

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-04(14)C  
Corporation Tax  
July 22, 2004

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C040420A

On April 20, 2004, a Petition for Advisory Opinion was received from The Polish American Citizens Club of Rochester, New York, Inc., 385 Weaver Street, Rochester, New York 14621-3613.

The issue raised by Petitioner, The Polish American Citizens Club of Rochester, New York, Inc., is whether it is subject to the minimum tax that is imposed on unrelated business income under Article 13 of the Tax Law when its federal unrelated business taxable income is zero.

Petitioner submits the following facts as the basis for this Advisory Opinion.

For federal income tax purposes, Petitioner is an exempt organization pursuant to IRC section 501(c)(7). Pursuant to IRC section 511, Petitioner is subject to tax on its unrelated business income of \$549 from its investment activity (which is an unrelated trade or business under IRC section 513), consisting of interest income. However, for federal income tax purposes, Petitioner's federal unrelated business taxable income for taxable year 2003 was zero, and no federal unrelated income tax was imposed.

**Applicable law**

Section 290(a) of Article 13 of the Tax Law imposes the tax on unrelated business income and provides, in part:

General. For every taxable year or part thereof, every organization described in paragraph two of subsection (a) of section five hundred eleven of the internal revenue code ... carrying on an unrelated trade or business in New York shall pay a tax at the rate of nine per centum on its unrelated business taxable income for such year, or on the portion thereof allocated to this state, as provided in section two hundred ninety-three, or two hundred fifty dollars, whichever is greater.

Section 291 (a) of the Tax Law provides that:

Any terms used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required....

Section 292 of the Tax Law provides the rules for determining unrelated business taxable income for purposes of Article 13 of the Tax Law, and provides, in part:

(a) The unrelated business taxable income of a taxpayer subject to the tax imposed by section two hundred ninety shall be such taxpayer's federal unrelated business taxable income, as defined in the laws of the United States for the taxable year, with the [modifications enumerated in section 292(a) (1) through(6).]

IRC section 511(a) provides, in part:

Charitable, etc., organizations taxable at corporation rates.–

\* \* \*

(2) Organizations subject to tax. –

(A) Organizations described in sections 401(a) and 501(c). – The tax imposed by paragraph (1) shall apply in the case of any organization ... which is exempt, except as provided in this part ... from taxation under this subtitle by reason of section 501(a).

IRC section 513(a) provides that:

General Rule. – 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 ... except that such term does not include any trade or business –

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or...

## **Opinion**

Section 290(a) of the Tax Law imposes a tax on every organization described in IRC section 511(a)(2) that is carrying on an unrelated trade or business in New York. Pursuant to section 291 of the Tax Law, an unrelated trade or business is such business as defined in IRC section 513. Section 290(a) of the Tax Law requires that each organization carrying on an unrelated trade or business in New York must pay a tax at the rate of nine percent on its unrelated business taxable income, as determined under section 292 of the Tax Law, that is allocated to New York State, or \$250, whichever is greater. Accordingly, a minimum tax of \$250 is imposed on an organization carrying on an unrelated trade or business in New York regardless of the amount of its unrelated business taxable income under section 292 of the Tax Law. For purposes of section 292 of the Tax Law, unrelated business taxable income is the organization's federal unrelated business taxable income with the modifications contained in section 292.

TSB-A-04(14)C  
Corporation Tax  
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In *Sciarabba Walker & Co.*, Adv Op Comm T&F, October 22, 1987, TSB-A-87(27)C, the petitioner's issue was identical to the issue in this case, and the petitioner's facts were substantially similar to Petitioner's facts in this case. In *Sciarabba Walker*, the entity was an exempt organization under IRC section 501(c)(7), and for federal income tax purposes its unrelated business income was zero. As a result, no federal unrelated business income tax was imposed. The opinion held that the entity was required to file form CT-13 and pay the minimum tax of \$250 that is imposed under Article 13 of the Tax Law.

In this case, Petitioner is an exempt organization pursuant to IRC section 501(c)(7) and is described in IRC section 511(a)(2). Petitioner states that it is subject to the federal unrelated business income tax imposed under IRC section 511(a)(1), and it is assumed from the facts presented that it is carrying on its unrelated trade or business in New York. However, since its federal unrelated business taxable income for taxable year 2003 was zero, and the modifications contained in section 292 of the Tax Law do not appear to apply, Petitioner does not have unrelated business taxable income for purposes of section 292 of the Tax Law for taxable year 2003. Therefore, pursuant to section 290(a) of the Tax Law, Petitioner is subject to the \$250 minimum tax for taxable year 2003.

DATED: July 22, 2004

/s/  
Jonathan Pessen  
Tax Regulations Specialist IV  
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.