

Tax News & Views Health Care Edition

Disposition of intellectual property is not unrelated business income

In [PLR 201407022](#), the IRS addresses whether the proposed disposition of intellectual property rights in several IPv4 addresses will be treated as a sale of property held “primarily for sale to customers in the ordinary course of a trade or business” within the meaning of section 512(b)(5).

Section 512(b)(5) excludes from unrelated business taxable income all gains or 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. Various revenue rulings and court cases have addressed the facts and circumstances determination with regard to whether property is held primarily for sale to customers in the ordinary course of business. The PLR provides a good summary of the factors generally analyzed by the court. In general, the determination is based on the frequency, continuity, and size of the sales; the purpose for which the property was acquired and held; and the proximity of sale to purchase.

In the PLR, a tax-exempt supporting organization provides research and development in the field of telecommunications and internet information technology. The organization supports a public university system. Several decades ago, the organization received several million IPv4 addresses, which were used for research as part of the organization’s tax-exempt purpose. Many of the IPv4 addresses remain unused and the organization proposes to liquidate several million unused addresses. The organization would be inclined to liquidate the surplus IPv4 addresses to a single buyer in a single transaction; however, legal and financial barriers would preclude such a sale.

The proposed sale is taking place several decades after the organization acquired the IPv4 addresses through a donation, and at all times, the IPv4 addresses were used in exempt activities. Therefore, the IRS held that the organization did not hold interests in IPv4 addresses “primarily for sale to customers” and the income from the disposition does not constitute unrelated business income.

Correction procedures for improper health FSA payments

A recent Chief Counsel Advice memo ([CCA 201413006](#)) outlines the correction procedures for improper health flexible spending arrangement (FSA) payments made by employers. Health FSAs are benefit plans established by employers to reimburse employees for health care expenses, such as deductibles and co-payments. In general, section 125 governs cafeteria plans, including FSAs. Proposed Treasury Reg. 1.125-5(a)(1) provides that after a qualified expense has been incurred in an FSA, the expense must first be substantiated before the expense is reimbursed. Often, employees are given debit cards to make payments for health care expenses under an FSA. If the debit card is used to make a payment for a non-qualified expense, corrective action must be taken by the employer to recover the funds. Proposed Reg. 1.125-6(d)(7) provides a series of five corrective procedures for any improper payments from a health FSA using a debit card, including i) deactivate the debit card and require receipts to be submitted for future payments, ii) demand that the employee repay the cafeteria plan an amount equal to the improper payment, iii) withhold the amount of the improper charge from the employee’s compensation, iv) apply a claims substitution or offset to a later substantiated expense claim, and v) treat the improper payment as business indebtedness.

One issue clarified by the CCA is that the correction procedures for debit cards provided in the proposed cafeteria plan regulations may be also applied to other improper payments from a health FSA, i.e., non-debt card improper payments. The CCA explains that the first four corrective procedures may be applied in any order, but the order must be consistently applied for all participants in the employer’s health FSA. The fifth corrective procedure, treatment of the improper payment as business indebtedness, may only be applied after all other procedures have been pursued. If the employer follows this method and treats the improper payment as business indebtedness, the payment should be reported by the employer to the employee as wages on a Form W-2 to the extent the employer forgives the indebtedness after requesting payment consistent with collection procedures for other business indebtedness. The amount included is subject to withholding for income tax, FICA, and FUTA.



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Annual events found to be “regularly carried on” for UBI purposes

In [PLR 201406020](#), the IRS is asked to determine whether four annual events held by a section 501(c)(6) trade organization were considered an unrelated business activity. The organization’s exempt purpose is to promote the enjoyment and involvement of a particular type of game. Through its promotion of such game, the organization holds four events and tournaments, which attract large numbers of in-person spectators and significant media coverage. Income is generated by the events through admission receipts, hospitality (including a percentage of the gross receipts from sales of food and beverages by authorized vendors), and volunteer fees.

Section 512(a)(1) provides that the term “unrelated business taxable income” means the gross income derived by an organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less allowable deductions, which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in section 512(b). In its analysis, the IRS addressed the three prongs of unrelated business income: whether the event is a trade or business; whether the event is regularly carried on; and whether the event is not substantially related to the organization’s exempt purpose. The IRS quickly concluded that the events were carried on for the production of income from either the sale of goods or the performance of services and were therefore a trade or business.

In determining whether the event was “regularly carried on,” the IRS considered whether the activities that produce the income manifest a frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities of nonexempt organization. Of the four events, one was held in the spring, one in the summer, and two in the fall. Compared to other organizations hosting similar events, it is unlikely that any other organization, exempt or nonexempt, conducts as many as four such major events in a year. As such, the IRS concluded that it could be said that the events are regularly carried on. In addition, the PLR states that even if the events were considered to be conducted intermittently, it cannot be said that the activities are conducted casually or without competitive and promotional efforts typical of a commercial nature. As major tournaments, each event is widely, heavily, and continuously promoted in both print and online media. Each event has its own website that solicits ticket sales, sponsors, and volunteers year round. Therefore, the IRS held that the event activities, including ticket sales and concessions, meet the requirements of regularity. To this point in the analysis, the events meet the first two prongs of the unrelated business activity definition.

Finally, the IRS considered whether the event activity was substantially related to the organization’s exempt purpose. The events are performances that promote the enjoyment and growth of a particular game and contribute to the professional growth and skill of persons related to the game, thereby contributing importantly to the organization’s exempt purpose. In addition, the events give the general public an opportunity to learn about a particular game by watching the best participants compete for the championship. In conclusion, the IRS held that while the events are a trade or business, and are regularly carried on, they are substantially related to an exempt purpose and are not considered an unrelated trade or business. The PLR provides a comprehensive summary of the relevant law and revenue rulings regarding an analysis of each of the three prongs of unrelated business income and may provide a helpful framework when analyzing other types of annual events.

Did you know?

New 2014 Form W-8IMY released

The IRS has released the new 2014 [Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting](#). The form includes information required by the Foreign Account Tax Compliance Act. Organizations making payments to foreign entities may be required to file or obtain such form as part of their withholding and reporting process.

Annual inflation adjusted limits for HSAs are set

The IRS issued [Revenue Procedure 2014-30](#) providing the 2015 inflation adjusted amounts for health savings accounts (HSAs). For calendar year 2015, the annual contribution limitation under a high deductible health plan is \$3,350 for self-only coverage and \$6,650 for family coverage. For 2015, a high deductible health plan is defined as a health plan with an annual deductible that is not less than \$1,300 for self-only coverage or \$2,600 for family coverage, and the annual out-of-pocket expenses do not exceed \$6,450 or \$12,900 for self-only or family coverage, respectively.

Tax-exempt organizations cautioned not to include SSNs on Form 990 series returns

The IRS cautions tax-exempt organizations not to include social security numbers (SSNs) on Form 990 series informational returns. Most tax-exempt organizations are required to publicly disclose most parts of the Form 990, including schedules and attachments. Public release of SSNs and other personally identifiable information about donors, clients or benefactors could give rise to identity theft. The IRS also urges tax-exempt organizations to file forms electronically in order to reduce the risk of inadvertently including SSNs or other unneeded personal information. ([IR-2014-57](#))

Changes made to the 403(b) pre-approved plan program

[Revenue Procedure 2014-28](#) extends the deadline for submitting section 403(b) pre-approved plans under [Revenue Procedure 2013-22](#) from April 30, 2014 to April 30, 2015. Rev. Proc. 2014-28 also modifies the eligibility criteria to allow more plan sponsors and employers to participate in the pre-approved plan program. Under the program, pre-approved sponsors of 403(b) plans may apply to the IRS for approval of a 403(b) prototype plan or a 403(b) volume submitter plan. Once approved, plan sponsors make the plan available to employers for adoption.

Mid-year plan amendments made related to marriages of same-sex couples

[Notice 2014-37](#) provides guidance that safe harbor 401(k) or 401(m) plans may be amended mid-year to comply with the Supreme Court's decision in *U.S. v. Windsor*, which treats same-sex couples as married for federal tax purposes. A plan with terms that are inconsistent with *Windsor* or [Revenue Ruling 2013-17](#) must be amended to comply. Amendments must be adopted by the later of December 31, 2014 or the applicable date under the IRS' general amendment guidance for qualified retirement plans per [Revenue Procedure 2007-44](#).

Deloitte Thoughtware

Health Reform. The health reform bills (HR3590 and HR4872) are now law and will trigger sweeping changes and disruptions — some rather quickly and some over many years. The industry is asking, "What now?" At Deloitte, we continue to explore and debate the specific questions facing the industry, and we look forward to helping our clients find and implement the appropriate answers for their organizations. To learn more, visit [Health Care Solutions](#) on the Deloitte website.

Health Care Regulation. With quality in the spotlight on a national level, hospitals across the country are renewing their commitment to confirming that their services meet the core measures for quality set by the government and that internal controls are in place to help determine that the collection and reporting of quality data is accurate, complete, and compliant with government reporting requirements. The financial and operational impacts of regulation and legislative oversight in the life sciences and health care industries are pervasive and constantly changing. [@Regulatory](#) is a monthly publication that apprises readers of the latest regulatory, legislative, and other public policy developments affecting life sciences and health care organizations. Visit [@Regulatory](#) on the Deloitte website.

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Financial Executives

CFOs and Globalization: The Call for Chief Frontier Officers June 18, 3:00 PM ET

Globalization is adding new complexities as companies extend beyond low-cost manufacturing locations into new consumer markets. Why are CFOs emerging as point leaders, what are realities of their new role, and what skills will make them effective Chief Frontier Officers? We'll discuss:

- Translating global ambitions into practical realities – extending the finance function to address financing, investment, operations, and valuation.
- Capabilities CFOs can leverage in this new role, including oversight of enterprise data, insights into investment decisions, analytics, and enterprise performance management.
- Enhanced skills CFOs need, including curiosity, capacity for surprise, courage, character, and collaboration.

Learn about the expanding role of CFOs as the nature of globalization evolves.

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Cyber-resilience Enterprises: Insuring a Virtual Reality June 19, 2:00 PM ET

Cyber-insurance is a key cyber-defense employed by many businesses to help assure stakeholders that the company is addressing certain compliance risks. What are important considerations when you purchase such insurance? We'll discuss:

- Considerations for linking cyber threats back to insurance coverage and understanding the nature of likely financial losses.
- Strategies for quantifying potential financial exposures and probable losses based on recent data breach experiences.
- Cyber Incident Response – what to look for in this table stakes coverage and Cyber Incident Response's importance as part of an enterprise's cyber resiliency.

Learn about the role of cyber-insurance in addressing cyber-risk and how to become a more cyber-resilient organization.

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Financial Executives (cont'd)

Compliance Leading Practices and Insights June 26, 2:00 PM ET

In an era of increasing regulatory scrutiny in the U.S. and other countries, corporate compliance programs and activities are rapidly evolving. What emerging risks and trends are compliance executives focused on today?

We'll discuss:

- New trends related to companies' compliance structures, their cultures, and their key emerging compliance risks.
- Operations-related challenges, including the use of performance metrics and compliance tools and technologies.
- Insights from CCOs and other compliance executives into unique aspects of their compliance programs and other risk mitigation initiatives.

Hear results from a recent Compliance Week compliance survey and learn ways to help refresh your company's compliance program and activities.

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Industries

The Journey to High-Quality Health Care: New Business Models Emerge June 10, 1:00 PM ET

With high-quality patient and family experiences a central focus of health reform, business models across the industry are changing. How can health care consumers benefit from the shift to innovation and value in the health care industry? We'll discuss:

- How consumers are helping drive the health care industry's pursuit of new innovations in care delivery.
- New ways in which employers are sharing costs with employees and providing incentives to encourage cost-saving decisions.
- Retail capabilities that could drive the health plan and provider markets of the future.

Explore the move away from traditional health care business models toward innovative approaches that focus high-quality care tailored to consumers

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Contacts

Please contact your local Deloitte Tax LLP provider for more information on our services.

Fran Bedard — Nashville

fbedard@deloitte.com

+1 615 259 1811

Lori Boyce — Detroit

lboyce@deloitte.com

+1 313 396 3324

Jeff Frank — Indianapolis

jdfrank@deloitte.com

+1 317 656 6921

Margaret Grinnell — Chicago

mgrinnell@deloitte.com

+1 312 486 9025

William Homer — Philadelphia

whomer@deloitte.com

+1 215 299 4642

Christine Kawecki — Jericho

ckawecki@deloitte.com

+1 516 918 7138

Tom Kromer — Columbus

tkromer@deloitte.com

+1 614 229 4705

Frank Neczypor — Boston

fneczypor@deloitte.com

+1 617 437 2728

Diana McCutchen — Costa Mesa

djmccutchen@deloitte.com

+1 714 436 7702

Mary Rauschenberg — Chicago

and Washington National Tax

mrauschenberg@deloitte.com

+1 312 486 9544

Steve Rovner — Tampa

srovner@deloitte.com

+1 813 273 8355

John W. Sadoff, Jr. — Atlanta

jsadoff@deloitte.com

+1 404 220 1352

Jim Sower — Cincinnati

jsowar@deloitte.com

+1 513 784 7242

Mike Walton — San Francisco

mwalton@deloitte.com

+1 415 783 6424

Yvette Woods — McLean

ywoods@deloitte.com

+1 703 251 1420

Sharon Zorbach — San Jose

szorbach@deloitte.com

+1 408 704 2063

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