

Publishing Activities of Exempt Organizations

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¶ 3024 PUBLISHING ACTIVITIES OF EXEMPT ORGANIZATIONS

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To get and maintain tax exemption under Section 501(c)(3), an organization must, among other things, (1) have exclusively exempt purposes and (2) not have income inure to the benefit of nonexempt persons. These are the two major problem areas for publishing by exempt organizations.

The issue of nonprofit publishing has been most acute in the area of religious publishing, but has involved other charitable organizations as well. Because of the potential exemption problems, most religious publishers are commercial (Word, Zondervan, Nelson, Baker, Erdmans, Scripture Press, Cook, and Crossways), unless they are denominational divisions (Broadman, Augsburg, Fortress, Bethany House, Judson, Concordia). There are few exceptions (Presbyterian & Reformed, which recently litigated the issue, Moody, and Gospel Light), and the IRS has revoked many exemptions (Scripture Press, Gospel Worker Society, Fides Publishers, and various others in revenue rulings).

The following topics will be covered:

1. Exclusive exempt purposes [¶ 3024.1]
 - No commercial pricing or profit [¶ 3024.2]
 - No substantial indirectly related or unrelated publishing [¶ 3024.3]
 - No substantial unrelated business income [¶ 3024.4]
2. No private inurement [¶ 3024.5]
 - No questionable royalty payments [¶ 3024.6]
 - No cross-subsidization or other inurement [¶ 3024.7]
3. Permissible alternatives [¶ 3024.8]
 - Feeder organizations [¶ 3024.9]
 - Some joint ventures or partnerships [¶ 3024.10]

EXCLUSIVE EXEMPT PURPOSES

¶ 3024.1 The requirement that a charity must have exclusively exempt purposes has several corollaries.

- It must not use commercial pricing levels or consistently have substantial profits, because that reflects a substantial commercial purpose.
- It must not carry on substantial publishing not directly related to its exempt purposes, because that constitutes a substantial purpose different from its exempt purpose.
- It must not have too substantial a level of unrelated business income (UBI) from advertising sales, mailing list sales, etc., for the same reasons.

Violation of each rule jeopardizes a nonprofit organization's tax exemption. In interpreting the exclusive purpose language of IRC §501(c)(3), the Supreme Court has stated that the "presence of a single [nonexempt] purpose, . . . substantial in nature, will destroy the exemption."¹

The IRS has adopted that approach in regulations.²

Conforming to these rules—no commercial pricing, substantially related publishing, no excessive UBI—allows an exempt organization to treat its publishing income as nontaxable.^{2a}

¶ 3024.2 **No commercial pricing or profit.** The regulations, in defining the term "education" under IRC §501(c)(3), require that "the manner in which the distribution is accomplished [be] distinguishable from ordinary commercial publishing practices."³

The IRS position essentially is that pricing publications significantly above actual cost (which may not take into account general overhead or depreciation) or at a level bringing substantial consistent profit is a substantial nonexempt purpose.

Nondenominational publishers. A number of decisions have revoked tax exemptions of religious publishers on these grounds.

In *Presbyterian & Reformed Publishing Co. v. Commissioner*,⁴ the IRS made that argument and persuaded the Tax Court, although not the Third Circuit.

• **Profits and commercial pricing.** In *Scripture Press Foundation v. United States*,⁵ the court of claims held that a nondenominational publisher was no longer entitled to exemption, because of commercial pricing and profit accumulation:

Footnote references start at the end of the analysis.

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We think the enormity of the contrast between what plaintiff has accumulated from sales each year and what it has expended for its educational programs reveals that the sale of religious literature is its primary activity and that its instructional phase is incidental thereto. It is true that plaintiff erected a new building in Wheaton, Illinois, at a total cost in excess of \$1,000,000 in 1956. Even allowing for the cost of the building, however, the disparity between amounts actually expended for instruction when compared with amounts realized in earnings is unaccountably small.⁶

Fides Publishers Association v. United States similarly involved revocation of the exemption of a "Catholic Action movement" publisher with pricing to yield a profit and with substantial net profit, because "the publication and sale of religious literature at a profit" was a "non-exempt purpose which is substantial in nature."⁷

● **Profits and commercial practices.** *Christian Manner International, Inc.* sold religious books at a profit in a commercial manner, and so was denied exemption.

But even if we assume that the publication of Smith's books was in part furtherance of religious or educational purposes, petitioner would still not qualify for exemption under section 501(c)(3) because a substantial part of the activity it engaged in was in furtherance of a purpose to benefit Smith personally rather than to benefit the public at large and it was commercial in nature. Smith's books were priced to return a profit to petitioner and the distribution and marketing of the books were patterned on standard commercial practices. Even though petitioner argues that some of the books were given away, the gifts were made in return for a minimum contribution which exceeded the list price of the books. . . .⁸

● **Profits and commercial subject matter.** *Parker v. Commissioner* denied exemption to a publisher of self-improvement publications for profit.

We are not saying herein that religious organizations may not maintain their tax exempt status if they . . . offer their literature for sale. The non-religious purpose of this particular organization was evidenced by the extent and scope of the profit-making circulation, the methods of promotion, the general non-religious subject matter of some of the publications, the large annual profit, the substantial accumulated earnings, and the statements made by Dr. Parker. When all of this is viewed in relationship to the organization's exempt activities, the substantial nature of the non-religious purpose is established. . . .⁹

A 1960 revenue ruling denied exemption to a secular publisher of a foreign language magazine that was sold at a subscription price above cost.¹⁰

A 1998 technical advice memorandum treated newsletter and magazine subscriptions, and book sales, as UBI and taxed them, but did not revoke the exemption of a secular educational organization.^{10A}

● **Profits and commercial competition.** In *Incorporated Trustees of the Gospel Worker Society v. United States Department of the Treasury*, a federal district court rejected the argument that \$5.3 million of accumulated profits was for expansion: "the sheer size of the surplus and the lack of anything more concrete than the word of plaintiff's officers as to its future use militates against such a finding," along with "direct competition with a number of commercial publishers."¹¹

*Contemporary Mission v. United States*¹² is an unpublished Federal Circuit decision denying exemption to a Catholic religious order because publishing activities were too commercial and other expenditures constituted private inurement.

The reasons for the IRS position are that commercial pricing generally reflects a commercial purpose and unfairly competes with for-profit publishers.

➤➤NOTE→ The IRS has never clearly defined what costs are considered in pricing "above cost," but tends to be stingy in allocating indirect costs such as overhead. A case involving a true nonprofit publisher will stand or fall depending on what costs are found to count in determining profit, as well as on whether the publishing activity "smells" commercial. By contrast, pricing at or below cost is permissible for an exempt organization, and tax exemptions have been upheld in such cases.

In *Elisian Guild, Inc. v. United States*, the First Circuit held that a small publisher did not have a commercial purpose just because it had one year of profit due to sale of a capital asset or because it had increasing sales each year (up to a peak \$615).¹³ "[I]n this case the deficit operation reflects not poor business planning nor ill fortune but rather the fact that profits were not the goal of the operation."¹⁴

In *Universal Church of Scientific Truth, Inc. v. Commissioner*,¹⁵ the district court found the level of "minimum donation" low enough to allow exemption of a religious organization that published tracts and sermons.

In *Pulpit Resource*, the Tax Court upheld the exemption of a nonsectarian publisher of sermon helps, despite a small profit (\$1,075), with the following analysis:

. . . Although subscription prices are kept as low as possible, *Pulpit Resource* is *not sold at or below cost*. Its net profit for 1977, after allowance of a \$15,000 salary for Harris, is projected to be \$1,075. This in itself suggests a commercial as opposed to a charitable purpose, [cites omitted] although it has been recognized that it is often necessary for an organization to earn a profit from a business activity in order to carry out its charitable purpose. [Cites omitted.] The record indicates that petitioner's projected net profit for 1977 will be donated to the Preaching Department of the School of Theology at Claremont.

. . . The fact that petitioner intended to make a profit, alone, does not negate that petitioner was operated exclusively for charitable purposes. [Cites omitted.] If the sale of religious literature was an integral part of and incidental to petitioner's avowed religious purpose, that activity may be considered a part of the religious purpose or objective. [Cites omitted.] We find that it was.¹⁶ [Emphasis added.]

Further, the court considered the following facts to be persuasive:

- Sale of the publication above cost was the only way to accomplish the goal of disseminating sermons to ministers at a price high enough to pay costs and a reasonable salary.
- There was little, if any, other income.
- The organization was not competing with a commercial enterprise.
- The profit was small and was designated for a tax-exempt purpose.¹⁷

In *Foundation of Human Understanding*,¹⁸ the Tax Court found that an organization formed to spread the religious teachings of its founder through publishing and broadcasting was a bona fide church entitled to exemption.

In *Forest Press, Inc.*,¹⁹ the Tax Court declared a secular publisher to be exempt that was formed to publish and disseminate the Dewey decimal system for libraries, because the publications were priced to recover manufacturing costs plus enough to sustain the small staff of seven to ten persons.

In *A.A. Allen Revivals, Inc.*,²⁰ the Tax Court found that an evangelistic organization was exempt despite sales of religious literature and profits. The court found that the organization throughout the years had devoted all of its gross profits to its religious purposes. Sale of a publication and the receipt of income from the sale doesn't, in itself, affect an organization's exempt status.²¹

The IRS or the Tax Court have upheld exemptions under all of the following circumstances:

- A religious organization received income from retreat tuition fees and book sales as well as donations.²²
- An organization sold a secular bulletin of translated foreign news below cost.²³
- A publisher sold a religious newspaper with interdenominational church news, and its church subscription and advertising revenues didn't cover its costs.²⁴
- The organization distributed free publications²⁵ or sold religious publications at nominal prices or below cost.²⁶
- A secular organization published a subsidized book on decorative arts pursuant to its exempt purpose.^{26.1}

»»»NOTE→ The difficulty in distinguishing the cases that revoke publishers' exemptions from the cases upholding exemptions shows the importance of establishing firmly the exempt purpose of the organization and its furtherance by the publications.

Denominational publishers. The exceptions have been mostly denominational presses, presumably because they are an integral agency of, or bear an intimate relationship to, the clearly exempt denominations.^{26.2}

The sale of religious publications to students and members of the "I Am" religious movement, in *Saint Germain Foundation*, did not defeat exemption and the sales were closely associated with and incidental to exempt purposes:

The sale of religious literature and the conclaves held to propagate the precepts of the petitioner are activities closely associated with, and incidental to, the religious purposes of the petitioner. Such activities bear an intimate relationship to the proper functioning of the petitioner, and we do not believe that income received from these activities prevents the petitioner from being an organization organized and operated "exclusively" for religious purposes. . . .²⁷

A publishing house controlled by the Catholic Church, which sold Catholic curricular materials to Catholic schools, was exempt even though sales were at a profit because profits were returned annually to the schools.²⁸ However, a church-controlled printer that did commercial rather than sectarian printing was not exempt, but instead was ruled a taxable feeder organization.²⁹

Most of the major religious denominations have publishing arms that are exempt.

The Presbyterian & Reformed Case. In the *Presbyterian & Reformed* case, the Tax Court revoked the organization's exemption and gave the general objection of commercialism:

We must, then, decide toward what ends petitioner's activities are directed and whether they are "animated" by a substantial commercial purpose. [Cites omitted] Where a nonexempt purpose is not an expressed goal, courts have focused on the manner in which activities themselves are carried on, implicitly reasoning that an end can be inferred from the chosen means. If, for example, an organization's management decisions replicate those of commercial enterprises, it is a fair inference that at least one purpose is commercial, and hence nonexempt. And if this nonexempt goal is substantial, tax exempt status must be denied.³⁰

The Tax Court listed four very significant factors that militate against exemption:

- the presence of substantial profits,
- the method of pricing—above or below costs,
- sizable profits at consistent and comfortable net profit margins,
- competition with commercial publishers.

Other less significant factors considered by the court involved a conscious effort by the organization to transform itself into a more mainline commercial enterprise by

- searching out more readers,
- employing paid workers,
- dropping nonprofitable plans,
- paying substantial royalties,
- making formal contracts,
- expanding facilities to reap more profits, and
- nonaffiliation with or control by any particular church.³¹

»NOTE→ The Tax Court factors, while not entirely addressed by the U.S. Court of Appeals, generally reflect the IRS's position and, as a cautious approach in structuring a nonprofit publisher, should be followed as closely as possible.

The Third Circuit rejected the Tax Court's conclusion and upheld the tax exemption with the following summary:

In this case, the Tax Court focused primarily on two factors—the lack of affiliation with a particular church and the accumulation of profits. As we have shown, neither factor indicates the presence of a non-exempt purpose here. . . .³²

The Third Circuit obviously did not address some of the factors mentioned by the Tax Court.³³

The IRS after *Presbyterian & Reformed* has stated its position as follows:

If an organization's primary purpose in conducting publishing, which represents its sole or primary activity, is to operate a commercial business producing net profits, the organization is not exempt under IRC 501(a) as an organization described in IRC 501(c)(3). The decision as to what an organization's primary purpose is must be made in light of all of the relevant facts and circumstances in a particular case. Among the *factors* that should be considered are the organization's *methods of pricing, presence of substantial profits* from its operations, and the *intended purpose of any accumulated profits*. The mere presence of operating profits is *not, by itself, a bar* to exemption of a publishing organization.

At the same time, profits are the objective of commercial operations. Therefore, the presence of profits suggests that the organization's purpose is commercial. The presence of profits thus invites further inquiry as to how the profits were produced, for what purposes, and for whose benefit. Many successful denominational publishing houses have chosen to avoid the necessity of justifying their profits by organizing their publishing departments as for profit corporations.³⁴ [Emphasis added.]

【¶ 3024.3】 **No substantial indirectly related or unrelated publishing.** Substantial publishing on subjects not directly related to the organization's exempt purposes is also a substantial nonexempt purpose.³⁵

The IRS continuing professional education manual states the rule as follows:

The IRC 502 regulations also provide that a subsidiary of an exempt organization will *not* be exempt if it is operated for the primary purpose of carrying on activities that would be unrelated business if carried on directly by its parent. For example, Rev. Rul. 73-164, 1973-1 C.B. 223, concluded that a church-controlled commercial printing corporation whose business earnings are paid periodically to the church, but which has no other significant charitable activity, is a feeder organization as described in IRC 502 and does not qualify for exemption under IRC 501(a) as an organization described in IRC 501(c)(3).³⁶

In *American Institute for Economic Research v. United States*, an organization sought exemption on an educational basis, but its economic and investment newsletter competed with commercial services and was sold above cost.³⁷

By contrast, publishing by an exempt organization on topics related to its exempt purposes is permissible. A 1974 revenue ruling recognized the exemption of a secular news publication designed to educate the public on the accuracy of news reporting and to encourage higher standards of reporting.³⁸

In a recent letter ruling, licensing arrangements by which an education institution disseminated its copyrighted curriculum package were related to the institution's exempt purpose of disseminating knowledge and were not an unrelated trade or business.³⁹

»POINTER→ Sales that generate UBI may not be so substantial as to jeopardize the organization's exemption. A trade association's sale of standard forms, in a technical advice memorandum, generated UBI but did not cause revocation of the exemption.^{39A}

Although the "relatedness" test is highly subjective and amorphous, it is very important to establish the close relationship between the exempt organization's purpose and its publishing activity.

¶ 3024.4] No substantial unrelated business income. Substantial unrelated business income from advertising sales, mailing list sales, and similar sources is also a substantial nonexempt purpose. The IRS denied exemption to a nonprofit newspaper organization that solicited advertising and generated subscriptions in the same way as commercial newspaper publishers.⁴⁰

However, income from advertising related to the exempt purpose is permissible.⁴¹ Also, advertising sales that still leave the publication non-profitable may not jeopardize its exemption.⁴² And insubstantial sales of a newsletter, magazine, and books will not cause revocation of exemption.^{42A} Even substantial UBTI, such as from sales of advertising not related to the organization's exempt purpose, may not jeopardize its exemption.^{42B}

In more recent technical advice, the Service ruled that a religious college and school that operated a publishing division that "amounted to more than one-half of the organization's total receipts," and was well beyond the textbook needs of the college and school, generated UBI but did not revoke the exemption. This was so even though the pricing was "probably comparable to ordinary commercial prices," and the sales methods were "indistinguishable from ordinary commercial sales practices."^{42C}

NO PRIVATE INUREMENT

¶ 3024.5] The requirement that a IRC § 501(c)(3) organization must not allow its income to inure to private benefit has several corollaries: (1) the IRS is suspicious of royalties on publications and (2) an exempt publisher must not subsidize a related commercial publisher or allow other private inurement.

¶ 3024.6] **No questionable royalty payments.** Payment of royalties by an exempt organization can jeopardize its exemption, whereas grants to authors for services rendered are permissible.

The IRS denied exemption to an organization that made funds available to authors and editors to prepare teaching materials and write textbooks and then paid them part of the royalties received after repayment of costs.⁴³ Reason: "[A]ll the participants expect to receive a monetary return."⁴⁴

The Tax Court in *Presbyterian & Reformed* found royalty payments to be one of a number of negative factors, although it didn't explain how a nonprofit publisher was supposed to generate funds before publication to pay a fixed fee to an author instead of a royalty after publication.⁴⁵ By contrast, the IRS, in a ruling, upheld payment of a percentage of patent royalties to inventors.⁴⁶

The IRS presses the exempt organization to hold the copyrights.^{46A} That is generally reasonable for works for hire, but not for works by third-party authors who insist on keeping the copyright.

By contrast, receipt of royalties by an exempt organization is permissible and is not unrelated business taxable income as long as the royalties do not come from a "controlled organization."⁴⁷ Extensive regulations apply to controlled organizations and income allocations between related and unrelated income.⁴⁸

➤➤➤**QUERY**→ It is difficult to understand why the IRS questions a reasonable royalty for published works not created during paid work time for a nonprofit organization, while reasonable compensation is unquestioned. The dollar amount might be the same for a percentage-based royalty and a fixed salary.

¶ 3024.7] **No cross-subsidization or other inurement.** Provision of an exempt organization's funds or facilities below cost to a commercial business is impermissible private inurement. In *Est of Hawaii v. Commissioner*, a religious publisher improperly served a substantial commercial purpose of a for-profit organization.⁵⁰

In an unpublished decision of the Federal Circuit, *Contemporary Mission v. United States*, the court affirmed the Claims Court and held that a Catholic religious order not affiliated with the Vatican was not entitled to exemption because of private inurement. The court found unexplained expenditures as well as commercial-like activities in publishing.

PERMISSIBLE ALTERNATIVES

¶ 3024.8] Two things that a nonprofit organization *may* do are (1) own or control a commercial publishing corporation (less than 50% ownership is preferable) or (2) enter into some types of joint ventures or partnerships to carry on activities that directly further its exempt purposes.

¶ 3024.9] **Feeder organizations.** An exempt organization may own a "feeder organization" or taxable subsidiary.⁵¹

A "feeder organization" is a commercial organization operated for the primary purpose of carrying on a trade or business for profit.⁵² Examples are a publishing corporation owned by a church⁵³ and a for-

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profit subsidiary formed by a nonprofit religious publisher to carry on all its unrelated business activities (commercial publishing).⁵⁴ A for-profit corporation may be owned by a religious organization to advertise and sell its publications.^{54A}

Dividends and passive interest, royalties, and real property rents that the feeder organization pays to the exempt organization are tax-free for the exempt organization as long as the feeder organization is not a "controlled organization."⁵⁵ And dividends and royalties are tax-free even if the taxable subsidiary is a controlled organization, if its sales are related publications, "as long as it can be shown that [the taxable subsidiary] is a separate taxable entity rather than merely your marketing arm or an instrumentality."^{55A} However, royalties and rents, along with interest and annuities, are taxable as UBI to the parent if the taxable subsidiary is a controlled organization (except to the extent the royalties derive from related activities).^{55B} A "controlled organization" generally is one owned more than 50% by the exempt organization.⁵⁶ The 1996 tax law changed the percentage to 50% from 80%.^{56.1}

An exempt organization in an arm's-length transaction may license such a commercial publisher to print and market its books, while retaining the copyright and receiving royalties back.⁵⁷

¶ 3024.10 **Some joint ventures or partnerships.** The IRS initially followed a per se rule forbidding the involvement of nonprofit organizations in partnerships or joint ventures,⁵⁸ but was rebuffed in the *Plumstead Theatre* case.⁵⁹ That case involved a nonprofit theater corporation that entered a limited partnership with a corporation and individuals to attract funds to produce a play at the Kennedy Center. The IRS revoked the theater's exemption for private inurement. The Tax Court and the Ninth Circuit rejected the per se rule and upheld the theater's exemption.

More recently, the IRS has employed strict scrutiny instead of a per se rule, as reflected in a number of general counsel memoranda on exempt organization involvement in partnerships and joint ventures.⁶⁰ One reason was the express reference to partnerships in the unrelated trade or business section, as well as in the private foundation regulations on taxable expenditures.⁶¹ Another reason was the necessity in the health care area for nonprofit hospitals to purchase expensive equipment and in the retirement housing field to construct costly buildings.⁶²

The current strict scrutiny test seems to involve whether the partnership or joint venture furthers the exempt purpose of the exempt organization, whether it adequately protects the interests of the exempt organization, and whether it sufficiently precludes private inurement.⁶³ Despite close scrutiny, the growth of nonprofit partnerships and ventures continues.⁶⁴

➤➤➤NOTE➔ Taxable subsidiaries (feeder organizations) that are operated as true separate entities on an arm's-length basis are preferable to joint ventures or partnerships in view of the IRS's present enforcement position that disfavors the latter.

CONSULT TABLE UNDER THE TAB CARD "CROSS REFERENCE TABLE" FOR OTHER ARTICLES AND NEW DEVELOPMENTS RELATED TO THIS SUBJECT

TABLE OF CITATIONS

Listed below are references to the preceding analysis.

Footnote

References

- (1) Better Business Bureau of Wash. DC Inc. v. United States, 326 U.S. 279, 283, 34 AFTR 5 (1945), (under former provision of Social Security Act).
- (2) Treas. Reg. §1.501(c)(3)-1(c)(1).
- (2A) Gross income derived from performing exempt functions is not UBI, and so is not taxed by UBIT. Reg. §1.513-1(d)(4)(i) E.g., Priv. Ltr. Rul. 9723046 (June 6, 1997) (revenue from licensing software on internet).
- (3) Rev.Rul. 67-4, 1967-1 C.B. 121, 122. See Gen. Couns. Mem. 38,845 (Jan. 21, 1982), PH Internal Memoranda of IRS ¶ 3s2(82); Treas. Reg. §1.501(c)(3)-1(d)(3)(i).
- (4) E.g., Presbyterian & Reformed Publishing Co. v. Commissioner, 79 T.C. 1070 (1982), *rev'd on other grounds*, 743 F.2d 148, 54 AFTR2d 84-5730 (3d Cir. 1984).
- (5) Scripture Press Foundation v. United States, 285 F.2d 800, 7 AFTR2d 489, (Ct. Cl. 1961), *cert. denied*, 368 U.S. 985 (1962).
- (6) *Id.* at 804-5.

Footnote

References

- (7) Fides Publishers Association v. United States, 263 F. Supp. 924, 935, 19 AFTR2d 845 (N.D. Ind. 1967) (substantial nonexempt purpose of "publication and sale of religious literature at a profit," even though "the publishing activities further the exempt purpose of educating the lay apostolate").
- (8) Christian Manner International, Inc. v. Commissioner, 71 T.C. 661 (1979) (primary activity was publication and sale of religious books at a profit).
- (9) In re Foundation for Divine Meditation, Inc. v. Commissioner, ¶ 65,077 PH Memo TC, *aff'd sub nom*, Parker v. Commissioner, 365 F.2d 792, 798, 18 AFTR2d 5575 (8th Cir. 1966), *cert. denied*, 385 U.S. 1026 (1967).
- (10) Rev.Rul. 60-351, 1960-2 C.B. 169.
- (10A) Tech. Adv. Mem. 9809062 (February 27, 1998).
- (11) Incorporated Trustees of the Gospel Worker Society v. United States Department of Treasury, 510 F. Supp. 374, 379, 47 AFTR2d 81-680 (D.D.C. 1981), *aff'd mem.*, 672 F.2d 894 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 944 (1982).

Footnote

References

- (12) *Contemporary Mission v. United States* (Fed. Cir. June 22, 1988) (unpublished).
- (13) *Elisian Guild, Inc. v. United States*, 412 F.2d 121, 125, 24 AFTR2d 69-5007 (1st Cir. 1969), *rev'g* 22 AFTR2d 5822 (D. Mass. 1968) (exempt purposes primary).
- (14) *Id.*
- (15) *Universal Church of Scientific Truth v. Commissioner*, 32 AFTR2d 73-6122 (N.D. Ala. 1973).
- (16) *Pulpit Resource v. Commissioner*, 70 T.C. 594, 610-611 (1978) (commercial aspects not sufficiently substantial or independent of religious purposes).
- (17) *Id.*
- (18) *Foundation of Human Understanding v. Commissioner*, 88 T.C. 1341 (1981).
- (19) *Forest Press, Inc. v. Commissioner*, 22 T.C. 265 (1954) (acq.).
- (20) *A.A. Allen Revivals, Inc. v. Commissioner*, ¶ 63,281 PH Memo TC.
- (21) *Id.* at p.1632.
- (22) *In re Alive Fellowship of Harmonious Living v. Commissioner*, ¶ 84,087 PH Memo TC.
- (23) *Peoples Translation Service/Newsfront International v. Commissioner*, 72 T.C. 42 (1979).
- (24) Rev. Rul. 68-306, 1968-1 C.B. 257.
- (25) Rev. Rul. 66-147, 1966-1 C.B. 137. *See also* Rev. Rul. 67-4, 1967-1 C.B. 121.
- (26) Rev. Rul. 68-307, 1968-1 C.B. 258 (nominal price); Rev. Rul. 68-306, 1968-1 C.B. 257 (below cost).
- (26.1) Priv. Ltr. Rul. 88-11-021 (Dec. 16, 1987), PH Private Letter Rulings ¶ 2247 (88).
- (26.2) E.g., Priv. Ltr. Rul. 9452047 (December 30, 1994); Priv. Ltr. Rul. 9439021 (September 30, 1994); Priv. Ltr. Rul. 9446030 (November 18, 1994).
- (27) *St. Germain Foundation v. Commissioner*, 26 T.C. 648, 658 (1956) (acq.); *see also* *In re Unity School of Christianity*, 4 BTA 61 (1926) (acq.).
- (28) Rev. Rul. 68-26, 1968-1 C.B. 272.
- (29) Rev. Rul. 73-164, 1973-1 C.B. 223.
- (30) *Presbyterian & Reformed Publishing Co. v. Commissioner*, 79 T.C. 1070 (1982), *rev'd on other grounds*, 743 F.2d 148, 54 AFTR2d 84-5730 (3d Cir. 1984).
- (31) *Id.* at 1082-86 (emphasis added).
- (32) *Presbyterian & Reformed Publishing Co. v. Commissioner*, 743 F.2d 148, 158, 54 AFTR2d 84-5730 (3d Cir. 1984).
- (33) For a discussion of this case *see* Comment, 23 Duq. L. Rev. 1245 (1985); Miller, *Rendering unto Caesar: Religious Publishers and the Public Benefit Rule*, 134 U.Pa. L. Rev. 433 (1986).
- (34) IRS, *Exempt Organizations Continuing Professional Education Technical Instruction Program for 1988*, at 75.
- (35) *In re Foundation for Divine Meditation, Inc. v. Commissioner*, ¶ 65,077 PH Memo TC, *aff'd sub. nom. Parker v. Commissioner*, 365 F.2d 792, 18 AFTR2d 5575 (8th Cir. 1966), *cert. denied*, 385 U.S. 1026 (1967).
- (36) IRS, *Exempt Organizations Continuing Professional Education Technical Instruction Program for 1988*, at 63.
- (37) *American Institute for Economic Research v. United States*, 302 F.2d 934, 9 AFTR2d 1426 (Cl. Ct. 1962), *cert. denied*, 372 U.S. 976 (1963). *See also* Rev. Rul. 73-105, 1973-1 C.B. 264 (involving unrelated business income tax); Rev. Rul. 69-430, 1969-2 C.B. 129 (same).
- (38) Rev. Rul. 74-615, 1974-2 C.B. 165.
- (39) Priv. Ltr. Rul. 88-24-018 (March 14, 1988), PH Private Letter Rulings ¶ 2273(88).
- (39A) Tech. Adv. Mem. 9527001 (July 7, 1995).
- (40) E.g., Rev. Rul. 77-4, 1977-1 C.B. 141 (soliciting advertisements and selling subscriptions in normal commercial manner).

Footnote

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- (41) *United States v. American College of Physicians*, 475 U.S. 834, 842-47, 106 S.Ct. 1591, 89 L.Ed.2d 841, 57 AFTR2d 86-1182 (1986).
- (42) Rev. Rul. 68-306, 1968-1 C.B. 257.
- (42A) Tech. Adv. Mem. 9809062 (February 27, 1998).
- (42B) Priv. Ltr. Rul. 9810030 (March 6, 1998); Priv. Ltr. Rul. 9724006 (June 13, 1997); Priv. Ltr. Rul. 9436001 (September 9, 1994); Priv. Ltr. Rul. 9302035 (October 23, 1992).
- (42C) Tech. Adv. Mem. 9636001 (September 6, 1996).
- (43) Rev. Rul. 66-104, 1966-1 C.B. 135.
- (44) *Id.* at 136.
- (45) *Presbyterian & Reformed Publishing Co. v. Commissioner*, 79 T.C. 1070, 1086 (1982) (one of many factors leading to revocation of exemption), *rev'd on other grounds*, 743 F.2d 148, 54 AFTR2d 84-5730 (3d Cir. 1984).
- (46) Rev. Rul. 76-297, 1976-2 C.B. 178.
- (46A) Priv. Ltr. Rul. 9346013.
- (47) I.R.C. §512(b)(2); Rev. Rul. 69-430, 1969-2 C.B. 129.
- (48) Treas. Reg. §1.512(b)-(1)(l).
- (49) [Reserved].
- (50) *Est of Hawaii v. Commissioner*, 71 T.C. 1067 (1979), *aff'd mem.*, 647 F.2d 170 (9th Cir. 1981).
- (51) *See* Treas. Reg. §1.502-1(b).
- (52) I.R.C. §502; Treas. Reg. §1.502-1(a).
- (53) Rev. Rul. 73-164, 1973-1 C.B. 223.
- (54) Priv. Ltr. Rul. 87-01-051 (Oct. 9, 1986), PH Private Letter Rulings ¶ 44(87).
- (54A) Priv. Ltr. Rul. 9346013.
- (55) I.R.C. §512(b)(1)-(3); Rev. Rul. 76-297, *supra* (royalties); Tech. Adv. Mem. 79-26-003 (Mar. 19, 1979), PH Private Letter Rulings ¶ 3307(79) (royalties); Priv. Ltr. Rul. 87-01-051, *supra* (interest and rents).
- (55A) Priv. Ltr. Rul. 9346013 (August 24, 1993).
- (55B) Priv. Ltr. Rul. 9705028 (January 31, 1997).
- (56) I.R.C. §368(c) and 512(b)(13).
- (56.1) I.R.C. §512(b)(13)(D)(i).
- (57) Rev. Rul. 69-430, *supra*; *see also* Rev. Rul. 76-297, *supra*.
- (58) Gen. Couns. Mem. 37,259 (1977); Gen. Couns. Mem. 36,293 (1973).
- (59) *Plumstead Theatre Society, Inc. v. Commissioner*, 74 T.C. 1324 (1980), *aff'd*, 675 F.2d 244, 49 AFTR2d 82-1390 (9th Cir. 1982).
- (60) Gen. Couns. Mem. 39,598 (Jan. 23, 1987), PH Internal Memoranda of IRS ¶ 18(87) (no per se rule but nonprofit subsidiary in venture lost exemption); Gen. Couns. Mem. 39,646 (June 30, 1987), PH Internal Memoranda of IRS ¶ 110(87) (subsidiary's improper acts in venture disqualified parent's exemption); Gen. Couns. Mem. 39,444 (Nov. 13, 1985), PH Memoranda of IRS ¶ 163(85); Gen. Couns. Mem. 39,285 (Sept. 20, 1984), PH Internal Memoranda of IRS ¶ 273(84); Gen. Couns. Mem. 39,005 (Dec. 17, 1982), PH Internal Memoranda of IRS 130(83); Gen. Couns. Mem. 37,596 (1976).
- (61) I.R.C. §512(c); Treas. Reg. §53.4943-3(c)(2).
- (62) Priv. Ltr. Ruls. 86-06-056 (Nov. 14, 1985), PH Private Letter Rulings ¶ 2939(86); 82-06-093 (Nov. 10, 1981), PH Private Letter Rulings ¶ 3828(82); 83-44-099 (Aug. 5, 1983, PH Private Letter Rulings ¶ 3815(83).
- (63) *See generally* Brier, "Joint Ventures Between For-Profit and Exempt Organizations," *Tax-Exempt Organizations*, Prentice Hall, ¶ 3068(1989); Faut, "Doing Well While Doing Good, and the Pitfalls of the Unrelated Business Income Tax," 63 *Taxes* 862, 875-76 (1985).
- (64) Note, *The Participation of Charities in Limited Partnerships*, 93 *Yale L.J.* 1355 (1984).
- (65) *See generally* Bird, "Taxable Subsidiaries of Exempt Organizations," *Practical Tax Lawyer* (1989).