

## CLIENT ALERT

### IRS Holds that Trade Association's Common Identifier Program Is Not Subject to UBIT

Feb.08.2011

In PLR 201105043, the IRS held the licensing for a fee by a trade association of common identifier numbers, and administration of the program, was not subject to unrelated business income tax ("UBIT").<sup>1</sup> A common identifier number is a 5- or 6-digit number that may be texted from a cell phone to get a coupon, obtain information, vote in a survey, etc. In the past, to use these codes as part of its marketing efforts, a company had to obtain a separate code from each cell carrier, and sometimes the code numbers obtained differed from carrier to carrier for the same content. A trade association determined that it was in the interest of the industry overall to permit content providers to secure one common identifier number that could be used for all participating carriers. Thus, the cell phone user could text a single code in response to a marketing campaign regardless of the user's cell phone carrier. The association initially considered letting a group of carriers coordinate this effort, but was concerned this might implicate antitrust issues. It was thought that a private service provider could not be used because it would lack sufficient credibility. So, the association took on the project.

A fee was charged for each common identifier number issued. The fee was set to cover costs and also to discourage "squatting," i.e., obtaining a common identifier number just to keep others from using it. Membership in the association was not required to obtain a common identifier number. The association also audited compliance of common identifier number holders with its "best practices" guidelines and provided an efficient means for the content provider to activate the issued common identifier number with various cell carriers.

The IRS held that the fees charged were not subject to the unrelated business income tax, because providing the common identifier numbers was related to the association's exempt purposes. Important factors in the IRS's reasoning included: (1) the common identifier number activity was uniquely related to the association's exempt purposes and not conducted by businesses; (2) the activity was in the best interests of the industry by ameliorating portability shortcomings in common identifier numbers; (3) membership in the association was not required to obtain a common identifier number; (4) fees were set at a level to cover costs and discourage squatting; and (5) the program advanced a common and pre-existing interest of the industry.

The IRS distinguished the common identifier number program from situations where UBIT had been held to apply. Particularly, the common identifier number program was different from the Bluetooth technology standard, where the association in question was established for the purpose of creating and marketing a particular technical standard in a commercial manner. The common identifier number program also differed from associations that had conducted real estate multiple listing services or had sold health data on individuals to insurance companies for a fee. In those situations, the associations were performing particular services for individual members, rather than advancing the industry as a whole.

Trade associations should consider how the reasoning of the ruling affects the UBIT treatment of their current or proposed programs. The ruling provides some of the principal considerations in determining whether a program's income is UBIT, including whether the program is within the association's exempt purposes, whether membership in the association is required

to participate in the program, and whether the program advances a common and pre-existing interest of the industry the association represents.

The ruling, PLR 201105043, is available at <http://www.irs.gov/pub/irs-wd/1105043.pdf>.

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<sup>1</sup> The name of the trade association and activity involved are redacted. Based on its content, the ruling appears to address the use of common identifier numbers.

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