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tance to grant relief to all persons injured as a result of such a violation.[150]

Furthermore, the court declined to restrict the use of the two-tier tender offer as a corporate takeover device, holding that a two-tier offer by itself does not constitute manipulation under Section 14(e) of the Williams Act.[151] Finally, the Fourth Circuit restricted the availability of injunctive relief to private plaintiffs under the RICO statute.[152] The court expressed a general unwillingness to apply RICO's statutory reach to areas outside of organized crime.[153] The *Dan River* decision, therefore, exemplifies the Fourth Circuit's reluctance to issue preliminary injunctive relief to a target company to delay a hostile tender offeror.

BRUCE MICHAEL HATRAK

## XIII. TAX

### *Group Insurance Rebates Are Taxable to IRC Section 501(c)(6) Tax-Exempt Business Leagues*

Section 501(c) of the Internal Revenue Code of 1954 (IRC) provides an exemption[1] from federal income taxes[2] to certain nonprofit organizations.[3] Among the nonprofit organizations that the IRC exempts from federal in-

150. *See supra* text accompanying notes 31-32 (Fourth Circuit's rule limiting standing to purchasers or sellers of securities under § 10(b) and rule 10b-5).

151. *See supra* text accompanying notes 44-54 (Fourth Circuit's discussion of two-tier tender offer and conclusion that device is not manipulative in itself).

152. *See supra* text accompanying notes 68-73 (Fourth Circuit's examination of whether RICO grants private parties a right of action for injunctive relief).

153. *See supra* text accompanying notes 76-80 (*Dan River* court's contention that RICO applies only to members of organized crime).

1. *See* I.R.C. §§ 101-31 (West 1983). The Internal Revenue Code (IRC) excludes from gross income various types of revenues. *See id.* § 101(a)(1) (beneficiary's receipt of death benefits from life insurance contract not taxable to beneficiary); *id.* § 105(b) (employer's reimbursement to employee for expenses employee incurred for medical treatment not taxable to employee); *id.* § 117(a)(1)(A) (scholarship not taxable to recipient); *id.* § 123(a) (beneficiary's receipt of reimbursement for living expenses under insurance contract because of destruction of residence not taxable to beneficiary).

2. *See* U.S. CONST. amend. XVI. The sixteenth amendment to the United States Constitution grants Congress the power to tax income. *Id.* The IRC assesses a tax on all taxable income an individual or corporation earns during the taxable year. *See* I.R.C. § 63(a) & (b) (West 1983).

3. *See* I.R.C. § 501(c) (West 1983). Examples of certain nonprofit organizations that IRC § 501(c) exempts from taxation include charitable organizations, educational institutions, scientific organizations, social welfare organizations, religious organizations, consumer cooperatives, labor unions, and trade associations. *See* Bittker & Rahdert, *The Exemption of Nonprofit Organiza-*

come taxes are business leagues.[4] Extending tax exemptions to business leagues promotes the public welfare because business leagues improve the business conditions of an industry by disseminating information and monitoring legislation.[5] Although the Internal Revenue Service (Service) will not tax income that is incidental to a business league's tax-exempt purposes,[6] the Service may tax any income that a business league produces in seeking to generate a profit.[7] The Service relies on the distinction between incidental income and

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*tions from Federal Income Taxation*, 85 YALE L.J. 299, 305-06 (1976). The two concepts of tax exemption and nonprofit associations are not identical. *See* 4 B. BITTKER, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS ¶ 100.1.1 (1981). The absence of a profit-making motive does not entitle an organization automatically to tax exemption. *See* Treas. Reg. § 1.501(a)-1(a)(2) (1958) (no automatic exemption merely because organization does not operate for profit). Certain nonprofit organizations are not exempt from taxation. *See* Bob Jones Univ. v. United States, 51 U.S.L.W. 4593 (1983) (Internal Revenue Service (Service) denied tax exemption for religious university that prohibited interracial dating and marriage); The Sense of Self Soc'y v. United States, 44 A.F.T.R.2d 5121, 5122 (D.D.C. 1979) (Service denied tax exemption for society for refusing to respond to requests for information).

4. *See* I.R.C. § 501(c)(6) (West 1983). A business league is an association of persons possessing a common business interest. Treas. Reg. § 1.501(c)(6)-1 (1958). A business league's purpose is to promote a group's common business interest by improving the conditions of one or more lines of business. *Id.; see* Crooks v. Kansas City Hay Dealers' Ass'n, 37 F.2d 83, 84-85 (8th Cir. 1929) (defining business league). *See generally* Note, *Creation of Tax-Exempt Business Leagues: For the Section 501(c)(6) "First Timer,"* 16 WASHBURN L.J. 628 (1977) [hereinafter cited as *First Timer*] (business league is organization composed of members of specific industry created to improve business conditions in that industry).

5. *See* 6 J. MERTENS, LAW OF FEDERAL INCOME TAX § 34.20 (1983 Cum. Supp.) (listing various examples and functions of business leagues); *see also* Moore, *Current Problems of Exempt Organizations*, 24 TAX. L. REV. 469, 478 (1969) (business leagues promote public good by improving business conditions in line of business). Federal law has encouraged the formation of business leagues since the inception of federal income tax in 1913. *See First Timer, supra* note 4, at 628; *see also* Revenue Act of 1913, Ch. 16, 38 Stat. 114, 172 (1913) (providing that income tax should not apply to business leagues). The Service has re-enacted the original tax-exemption statute numerous times. *See First Timer, supra* note 4, at 629 n.7 (citing re-enactments).

6. *See* United States v. Omaha Live Stock Traders Exch., 366 F.2d 749, 752-53 (8th Cir. 1966) (business league retained tax-exempt status because services that benefitted league's members as individuals were incidental to league's purpose of improving livestock trading business); Orange County Builders Ass'n v. United States, 16 A.F.T.R.2d 5570, 5572 (S.D. Cal. 1965) (business league's sponsoring of annual home trade show did not produce income taxable to league because of show's relation to league's purpose of promoting construction industry); *see also* Hi-Plains Hosp. v. United States, 670 F.2d 528, 532-33 (5th Cir. 1982) (hospital's pharmaceutical sales' revenue not subject to federal income tax because sales contributed importantly to attracting doctors to hospital); Hope School v. Untied States, 612 F.2d 298, 301-03 (7th Cir. 1980)(school's sale of greeting cards generated income not taxable to school because cards were low-cost articles incidental to solicitation of charitable contributions); Anateus Lineal 1948, Inc. v. United States, 366 F. Supp. 118, 126-27 (W.D. Ark. 1973) (money that tax-exempt organization received from pathology services necessary to train medical technicians was not income taxable to corporate taxpayer); American College of Physicians v. United States, 530 F.2d 930, 933 (Ct. Cl. 1976) (educational journal's advertising profits were not income taxable to organization because Congress did not intend to treat customary activities of tax-exempt organization on par with activities of independently run advertising agency).

7. I.R.C. § 513(c) (West 1983); *see* Louisiana Credit Union League v. United States, 693 F.2d 525, 536-37 (5th Cir. 1982) (credit union business league's involvement in insurance endorsement and promotion essentially was fund-raising activity producing unrelated income taxable to

income produced by a profit motive to decide whether income is taxable,[8] or whether the receipt of certain types of income will render the business league ineligible for tax-exempt status.[9] In *Carolinas Farm & Power Equipment Dealer*

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league); Professional Ins. Agents of Mich. v. Commissioner, 78 T.C. 246, 268 (1982) (insurance business league's group insurance promotional and administrative services fees were unrelated income taxable to league); *see also* Carle Found. v. United States, 611 F.2d 1192, 1198 (7th Cir. 1979) (hospital's pharmaceutical sales to clinic produced unrelated income taxable to foundation); Cooper Tire & Rubber Co. Employees' Retirement Fund v. Commissioner, 306 F.2d 20, 21 (6th Cir. 1962) (tax-exempt trust's machine rental service created unrelated income taxable to trust); Iowa State Univ. of Science and Technology v. United States, 500 F.2d 508, 516 (Ct. Cl. 1974) (university-owned television station's advertising activities generated unrelated income taxable to university); Smith-Dodd Businessman's Ass'n, Inc. v. Commissioner, 65 T.C. 620, 625 (1975) (corporation's weekly bingo games produced unrelated income taxable to corporation).

8. *See* Treas. Reg. § 1.512(a)-1(a) (1967). In 1950, Congress enacted the unrelated business income tax provisions. *See* Revenue Act of 1950, Pub. L. No. 814, § 301, 64 Stat. 906, 947 (1950). Prior to 1950, unrelated income a nonprofit organization received, regardless of the source of the income, was not taxable to the organization if the organization used the unrelated income to further the organization's tax-exempt purposes. *See* Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578, 581 (1924) (test for taxability is destination and not source of income). The destination-of-income test that the Supreme Court established in *Trinidad v. Sagrada Orden de Predicadores* led to the development of feeder corporations, which are corporations that operate with the sole purpose of conducting business to raise tax-exempt profits for nonprofit organizations. *See* C.F. Mueller Co. v. Commissioner, 190 F.2d 120, 122-23 (3d Cir. 1951) (profits corporation received from macaroni business were not taxable to corporation because corporation used profits solely to benefit nonprofit law school); Roche's Beach, Inc. v. Commissioner, 96 F.2d 776, 778-79 (2d Cir. 1938) (bathing beach business produced profits not taxable to corporation because corporation used profits to create charitable foundation); *see also* I.R.C. § 502(a) (West 1983) (organization with primary purpose of producing income for tax-exempt organization is not exempt from income tax). Section 512 of the IRC allows the Service to tax the income of a trade or business that a nonprofit organization carries on regularly, provided the income-producing activity is not substantially related to the organization's tax-exempt purposes. *Id.* § 512(a)(1); *see* Kaplan, *Intercollegiate Athletics and the Unrelated Business Income Tax*, 80 COLUM. L. REV. 1430, 1433 (1980) (formerly, income organization derived from whatever source was either entirely taxable or entirely tax-exempt). Prior to the adoption of the IRC § 512 unrelated business income tax in 1950, courts either had to deny a nonprofit organization its § 501(c) tax exemption or permit the organization to continue the unrelated activity tax free. *Id.*

9. *See* National Muffler Dealers Ass'n v. United States, 440 U.S. 472, 483 (1979) (business league consisting of muffler dealers produced income taxable to league because league limited membership to Midas franchises and therefore league did not benefit muffler industry in general); Men's and Boys' Apparel Club of Fla. v. United States, 14 A.F.T.R.2d 5888, 5888-89 (Ct. Cl. 1964) (profits business league derived from fashion shows were taxable to league because league operated shows to benefit individual league members); Evanston-North Shore Bd. of Realtors v. United States, 320 F.2d 375, 378 (Ct. Cl. 1963) (real estate business league's multiple listing service benefitted individual members and therefore profits to league were not tax-exempt), *cert. denied*, 376 U.S. 931 (1964); Associated Master Barbers & Beauticians v. Commissioner, 69 T.C. 53, 65 (1977) (business league not tax-exempt because league operated insurance business usually carried on for profit). *But see* Pepsi-Cola Bottlers' Ass'n v. United States, 369 F.2d 250, 252 (7th Cir. 1966) (business league benefitting only one bottling company constituted line of business and therefore produced tax-exempt income for league); *but cf.* Rev. Rul. 68-182, 1968-1 C.B. 263, 264 (Service has refused to follow *Pepsi Cola Bottlers' Ass'n v. United States* by finding that organizations promoting single brand or product within line of business do not qualify for tax exemption).

*Association v. United States*,[10] the Fourth Circuit considered whether income a business league received constituted unrelated business taxable income.[11]

Carolinas Farm & Power Equipment Dealers Association (Association) was a business league with the stated purpose of promoting the general welfare of independent retail distributors of farm and power equipment in North and South Carolina.[12] One service the Association offered its members was the opportunity to purchase group insurance[13] through an Association-operated trust fund.[14] Pursuant to an agreement between the Association and the insurer,[15] the insurer rebated to the Association or the Association-operated trust seven percent of the gross accident and health insurance premiums.[16] The rebate served as an administrative allowance.[17] The trust used its receipts to pay operating expenses and to maintain a reserve fund, and the Association used its receipts to pay operating and other general expenses.[18] The Serv-

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10. 699 F.2d 167 (4th Cir. 1983).

11. *Id.*

12. *Id.* at 168. In *Carolinas Farm & Power Equip. Dealers Ass'n v. United States*, the Carolinas Farm & Power Equipment Dealers Association (Association) qualified as a tax-exempt business league under IRC § 501(c)(6). *Id.* The Association promoted the general welfare of independent retail distributors of farm and power equipment by monitoring state and federal legislation, conducting workshops, and publishing a newsletter. *Id.* The Association also provided insurance coverage to those Association members who elected to participate in the group insurance program. *Id.; see infra* note 13 (discussing group insurance).

13. *See* 1 J. APPLEMAN, INSURANCE LAW AND PRACTICE § 41 (1981) (group insurance is one comprehensive policy's coverage of number of individual persons); *see also* Aetna Life Ins. Co. v. Messier, 173 F. Supp. 90, 96 (M.D. Pa. 1959) (purpose of group insurance plan is to supply low-cost coverage for employees). The theory of averages supplies the basis for group insurance. *See* 19 COUCH ON INSURANCE § 82:59 (2d ed. 1968) (within given group exists number of weaker lives offset by number of stronger lives keeping average age within group fairly constant).

14. 699 F.2d at 168. In 1955, the Association in *Carolinas Farm & Power* created an insurance trust fund to operate and finance a group insurance program for Association members. *Id.* The fund trustees were members of the Association's board of directors. *Id.*

15. *Id.* The insurer in *Carolinas Farm & Power* provided life, accident and health, and hospital and surgical insurance coverage. *Id.* Forty-one percent of the Association's 421 members chose to participate in the group insurance plan. *Id.*

16. *Id.* Association members in *Carolinas Farm & Power* paid their insurance premiums to the trust. *Id.* The trust in turn remitted the premiums, in full, to the insurer. *Id.* Four full-time employees of the Association handled the operation of the group insurance program for the Association. *Id.* The trust paid the Association an administrative fee for the employees' insurance-related services. *Id.*

17. *Id.*

18. *Id.* During four of the five years the insurance program in *Carolinas Farm & Power* was in effect, the insurer rebated approximately two-thirds of the 7% of the gross accident and health insurance premiums income to the Association and one-third to the trust. *Id.* During the final year the insurance program was in effect, the insurer paid the entire rebate to the trust. *Id.*

In addition to rebating 7% of the gross accident and health insurance premiums to the Association or to the trust, the insurer also returned to the Association an experience refund. *Id.* The experience refund was the amount of money the Association received from the insurer whenever the claims of Association members were less than the premiums the members had paid for a year. *Id.* Because the Association returned these funds in proportionate shares to Association members and did not retain any of the funds for Association purposes, the Service in *Carolinas Farm & Power* did not claim that the experience refunds were income to the Association. *Id.*

ice determined that the seven percent administrative allowance the insurer rebated to the Association was taxable to the Association as IRC section 512 unrelated business income.[19] The Association paid the resultant tax liability[20] and filed an unsuccessful refund claim with the Service.[21] Thereafter, the Association filed suit for refund in the United States District Court for the Eastern District of North Carolina.[22] The Association argued first that the funds the insurer rebated to the Association were substantially related to the Association's nonprofit purposes and therefore were not taxable.[23] Alternatively, the Association argued that it held any funds it received in trust for Association members individually and therefore the funds were not income to the Association.[24] The magistrate to whom the court referred the case re-

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19. *Id.*

20. *Id.* Before the Association in *Carolinas Farm & Power* could initiate any steps toward receiving a refund of income tax the Association paid on rebates it received from the insurer, the Association first had to pay, in full, the tax in question. *See* Flora v. United States, 362 U.S. 145, 176 (1960) (full-payment requirement promotes smooth functioning of taxation system).

21. 699 F.2d at 168. The IRC permits the taxpayer to treat his payment of income tax as an overpayment of income taxes in situations in which tax liability is in question. I.R.C. § 6501(c) (West 1983). In the case of an overpayment of income taxes, a tax-exempt organization must file its claim for a refund on Form 990T. *See* Treas. Reg. § 301.64-2-3(a)(4) (1954). The taxpayer must file his refund claim either within three years from the date the taxpayer filed his tax return for the year in question, or within two years from the date the taxpayer paid the taxes he seeks to have refunded. *See* I.R.C. § 6511(a) & (b)(1) (West 1983). After the taxpayer has filed his refund claim the taxpayer may not file a refund suit under IRC § 7422(a) unless the Service has rejected the taxpayer's claim or has failed to take action on the claim within six months of the filing of the refund claim. *See id.* § 6532(a)(1); *see also id.* § 7422(a) (filing of refund claim with Service is prerequisite to commencement of suit in court).

22. *See* Carolinas Farm & Power Equip. Ass'n v. United States, 541 F. Supp. 86 (E.D. N.C. 1982). A taxpayer may file a refund suit against the United States either in a federal district court or in the Court of Claims. *See* 28 U.S.C. § 1346(a)(1) (1976) (federal district court jurisdiction for taxpayer refund claims); *id.* § 1491 (Court of Claims jurisdiction for taxpayer refund claims).

23. 541 F. Supp. at 91-92.

24. 699 F.2d at 169. Because the district court in *Carolinas Farm & Power* held that the rebates the insurer paid to the Association were related to the Association's tax-exempt purposes and therefore were not taxable to the Association, the district court did not reach the Association's second contention that since the Association held the rebated funds in trust for Association members, the funds were not income to the Association. *Id.* Since the Association did not raise this second contention on appeal the Fourth Circuit did not address the issue. *Id.* at 169 n.2. Had the Association proved that it held the rebates in trust for its members, the Association would not have received income because money an organization holds in trust for its members is not income to the organization. *See* New York State Ass'n of Real Estate Bds. Group Ins. Fund v. Commissioner, 54 T.C. 1325, 1334-35 (1970) (overpaid insurance premiums of association members, which association held in trust for or distributed to members, were not income to association or to members); Rev. Rul. 64-258, 1964-2 C.B. 134, 136 (when organization acts as conduit in returning insurance premium rebates to organization members, rebates are not income to organization); *see also* Florists' Transworld Delivery Ass'n v. Commissioner, 67 T.C. 333, 345-46 (1976) (retail florists association that received advances from members for advertising purposes did not have income because association had to extend advances for specific purpose of advertising); Park Place, Inc. v. Commissioner, 57 T.C. 767, 778-79 (1972) (assessments that housing corporation annually received from tenant-stockholders were not income to corporation because corporation used assessments only for operation of apartment building).

jected both of the Association's contentions, and recommended judgment in favor of the Service.[25] The district court, however, relying on the reasoning behind *Oklahoma Cattlemen's Association v. United States*[26] and *San Antonio District Dental Society v. United States*,[27] reversed the magistrate's determination and held that the rebates did not constitute unrelated business taxable income because the insurance program was substantially related to the Association's tax-exempt purposes and the program did not constitute a trade or business within the meaning of IRC section 513(c).[28] The Service appealed the district court's decision to the Fourth Circuit.[29]

In reversing the district court's decision that the Association's insurance rebates did not constitute unrelated business taxable income to the Association, the Fourth Circuit looked to the IRC to decide whether insurance rebates are income taxable to business leagues.[30] The IRC provides that the Service may tax a nonprofit business league's unrelated business income.[31] Section 512(a)(1) of the IRC defines unrelated business taxable income as the gross income a tax-exempt organization receives through an unrelated trade or business that the organization carries on regularly.[32] An unrelated trade or business is an activity an organization carries on for the production of profit that is not substantially related to a tax-exempt organization's nonprofit purposes.[33] The pertinent issues for the court in *Carolinas Farm & Power* were whether the Association's insurance activities constituted a trade or business that was not substantially related to the purposes for the Association's tax-

25. 699 F.2d at 169.

26. 310 F. Supp. 320 (W.D. Okla. 1969).

27. 340 F. Supp. 11 (W.D. Tex. 1972).

28. 541 F. Supp. at 89-92; *see* I.R.C. § 513(c) (West 1983) (trade or business produces income through sale of goods or performance of services). In *Oklahoma Cattlemen's Ass'n v. United States, Inc.*, an association received a 5% rebate from an insurer on premiums association members paid. *See* 310 F. Supp. 320, 321 (W.D. Okla. 1969). The district court in *Oklahoma Cattlemen's* held that the association's insurance activity did not constitute trade or business because the association involved itself only passively in the insurance activity. *Id.* at 322. In *San Antonio Dist. Dental Soc'y v. United States*, a dental society entered an agreement with a bank providing that the society would sponsor a payment plan the bank offered to society members. *See* 340 F. Supp. 11, 12 (W.D. Tex. 1972). The district court in *San Antonio* held that since the efforts of the bank, and not the efforts of the society, generated profit through the payment plan, the payment plan did not constitute an unrelated trade or business of the society within the meaning of IRC § 513(a) because the payment plan was not a trade or business. *Id.* at 14; *see* I.R.C. § 513(a) (West 1983) (unrelated trade or business is trade or business not substantially related to organization's tax-exempt functions). In both *Oklahoma Cattlemen's* and *San Antonio* the courts noted that the IRC did not define trade or business during the taxable years at issue. *See* 340 F. Supp. at 14; 310 F. Supp. at 322.

29. 699 F.2d 167.

30. *Id.* at 169.

31. *See* I.R.C. § 511(a)(1) (West 1983).

32. *See id.* § 512(a)(1).

33. *See id.* § 513(a). A tax-exempt organization's gross income constitutes unrelated business taxable income if the organization derives the income from a regularly carried on activity that is not substantially related to the organization's tax-exempt purposes. Treas. Reg. § 1.513-1(a) (1967); *see* 1 S. WEITHORN, TAX TECHNIQUES FOR FOUNDATIONS AND OTHER EXEMPT ORGANIZATIONS § 15.09[16][a] (1975).

exempt status.[34] In reaching the conclusion that the Association's insurance premium rebates constituted unrelated business income taxable to the Association, the court applied a two-part test.[35] The two-part test determined first, that the Association's group insurance program constituted a trade or business, and second, that the trade or business was not substantially related to the Association's tax-exempt purposes.[36]

In applying the first part of the test, the Fourth Circuit considered whether the Association's insurance program constituted a trade or business within the meaning of IRC section 513(c).[37] Under the IRC, a trade or business includes any activity an organization carries on for the production of income from the sale of goods or from the performance of services.[38] In deciding that the Association's insurance program constituted a trade or business under IRC section 513(c), the Fourth Circuit employed the profit-motive test the Fifth Circuit espoused in *Louisiana Credit Union League v. United States*.[39]

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34. 699 F.2d at 169. The Association in *Carolinas Farm & Power* did not dispute that it regularly carried on insurance activities. *Id.* The Association also did not deny that the profits it received through the insurance rebates constituted income to the Association. *See* Brief for Appellee at 8-9, Carolinas Farm & Power Equip. Dealers Ass'n v. United States, 699 F.2d 167 (4th Cir. 1983) [hereinafter cited as Brief for Appellee].

35. 699 F.2d at 169.

36. *Id.* at 170-71.

37. *Id.* at 169.

38. *See* I.R.C. § 513(c) (West 1983). The court in *Carolinas Farm & Power* concluded that the proper inquiry in defining trade or business was whether an organization conducted an activity with a profit motive. 699 F.2d at 169.

39. 699 F.2d at 170; *see* Louisiana Credit Union League v. United States, 693 F.2d 525, 532 (5th Cir. 1982) (proposing profit-motive test for determining whether activity is trade or business). In *Louisiana Credit Union League v. United States*, a tax-exempt credit union league received revenues pursuant to a contract between the league and an insurer. *Id.* at 528. In return for the league's insurance endorsement and coverage solicitation, the insurer paid the league a percentage of premiums the insurer received from credit unions and credit union members. *Id.* In concluding that the revenues the league received from the insurer were taxable to the league as unrelated business taxable income, the *Louisiana Credit Union* court applied a two-part test to determine whether the league's insurance activities constituted a trade or business and whether the insurance activities were substantially related to the league's purpose of promoting the development of credit unions in Louisiana. *Id.* at 531. First, the court held that the league's insurance endorsement and coverage solicitation constituted a trade or business within the meaning of IRC § 513(c) because the league engaged in these activities primarily to produce the revenues necessary to finance the league's operations, and therefore the league possessed the requisite profit motive to constitute a trade or business. *Id.* at 532-33. Second, the *Louisiana Credit Union* court determined that the league's insurance activities were not substantially related to the league's tax-exempt function of promoting the organization and development of credit unions in Louisiana because the insurance activities were not unique to the league's function and the benefit the league derived from the activities inured to league members individually and not as members of the league. *Id.* at 535-36. In determining that the Association in *Carolinas Farm & Power* produced unrelated business taxable income through its group insurance program, the Fourth Circuit applied the same two-part test the Fifth Circuit had applied in *Louisiana Credit Union*. 699 F.2d at 169-72. The Fourth Circuit initially determined that the Association possessed a profit motive in operating its insurance program. *Id* at 169-71; *see infra* notes 54-69 and accompanying text (discussing application of profit-motive test). The Fourth Circuit then determined that the insurance program was not substantially related to the Association's tax-exempt purposes of promoting the

The *Louisiana Credit* court held that because the purpose of an association-operated insurance program was the production of profit through the performance of services, the insurance program constituted a trade or business within the meaning of IRC section 513(c).[40] Among the factors the Fourth Circuit considered in *Carolinas Farm & Power* in deciding that the Association possessed a profit motive in conducting the insurance program were the insurance program's consistently profitable result,[41] the proportion of insurance income to the Association's total income,[42] and the Association's use of the income for the Association's own purposes as opposed to returning the income to Association members.[43] Based on these indications of a profit motive, the

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farm and power dealers equipment industry. *Id* at 171-72; *see infra* notes 70-79 and accompanying text (discussing application of substantial relationship test).

40. 693 F.2d at 533. While the Fourth Circuit in *Carolinas Farm & Power* employed only a profit-motive test in deciding that the Association's insurance activities constituted a trade or business within the meaning of IRC § 513(c), the court acknowledged more restrictive tests dealing with the congressional intent behind the unrelated business tax provisions. 699 F.2d at 169. Several courts have reasoned that in enacting the unrelated business tax provisions of the IRC in 1950, Congress intended to prevent tax-exempt organizations from having a competitive advantage over tax-paying enterprises. *See, e.g.*, Hope School v. United States, 612 F.2d 298, 304 (7th Cir. 1980) (unfair competition is primary consideration in defining trade or business); Massachusetts Medical Soc'y v. United States, 514 F.2d 153, 155-56 (1st Cir. 1975) (educational publication's competition with taxpaying publications for advertising was not unfair); Disabled Am. Veterans v. United States, 650 F.2d 1178, 1187 (Ct. Cl. 1981) (organization must operate activity in competitive, commercial manner to constitute trade or business); *see also* Clarence LaBelle Post No. 217, VFW v. United States, 580 F.2d 270, 278 (8th Cir.) (Schatz, J., dissenting) (Congress designed unrelated business tax to place tax-exempt organization's activities on same competitive level as activities of taxpaying enterprises), *cert. dismissed*, 439 U.S. 1040 (1978). *But see infra* note 66 and accompanying text (congressional intent behind enactment of unrelated business income tax was to raise revenue as well as to curb unfair competition). The Fourth Circuit reasoned, however, that the best measure for determining an organization's motive for conducting an activity is the end the activity achieves. 699 F.2d at 170. The end the Association's insurance program achieved was the production of substantial profits inuring to the Association's benefit. *Id.* at 168; *see, e.g.*, Iowa State Univ. of Science and Technology, 500 F.2d 508, 517-18 (Ct. Cl. 1974) (profits, though not conclusive, are evidence that business purpose is primary); American Inst. for Economic Research v. United States, 302 F.2d 934, 937-38 (Ct. Cl. 1962) (presence of profits evidences business purpose), *cert. denied*, 372 U.S. 976 (1963); Scripture Press Found. v. United States, 285 F.2d 800, 803 (Ct. Cl. 1961) (large profits are not conclusive but are evidence of commercial character), *cert. denied*, 368 U.S. 985 (1962); B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 357 (1978) (profits are relevant evidence of forbidden predominant purpose); *see also Kaplan, supra* note 8, at 1439 (organization need not operate activity exclusively for profit); *cf.* Golden Rule Church Ass'n v. Commissioner, 41 T.C. 719, 731 (1964) (consistent lack of profitability evidences absence of commercial purpose).

41. 699 F.2d at 169. The insurer in *Carolinas Farm & Power* paid the Association or the Association-operated trust 7% of gross accident and health insurance premiums during each of the five years the Association's group insurance program was in effect. *Id.* at 168.

42. *Id.* at 169. In *Carolinas Farm & Power*, during the five years the Association's group insurance program was in effect, the Association's insurance rebates comprised over 43% of its total income. *See id.* at 168. The Association's insurance profits exceeded its receipts from membership dues and assessments during the first four of the five years the insurance program was in effect. *See* Brief for Appellant at 14, Carolinas Farm & Power Equip. Dealers Ass'n v. United States, 699 F.2d 167 (4th Cir. 1983) [hereinafter cited as Brief for Appellant].

43. 699 F.2d at 169.

Fourth Circuit reasoned that the Association's sale of insurance constituted trade or business within the meaning of the IRC,[44] rejecting the Association's contention that Congress had intended competition rather than profit motive to be the test for whether an activity constituted a trade or business.[45]

After determining under the first part of the test that the Association's insurance program was a trade or business, the Fourth Circuit applied the second part of the test and held that the Association's insurance business was not substantially related to the Association's nonprofit purposes.[46] The court looked to the IRC to determine whether any substantial relation existed between the Association's insurance business and the Association's tax-exempt purposes.[47] Pursuant to the Treasury Regulations promulgated under IRC section 501(c)(6), which limit business leagues to conducting activities for the improvement of business conditions as distinguished from activities benefitting individual persons, the court held that the Association's operation of the insurance program constituted the performance of a service for its individual members and not activities substantially related to the Association's tax-exempt purposes of promoting the farm and power equipment industry.[48] The court considered several factors in holding that the insurance program operated primarily to benefit individual Association members and not the farm and power equipment industry in general.[49] The court first noted that the fees the Association charged to its members for participation in the program were in direct proportion to the benefits the members received.[50] In addition, the court found that the Association limited participation in the insurance program to Association members.[51] As a result, the Fourth Circuit determined that the

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44. *Id.*

45. *See* Brief for Appellee, *supra* note 34, at 16-17 (Congress intended to tax competitive businesses that organizations carry on within umbrella of tax-exempt activities). The Fourth Circuit in *Carolinas Farm & Power* maintained that if the Association's insurance business were not substantially related to the Association's tax-exempt purposes, the Association had the burden of proving that it did not possess a profit motive. 699 F.2d at 171; *see, e.g.*, Ohio Teamsters Educ. & Safety Training Trust Fund v. Commissioner, 692 F.2d 432, 436 (6th Cir. 1982) (organization must show purpose is exclusively charitable); Bubbling Well Church of Universal Love, Inc., v. Commissioner, 670 F.2d 104, 105 (9th Cir. 1981) (organization must demonstrate entitlement to tax exemption); Senior Citizens Stores, Inc. v. United States, 602 F.2d 711, 713 (5th Cir. 1979) (burden on party claiming tax exemption to prove entitlement). The court further noted that the Association could have distributed the rebate payments to Association members. 699 F.2d at 171; *cf. supra* note 24 (rebates organizations distribute to members are not income to association or to association members).

46. 699 F.2d at 171.

47. *Id.*

48. *Id.*; see Treas. Reg. § 1.501(c)(6)-1 (1958) (distinguishing between activities serving individuals and activities improving business conditions).

49. 699 F.2d at 171.

50. *Id.; see, e.g.*, Contracting Plumbers Coop. Restoration Corp. v. United States, 488 F.2d 684, 687 (2d Cir. 1973) (each organization member benefitted precisely to extent he used and paid for services), *cert. denied*, 419 U.S. 827 (1974); Evanston-North Shore Bd. of Realtors v. United States, 320 F.2d 375, 378-79 (Ct. Cl. 1963) (listing service's fees charged in proportion to benefits each realtor received).

51. 699 F.2d at 171.

insurance program did not benefit nonmembers of the Association, Association members who chose not to purchase the group insurance, or the farm and power equipment industry in general.[52] Finally, the court noted that the insurance service the Association provided its members was a service that profit-seeking entities commonly provide.[53]

While the Fourth Circuit's application of the profit-motive test for establishing whether an activity constitutes a trade or business is in accord with tests other circuits have employed,[54] the Association's production of large profits alone did not necessitate the conclusion that the Association's insurance program operated as a trade or business.[55] In construing IRC section 513(c), courts have focused on profit production.[56] Profit production evidences a profit motive,[57] and it is the taxpaying organization's burden to dispel the presumption that the organization operated an activity with the intention of earning a profit.[58] To the extent that the Association failed to rebut the presumption by showing that the insurance profits were merely incidental to the insurance

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52. *Id.*

53. *Id.; see* Associated Master Barbers & Beauticians of Am. v. Commissioner, 69 T.C. 53, 65 (1977) (business league not tax-exempt because it operated insurance program businesses typically carry on for profit).

54. *See e.g.*, Louisiana Credit Union League v. United States, 693 F.2d 525, 532 (5th Cir. 1982) (to determine whether organization is carrying on trade or business court must look to see whether organization is engaged in extensive activity over period of time with intent to earn profit); Lamont v. Commissioner, 339 F.2d 377, 380 (2d Cir. 1964) (existence of profit motive most important criteria in deciding activity constitutes trade or business); International Trading Co. v. Commissioner, 275 F.2d 578, 584 (7th Cir. 1960) (profit motive and business-like policies prominent in establishing whether activity is trade or business); Professional Ins. Agents of Mich. v. Commissioner, 78 T.C. 246, 262 (1982) (since profit motive prompted business league involvement in insurance program, program was trade or business); *see also* Five Lakes Outing Club v. United States, 468 F.2d 443, 445 (8th Cir. 1972) (profit motive is prerequisite to deductibility of expenses); Mercer v. Commissioner, 376 F.2d 708, 710 (9th Cir. 1967) (court used size-of-operations test to determine that taxpayer operated trade or business for deduction purposes); Hirsch v. Commissioner, 315 F.2d 731, 736 (9th Cir. 1963) (intent to earn profit must exist before taxpayer may claim trade or business expenses); American Properties, Inc. v. Commissioner, 262 F.2d 150, 151 (9th Cir. 1958) (since taxpayer did not conduct boat racing activities to earn profit, activities were not trade or business for deduction purposes).

55. *See* McDowell v. Ribicoff, 292 F.2d 174, 178 (3d Cir.) (trade or business connotes more than merely activity in which organization engaged for profit), *cert. denied*, 368 U.S. 919 (1961). The term trade or business refers not only to activities a taxpayer engages in for profit production, but also to activities over a period of time during which the taxpayer holds himself out as a provider of products or services. *Id.; see* Scripture Press Found. v. United States, 285 F.2d 800, 803 (Ct. Cl. 1961) (large profits offer some evidence of commercial character, but are not conclusive of trade or business).

56. *See* Louisiana Credit Union League v. United States, 693 F.2d 525, 533 (5th Cir. 1982) (business league's insurance activities were highly profitable); Professional Ins. Agents of Mich. v. Commissioner, 78 T.C. 246, 262 (1982) (business league's insurance promotional activities generated revenues far in excess of related expenses); I.R.C. § 513(c) (West 1983) (defining trade or business).

57. *See supra* note 54 (profit production evidences business purpose).

58. *See supra* note 45 (organization must show it possessed no profit motive); *see also* Kaplan, *supra* note 8, at 1439 n.45 (presence of profits creates presumption that operation is trade or business).

program's primary purpose of improving the farm and power equipment industry, the Fourth Circuit was correct in inferring that the Association operated the insurance program with a profit motive and that the program therefore constituted a trade or business within the meaning of section 513(c).[59]

Despite the Fourth Circuit's determination that the Association's insurance program constituted a trade or business within the meaning of the IRC, courts have not agreed on the congressional purpose behind section 513(c).[60] Some courts have held that by enacting the unrelated business tax provisions in 1950, Congress intended to curb tax-exempt organizations' unfair competition with taxpaying businesses.[61] These courts lend support to the Association's argument that the Fourth Circuit should have looked to competition and not a profit motive in determining whether the Association's insurance program constituted a trade or business.[62] Other courts, however, have held that unfair competition is not a significant factor in determining whether an activity constitutes a trade or business within the meaning of section 513(c).[63] The Fourth Circuit sided with these courts in applying the profit-motive test.[64] While the legislative history of the unrelated business income tax provisions strongly suggests that the primary intent of Congress in enacting the provisions was to avoid endowing tax-exempt organizations with an unfair competitive advantage,[65] a secondary purpose behind the provisions was to raise revenue.[66]

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59. *See supra* notes 30-58 and accompanying text (courts will consider organization's profit-producing activity to be trade or business unless organization successfully rebuts presumption).

60. *See supra* note 40 (courts differ on importance of unfair competition).

61. *See* Greene County Medical Soc'y Found. v. United States, 345 F. Supp. 900, 901 (W.D. Mo. 1972) (charitable foundation's sale of phonograph records as novelty items was not trade or business because sale did not compete with commercial record sales); *see also supra* note 40 (listing courts that have employed competition standard).

62. *See supra* note 40 (listing courts that have employed competition standard).

63. *See id.* (listing courts that have employed profit-motive standard).

64. *See* Carle Found. v. United States, 611 F.2d 1192, 1196 n.6 (7th Cir. 1980) (elimination of unfair competition not sole factor courts must consider in determining whether activity constitutes trade or business); Clarence LaBelle Post No. 217, VFW v. United States, 580 F.2d 270, 272 (8th Cir. 1978) (Congress enacted unrelated business income tax provisions to raise revenue); Smith-Dodd Businessman's Ass'n, Inc. v. Commissioner, 65 T.C. 620, 624 (1975) (unfair competition plays insignificant role in applying unrelated business tax). *But see* Hope School v. United States, 612 F.2d 298, 303 (7th Cir. 1980) (unfair competition is not only factor, but is primary factor in defining trade or business).

65. *See* S. REP. No. 2375, 81st Cong., 2d Sess. 28 (1950) *reprinted in* 1950-2 C.B. 483, 484 (1950) [hereinafter cited as S. REP. No. 2375]. The Senate Report accompanying the Revenue Act of 1950 indicated that nonprofit organizations could use their tax-free profits to expand operations while other organizations could expand only with profits remaining after taxes. *Id.; see* Revenue Act of 1950, Pub. L. No. 814, § 301, 64 Stat. 906, 947 (1950); *see also* Treas. Reg. 1.513-1(b) (1967) (primary objective of unrelated business tax was to eliminate unfair competition).

66. *See* H.R. REP. No. 2319, 81st Cong., 2d Sess. 1 (1950) *reprinted in* 1950-2 C.B. 380, 380-81 (1950). The House Ways and Means Committee stated that changes in the tax treatment of charitable institutions partially would compensate the federal budget for the reduction in war excise taxes. *Id.* at 2-3. Military action in Korea, in addition to increases in defense and related expenditures, prompted the Senate Finance Committee to convert the bill on excise tax reduction the House previously passed into a bill to raise revenues. *See* S. REP. No. 2375, *supra* note 65, at 29, *reprinted in* 1950-2 C.B. at 484 (1950); *see also* 96 CONG. REC. 769 (1950) (Presidential

A tax-exempt organizations' activity need not compete with a taxpaying entity's activity for the tax-exempt organizations' activity to function as a trade or business.[67] Neither the IRC nor the Treasury Regulations to section 513 limit the unrelated business tax to tax-exempt organizations that compete with tax-paying entities.[68] Thus, the Fourth Circuit was correct in looking to a profit motive as opposed to competition in finding the existence of a trade or business within the meaning of section 513(c).[69]

After determining under the first part of the test that the Association's insurance program constituted a trade or business within the meaning of IRC section 513(c), the Fourth Circuit applied the second part of the test and considered whether the insurance program was substantially related to the Association's nonprofit purpose of promoting the farm and power equipment industry.[70] Initially, the court noted that the Association's need for income did not constitute the necessary substantial relationship for not taxing profits as unrelated business income.[71] Therefore, to determine whether the insurance program was substantially related to the Association's tax-exempt purposes, the Fourth Circuit had to examine the relationship between the insurance program and the reason for the Association's tax-exempt status.[72] To avoid the imposition of an unrelated business tax, the Association's insurance program must have had a substantial, causal relationship to the achievement of the Association's tax-exempt goals.[73] An important factor the court considered

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message to Congress). In his special message to Congress, President Harry S. Truman stressed the need to increase revenues by closing tax loopholes. *Id.* at 770. While President Truman specifically pointed out that the government should change the tax policy to curtail nonprofit institutions' abuse of their tax-exempt status by gaining a competitive advantage over private enterprise, the underlying purpose behind the policy change was to increase revenues by closing tax loopholes. *Id.* at 771.

67. *See supra* note 64 and accompanying text (listing courts that have not applied competition standard).

68. *See* I.R.C. § 513(c) (West 1983) (defining trade or business as any activity organization carries on to produce income); Treas. Reg. § 1.513-1(b) (1967) (calling elimination of unfair competition "primary" objective behind Congress' adoption of unrelated business tax provisions).

69. *See supra* notes 65-68 and accompanying text (legislative history shows Congress intended to raise revenues by enacting unrelated business taxable income provisions).

70. 699 F.2d at 171; *see* Treas. Reg. § 1.513-1(a) (1967) (trade or business cannot be substantially related to organization's exempt purpose); *see also supra* note 39 (discussing two-part test in *Louisiana Credit Union League v. United States*). *See generally* Donahue, *Unrelated Business Income of Tax Exempt Organizations*, 37 N.Y.U. INST. ON FED. TAX'N § 27.04[3] (1979) (substantial relation is basically factual question).

71. 699 F.2d at 169; *see* I.R.C. § 513(a) (West 1983) (tax-exempt organization's need for income does not constitute necessary substantial relationship).

72. *See* Treas. Reg. § 1.513-1(d)(2) (1967) (gross income derives from organization's trade or business if trade or business is not substantially related to organization's exempt purposes); *see also infra* note 80 (courts employ substantial relation test to determine if activity produces taxable income).

73. *See* Treas. Reg. § 1.513-1(d)(2) (1967) (income-producing activity is substantially related to organization's exempt purposes if activity contributes importantly toward accomplishing that purpose); *see also* Hi-Plains Hosp. v. United States, 670 F.2d 528, 532-33 (5th Cir. 1982) (hospital's pharmaceuticals sales' revenue not subject to federal income tax because sales contributed importantly to attracting doctors to hospital); St. Luke's Hosp. of Kansas City v. United States, 494

in *Carolinas Farm & Power* was the relatively small number of Association members the insurance program benefitted and the lack of benefit to the farm and power equipment industry in general.[74] In seeking to establish whether a substantial relationship existed between the Association's insurance program and the Association's tax-exempt purposes of promoting the farm and power equipment industry, the Fourth Circuit first had to determine whether the group insurance program available to Association members possessed a unique character in relation to the Association's function of serving the farm and power equipment industry generally.[75] After deciding that the insurance program possessed no unique character in relation to the Association's primary function, the court had to determine whether Association members received benefits from the insurance program as members of the Association or as individuals.[76] For a substantial relationship to exist, any direct benefits flowing from the Association's insurance program must have inured to Association members in their capacities as members of the Association.[77] The insurance program benefitted Association members personally by providing low-cost insurance, and did not benefit the farm and power equipment industry generally.[78] Therefore, because the program benefitted Association members personally, and because the program possessed no unique character in relation to the Association's primary purpose, the insurance program was not substantially related to the Association's purpose of promoting the farm and power equipment industry.[79]

Courts considering the relationship between a business league's tax-exempt

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F. Supp. 85, 90 (W.D. Mo. 1980) (hospital's income derived from pathology tests not subject to federal income tax because tests contributed importantly to hospital's teaching function); Professional Ins. Agents of Mich. v. Commissioner, 78 T.C. 246, 268 (1982) (league's insurance program produced taxable income because program did not contribute importantly to league's goal of improving insurance business, as did league's educational and legislative activities).

74. *See* Treas. Reg. § 1.513-1(d)(3) (1967) (in determining whether activities contribute to organization's exempt function, court must consider size and extent of activities in relation to nature and extent of organization's exempt function).

75. *See supra* note 39 (describing *Louisiana Credit Union* substantial relationship test). In *Louisiana Credit Union*, the Fifth Circuit indicated that certain activities, such as educational and training programs, legislative lobbying, and institutional advertising are unique to a particular type of business league. 693 F.2d at 535. The court distinguished from these activities the Louisiana Credit Union League's insurance endorsement and administration, which the court held were not the kind of activities that satisfied the substantial relationship test. *Id.* at 536.

76. *See infra* note 77 (illustrating difference between organizational and individual benefits).

77. *See supra* note 39 (activities benefitting individuals as individuals do not pass substantial relationship test). In *Louisiana Credit Union*, the court distinguished between inherently group benefits and individual benefits in describing activities that are substantially related to an organization's tax-exempt functions. 693 F.2d at 536. The court held that since benefits business league members derive from educational programs, lobbying activities, and advertising services accrue to members in their roles as members, and not as individuals, the programs, activities, and services are substantially related to the business league's tax-exempt purposes. *Id.* The court further held that benefits members receive from an insurance program are not inherently group-related and benefit members as individuals and not as members of a business league. *Id.*

78. 699 F.2d at 171-72.

79. *See supra* note 77 (activities inuring to benefit of particular individuals rather than to organization in general are not substantially related to organization's tax-exempt purposes).

purposes and proceeds the league derives from group insurance premium rebates generally have held that the relationship between the activity and the tax-exempt purposes is not substantial.[80] The Service has issued essentially the same holdings in concluding that insurance programs do not relate substantially to an organization's tax-exempt purposes either because the insurance programs inure to the benefit of organization members individually or because the insurance programs are not unique to the organization's tax-exempt functions.[81]

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80. *See* Louisiana Credit Union League v. United States, 693 F.2d 525, 536 (5th Cir. 1982) (connection between credit union movement and selling insurance is merely tangential); Professional Ins. Agents of Mich. v. Commissioner, 78 T.C. 246, 267 (1982) (insurance program served as convenience or economy to individual members); Long Island Gasoline Retailers Ass'n v. Commissioner, 51 T.C.M. (P-H) 561, 564 (1982) (availability of group insurance did not contribute to improvement of common business conditions of retail gasoline dealers). *But see* Oklahoma Cattlemen's Ass'n, Inc. v. United States, 310 F. Supp. 320, 322-23 (W.D. Okla. 1969) (group insurance available to members who otherwise could not procure insurance is substantially related to cattlemen's association's stated purpose). The Association in *Carolinas Farm & Power* urged that the availability of group insurance to Association members at economical rates contributed to the general welfare of all members, especially since many members would not have been able to obtain insurance were it not for the Association's program. *See* Brief for Appellee, *supra* note 34, at 22. The Fifth Circuit in *Louisiana Credit Union* rejected a similar argument when it held that a business league's insurance activities did little more than generate revenue for the league. *See* Louisiana Credit Union League v. United States, 693 F.2d 525, 537 (5th Cir. 1982). Likewise, the Court in *Long Island Gasoline Retailers Ass'n v. Commissioner* held that an insurance program did not benefit the gasoline retailers industry in general because the only league members who would derive benefits from the program would be those members who actually had participated in the insurance program. *See* 51 T.C.M. (P-H) 561, 564 (1982).

Because of the case-by-case analysis required in establishing the relationship between a nonprofit organization's tax-exempt purpose and its income-generating activity, court decisions have varied. *See, e.g.*, Hi-Plains Hosp. v. United States, 670 F.2d 528, 531 (5th Cir. 1982) (hospital's pharmaceuticals sales contribute importantly to hospital's goal of attracting and keeping doctors); Anateus Lineal 1948, Inc. v. United States, 366 F. Supp. 118, 127 (W.D. Ark. 1973) (since medical education is unique because students need human specimens, educational and scientific organization's pathology services are substantially related to medical research); San Antonio Dist. Dental Soc'y v. United States, 340 F. Supp. 11, 15 (W.D. Tex. 1972) (dental organization's payment financing plan is substantially related to organization's tax-exempt function of promoting dental service); Orange County Builders Ass'n v. United States, 16 A.F.T.R. 2d 5570, 5572 (S.D. Cal. 1965) (operation of home trade show is substantially related to organization's purpose of improving conditions in construction industry). *But see, e.g.*, Carle Found. v. United States, 611 F.2d 1192, 1199 (7th Cir. 1979) (sale of pharmaceuticals did not relate substantially to hospital's purpose of treating sick and disabled persons); Iowa State Univ. of Science and Technology v. United States, 500 F.2d 508, 519 (Ct. Cl. 1974) (since public interest programming is not unique to university television station, programming's operation does not relate substantially to educational goals).

81. *See* Rev. Rul. 67-176, 1967-1 C.B. 140 (providing insurance to members of professional school preparation business league did not relate substantially to league's purpose of preparing students for profession); Rev. Rul. 66-151, 1966-1 C.B. 152 (management of health and welfare plans did not relate substantially to business league's purpose of representing firms in labor relations matters); Rev. Rul. 60-228, 1960-1 C.B. 200 (fees agricultural organization received through insurance program did not relate substantially to organization's purpose of improving agriculture). *See generally* Grief & Goldstein, *Rulings Holding Insurance Plans of Exempt Organizations Taxable May Threaten Exemptions*, 50 J. TAX. 294 (1979) (analysis of Service Private Letter Rulings characterizing insurance premium rebates as source of unrelated business taxable income). At least one commentator has disagreed with the Service's position. *See* 1 WEITHORN, *supra* note

Court decisions employing the substantial relationship test support the Fourth Circuit's holding that the Association's involvement in the insurance program was not substantially related to the Association's tax-exempt purpose of benefitting the farm and power equipment dealers industry in general.[82] Courts have held that an insurance program is not causally connected with a tax-exempt organization's exempt purposes.[83] In addition, courts have held that tax-exempt organization members derive benefits from an insurance program individually rather than in their capacities as organization members.[84]

In *Carolinas Farm & Power*, the Fourth Circuit correctly applied a two-part test for establishing whether certain income to a business league is taxable as unrelated business income.[85] The court looked to whether the insurance rebate income was the result of a trade or business and whether the trade or business was substantially related to the Association's tax-exempt purpose of promoting the farm and power equipment industry.[86] Under the Fourth Circuit's two-part test, insurance premium rebates to business leagues otherwise exempt from taxation under section 501(c) of the IRC are taxable to the leagues as unrelated business income.[87] The Fourth Circuit's decision follows the recent Service trend of taxing the insurance-related income of nonprofit organizations.[88] When reviewing the possible application of the unrelated business tax to certain operations of a business league, a practitioner initially must determine whether the activity the league is operating generates income through a profit motive, and secondly, whether the activity is not substantially related to the business league's tax-exempt functions.[89] If the answers to these inquiries are in the affirmative, and the business league is unable to overcome the presumption that the league conducts the activity with the intention of earning a profit, the business league should be prepared to pay tax on the income.[90]

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33, § 41.03[6] (operating insurance programs relates to organization's tax-exempt purposes because insurance programs benefit welfare of members in general).

82. *See supra* notes 70-80 and accompanying text (discussing substantial relationship test).

83. *See supra* note 80 (insurance rebates do little more than generate revenue).

84. *See supra* notes 77-80 and accompanying text (insurance benefits inure to organization members as individuals).

85. *See supra* note 33 (income business league derives from regularly carried-on trade or business not substantially related to league's exempt purposes is taxable to league).

86. *See supra* notes 37-53 and accompanying text (discussing two-part test Fourth Circuit used to determine whether Association's rebates constituted unrelated business income taxable to Association).

87. *See supra* notes 56-59 & 75-79 and accompanying text (insurance program is trade or business within meaning of IRC and program is not substantially related to IRC § 501(c)(6) business league's exempt purposes).

88. *See supra* note 81 (Service favors taxing income business leagues derive from insurance program).

89. *See supra* notes 54 & 77 and accompanying text (business league's operation of activity that is not substantially related to league's exempt purposes and that league operates with intent to earn profit produces income taxable to league).

90. *See* I.R.C. § 511(a)(1) (West 1983) (Service imposes tax on unrelated business income of business leagues).