§ 1.513–1(e)(1) (relating to trades or businesses in which substantially all the work is performed without compensation).

§ 1.513–5 Certain bingo games not unrelated trade or business.

(a) In general. Under section 513(f), and subject to the limitations in paragraph (C) of this section, in the case of an organization subject to the tax imposed by section 511, the term unrelated trade or business does not include any trade or business that consists of conducting bingo games (as defined in paragraph (d) of this section).

(b) Exception. The provisions of this section shall not apply with respect to any bingo game otherwise excluded from the term unrelated trade or business by reason of section 513(a)(1) and §1.513–1(e)(1) (relating to trades or businesses in which substantially all the work is performed without compensation).

(c) Limitations—(1) Bingo games must be legal. Paragraph (a) of this section shall not apply with respect to any bingo game conducted in violation of State or local law.

(2) No commercial competition. Paragraph (a) of this section shall not apply with respect to any bingo game conducted in a jurisdiction in which bingo games are ordinarily carried out on a commercial basis. Bingo games are ordinarily carried out on a commercial basis if bingo games are carried out by for-profit organizations in any part of any of that jurisdiction. Normally, the entire State will constitute the appropriate jurisdiction for determining whether bingo games are ordinarily carried out on a commercial basis. However, if State law permits local jurisdictions to determine whether bingo games may be conducted by for-profit organizations, or if State law limits or confines the conduct of bingo games by for-profit organizations to specific local jurisdictions, then the local jurisdiction will constitute the appropriate jurisdiction for determining whether bingo games are ordinarily carried out on a commercial basis.

(3) Examples. The application of this paragraph is illustrated by the examples that follow. In each example, it is assumed that the bingo games referred to are operated by individuals who are compensated for their services. Accordingly, none of the bingo games would be excluded from the term unrelated trade or business under section 513(a)(1).

Example 1. Church Z, a tax-exempt organization, conducts weekly bingo games in State O. State and local laws in State O expressly provide that bingo games may be conducted by tax-exempt organizations. Bingo games are not conducted in State O by any for-profit businesses. Since Z’s bingo games are not conducted in violation of State or local law and are not the type of activity ordinarily carried out on a commercial basis in State O, Z’s bingo games do not constitute unrelated trade or business.

Example 2. Rescue Squad X, a tax-exempt organization, conducts weekly bingo games in State M. State M has a statutory prohibition that prohibits all forms of gambling including bingo games. However, that law generally is not enforced by State officials against local charitable organizations such as X that conduct bingo games to raise funds. Since bingo games are illegal under State law, X’s bingo games constitute unrelated trade or business regardless of the degree to which the State law is enforced.

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Example 3. Veteran’s organizations Y and X, both tax-exempt organizations, are organized under the laws of State N. State N has a statutory provision that permits bingo games to be conducted by for-profit organizations. In addition, State N permits bingo games to be conducted by for-profit organizations in city S. Several for-profit organizations conduct nightly bingo games in city S. Y conducts weekly bingo games in city S. X conducts weekly bingo games in county R. Since State law confines the conduct of bingo games by for-profit organizations to city S, and since bingo games are regularly carried on there by those organizations, Y’s bingo games conducted in city S constitute unrelated trade or business. However, X’s bingo games conducted in county R outside of city S do not constitute unrelated trade or business.

(d) Bingo game defined. A bingo game is a game of chance played with cards that are generally printed with five rows of five squares each. Participants place markers over randomly called numbers on the cards in an attempt to form a preselected pattern such as a horizontal, vertical, or diagonal line, or all four corners. The first participant to form the preselected pattern wins the game. As used in this section, the term bingo game means any game of bingo of the type described above in which wagers are placed, winners are determined, and prizes or other property is distributed in the presence of all persons placing wagers in that game. The term bingo game does not refer to any game of chance (including, but not limited to, keno games, dice games, card games, and lotteries) other than the type of game described in this paragraph.

(e) Effective date. Section 513(f) and this section apply to taxable years beginning after December 31, 1969.

[T.D. 7699, 45 FR 33970, May 21, 1980]

§ 1.513–6 Certain hospital services not unrelated trade or business.

(a) In general. Under section 513(e), the furnishing of a service listed in section 513(e)(1)(A) by a hospital to one or more other hospitals will not constitute unrelated trade or business if—

(1) The service is provided solely to hospitals that have facilities to serve not more than 100 inpatients,

(2) The service would, if performed by the recipient hospital, constitute an activity consistent with that hospital’s exempt purposes, and

(3) The service is provided at a fee not in excess of actual cost, including straight line depreciation and a reasonable rate of return on the capital goods used to provide the service. For purposes of this section, a rate of return on capital goods will be considered reasonable provided that it does not exceed, on an annual basis, the percentage described below which is based on the average of the rates of interest on special issues of public debt obligations issued to the Federal Hospital Insurance Trust Fund for each of the months included in the taxable year of the hospital during which the capital goods are used in providing the service. Determinations as to the cost of services and the applicable rate of return should be made as prescribed by 42 U.S.C. 1395x(v)(1) (A) and (B) and the regulations thereunder (permitting a health care facility to be reimbursed under the Medicare program for the reasonable cost of its services, including, in the case of certain proprietary facilities, a reasonable return on equity capital). For taxable years beginning on or before May 14, 1986, the rate of return shall be one and one-half times the average of the rates of interest on public debt obligations described above which were in effect on or before April 20, 1983.

(b) Hospital defined. As used in this section the word hospital means a hospital described in section 170(b)(1)(A)(iii).

(c) Example. The provisions of this section are illustrated by the following example:

Example. A large metropolitan hospital provides various services to other hospitals. The hospital furnishes a purchasing service to hospitals N and O, a data processing service to hospitals R and S, and a food service to hospitals X and Y. All the hospitals are described in section 170(b)(1)(A)(iii). All the hospitals have facilities to serve not more than 100 inpatients except hospital N. The services are furnished at cost to all hospitals except that hospital R is charged a fee in excess of cost for its use of the data processing service. The purchasing service constitutes unrelated trade or business because it is not provided solely to hospitals having facilities to serve not more than 100 inpatients.