

**INTERNAL REVENUE SERVICE
TE/GE TECHNICAL ADVICE MEMORANDUM**

Release Number: **201005061**

Release Date: 2/5/10

Date: 11/12/09

UIL Code: 512 00-00

EO Area Manager

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification Number:

Years Involved:

Date of Conference:

Legend:

Trade Association	=
National Trade Association	=
B	=
Sport Facility	=
x	=

Issues:

1. Whether Trade Association, which is exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code, receives unrelated business taxable income under section 512(a)(1) from the sale of discount certificates.
2. Whether Trade Association's sale of discount certificates will adversely affect its tax exempt status under section 501(c)(6).

Facts:

Trade Association is a business league which is recognized as exempt from federal income tax under section 501(a) of the Internal Revenue Code (the "Code") as an organization described in section 501(c)(6). Trade Association is composed of persons who reside in a particular geographic region of the United States with a business interest in the sport of B, which is played by amateurs and professionals. The members of Trade Association include professional athletes in the sport, teachers and coaches of the sport, owners and managers of Sport Facilities, managers of food and beverage activities at Sport Facilities, and retailers of sport equipment. The Amended and

Restated Articles of Trade Association state that its purpose is: "to promote the common business interests of the associated members... promote the objectives of the [National Trade Association], promote competitive [B], hold meetings and tournaments for the benefit of the members...." Thus, the relationship between Trade Association and the National Trade Association is that Trade Association's purposes encompass the National Trade Association's purposes. The National Trade Association charter states that its purpose is to: "promote interest in the game..." and the national constitution states that the National Trade Association's purpose is to: "promote the enjoyment and involvement in the game... and contribute to its growth by providing services to [B] professionals and the [B] industry."

The nature of the sport is that players generally must pay fees to play at Sport Facilities. Trade Association and participating Sport Facilities sell discount certificates to the general public for a fee to play at various Sport Facilities. During the audit years, the discount certificates entitled the purchaser to play the sport at a number of participating Sport Facilities in the region at deep discounts. Most of the discount certificates were sold by participating Sport Facilities, but a number of the discount certificates were sold directly by Trade Association. Although the discount certificates were not available for purchase directly on the Internet, Trade Association's brochures and web-site indicated that members of the general public could purchase the discount certificates at participating Sport Facilities, from Trade Association's home office, or by mail. The brochures and web-site described the discount program and specified which Sport Facilities participated in the program. Trade Association marketed and advertised the discount certificates. Trade Association decided the content, format, and timing of the advertising of the discount certificates. Additionally, Trade Association was responsible for setting the sale prices of the discount certificates as well as the amount to be shared with the participating Sport Facilities and devised the contracts with the Sport Facilities. If the discount certificates were purchased at the participating Sport Facilities, the participating Sport Facilities then sent the revenue to Trade Association, which retained a share of x dollars and remitted the remainder back to the Sport Facilities. If the discount certificates were purchased from Trade Association or by mail, Trade Association received all of the income.

The sales have resulted in significant revenue and substantial profits for Trade Association. At an annual meeting, Trade Association's leaders indicated that the discount certificate program revenues had become a source of funding for many of Trade Association's programs; and that the discount certificates benefited the Sport Facilities as well. A number of for-profit entities in the region offer similar programs that sell discount certificates to Sport Facilities. Most of these Sport Facilities are different than the participating Sport Facilities of Trade Association. However, participating Sport Facilities can also participate in for-profit discount programs; conversely, Sport Facilities participating in for-profit discount programs may also participate in Trade Association's program.

Any Sport Facility in the area is eligible to and permitted to participate in Trade Association's program simply by requesting to participate. Although any Sport Facility

can participate, not all of the area's Sport Facilities do participate. Additionally, although some participating Sport Facilities are members of Trade Association, some participating Sport Facilities are not members. Also, although some Trade Association members are employees of participating Sport Facilities, there is no pre-requisite that participating Sport Facilities must employ Trade Association members. It is possible, though unlikely, that a participating Sport Facility may employ no Trade Association members.

Trade Association stated that although it is impossible to know exactly how much the sale of passes has increased playing the sport in its region, or revenues to participating Sports Facilities, both its members and the participating Sport Facilities believe that the program has positively stimulated the playing of the sport by the general public. Also, Trade Association stated that the increase in the number of Sport Facilities participating in the discount pass program indicates that the Sport Facilities believe it is worth discounting their normal fees.

The staff time that Trade Association devotes to the discount certificates has fluctuated somewhat over the years, although it has decreased over all. Trade Association substantiated an average of 25 percent of the staff time during the first six years of the activity. Also, Trade Association's board spends approximately five percent of its time, and approximately 10 percent of the overall time spent by Trade Association's committees is spent on the discount certificate program. Trade Association conducts other activities including: professional and amateur tournaments, high school sport programs, junior sport programs and events, Special Olympics sport programs, and financial support for research.

Law:

Section 501(a) of the Code provides, in part, that organizations described in section 501(c) are exempt from federal income tax.

Section 501(c)(6) of the Code 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 (the "regulations") provides, in part, 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. Its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Over the years, courts have distilled from the statute and regulations a series of requirements that an organization must meet to be described in section 501(c)(6). One common formulation, quoted by the court in Associated Master Barbers & Beauticians v. Commissioner, 69 TC 53 (1977), states the requirements as follows:

- (1) It must be an association of persons having a common business interest,
- (2) Its purpose must be to promote that common business interest,
- (3) It must not be organized for profit,
- (4) It should not be engaged in a regular business of a kind ordinarily conducted for a profit,
- (5) Its activities should be directed toward the improvement of business conditions of one or more lines of business as opposed to the performance of particular services for individual persons, and
- (6) Its net earnings, if any, must not inure to the benefit of any private shareholder or individual.

Section 511(a) of the Code imposes a tax on the unrelated business taxable income of organizations described in section 501(c).

Section 512(a)(1) of the Code defines the term "unrelated business taxable income" (UBTI) as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less certain allowable deductions and modifications.

Section 513(a) of the Code 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 the functions constituting the basis for its exemption.

Section 1.513-1(a) of the regulations provides that gross income of an exempt organization subject to the tax imposed by section 511 of the Code is, with certain exceptions, includable in the computation of UBTI if (1) it is income from trade or business, (2) such trade or business is regularly carried on by the organization, and (3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions.

Section 1.513-1(b) of the regulations provides that the term "trade or business" has the same meaning it has in section 162 of the Code, and generally includes any activity carried on for the production of income from the sale of goods or the performance of services.

Section 1.513-1(c)(1) of the regulations states that in determining whether a trade or business is "regularly carried on" within the meaning of section 512 of the Code, regard must be had to the frequency and continuity with which the activities are conducted and the manner in which they are pursued. Hence, for example, specific business activities will ordinarily be deemed "regularly carried on" if they manifest a frequency and

continuity, and are pursued in a manner generally similar to comparable commercial activities of nonexempt organizations.

Section 1.513-1(d)(1) of the regulations provides that gross income is derived from "unrelated trade or business" within the meaning of section 513(a) of the Code, if the conduct of the trade or business which produces the income is not substantially related (other than through the production of funds) to the purposes for which exemption is granted. The presence of this requirement necessitates an examination of the relationship between the business activities that generate the particular income in question - the activities, that is, of producing or distributing the goods or performing the services involved - and the accomplishment of the organization's exempt purposes.

Section 1.513-1(d)(2) of the regulations provides that a trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income), and it is "substantially related," for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of a trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those exempt purposes. Whether activities contribute importantly to an organization's exempt purposes depends in each case upon the facts and circumstances involved.

Example (7) of section 1.513-1(d)(4)(iv) of the regulations describes a journal of a section 501(c)(6) trade association that carries advertising for products within the professional interests of the members of the association. The advertising in question is subject to a number of restrictions as to content. However, while the advertisements contain certain information, the informational function of the advertising is incidental to the controlling aim of stimulating demand for the advertised products and differs in no essential respect from the informational function of any commercial advertising. The example states that advertising is accepted only from those able to pay the established rates and that a prime consideration in accepting advertising is not the continuing education of the membership in the manner contemplated by the statute. Accordingly, income derived from such advertising constitutes gross income from an unrelated trade or business.

Section 1.513-4(c) defines a qualified sponsorship payment as any payment to an exempt organization by a person engaged in a trade or business made without expectation of a substantial return benefit.

Section 1.513-4(c)(v) identifies advertising as a "substantial return benefit," and includes in the description of advertising: material which promotes or markets any service or facility, including messages that contain price information or other indications of savings or value or an inducement to use any service or facility.

Rev. Rul. 64-315, 1964-2 C.B. 147, held that an association of merchants in a particular shopping center whose advertising material contains the names of the individual merchants is performing particular services for members rather than an activity directed to the improvement of general business conditions.

Rev. Rul. 65-14, 1965-1 C.B. 236, held that an association created to attract tourists to a local area, but whose principal activity is publication of a yearbook consisting largely of paid advertisements for its members, is performing particular services for members, rather than an activity aimed at the improvement of general business conditions.

Rev. Rul. 68-267, 1968-1 C.B. 284, concluded that an association of grocery stores provides particular services for individual members by collecting coupons used by customers in their stores, sorting them by the wholesalers of products that had issued them, counting and remitting them to the correct wholesalers for payment that is then given to the retail grocery stores

Rev. Rul. 70-80, 1970-1 C.B. 130, denies exemption under section 501(c)(6) to a nonprofit trade association of manufacturers whose principal activity is the promotion of its members' products under the association's registered trademark. The ruling distinguishes Am. Plywood Ass'n, below, because the trade association at issue in the ruling promotes only its members' products under the association's registered trademark, even though non-members' products also may meet the quality standards for the trademark.

Rev. Rul. 73-386, 1973-2 C.B. 191, holds that an IRC 501(c)(6) organization's program of securing and supplying member and non-member business concerns with job injury histories on prospective employees on an expedited basis for a fee is subject to the unrelated business income tax (UBIT) because the program furnishes individual members of the business community with a regular commercial-type business service. The fact that businesses cannot readily secure such information on an expedited basis from other commercial providers does not alter the commercial nature of the service or the fact that the service relates to individual business needs of the business concerns involved.

Rev. Rul. 78-70, 1978-1 C.B. 159, holds that a board of trade that provides grain analysis laboratory services to members and nonmembers at the same charge and earns substantial profits on the activity is providing particular services to individuals and is engaged in business of a kind ordinarily carried on for profit and hence that such activity does not further exempt purposes within the meaning of section 501(c)(6) of the Code. See also Rev. Rul. 81-175, 1981-1 C.B. 337 (holding that assuring the availability of auto insurance for high-risk customers by accepting such customers for reinsurance does not further exempt purposes under section 501(c)(6) because "reinsurance is a business ordinarily carried on by commercial insurance companies for profit"); Rev. Rul. 81-174, 1981-1 C.B. 335 (holding that providing medical malpractice insurance to health care providers does not further exempt purposes under section

501(c)(6) because the “provision of medical malpractice insurance is a business of a kind ordinarily carried on for profit”).

Rev. Rul. 79-31, 1979-1 C.B. 206, contrasts two attempts by a section 501(c)(6) organization of business owners, professionals, and civic leaders to stimulate commerce in a downtown area by improved parking. In the first activity, the organization operates fringe parking facilities and shuttle buses connecting them to the downtown area. No individual merchant is favored by the manner in which the facilities are operated or where the stops are located. This activity stimulates and improves business conditions in the downtown area generally, thereby contributing importantly to the accomplishment of the organization’s exempt purpose. However, in the other activity, merchants purchase parking stamps and distribute them to their customers to use at downtown lots. This activity encourages persons to patronize the specific, participating member merchants to obtain free parking, and therefore provides services to individual members rather than furthering the organization’s exempt purpose under section 501(c)(6) of the Code. Accordingly, this activity constitutes an unrelated trade or business within the meaning of section 513 of the Code.

Rev. Rul. 80-294, 1980-2 C.B. 187, clarifying Rev. Rul. 58-502, 1958-2 C.B. 271, describes an organization, exempt under section 501(c)(6) of the Code, of professional players of the sport. It was formed to promote interest in the sport, to elevate the standards of the sport as a profession, and to sponsor and conduct tournaments for the encouragement of its members. The organization conducts apprentice programs, annual conventions and merchandise shows, and tournaments. Its support is derived primarily from the sale of television broadcasting rights to its tournaments, but also from membership dues, penalties, and apprentice fees. The revenue ruling holds that the sponsorship of tournaments and the sale of broadcasting rights directly promote the interests of those engaged in the sport by encouraging participation in the sport and by enhancing awareness of the general public of the sport as a profession. The amount of the income derived from the sale of broadcasting rights is not, by itself, determinative of whether the activity furthers the purposes specified in section 501(c)(6) of the Code and an organization may even draw its primary support from the sale of broadcasting rights to the sports tournaments it conducts. Therefore, income from the sale of television broadcasting rights was not UBTI.

Rev. Rul. 81-75, 1981-1 C.B.35, concerned a trade association organized to promote trade relations between businesses in the United States and the government of a particular foreign country. In addition to its primary activity of arranging trade missions, fairs, and exchange of economic information, the association provides a language translation service to member and non-member businesses for a fee. The Service held that the translation service was a regular business carried on for the benefit of individual businesses and therefore is unrelated in the meaning of section 513.

Rev. Rul. 82-139, 1982-2 C.B. 108, sets forth the issue of whether publication of commercial advertising in its journal by a bar association exempt from federal income tax under IRC 501(c)(6) constitutes unrelated trade or business. The bar association's

purpose is to promote the interests of the legal profession and to supervise the practice of law within a county of a state. Membership is composed of practicing attorneys within the county. Fees are charged for the publication of the advertisements. The ruling holds that the publication of ordinary commercial advertising does not advance the exempt purposes of the association, even when published in a periodical which contains editorial material related to exempt purposes. Further, even though the advertising in this case is directed specifically to members of the legal profession, it is still commercial in nature and represents an effort on the part of the advertisers to maximize sales to a particular segment of the public. Therefore, the publication of the commercial advertisements does not contribute importantly to the exempt purposes of the bar association.

In United States v. American College of Physicians, 475 U.S. 834, 106 S.Ct. 1591, 89 L.Ed. 2d 841 (1986), the Supreme Court held that advertising in the journal of the American College of Physicians does not contribute importantly to the organization's educational purposes and therefore is subject to tax pursuant to the provisions of sections 511-513 of the Code.

In Illinois Association of Professional Insurance Agents, Inc. v. Commissioner, 801 F.2d 987 (7th Cir. 1986), the court found that a tax-exempt business league of independent insurance agents described in section 501(c)(6) of the Code was subject to tax on UBTI on the fees it received for performing promotional and administrative services in connection with the sale of errors and omissions ("E&O") insurance to its members. Rather than merely informing members of the necessity for E&O insurance generally, the court determined that the business league "endorsed a particular E & O program in a manner which provided convenient marketing, advertising, and administrative services to the offering insurance company, generated income for the Association, and provided its individual members convenient coverage." Id. at 995. The court also noted that the association's activities were in competition with services provided by other taxpaying entities and that "[w]here services and goods are available in the marketplace, a trade association need not provide it to accomplish an exempt purpose." Id. at 994 (internal quotations and citation omitted). Accordingly, the court concluded that any exempt function the business league's E & O program may have served was incidental to its purpose of raising revenues and the program therefore did not contribute importantly to improving conditions in a line of business or the industry generally. See also Prof'l Ins. Agents of Mich. v. Comm'r, 78 T.C. 246, 268 (1982), aff'd 726 F.2d 1097 (6th Cir. 1984) (holding that promotional and administrative fees received by a business league of independent insurance agents for promoting group insurance programs for its members constituted UBTI because the taxpayer could not demonstrate that such activities contributed "directly and importantly" to the improvement of conditions in a particular line of business); La. Credit Union League v. United States, 693 F.2d 525, 534, 536, 537 (5th Cir. 1982) (holding that business league's active support and endorsement of insurance policies sold by a particular insurance company in return for commissions on insurance policy purchases and renewals made by its member credit unions constituted an unrelated trade or business; the activity "did little more than generate revenue for the League and provide [the insurance company] with convenient services in the marketing

and administration of its programs” and the relationship between it and the league’s exempt purpose was “at best tangential” and therefore was statutorily insufficient to qualify as “substantial”); Prof’l Ins. Agents of Wash. v. Comm’r., 875 F.2d 870 (9th Cir. 1989) (unpublished).

MIB, Inc. v. Commissioner, 734 F.2d 71 (1st Cir. 1984) held that an association of life insurance companies that maintains a computerized system for gathering confidential underwriting information, available to its members, was rendering particular services for individual member companies, notwithstanding some indirect benefits that accrued to the industry and public generally.

In Washington State Apples, Inc. v. Commissioner, 46 B.T.A. 64 (1942), acq., 1942-1 C.B. 17, the court held that an association of apple growers that engaged in advertising and promoting the sale of Washington apples, but whose advertising did not mention any specific brand or grower, was exempt under a predecessor Code section because its purpose was to promote an industry as a whole and improve a line of business rather than individual businesses. Similarly, in American Plywood Association v. United States, 19 A.F.T.R.2d 1725 (W.D. Wash. 1967), the court held that the advertising conducted by the trade association of plywood manufacturers that did not identify individual manufacturers, but promoted plywood as a generic building material, promoted the industry as a whole.

By contrast, in Automotive Electric Association v. Commissioner, 168 F.2d 366 (6th Cir. 1948), the court found that an association that published and sold catalogues to members and non-members was performing particular services for individual persons when the catalogue listed only products manufactured by the members, even though there may have been incidental benefit to the relevant industry.

In Evanston-North Shore Board of Realtors v. United States, 320 F.2d 375 (Ct. Cl. 1963), the court held that an organization’s operation of a multiple listing service constituted the performance of a particular service for the individual real estate broker members and generated benefits for them in proportion to the fees that they paid for the service, and that therefore the listing system could not be regarded as directed to the improvement of business conditions in the real estate market. Noting that an “organization whose principal purpose and activity is such as to justify exemption does not lose its exempt status by engaging in incidental activity which standing alone would be subject to taxation,” the court then examined the extent of the organization’s multiple listing service activities to determine whether the Evanston-North Shore Board could maintain its exempt status. Id. at 380. The court found that 61% of the Board’s revenues were derived from the operation of the listing service and that 42% of its costs were directly allocable to the service (as well as an additional, substantial portion of its salaries expense). The court also found it reasonable to infer that the organization had increased its number of employees from one to five because of the listing service. As a result, the court concluded that the listing service was “the dominant, rather than an incidental, activity of the” organization and thus upheld the revocation of its exempt status. See also Ind. Retail Hardware Ass’n, Inc. v. United States, 366 F.2d 998, 1001

(Ct. Cl. 1966) (acknowledging that “[a]n organization which by its principal purpose and activity is entitled to exempt status does not lose that status by engaging in incidental activities which, standing alone, would deprive it of the exemption” but concluding that hardware dealers' association was not entitled to business league exemption where over 58% of its total income was derived from its performing particular services for individuals and from its other income-producing activities and about 50% of time of employees was devoted to such income-producing activities); Am. Plywood Ass'n, 19 A.F.T.R.2d at 1727, supra (noting that “[t]he rule is well established that a trade association whose main purpose justifies exemption from income tax will not forfeit tax exempt status by engaging in incidental activities which, standing alone, would be subject to taxation” and that the “ultimate fact as to which activities of a business league are primary and which are incidental must be determined in each case upon the particular circumstances involved”); Rev. Rul. 78-70, supra, (although organization engages in other, exempt activities, its operation of a grain analysis laboratory as a business of a kind ordinarily carried on for profit and in manner that performs particular services for individuals results in revocation of its exempt status under section 501(c)(6) when the laboratory has become the principal activity of the organization, accounting for virtually all of its income and two-thirds of its expenses in the most recent year.)

In Commissioner v. Chicago Graphic Arts Federation, 128 F.2d 424, 426 (7th Cir. 1942), the court concluded that a business league that received as much as 34% to 40% of its revenues per year from its engagement in a regular business of a kind ordinarily carried on for profit or in return for individual services rendered to individual members, was nevertheless entitled to exemption because such services were “only incidental or subordinate to the main or principal purposes required” of a business league under the predecessor to Code section 501(c)(6). See also Milwaukee Ass'n of Commerce v. United States, 72 F. Supp. 310 (E.D. Wis. 1947) (recognizing that an organization formed to advance the commercial interests of a city was exempt under the predecessor of section 501(c)(6), notwithstanding the fact that it also conducted a commercial credit bureau where the bureau was one of 15 departments of the organization and generated less than a quarter of its total revenue.)

Analysis:

Issue 1: UBIT

In determining that an income-producing activity is an unrelated trade or business, it is necessary to show that (1) there is a trade or business, (2) the trade or business is regularly carried on, and (3) the conduct of the trade or business is not substantially related to the organization's exempt purpose or function. See section 1.513-1(a) of the regulations.

Trade Association has agreed that the first and second prongs of the test set forth in section 1.513-1(a) of the regulations are met for the activity discussed herein. Therefore, the sole issue with respect to whether Trade Association's sale of discount

certificates is an unrelated trade or business is whether that activity is substantially related to the organization's performance of its exempt functions.

Determination of the substantial relationship issue requires an examination of the relationship between the business activities that generate the particular income in question and the accomplishment of the organization's exempt purposes. Section 1.513-1(d)(1) of the regulations. The regulations further state that for the conduct of the trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Section 1.513-1(d)(2) of the regulations; see also Prof'l Ins. Agents of Mich., supra, (holding that for the conduct of a trade to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services must contribute "directly and importantly" to the accomplishment of those purposes); La. Credit Union League, supra, (holding that the League's endorsement of group insurance plans was principally motivated by a desire to raise revenue, and at best was only tangentially related to the furtherance of the credit union movement, and therefore finding the requisite substantial relationship lacking).

For income earned on the Trade Association's discount certificate activities to escape taxation as UBTI, the activities must contribute directly and importantly to the accomplishment of one or more of Trade Association's exempt purposes. See Prof'l Ins. Agents of Mich.; Ill. Ass'n of Prof'l Ins. Agents, supra; Rev. Rul. 82-139, supra.

Trade Association, composed of members with a business interest in the sport of B, is organized and operated as a trade association within the meaning of section 501(c)(6) of the Code. Trade Association promotes enjoyment of and involvement in the sport and thereby the common business interests of its members by organizing professional and amateur tournaments and events for students, young people and disabled people. Under the regulations, an exempt business league must direct its activities to improving business conditions of one or more lines of business as distinguished from performing particular services for individual persons (whether or not members of the organization). Section 1.501(c)(6)-1 of the regulations; and, e.g., MIB, Inc.; Rev. Rul. 65-14, and Rev. Rul. 70-80, supra. Accordingly, only activities directed at improving business conditions can be considered substantially related to a business league's exempt purposes under the UBIT provisions, while the performance of particular services for individuals cannot be considered substantially related to such purposes. See, e.g., Prof'l Ins. Agents of Mich., supra; Rev. Rul. 73-386, and Rev. Rul. 79-31, supra. Thus, the issue here is whether the sale of discount certificates improves the line of business of Trade Association, which is to promote interest and involvement in the recreational and professional playing of the sport, or rather, whether it constitutes the performance of particular services for individual persons.

Trade Association states that its purpose is generally to promote the sport of B and argues that the sale of discount certificates furthers that purpose. However, the facts do

not show how the sale of discount certificates contributes directly and importantly to Trade Association's exempt purposes. Rather, the sale of discount certificates primarily benefits the participating Sport Facilities, while also generating revenue for Trade Association. Trade Association's materials specifically name each of the participating Sport Facilities. The materials offer inducements to patronize the named facilities, in the form of the publicized reduced fees (which also constitute an indication of savings or value). Trade Association designed the program and set the price for the certificates and the corresponding discount the purchaser receives. It decided the content, format and timing for the promotion of the certificates in paper brochures and on the Internet. It also marketed and advertised the discount certificates and used its stature to promote their sale to the public. Thus, the advertising activities are commercial services for individual businesses, similar to the processing and remittance of manufacturers' coupons in Rev. Rul. 68- 267, supra.

The marketing and publicity by Trade Association of the discount certificates benefits participating Sport Facilities over non-participating Sport Facilities. Purchasers of the certificates will be more likely to play at a Sport Facility that charges a reduced fee, than a non-participating Sport Facility that charges a full fee. Additionally, the promotion of discount certificates increases the general public's awareness of the named, participating Sport Facilities, making it more likely that a player of the sport will patronize a participating Sport Facility, even if the player has not purchased a discount certificate. The fact that any Sport Facility may participate in the program is not dispositive. Rather, the fact that only the Sport Facilities that choose to participate receive the benefits and services of Trade Association undermines the argument that the activity furthers the sport as a whole. See, e.g., Rev. Rul. 79-31, supra (ruling that a business league's operation of a "park and shop" plan is an unrelated trade or business because the plan only encourages persons to patronize the limited number of merchants choosing to participate in the plan by offering free parking only to the patrons of these merchants.)

Thus, the service that Trade Association performs when it prepares, promotes, and sells discount certificates is advertising for the participating Sport Facilities rather than for the industry as a whole. See, e.g., section 1.513-4(c)(v) of the regulations (recognizing that messages containing indications of savings or value or inducements to patronize specific businesses constitute advertising). Advertising campaigns such as Trade Association's sale of discount certificates that name and promote specific businesses rather than the industry as a whole constitute the performance of particular services for individual persons. See, e.g., Auto. Elec. Ass'n, supra; Rev. Rul. 64-315, Rev. Rul. 65-14, and Rev. Rul. 70-80, supra. Compare Wash. State Apples and Am. Plywood Ass'n, supra. Accordingly, this activity constitutes an unrelated trade or business within the meaning of section 513 of the Code. See, e.g., Am. Coll. of Physicians, Ill. Ass'n of Prof'l Ins. Agents, La. Credit Union League, and Prof'l Ins. Agents of Mich., supra; section 1.513-1(d)(4)(iv) of the regulations (example 7); Rev. Rul. 73-386, Rev. Rul. 79-31, Rev. Rul. 81-75, and Rev. Rul. 82-139, supra.

In addition, Trade Association has sold the discount certificates at a price that has generated substantial profits. Moreover, other commercial entities in the area provide the same types of discount certificates. Accordingly, Trade Association is engaged in a regular business of a kind ordinarily carried on for profit, and hence an activity that is not substantially related to its exempt purposes. Section 1.501(c)(6)-1; see also III. Ass'n of Prof'l Ins. Agents, supra; Rev. Rul. 78-70, Rev. Rul. 81-174, and Rev. Rul. 81-175, supra.

Most of the businesses promoted by the discount pass program are not themselves members of the Trade Association. However, the Service has held that providing specific services for individual persons, whether to member or non-member businesses, conflicts with a trade association's purpose to promote the industry as a whole. See, e.g., Rev. Rul. 73-386, Rev. Rul. 78-70, and Rev. Rul. 81-75, supra; see also III. Ass'n of Prof'l Ins. Agents, supra (holding that the provision of marketing services to non-member insurance company was an unrelated trade or business,) La. Credit Union League, supra (same).

Trade Association argues that the sale of discount certificates is similar to the activity described in Rev. Rul. 80-294, supra. That ruling involved an association composed of professional players of a particular sport. The association's purpose was to promote interest in the sport, to elevate the standards of the sport as a profession, and to sponsor and conduct tournaments for the encouragement of its members. The Revenue Ruling holds that the sponsoring of tournaments and the sale of rights to broadcast the tournaments directly furthers the organization's exempt purpose by encouraging participation in the sport and by enhancing awareness by the general public of the sport as a profession.

The national broadcasts of professional tournaments that were the subject of Rev. Rul. 80-294 provided a showcase for the sport as a whole. They increased the interest and knowledge of the public and enhanced the stature and earning power of the top players, thereby improving both the amateur and professional aspects of the sport nationwide. In contrast, the discount certificates only serve to promote specific Sports Facilities which does not improve the business conditions of one or more lines of business of the members of Trade Association.

In the case at hand, the discount certificate program gives members of the general public the ability to play the sport of B at a discount at particular Sport Facilities that participate in the program. In contrast to Rev. Rul. 80-294, it is really the participating Sport Facilities, not the sport of B as a whole, that Trade Association promotes to the public through the discount certificate program.

Additionally, in Rev. Rul. 80-294, the organization was providing a service through broadcasting that reached a broad segment of the general population. In the case of the discount certificates, sales are made to a limited number of individuals, albeit members of the general public, to play the sport of B in a particular geographic area.

Therefore, the sale of discount certificates in the manner described does not bear a substantial causal relationship to Trade Association's exempt function of promoting recreational interest in the sport as a whole. Rather, the share of the sports pass received by Trade Association is essentially a payment for the advertising services designed to encourage the general public to play the sport at their facility at reduced fees. Any benefit to Trade Association's line of business, or nexus to its exempt purposes, is only incidental to the direct service provided to these entities. Thus, the activity is not substantially related to Trade Association's exempt purposes and is therefore subject to UBIT.

Issue 2: Exemption

An organization whose principal or primary purpose and activity justifies exemption under section 501(c)(6) does not lose its exempt status by engaging in incidental or subordinate activity constituting a regular business of a kind ordinarily carried on for profit or the performance of particular services for individual persons. See, e.g., Ind. Retail Hardware Ass'n, Evanston-Northshore Bd. of Realtors, Chi. Graphic Arts Fed'n, Am. Plywood Ass'n, supra. The ultimate fact as to which activities of a business league are primary and which are incidental must be determined in each case upon the particular circumstances involved, which can include the amount of time the organization's employees spend on the activities. Am. Plywood Ass'n, Ind. Retail Hardware Ass'n, supra.

Trade Association derives a substantial portion of its revenues from the sale of discount certificates and commissions earned on the sale of discount certificates by Sport Facilities. The amount of revenue generated by an activity is not the only way to determine whether that activity is the primary activity of an exempt organization. "The amount of the income derived from the sale of broadcasting rights is not, by itself, determinative of whether the activity furthers the purposes specified in section 501(c)(6) of the Code." Rev. Rul. 80-294.

Trade Association calculated that its employees spend approximately one-quarter of their work time on these activities, its board members spend approximately five percent of their time on these activities, and their committee members spend 10 percent of their time on the discount certificate program. The facts do not indicate that Trade Association has any other activities that are unrelated to its exempt purposes. Trade Association has represented that the remainder of its revenues are derived from activities that further its exempt purposes. Furthermore, Trade Association represents that most of the time of its staff, board members and committee members is spent on activities that further Trade Association's exempt purposes. Thus, the sale of discount certificates is not Trade Association's primary purpose and the activity therefore will not adversely affect the tax exempt status of Trade Association under section 501(c)(6) or the Code.

Conclusion:

1. Trade Association's income from the sale of discount certificates constitutes UBTI under section 512(a)(1) of the Code. Therefore, Trade Association's income from this activity is subject to UBIT under section 511 of the Code.
2. Trade Association's sale of discount certificates will not adversely affect the tax exempt status of Trade Association under section 501(c)(6).