Suffolk County Patrolmen's Benevolent Association, Inc. v. Commissioner, 77 T. C. 1314 (1981)

Intermittent fundraising activities of exempt organizations, such as annual vaudeville shows, are not considered "regularly carried on" and thus not subject to unrelated business income tax.

Summary

The Suffolk County Patrolmen's Benevolent Association, an exempt organization, sponsored annual vaudeville shows to raise funds. The IRS argued that the income from these shows and related program guides should be taxed as unrelated business income. The Tax Court held that because the activities were intermittent, occurring only annually, they did not constitute a "regularly carried on" trade or business under IRC sections 511-513. Therefore, the income was not subject to tax. This ruling emphasizes the distinction between regular business activities and occasional fundraising events, impacting how exempt organizations can structure their fundraising efforts.

Facts

The Suffolk County Patrolmen's Benevolent Association, Inc. (PBA), an exempt organization under IRC sec. 501(c)(4), conducted annual vaudeville shows from 1972 to 1977 to raise funds. The shows were held over one weekend each year, with performances in a local high school auditorium. The PBA contracted with Roy Radin Theatrical Productions and later Advance Promotions, Inc. , to produce the shows and solicit advertising for program guides distributed at the events. The PBA received a percentage of the gross receipts from ticket sales and advertising. The IRS asserted that these activities constituted an unrelated trade or business regularly carried on, subject to tax under IRC sections 511-513.

Procedural History

The IRS determined deficiencies in the PBA's federal income taxes for the years 1974, 1975, and 1976, asserting that the income from the vaudeville shows and program guides was unrelated business taxable income. The PBA petitioned the Tax Court to challenge these determinations. The court consolidated the cases and heard arguments on whether the PBA's fundraising activities were regularly carried on.

Issue(s)

1. Whether the PBA's annual vaudeville shows and accompanying program guides constituted an unrelated trade or business that was "regularly carried on," making the income subject to tax under IRC sections 511-513.

Holding

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1. No, because the annual vaudeville shows and program guides were intermittent activities that did not meet the “regularly carried on” requirement under IRC sections 511-513.

Court’s Reasoning

The court applied the regulations under IRC sec. 513, which define “regularly carried on” based on the frequency, continuity, and manner of the activities. The court found that the vaudeville shows were similar to examples in the regulations of intermittent activities not considered “regularly carried on,” such as an annual dance or a sandwich stand at a fair. The court emphasized that even though the shows were annually recurrent and professionally produced, their duration was limited to one weekend per year, and preparation lasted only 8-16 weeks. The court distinguished this from the continuous operation typical of commercial businesses. The court also considered the legislative history of IRC sections 511-513, which aimed to prevent unfair competition but did not intend to tax occasional fundraising events. The court rejected the IRS’s arguments regarding the professional nature of the production and advertising solicitation, stating that these factors did not change the intermittent nature of the events. The court found support in Rev. Rul. 75-201, which held that an annual concert book distributed at a fundraising event was not taxable as unrelated business income.

Practical Implications

This decision allows exempt organizations to conduct annual fundraising events without the income being subject to unrelated business income tax, provided the events are intermittent and not conducted in a manner similar to commercial businesses. Organizations should structure their fundraising to occur infrequently and avoid continuous operations resembling for-profit businesses. The ruling clarifies that the use of professional services for event production and advertising solicitation does not necessarily make an activity “regularly carried on. ” Legal practitioners advising exempt organizations should consider this when planning fundraising strategies to minimize tax exposure. Subsequent cases have followed this ruling, reinforcing the principle that occasional fundraising events are not taxable as unrelated business income.

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