

TAXED IN PART

When exempt property is used in part for unrelated trade or business, that portion is assessable. Please see the material in Chapter 22 on Taxed-In-Part.

Chapter 22 Exemptions General

22.1.6 TAXED IN PART

Under Wisconsin Statutes Section 70.1105(1), an exempt organization may be assessed and taxed in part, when:

“Property that is exempt under s. 70.11 and that is used in part in a trade or business for which the owner of the property is subject to taxation under sections 511 to 515 of the internal revenue code, as defined in s. 71.22 (4m), shall be assessed for taxation at that portion of the fair market value of the property that is attributable to the part of the property that is used in the unrelated trade or business.

This section does not apply to property that is leased by an exempt organization to another person or to property that is exempt under s. 70.11(34).”

The Internal Revenue Service provides guidelines to determine the taxability of unrelated income in *Publication 598 Tax on Unrelated Business Income of Exempt Organizations*. This document may be viewed or downloaded at www.irs.gov.

Unrelated business income is defined as income from a trade or business that is regularly carried on by an exempt organization that is not substantially related to the performance of its exempt purpose or function, except for the profits derived from this activity.

Trade or business generally includes income-producing activities related to selling goods or performing a service.

Regularly carried on activities are performed with frequency and continuity comparable to commercial activities of nonexempt organizations.

Not substantially related activities do not significantly contribute to accomplishing the exempt purpose of the organization. The following examples describe activities generating unrelated business income by exempt organizations:

A Humane Society provides pet boarding and grooming services to the general public for a fee.

A Nonprofit Medical Research Foundation rents its labs to a for profit drug company for research on the effectiveness of a new drug. The research is performed entirely by the drug company’s staff. The Foundation’s staff and students are not involved in the research.

An Art Gallery rents the facility to a commercial event promoter for concerts, weddings, parties and lectures.

The Internal Revenue Service determines if an organization is subject to taxation for unrelated business income. If the assessor feels an exempt organization may have unrelated business income, an Unrelated Business Income Report (PC-227) should be sent to the organization. The organization will know if it is being taxed by the IRS for unrelated business income and should complete and return this form.

After receiving the return, the assessor should estimate the market value of the part of the property used to generate unrelated business income using the three approaches to value. **If only part of the building is used to generate unrelated business income, the assessor should determine that percentage and multiply it times the market value of the building.** For example, assume a lodge operates a kitchen and dining room that is regularly open to the public. The assessor estimates that the market value of the building is \$500,000. The area of the kitchen and dining room is 1,000 square feet and the area of the building is 5,000 square feet. The percentage used to generate unrelated business income is 20% (1,000/5,000). The market value of the unrelated business use is \$100,000 (\$500,000 x .20). The percentage is not applied to the land unless the organization receives separate compensation for the land.

If an entire building is used part of the time to generate unrelated business income, **the assessor can base the assessment on either the percentage of income attributable to the non-exempt use or the percentage of time the property is used for the non-exempt use.** For example, an exempt organization publishes a student newspaper and also regularly does printing for the public which provides 20 percent of its income. The assessor would estimate the market value of the building and multiply it times 20 percent to estimate the market value of the unrelated business use.

WISC. STATS. CHAPTER 70 GENERAL PROPERTY TAXES

70.1105 Taxed in part. (1) Property that is exempt under s.70.11 and that is used in part in a trade or business for which the owner of the property is subject to taxation under sections 511 to 515 of the internal revenue code, as defined in s. 71.22 (4m), shall be assessed for taxation at that portion of the fair market value of the property that is attributable to the part of the property that is used in the unrelated trade or business. This section does not apply to property that is leased by an exempt organization to another person or to property that is exempt under s. 70.11 (34).

(2) Property, excluding land, that is owned or leased by a corporation that provides services pursuant to 15 USC 79 to a light, heat, and power company, as defined under s. 76.28 (1) (e), that is subject to taxation under s. 76.28 and that is affiliated with the corporation shall be assessed for taxation at the portion of the fair market value of the property that is not used to provide such services.

History: 1997 a. 35 s. 243; 2001 a. 16. Section 70.11 (intro.), and not s. 70.1105, applies if an exempt organization leases part of its property to a for-profit entity. Section 70.1105 applies if the exempt organization engages in for-profit activities. However the methodology for determining exemptions under each is the same. *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999), 96-2489.