

FEDERAL TAXATION

Unrelated Business Income—§ 8018

... The over-5 year leases account for 50% or more of the total rented area at any time during the year.

... Any tenant (or group of tenants that are members of the same consolidated return affiliated group or partnership) under an over-5 year lease accounts for more than 10% of the rents for the year.

... Any tenant (or group of tenants that are members of the same consolidated return affiliated group or partnership) under an over-5 year lease accounts for more than 10% of the total rented area at any time during the year.

Over-5 years continuous occupancy by the same tenant is treated as an over-5 year lease under the two 10% rules above, but not under the two 50% rules.

Under the 50% rules only, the unexpired portion of a lease on the date that a new lease is made isn't tacked on to the second lease in determining whether the term of the second lease is over 5 years. But this rule applies only if the second lease takes effect after the end of the first lease and is made during the last half of the term of the first lease.¹

1. Code Sec. 514(b)(3)(B).

§ 8016. Business lease indebtedness. Business lease indebtedness is the unpaid amount of indebtedness with respect to real property leased for a term of over 5 years. It includes indebtedness:

... Incurred by the lessor in acquiring the property.

... Subject to which the property was acquired (whether the acquisition was by gift, devise, or purchase).

... Incurred by the lessor in improving the property.

... Incurred before acquisition or improvement of the property if it wouldn't have been incurred but for such acquisition or improvement.

... Incurred after acquisition or improvement of the property if it wouldn't have been incurred but for such acquisition or improvement and its incurrence was reasonably foreseeable at the time of the acquisition or improvement.¹

Whether indebtedness subject to which property is acquired on liquidation of a corporation in which the exempt organization held stock is business lease indebtedness isn't settled. A district court held that it isn't basing its decision on the ground that indebtedness subject to which property is acquired is business lease indebtedness only if the property was acquired by gift, devise, or purchase and that none of these includes prop-

erty acquired on liquidation of a corporation.² But the Treasury holds that property received in a corporate liquidation is "acquired" within the meaning of the business lease indebtedness provision.³

If only part of the real property is subject to a business lease, only part of the indebtedness with respect to the property is business lease indebtedness. This is determined by making a proper allocation.⁴

Special rules apply in the following cases:

... Property subject to indebtedness acquired by gift, bequest or devise before July 1, '50.⁵

... Property subject to a lease requiring improvements, acquired by gift, bequest, or devise before July 1, '50.⁶

... Certain Code Sec. 501(c)(2) title holding corporations.⁷

... Certain Code Sec. 401(a) qualified pension, profit-sharing, and stock bonus trusts.⁸

... Code Sec. 501(c)(17) employees supplemental unemployment compensation trusts.⁹

1. Code Sec. 514(c)(1) and (2).
2. *Broderick v. U.S.*, D.C. Wash., 6/19/64.
3. Rev. Rul. 66-107, IRB 1966-18, 13.
4. Code Sec. 514(c)(6).
5. Code Sec. 514(c)(2).
6. Code Sec. 514(c)(3).
7. Code Sec. 514(c)(4) and (5); Regs. § 1.514(c)-1(f).
8. Code Sec. 514(c)(5) and (7).
9. Code Sec. 514(c)(8).

§ 8017. Tax on unrelated business taxable income. The tax on unrelated business taxable income is computed at the corporate income tax rates as if the exempt organization's "unrelated business taxable income" is its "taxable income."¹ But if, except for its exempt status, the organization would be taxable as an estate or trust, its tax on unrelated business taxable income is computed at the income tax rates applicable to individuals.²

In computing the limitation on the credit for taxes of foreign countries and U. S. possessions, the exempt organization's "unrelated business taxable income" is used instead of "taxable income."³

✓ *observation:* The investment credit allowed by Code Sec. 38 apparently also is allowed since that credit applies to the tax imposed by Chapter I of the Code, and Code Sec. 511 which imposes the tax on unrelated business taxable income is part of that chapter.

1. Code Sec. 511(a)(1).
2. Code Sec. 511(b).
3. Code Sec. 515.

§ 8018. Returns and payment of tax. Form 990-T is used to report and pay tax on unrelated business taxable income. The same form is used whether the tax is computed at corporate or individual income tax rates.¹