200047049

INTERNAL REVENUE SERVICE
TE/GE TECHNICAL ADVICE MEMORANDUM

AUG 2 2000

Area Manager -

T:EO:RA:T3

UIL: 512.00-00
501.00-00
513.00-00

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification Number:

Years Involved:

Date of Conference:

Legend:

M =

Issues:

1. Whether income derived by M from the sale of land under the circumstances described constitutes unrelated business taxable income under section 512(a)(1) of the Internal Revenue Code.

2. Whether M's provision of municipal-type services in the manner described serves the private interests of M's members in contravention of section 501(c)(3) of the Code, and, if not, whether income derived by M from providing such services constitutes unrelated business taxable income under section 512(a)(1).

3. Whether income derived by M from the provision of a golf course, tennis courts and boating facilities constitutes unrelated business taxable income under section 512(a)(1) of the Code, and what factors are relevant in determining whether such activities further an exempt purpose under section 501(c)(3).

4. If any of the above-mentioned activities constitute unrelated trade or business under section 513 of the Code, whether such activities would adversely affect M's tax-exempt status under section 501(c)(3).

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Facts:

M was created by a legislative act and was formed "to promote the intellectual, social, physical, moral and religious welfare of the people." M is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3). M is physically located on hundreds of acres of land, a portion of which is surrounded by a fence and gates. M's grounds are organized spatially as a compact town. The grounds contain hundreds of buildings, including single family homes, multi-unit dwellings, rooming houses, boarding houses, condominiums and small hotels. The entire area is designated as a national historic district, and many of the buildings are designated as national historic structures.

M provides courses in education, arts, religion, and recreation, which occur mainly during a nine-week summer session. Thousands of people visit M each week during its nine-week summer season. M offers approximately 150 courses in music, art, ballet, modern dance and special studies, and also presents lectures, sermons, symphony and chamber music concerts, opera, ballet and modern dance. The lectures include topics in the following areas: international relations, economics, science, education, literature and religion. M also conducts religious programs consisting of Sunday and weekday services, sacred song services, choral and workshop classes, adult Bible classes, and religious film series. M offers the participants of these programs recreational facilities that include camps for children, three beaches, tennis courts, a golf course, docks for boats, a movie theater and restaurants. To carry out these efforts, M employs more than two hundred faculty members and serves more than 8,000 participants.

M's primary source of financial support comes from attendees of its nine-week summer season. Attendees may be divided into the following three categories: property owners, resident visitors (those who spend a night or more in accommodations on the grounds), and day visitors. Individuals interested in taking the courses offered during the nine-week summer season must first purchase a "gate ticket," which entitles them to enter M's grounds for a week, two weeks, or for the entire nine-week summer season, depending upon the type of gate ticket purchased. Property owners must also purchase gate tickets to access their private residences, even if they do not plan to attend any of the courses or programs. Gate ticket holders ("students") must then pay an additional fee for each course or program that they have chosen to attend. M offers scholarships to worthy individuals, including needy and disabled persons through funds provided by related, but separate, organizations.

1. Income Derived from Sale of Land

Over a three year period M purchased five parcels of real estate constituting approximately 7.58 acres of land (hereinafter, the "Project"). M acquired the Project

with the goal of expanding its residential housing and green space. M integrated the Project within its grounds by extending its perimeter fence to encompass it. M subdivided the 7.58 acres into 31 lots and then improved the lots by installing utility lines, pedestrian walkways, a pond and a large park. The subdivision of and improvements to the 7.58 acres of land permitted the purchasers of the lots to construct individual houses on the lots. M provides or will provide all services typically associated with a municipality, such as police protection, garbage collection, road maintenance and snow plowing. The ultimate goal of the Project is to attract permanent residents to the properties as opposed to transients or those paying rent. With their lot purchases, new property owners became members of M with the authority to elect four of M's trustees. M's rules and regulations provide that, "during the summer season, the members of the general public, including property owners, are excluded from [M's] grounds, except by admission ticket or written pass."

M hopes that the Project would increase attendance during its nine-week summer season and maintains that it was essential to increase its capacity for housing within its grounds. Hence, it would be advantageous for M to acquire the 7.58 acres of land to provide added flexibility for expansion, parking and leasing. In discussing its financial resources, M summarized that "a considerable fund-raising effort, efficient use of operating income and the capital budget, planned growth in attendance and funds from the land assets will combine to underwrite the goals of the decade." M writes: "the Board of Trustees must give full affirmation to the general goals and blueprint for the future of [M] in this document. That affirmation carries with it the recognition of the need to pursue the marketing, land development and fund-raising objectives that can provide increased resources." The administrative file contains a letter from an entity that marketed and helped develop the Project. The letter discusses a meeting which M's officers had with that entity concerning the development of the Project. The letter states that the Project could be important for M, as it will provide "great opportunities to create a beautiful, well-planned community that can be a significant asset for [M], both aesthetically and financially."

M decided to sell the lots by sealed bid. M placed an invitation to submit a bid in its daily newspaper as well as newspapers of surrounding metropolitan areas and entered into an open listing agreement with four real estate agencies. M intended to sell each lot to the highest bidder. In addition, the price of each lot was set at a minimum-offering price determined by two independent appraisers. M required purchasers to agree to acquire the lots subject to all existing and future bylaws, ordinances, rules and regulations of M, including but not limited to, the Architectural and Land Use Regulations ("Architectural Regulations"). The Architectural Regulations state that its objectives are to provide the following:

> for the appropriate and best use of the land; for preservation, protection and conservation of historic buildings, places of historic

interest and the natural resources of land, water, and air; for the safe movement of traffic as well as the movement of people and goods; for the use and occupancy of buildings; for the healthful and convenient distribution of population; for promotion of aesthetic amenities of beauty and visual interest; and for the recreation, health and comfort of all persons on the grounds of [M].

Furthermore, the sales were subject to an indenture that would prevent a subsequent sale or lease of the lots without the consent of M. All sales are subject to an option agreement that allows M to repurchase any lot sold at a percentage of the original sales price in the event a purchaser does not, in good faith, begin the construction of an approved dwelling on an unimproved lot within two years from the date of purchase, or if the purchaser fails to diligently pursue construction to completion. The indenture also contained the following clause: "the giving of this deed shall in no way and to no extent confer upon the grantee the right to enter upon the grounds of [M] or to pass through its gates, except upon payment of the fees and upon the conditions and subject to all of the rules and regulations prescribed by [M]."

M's promotional brochure for the Project indicates that the Project consists of 27 building lots and four existing homes that are offered for sale. The brochure provides "your opportunity to own the home you've dreamed about in [M's] very special and newest neighborhood! Now is the time to think seriously about making a [M] vacation a way of life! . . . Within the gates of [M] and situated in a convenient yet quiet corner of the grounds . . ." The brochure then advises the reader to contact any of six listed Realtors to obtain further information or the Official Offering Packet.

2. Income Derived from Provision of Municipal-Type Services

As described above, many housing units within the grounds of M are owned by or leased to private individuals, who are considered members of M and subject to the rules and regulations thereof. The members are not entitled to enter the grounds of M, and hence not able to access their housing units, during the nine-week summer season unless they purchase gate tickets. The members must also pay the appropriate fees to attend any of the courses or programs.

The members are obligated to maintain the interiors and exteriors of their housing units. None of M's activities are directed to the exterior maintenance of the private residences. However, M does provide water and sewer, garbage and solid waste pick-up services to the members. M provides and maintains the common areas and facilities that include roadways, parklands, sidewalks, streetlights, waterfront, public library and other types of commonly used facilities. The members are billed for the aforementioned municipal-type services annually. M has indicated that the revenue derived therefrom only covers approximately 60 percent of the costs for providing such

services.

3. Income Derived from Provision of Golf Course, Tennis Courts, and Boating Facilities

M maintains and operates a golf course, which may be used by its students. Those who are not students may also use the golf course. Both students and non-students are required to pay user fees, the amount of which is higher for non-students. M classified income received from students as non-taxable exempt purpose income, and from non-students as taxable income.

M also maintains tennis courts and boating facilities for use by students. The boating facilities allow students and their guests to enjoy the beauty of the lake. M represents that the tennis courts and boating facilities are available only for use by students.

Applicable Law:

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax for organizations organized and operated exclusively for charitable, educational and religious purposes, provided that no part of the organization's net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests

Section 511(a)(1) 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 provides that the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade

or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with modifications provided in section 512(b).

Section 512(b)(5) of the Code provides, in pertinent part, that there shall be excluded from the computation of unrelated business taxable income all gains and losses from the sale, exchange, or other disposition of property other than–

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or
(B) property held primarily for sale to customers in the ordinary course of the trade or business.

Section 513(a) of the Code provides, in pertinent part, that the term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, 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 its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(c)(3).

Section 513(c) of the Code provides, in part, that the term "trade or business" includes any activity which is carried on for the production of income from the sale of goods or the performance of services.

Section 1.513-1(a) of the regulations provides, in pertinent part, that unless one of the specific exceptions of section 512 or 513 is applicable, gross income of an exempt organization subject to the tax imposed by section 511 is includible in the computation of unrelated business taxable income 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 function.

Section 1.513-1(b) of the regulations provides, in pertinent part, that any activity of a section 511 organization which is carried on for the production of income and which otherwise possesses the characteristics required to constitute "trade or business" within the meaning of section 162 – and which, in addition, is not substantially related to the performance of exempt functions – presents sufficient likelihood of unfair competition to be within the policy of the tax. Accordingly, for purposes of section 513 the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services.

Section 1.513-1(c)(1) of the regulations provides, in pertinent part, that in determining whether trade or business from which a particular amount of gross income derives is "regularly carried on" within the meaning of section 512, regard must be had to the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued. This requirement must be applied in light of the purpose of the unrelated business income tax to place exempt organization business activities upon the same tax basis as the nonexempt business endeavors with which they compete. Hence, for example, specific business activities of an exempt organization will ordinarily be deemed to be "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 derives from "unrelated trade or business," within the meaning of section 513(a), 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 which 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, in pertinent part, that a trade or business is "related" to exempt purposes 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). Further, it is "substantially related," for purposes of section 513, only if the causal relationship is a substantial one. For this relationship to exist, 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 exempt purposes. Whether such activities contribute importantly to such purposes depends, in each case, upon the facts and circumstances involved.

Section 1.513-1(d)(3) of the regulations provides, in pertinent part, that in determining whether activities contribute importantly to the accomplishment of an exempt purpose, the size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function which they purport to serve.

Section 1.513-1(d)(4)(iii) of the regulations states that in certain cases, an asset or facility necessary to the conduct of exempt functions may also be employed in a commercial endeavor. In such cases, the mere fact of the use of the asset or facility in exempt functions does not, by itself, make the income from the commercial endeavor gross income from related trade or business. The test, instead, is whether the activities productive of the income in question contribute importantly to the accomplishment of exempt purposes

Rev. Rul. 55-449, 1955-2 C.B. 599, states that the construction and sale of 80 houses by a foundation described in section 501(c)(3) of the Code over a period of 18 months for the sole purpose of raising funds for the support of a church constitutes unrelated trade or business within the meaning of section 513, notwithstanding the fact that the organization did not plan to engage in further similar activities.

Rev. Rul. 78-98, 1978-1 C.B. 167, states that income derived by a Code section 501(3) school from the use of its ski facilities by students is not income from an unrelated trade or business. However, income that the school receives from the general public is income from an unrelated trade or business.

Louisiana Credit Union League v. United States, 693 F.2d 525 (5th Cir. 1982) presents an extensive definition of the concept of unrelated trade or business. Although the finding of a profit motive is a key element, section 513(c) of the Code clearly states that any activity carried on for the production of income constitutes a trade or business.

In Brown v. Commissioner, 143 F.2d 468 (5th Cir. 1944), a taxpayer owned 500 acres of unimproved land used for grazing purposes. The taxpayer subdivided the land into lots and made improvements such as streets, storm sewers, and gas and electric lines. Each year approximately 20 to 30 lots were sold. The court held that the taxpayer was holding lots for sale to customers in the regular course of business.

In Junaluska Assembly Housing, Inc. v. Commissioner, 86 T.C. 1114 (1986), an organization ("Housing") applied for recognition of exemption as an organization described in section 501(c)(3) of the Code. Housing was created and controlled by Lake Junaluska Assembly, Inc. ("Assembly"), an auxiliary of the United Methodist Church and a church itself. Assembly created Housing to construct, sell, or lease housing on 7.42 acres of land that it transferred to Housing. Assembly operated and maintained grounds, including the land that it transferred to Housing that the Church used as a gathering place of missionaries on leave, retired clergy, active laymen and pastors for religious services, religious seminars and religious training. Housing planned to construct 12 buildings containing 56 condominium units. Housing maintained that it would neither advertise, nor use real estate agents to attract buyers. Instead, Housing maintained that it would make the units available only to individuals involved in or supportive of Assembly's activities.

The Tax Court held that Housing was entitled to recognition of exemption under section 501(c)(3) of the Code because the sale of housing would serve Assembly's exempt purpose. Significantly, the court found that the current residents of Assembly's grounds served the Church by conducting religious activities. The court also found that the housing units would be sold to buyers actively involved in Assembly's activities.

The court, however, warned that it would reach a different holding if it found that the sales benefited individuals who maintained minimal involvement in Assembly's activities. Specifically, the court stated that "[i]f petitioner's housing units are utilized substantially for vacation or recreational purposes or otherwise by individuals who do not have active roles in the planning, organization, operation of or participation in the Assembly's programs and religious activities, then a substantial nonexempt purpose would be served . . .."

Analysis:

As the above sections of the Code and regulations indicate, an organization described in section 501(c)(3) is subject to the unrelated business income tax if three requirements are met. First, the activity must constitute a trade or business. The meaning of the term "trade or business," as explained in the regulations above, has the same meaning as the term has under section 162. The term "trade or business" generally covers the sale of goods or services provided to produce income. See section 1.513-1(b) of the regulations.

Second, the trade or business must be regularly carried on by the organization. "Regularly carried on" is determined by the frequency and continuity with which the activities are conducted and the manner in which they are pursued. See section 1.513-1(c)(1) of the regulations.

Third, the trade or business must not be substantially related to the organization's exempt purpose. A trade or business relates to the exempt purpose only if the exercise of the trade or business activities has a causal relationship to the achievement of the exempt purpose. A causal relationship exists only if the trade or business contributes importantly to the achievement of the exempt purpose. Section 1.513-1(d)(1) of the regulations. To determine whether the trade or business contributes importantly to the advancement of an exempt purpose, "the size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function which they purport to serve." See section 1.513-1(d)(3). This determination is made based on all the facts and circumstances of each particular case.

1. Income Derived from Sale of Land

First, M's subdivision, development and sale of the lots to third parties clearly constitute a trade or business under section 513(c) of the Code, and M does not dispute this conclusion. See Rev. Rul. 55-449 and Brown v. Commissioner, supra. Thus, the "trade or business" requirement is satisfied. Second, this business activity was done regularly and continuously and in a manner that is similar to a for-profit residential land development company. Specifically, the Foundation developed the lots of land to allow marketing thereof by real estate companies. Hence, the "regularly

carried on" requirement is satisfied.

The next inquiry is whether the acquisition and development of the land, and subsequent division into lots and sales thereof are substantially related to M's exempt purpose. M asserts that the subdivision, improvement and sale of the lots to third parties are substantially related to its exempt purposes by bringing people within its grounds as a place of meeting. M cites Junaluska Assembly Housing, Inc. v. Commissioner, supra, in support of its position. Like Junaluska, M argues that the sales of the lots and houses enable it to bring in more people to participate in its educational programs. According to M, no person would attempt or even consider purchasing a lot unless his or her principal intent was to become a member of M and a participant in its activities. M maintains that the high prices of the lots, compared with those just outside its gates, and the limitations and restrictions placed on the construction and utilization of the property, show that buyers are willing to sacrifice to be part of the M community and participate in its activities.

We conclude, however, that the facts and circumstances in this case are distinguishable from the holding in Junaluska. The decision therein was principally based on the court's finding that the condominiums would be sold to individuals actively involved in Junaluska's activities. Key to the holding was the questionnaire Junaluska used to screen prospective purchasers. There was no indication in the court's opinion that the condominiums were marketed in a manner designed to maximize the sales price. Furthermore, the court emphasized that it would reach an opposite holding if the condos were used as vacation properties. In this case, M's development and marketing of the lots and houses were designed to attract the highest bid. Most importantly, M acquired and sold the lots of land, primarily, to raise funds. By its own words, M states that, "funds from the land assets will combine to underwrite the goals of the decade."

We acknowledge that there is some evidence in the administrative file to show that one of the purposes of the sales of the lots in question was to increase M's potential clientele. However, the relationship between the sales of the lots for single family homes and M's goal of increasing attendance is somewhat tenuous. While the sales may slightly increase M's attendance base, no substantial causal relationship exists between the land sales and provision of, or even the participation in, M's educational programs. M did not select buyers based upon their anticipated involvement in its activities. Rather, the sole criterion appears to be the amount of the buyer's offer. The fact that the eventual owners would have to buy gate passes during the summer season to enter their properties is inconsequential. Many homeowners' associations require similar fees.

Furthermore, the court in Junaluska indicated that it would reach a contrary conclusion if the condominiums were sold to individuals that merely contributed financial support to Junaluska. See Junaluska at 1123, note 5. In this case, the

development and sales of the lots were marketed by M and its agents in a manner designed to maximize sales price. This is different from a situation where a university acquires and develops land because it lacks sufficient housing for its students. Any benefit to M's educational mission through the development and sales of the lots is ancillary to the principal purpose of the sales, raising funds. Offering purchasers to partake incidentally in M's educational and cultural programs does not convert the business of selling land into an educational endeavor. Consequently, M has failed to show that the development and sales of the lots have a substantial connection to its exempt purpose.

Since the development and sales of the lots of land constitute a trade or business, were done in a regularly carried on manner and are not substantially related to M's exempt purpose, the income therefrom is unrelated business taxable income under section 512(a)(1) of the Code. Also, the facts and circumstances described above clearly indicate that the 7.58 acres of land were acquired and improved upon for the primary purpose of sale to customers. The frequency, continuity and size of sales, the extent of improvements made by M, and the proximity of purchase and sale support a conclusion that the property was held primarily for sale to customers in the ordinary course of the trade or business. Thus, the modification for gains from the sale of property set forth in section 512(b)(5) and section 1.512(b)-1(d)(1) of the regulations is not applicable here.

2. Income derived from Provision of Municipal–Type Services

As described above, M provides water and sewer, garbage and solid waste collection services to its own buildings and facilities, and the private residences of the people living within its grounds. M also provides and maintains roadways, parklands, sidewalks, streetlights, waterfront, public library and other municipal–type facilities that are commonly used by the private residents and the students of M. M assessed fees on each private residence for provision of these services and maintenance of the commonly used facilities.

We believe the provision of water, sewer, garbage and solid waste collection services to private residences is not substantially related to M's exempt purposes. The benefit to M's educational and cultural mission through the provision of the aforementioned municipal–type services is ancillary to the principal purpose of providing these conveniences to the private residences. Providing these conveniences does not "contribute importantly" to the educational and cultural activities of M. See section 1.513-1(d)(3) of the regulations. We also note that these services, without question, are regularly provided to the private residences. Nevertheless, the information in the file does not indicate that M entered into this activity with the dominant hope and intent of earning a profit. See Louisiana Credit Union League v. United States, supra. All of the available information indicates that M's provision of

municipal-type services does not possess the characteristics of a trade or business under section 513(c) of the Code. Because of the absence of a profit motive, any income derived by M from providing these services does not constitute unrelated business taxable income under section 512(a)(1).

We believe that the provision and maintenance of the commonly used facilities are substantially related to M's exempt purposes. These public or commonly used facilities are provided for the benefit of and used by the students of M. Any benefit derived by the private residents from the use of these facilities (or from the services described above) is merely incidental and does not result in private interests being served. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. We also note that the entire grounds of M have been designated as a national historic district, and many buildings are designated as national historic structures. The provision and maintenance of these commonly used facilities also serve the exempt purpose of preserving the historic district status of M. See section 1.513-1(d)(4)(iii). In this instance, any income derived from providing and maintaining the commonly used facilities does not constitute unrelated business taxable income under section 512(a)(1) of the Code.

3. Income Derived from Provision of Golf Course, Tennis Courts, and Boating Facilities

M owns and maintains a golf course, tennis courts, and boating facilities. Gate ticket holders, the students of M, may use any of these facilities provided they pay the appropriate user fees. Non-students may use the golf course but not the tennis courts or boating facilities; they must also pay the appropriate user fees.

We believe that the user fees M derived from its students for the use of these facilities do not constitute unrelated business taxable income under section 512(a)(1). As described above, M offers a wide variety of educational, art, and religious programs to its students, the purpose of which is to develop a well-rounded mind. M also offers programs or activities whose purpose is to develop and improve the students' health and body and provide recreation for the students. Like the organization described in Rev. Rul. 78-98, supra, which provided ski facilities for its students, M's provision of recreational facilities is substantially related to its exempt purposes. Under these circumstances, such activities are part of the overall educational and developmental experiences offered by M. Student use of the golf course, tennis courts, and boating facilities serve this objective and contribute importantly to the exempt purposes of M.

However, the use of the golf course by non-students, i.e. those who are not gate ticket holders, does not serve this objective. Again, like the organization described in Rev. Rul. 78-98, supra, M's providing of its golf course to individuals who are not students of M does not further M's overall educational purposes. The use of M's golf

course by members of the public is a regularly carried on trade or business activity that is not appreciably different from private, for-profit golf courses. Consequently, the user fees derived by M from non-students constitute unrelated business taxable income under section 512(a)(1) of the Code.

4. Exemption under Section 501(c)(3)

As described above, M offers an extensive summer program of education, arts, religion, and recreation. The unrelated business activities described above comprise only a small part, both qualitatively and quantitatively, of the overall activities of M. By any measure, during the years under examination M was "operated exclusively" for exempt purposes as required by section 1.501(c)(3)-1(c)(1) of the regulations and was not operated for a substantial nonexempt purpose. As the "operational test" together with the other requirements under section 501(c)(3) of the Code was met, M's exemption under section 501(c)(3) was not adversely affected by the aforementioned activities.

Conclusion:

1. Income derived by M from the sale of land under the circumstances described constitutes unrelated business taxable income under section 512 (a)(1) of the Code.

2. M's provision of municipal-type services in the manner described does not serve the private interests of M's members, and income derived by M from providing such services does not constitute unrelated business taxable income under section 512(a)(1) of the Code

3. Income derived by M from the provision of golf course, tennis courts and boating facilities to M's students does not constitute unrelated business taxable income under section 512(a)(1) of the Code; income derived by M from the use of the golf course by non-students does constitute unrelated business taxable income under section 512(a)(1).

4. Although some of the above-mentioned activities constitute unrelated trade or business under section 513 of the Code, M's exemption under section 501(c)(3) is not adversely affected.

A copy of the technical advice memorandum is to be given to the organization. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

- END -