Vermont Department of Taxes
TECHNICAL BULLETIN

TAX: Corporate Income

SUBJECT: Unrelated Business Income of Exempt Corporations **TB-59**

STATUTORY REFERENCE: 32 V.S.A. § 5811 (18) (D) **ISSUED:** January 3, 2011

Introduction

This bulletin describes the Vermont income tax filing requirements for federally exempt corporations that have unrelated business income. Effective for tax years beginning on and after January 1, 2010, exempt corporations (also referred to herein as "nonprofit organizations") that are required to report unrelated business income on a federal return and have activities in Vermont are required to file a Vermont corporate income tax return and include a copy of their federal return.[1]

Who must file? A nonprofit organization that produced unrelated business income subject to federal income tax under Internal Revenue Code Section 511 and engaged in activities in Vermont during the taxable year is required to file a Vermont Corporate Income Tax Return. If such nonprofit corporation is part of an affiliated group it must file Form CO-411U (Combined Report for Unitary Group) and follow the instructions for the use of that form. Otherwise, it should file a Form CO-411.

The federal requirement to report (on Federal Form 990T) and pay tax is triggered by the receipt of unrelated business income of $1000 or greater. The tax on unrelated business income applies to most organizations that are exempt under IRC §501. These organizations include charitable, religious, scientific and other organizations described in IRC §501(c) as well as employees' trusts forming part of pension, profit-sharing, and stock bonus plans described in IRC §401(a).

What is Unrelated Business Income? Unrelated Business Income is income from a trade or business regularly carried on by an exempt organization and not substantially related to the performance by the organization of its exempt purpose or function, except that the organization uses the profits derived from this activity. IRC § 513; Internal Revenue Service Publication 598.

Vermont adopts this meaning of the term through the reference to income taxed under IRC § 511 in the definition of "Vermont net income"[2]. If income must be reported on Federal Form 990-T,

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[1] This requirement also applies to corporations with federal exempt status that have income from debt-financed property. See footnote 2.

[2] "Vermont net income means "[f]or a corporation with federal exempt status…all income that is subject to federal income tax, including unrelated business income under Section 511 of the internal Revenue Code and any income

then a Vermont corporate income tax form must be filed. The two key phrases are “regularly carried out” and “not substantially related to the performance … of its exempt purpose or function.” Unrelated business income may be derived from:

- Owning property that yields rental income
- Having an office where employees engage in activities not substantially related to the corporation’s exempt purpose
- Performing services that produced unrelated business income.

How should unrelated business income be reported? Except as noted below, nonprofit organizations should follow the same instructions for Vermont Forms CO-411 (Vermont Corporate Income Tax Return) and CO-411U (Combined Report for Unitary Group) as do for-profit corporations. In addition, a nonprofit organization must include the first page of its Federal Form 990 and its complete Federal 990-T with its Vermont form. The unrelated taxable income reported on Line 34 of the 990-T is reported as taxable income on Line 1 of Vermont Form CO-411 or CO-411U.

- **Apportionment of income -** If a nonprofit organization’s income is derived entirely from activities within the state, its Vermont net income is allocated entirely to Vermont. If the nonprofit organization’s income is derived from activities conducted both in Vermont and another state or states, its Vermont net income is apportioned as provided in 32 V.S.A. § 5833 on Vermont Form BA-402. For example, income derived from sales of tangible personal property that occur in more than one state as a fundraising activity is apportioned between or among the states. In cases where the nonprofit organization is a part of an affiliated group and other members of the affiliated group report unrelated business income, the Vermont nonprofit organization must complete BA-402 and apportion the combined group’s unrelated business income.

- **Exceptions for non-profit organizations filing Form CO-411:**

  Line 2a – Nonprofit organizations do not need to include interest of any kind in the calculation of net taxable income. Therefore report “0” on Line 2a even if your organization has interest on non-Vermont state and local obligations.

  Line 2c – Interest from US Government obligations is not included in the calculation of Line 1 income and therefore should not be reported on Line 2c, which reduces federal taxable income to arrive at Vermont Net Taxable Income.

Are nonprofit organizations subject to the minimum corporate tax? If the nonprofit organization has no federal filing requirement, it is not required to file a Vermont return and it

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arising from debt-financed property subject to taxation under Section 514 of the Internal Revenue Code.” 32 V.S.A. § 5811(18)(D).

owes no tax. If the federal filing requirement is triggered and therefore an organization has a Vermont filing requirement, the organization owes the greater of tax on the income allocated and apportioned to Vermont or the minimum tax on corporations.[3]

Drafted by:

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Ken Jones Date
Policy Analyst

Approved by:

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Ellen Tofferi Date
Acting Commissioner of Taxes

[3] The current minimum tax is $250. 32 V.S.A. § 5832(2)(B).