrelated trade or business. The effect of these limitations is to deny the use of any such loss in computing the overall unrelated business income and net operating loss carryover or carryback.⁹⁵

The validity of the limitations on the use of any loss can be questioned. As to the denial of the use of such a loss on a carryover or carryback, the statute's only restriction on what deductions can be used to compute the net operating loss carryover or carryback is the disallowance of any deduction which is excluded in

88. Treas. Reg. § 1.513-1(d)(4)(iii) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

89. Treas. Reg. § 1.513-1(d)(4)(iv) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

90. Treas. Reg. § 1.512(a)-1 (1958), 1958-2 CUM. BULL. 197.

91. Treas. Reg. § 1.512(a)-1(a) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

92. Treas. Reg. § 1.512(a)-1(c) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

93. Treas. Reg. § 1.512(a)-1(d)(1) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

94. *Ibid.*

95. Treas. Reg. § 1.512(a)-1(d)(2) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

computing the unrelated business taxable income.⁹⁶ Thus a regulation denying the use of a deduction, which is included in computing the unrelated business taxable income, for the net operating loss carryback and carryover may be contrary to the statute. The denial of the use of such a loss in computing the overall unrelated business taxable income could be challenged as inconsistent with the provision in the regulations that unrelated business taxable income is computed on the aggregate of income and expense items.⁹⁷ These provisions on the exploitation of an exempt function seem designed to solve a practical problem related to taxing the advertising revenue from publications by exempt organizations. The practical problem is what deductions are allowable and how are they allocated if the organization's journal is an exempt activity but the sale of advertising space is an unrelated trade or business. Both limitations might be valid as a reasonable means of allocating expenses when they are attributable to both the unrelated trade or business and an exempt activity of the organization.

V. VALIDITY OF THE REGULATIONS

The validity of the 1967 regulations will be discussed in reference to advertising revenue from periodicals of exempt organizations. It is highly probable that the 1967 regulations will be vigorously challenged considering the amount of revenue involved and vocal nature of the organizations affected.⁹⁸ With three examples in the 1967 regulations involving journals of exempt organizations, the regulations are almost tailored for the advertising revenues. The arguments involved also should be pertinent to other fact situations.

A. Reenactment Argument

Various rules of construction for statutory interpretation have developed around Treasury Regulations.⁹⁹ Some of these will no doubt be called into play in challenging the 1967 regulations. For example, the Supreme Court has stated: "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed

96. § 512(b)(6)(A) provides: ". . . the amount of the net operating loss carryback and carryover to any taxable year, . . . shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income"

97. Treas. Reg. § 1.512(a)-1(a) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

98. The Chamber of Commerce, the American Medical Association, and the American Bar Association are among the organizations affected. Wiethorn and Liles, *Unrelated Business Income Tax: Changes Affecting Journal Advertising Revenues*, 45 TAXES 791 (1967).

99. See generally 1 MERTENS, *LAW OF FEDERAL INCOME TAXATION*, § 3.20-3.25 (1962); Paul, *Uses and Abuse of Tax Regulations in Statutory Construction*, 49 YALE L. J. 660 (1940); Griswold, *A Summary of the Regulations Problem*, 54 HARV. L. REV. 398 (1941).

to have received congressional approval and have the effect of law."¹⁰⁰ The application of this rule of construction to the prior regulations¹⁰¹ with the 1954 Code being the reenactment has been suggested.¹⁰² The conclusion would be that the prior regulations, having received congressional approval, have the effect of law and can not be changed. This argument is not without its weaknesses. The prior regulations had been in effect for only two years before the 1954 Code, and during that period there were no major cases or significant developments to call the regulations to the attention of Congress. A reenactment argument has been rejected when the regulation was in effect for only three years and there was nothing to indicate that it was ever called to the attention of Congress.¹⁰³ In other instances, courts have cast considerable doubt upon the entire reenactment argument: "It [reenactment] does not mean that a regulation interpreting a provision of one act becomes frozen into another act merely by reenactment of that provision, so that administrative interpretation can not be changed prospectively through exercise of appropriate rule making powers."¹⁰⁴ Considering the short period of time the unrelated business income tax regulations were in effect prior to the 1954 Code and the questionable strength of the basic reenactment argument, it is doubtful that future litigation will be won or lost on this point.

B. Congressional Intent Argument

Before analyzing the issues likely to arise in future journal advertising cases, another possible argument should be considered. The 1967 regulations emphasize the congressional purpose of eliminating unfair competition; this may indicate the Service will strongly contend that journal advertising is one form of unfair competition Congress intended to eliminate. With such an argument the regulations could be upheld with reasoning by the court similar to the following. The unrelated business income tax was designed to correct the problem of unfair competition created by exempt organizations engaging in commercial enterprises. The sale of advertising space in the journals of exempt organizations is one type of the unfair competition Congress intended to prevent. The sale of advertising space is an activity productive of income; thus, it is a trade or business within the meaning of the regulations. The regulations are a reasonable interpretation of the statute in the light of the congressional intent of eliminating unfair competition.

While this analysis is possible under an intent of Congress approach, it is not without its problems. The principal problem is that it is not accurate to assert

100. *Cammarano v. United States*, 358 U.S. 498 n.18 (1958); *Boehm v. Commissioner*, 326 U.S. 287, 292 (1945); *Helvering v. Winmill*, 305 U.S. 79, 83 (1938). See also, *United States v. Correll*, 389 U.S. 299 (1967); *Commissioner v. Stidger*, 386 U.S. 287 (1967).

101. The original regulations under the 1939 Code were *Treas. Reg. § 29.421-1 to 29.423-4*, T.D. 5928, 1952-2 *CUM. BULL.* 181.

102. *Wiethorn and Liles*, *supra* note 98, at 797.

103. *United States v. Calamaro*, 354 U.S. 351 (1957).

104. *Helvering v. Wilshire Oil Co.*, 308 U.S. 90, 100 (1939); *Safe Harbor Water Power Corp. v. United States*, 157 Ct. Cl. 912, 923, 303 F.2d 928, 935 (1962). See *American Chic Co. v. United States*, 316 U.S. 450 (1941); *Helvering v. Reynolds*, 313 U.S. 428 (1940).

without qualification that Congress intended to eliminate unfair competition. Concerning competition, it has been said: "Whatever an organization does, there are in the business world somewhere, people doing that same sort of thing."¹⁰⁵ Had Congress intended to eliminate completely unfair competition, it would have subjected to tax any trade or business conducted by an exempt organization. Instead Congress compromised; it only subjected to tax a trade or business which was not substantially related to any purpose forming the basis of the organization's exemption.¹⁰⁶ Thus the above approach is most susceptible to attack on the ground that it interprets the Congressional intent or purpose too broadly.

Aside from the intent of Congress argument, there are two issues upon which journal advertising cases are likely to be decided. The critical issue will be whether or not the sale of advertising space in a journal, when the journal is substantially related to the organization's purposes, can constitute a trade or business standing alone. The second issue is whether the sale of advertising space is substantially related to any purpose for which the organization was granted an exemption.

C. Trade or Business

Although the term "trade or business" is a common and frequently used term in the Code,¹⁰⁷ the issue of whether one activity can, by itself, constitute a trade or business is unique. The term has not been definitively interpreted either by the Commissioner through his regulations or by judicial decision,¹⁰⁸ and the existence of a trade or business is a finding of fact determined on a case by case method. As a result of this, a case law analysis of the issue may not be valuable. What may be valuable is an analysis of the use of the term in other sections of the Code. As previously stated, the 1967 regulations state that the term "trade or business" has the same meaning as under section 162 but interpret the term broadly.¹⁰⁹ In terms of a specific definition for the unrelated business income tax, the regulations seem to define trade or business as an activity carried on for the production of income. Two factors indicate this definition. First the regulations state that "trade or business" includes any activity carried on for the production of income from the sale of goods or performance of services.¹¹⁰ Also the regulations frequently use the phrase "income producing activities" instead of "trade or business." Thus the Service's position seems to be that since the sale of advertising space in journals is an income producing activity, it constitutes a trade or business.

There are a number of Code sections which exempt organizations can utilize

105. Sugarman and Pomeroy, *Business Income of Exempt Organizations*, 46 VA. L. REV. 424 n.42 (1960).

106. Weithorn and Liles, *supra* note 98, at 795.

107. The term "trade or business" is used 170 times in 60 Code sections according to Groh, *Trade or Business: What It Means, What It Is, and What It Is Not*, 26 J. TAXATION 78 (1967).

108. 4A MERTENS, *op. cit. supra* note 99, § 25.08.

109. Treas. Reg. § 1.513-1(b) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

110. *Ibid.*

in opposing this position. Sections 346 and 355 both contain trade or business requirements which involve the question of whether one activity in a trade or business can, by itself, constitute a trade or business.¹¹¹ For both these sections:

a trade or business consists of a specific existing *group* of activities being carried on for the purpose of earning income or profit from only such group of activities, and the activities included in such group must include every operation which forms a part of, or a step in, the process of earning income or profit from such group.¹¹²

Furthermore, a group of activities not independently producing income is not a trade or business.¹¹³ The sale of advertising is only one part of the operation of a journal. Also the sale of advertising space can not exist by itself, *i.e.*, without the journal; thus, it can not independently produce income. Therefore, if sections 346 and 355 are considered in determining what constitutes a trade or business for purposes of the unrelated business income tax sections, journal advertising, by itself, should not constitute a trade or business.

The Service negates the idea that trade or business for section 512 purposes requires an aggregate of assets and activities as required by other sections of the Code;¹¹⁴ in short, the Service is saying that sections 346 and 355 should not be considered. It has been recognized that trade or business does not have precisely the same meaning under each section of the Code.¹¹⁵ The question of whether there is any similarity of purpose between these sections and the unrelated business income tax sections so that all should be considered in interpreting common terms is material at this point. Section 346 establishes the requirements for a partial liquidation under which the amounts distributed will be treated as in payment in exchange for the shareholder's stock. Section 355 establishes the requirements for determining when certain distributions of stock or securities in a division or separation of one corporation into more than one corporation will not be taxable at time of receipt by the shareholder. Generally, these sections are designed to prevent the distribution of earnings and profits at capital gain rates or by tax free distributions through the guise of a partial liquidation or corporate division. At the same time, the sections recognize that legitimate divisions and partial liquidations are important to the business community and should be allowed. The trade or business requirements help to classify the separation or liquidation of an entire enterprise, *i.e.*, a trade or business, as legitimate (capital gains or tax free) but classify the separation or liquidation of less than an entire enterprise as a scheme to withdraw earnings and profits from a corporation (a dividend distribution). It can be argued that these sections and the unrelated

111. Respectively, the trade or business requirements are §§ 346(b) and 355(b).

112. Treas. Reg. § 1.355-1(c) (1955) (Emphasis supplied). Treas. Reg. § 1.346-1(c) refers to Reg. § 1.355-1(c) for the meaning of "active conduct of a trade or business."

113. Treas. Reg. § 1.355-1(c) (1955).

114. Treas. Reg. § 1.513-1(b) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

115. 4A MERTENS, *op. cit. supra* note 99, § 25.08.

business income tax sections are dissimilar in that sections 346 and 355 offer taxpayers beneficial treatment while the unrelated business income tax sections reach out for income. This would support the Service's position that sections 346 and 355 should not be considered in interpreting the unrelated business income tax.

Sections 162, 212, 165, 166 and 167 may be utilized by organizations arguing against the Service's contention that any activity productive of income is a trade or business. Section 162 is particularly important since the 1967 regulations refer to it for the meaning of trade or business. This section allows a deduction for the ordinary and necessary expenses in carrying on a trade or business. A major case on section 162 is *Higgins v. Commissioner*¹¹⁶ in which the taxpayer's activities of buying and selling stocks and securities on a large scale were held not to constitute a trade or business. This holding brought about the enactment of what is now the section 212 deduction for ordinary and necessary expenses incurred in the production of income.¹¹⁷ Section 167, which allows a deduction for depreciation, recognizes the distinction by requiring that the property be either used in the trade or business or held for the production of income.¹¹⁸ Thus, sections 162, 212, and 167 taken together, indicate that a trade or business under section 162 does not include all activities productive of income. Section 165(c) allows a deduction in subsection (1) for losses incurred in a trade or business and a deduction in subsection (2) for losses incurred in any transaction entered into for profit. The distinction between the subsections indicates that trade or business is not the equivalent of income producing activities.¹¹⁹ There is a trade or business requirement for bad debt deductions under section 166. In *Whipple v. Commissioner*¹²⁰ the taxpayer's loan to the corporation which he controlled was held not deductible as a bad debt because the taxpayer could not establish the loan was made in his trade or business. Part of the court's discussion of the concept of trade or business is relevant here:

The concept of engaging in a trade or business as distinguished from other activities pursued for profit is not new to the tax laws. As early as 1916, Congress by providing for the deduction of losses incurred in a trade or business separately from those sustained in other transactions entered into for profit, . . . distinguished the broad range of income or profit producing activities from those satisfying the narrow category of trade or business. This pattern has been followed elsewhere in the Code.¹²¹

The Service, in support of the 1967 regulation asserting that trade or business includes any activity productive of income, is likely to argue that the Code sec-

116. 312 U.S. 212 (1941).

117. See the discussion in 4A MERTENS, *op. cit. supra* note 99, § 25A.01 and in *Whipple v. Commissioner*, 373 U.S. 193 (1963).

118. § 167(a) provides: "There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—1) of property used in the trade or business, or 2) of property held for the production of income."

119. *McDowell v. Ribicoff*, 292 F.2d 174 (3rd Cir. 1961).

120. 373 U.S. 193 (1963).

121. *Id.* at 197.

tions discussed above should not be considered. A possible argument is the distinction between Code sections classifying income and Code sections involving deductions. Of the above Code sections, sections 162, 212, 167, 165, and 166 involve deductions; and sections 346 and 355 are similar to deduction sections in that they offer the taxpayer beneficial treatment (capital gains or tax free distributions). Deduction sections, being matters of legislative grace,¹²² are given narrow interpretations. On the other hand, Congress used gross income so as to exert "the full measure of taxing power;"¹²³ therefore income sections are given broad encompassing interpretations. A comparison of *Higgins v. Commissioner*¹²⁴ and *Mauldin v. Commissioner*¹²⁵ illustrates the distinction. *Higgins* involved a deduction section; so trade or business is given a narrow interpretation, and the taxpayer's investment activities in purchasing and selling stock did not constitute a trade or business. *Mauldin* involves an income section, whether gain from the sale of real property was ordinary income (trade or business) or capital gains (investment);¹²⁶ trade or business was interpreted broadly, and the taxpayer's sales of lots twenty years after he purchased the land constituted a trade or business and produced ordinary income. The unrelated business income tax sections are analogous to income sections; that is, the *Mauldin* case involved ordinary income versus capital gain and the unrelated business income tax involves ordinary income versus tax exemption. Thus, the Service will contend, the unrelated business income tax sections are income sections, and trade or business should be given a broad encompassing interpretation. Given a broad interpretation of trade or business as in other income sections,¹²⁷ the sale of advertising space in a journal can, by itself, constitute a trade or business.

Two points can be made in answer to the above argument. First, the 1967 regulations refer not to income sections but to a deduction section, section 162, for the meaning of trade or business. Secondly, consistency in giving income sections a broad interpretation is, at times, lacking.¹²⁸

122. *Interstate Truck Lines v. Commissioner*, 319 U.S. 590, 593 (1943); *Deputy v. Du Pont*, 308 U.S. 488, 493 (1940); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934).

123. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 429 (1955); *Helvering v. Clifford*, 309 U.S. 331, 334 (1940); *Helvering v. Midland Mutual Life Ins. Co.*, 300 U.S. 216, 223 (1937).

124. 312 U.S. 212 (1941).

125. 195 F.2d 714 (10th Cir. 1952).

126. The Code section involved was the predecessor of § 1221(1), which excluded from the capital asset category property held primarily for sale to customers in the ordinary course of a trade or business.

127. In addition to § 1221 (1) and (2), § 1231(b) is an income section. For examples of the broad interpretation see *Gilford v. Commissioner*, 201 F.2d 735 (2d Cir. 1953); *Fackler v. Commissioner*, 133 F.2d 509 (6th Cir. 1943); *Pinchot v. Commissioner*, 113 F.2d 718 (2d Cir. 1940).

128. *Stern v. United States*, 164 F. Supp. 847 (E.D. La. 1958), *aff'd per curiam*, 262 F.2d 957 (5th Cir. 1959), suggested courts should be hesitant in holding a taxpayer was engaged in a trade or business. In *Malat v. Riddell*, 383 U.S. 569 (1966), the Supreme Court, in holding that primarily in § 1221(1) meant principally rather than substantially, did not interpret an income section broadly.

D. *Substantially Related*

The other important issue concerning the application of the unrelated business income tax to journal advertising is whether the advertising is substantially related to any purpose forming the basis of the organization's exemption. This issue involves two different questions: 1) does the advertising contribute importantly to any of the exempt purposes of the organization; 2) is the advertising on a larger scale than reasonably necessary for the accomplishment of the exempt purposes. Meeting the first requirement will be more difficult for organizations under the new "contribute importantly" test than under the old "principle purpose" test. For example, a bar association is likely to argue that their journal advertisements of products and services needed by lawyers are substantially related to the exempt educational and informational purposes of the bar association. The principal purpose test would have been satisfied since the purpose of the journal advertising furthered the exempt educational and informational purposes of the bar association. But with the new test, the bar association would have to prove that the journal advertising actually contributed importantly to the educational and informational purposes. This may be quite difficult if, as is likely, only a few of the advertisements have any informational value. Thus, the casual relationship which must exist in order to satisfy the contribute importantly test makes it more difficult for a trade or business to be substantially related to the organization's purposes. Concerning the second question, the Service is likely to contend that even if the journal advertisements are substantially related, the trade or business of selling advertising in journals is conducted on a larger scale than reasonably necessary for the accomplishment of the organization's purposes. Therefore, the journal advertisements beyond the reasonably necessary level are not substantially related. This contention can be challenged as inconsistent with the statute. The applicable part of the statute reads ". . . any trade or business the conduct of which is not substantially related . . ." ¹²⁹ This language does not seem consistent with the division of a trade or business into a part which is substantially related and a part which is not substantially related.

E. *Regularly Carried On*

The "regularly carried on" provision in the 1967 regulations will not be in issue in journal advertising cases. In other situations the regulations will be helpful in that they provide guidelines for the organizations which engage in profit making activities on a non-continuous basis. The prior regulations offered little help in this regard as they only provided that a continuing purpose to derive income indicated that the activity was regularly carried on.¹³⁰ There is no test for "regularly carried on" in the 1967 regulations; instead the frequency and continuity of the trade or business must be analyzed in the light of the purpose of

129. INT. REV. CODE OF 1954, § 513(a).

130. Treas. Reg. § 1.513-1(a)(3) (1958), 1958-2 CUM. BULL. 197.

the unrelated business income tax.¹³¹ The effect of this may be that the Service will consider a trade or business regularly carried on when it is conducted frequently enough to be in competition with any taxpaying business.

VI. CONCLUSION

It is not clear how successful the unrelated business income tax has been in solving the problem of business activity by exempt organizations.¹³² The unrelated business income tax has not produced much revenue,¹³³ but perhaps it has discouraged exempt organizations from engaging in business. The attempt to tax the advertising revenue of exempt organizations through 1967 regulations can be challenged on three points: 1) the limitation on losses sustained by a trade or business which exploits an exempt function; 2) the definition of trade or business; 3) the provision that a substantially related trade or business is unrelated to the extent it is conducted on a larger scale than reasonably necessary to the accomplishment of exempt purposes. The definition of trade or business is the point most vulnerable to attack. If the Service is successful, the unrelated business income tax may take on new vitality as a revenue producer. Otherwise, the unrelated business income tax will continue to be merely a deterrent to business activities of exempt organizations.

TERRY AHERN

131. Treas. Reg. § 1.513-1(c)(1) (1958), as amended, T.D. 6939, 1968 INT. REV. BULL. No. 2 at 17.

132. Comment, 32 U. CHI. L. REV. 581 (1965) contends that the Internal Revenue Service has approached the problem by denying exemptions rather than by emphasizing the unrelated business income tax.

133. As of 1965, the amount collected per year never exceeded \$2,000,000. Comment, 32 U. CHI. L. REV. 581 n.2 (1965).