

NEVADA STATE

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NSEA Business Practices

Rents from Personal Property, “Mixed Leases,” and the Rental Exclusion from UBTI

Rents from the lease of personal property are not excludable from unrelated business taxable income under Section 512(b)(3), unless the personal property is leased with real property and the rent attributable to the personal property is an incidental amount of the total rents received or accrued under the lease, as determined at the time the personal property is first placed in service. If more than 50% of the total rental income under a lease is attributable to personal property, then none of the income received or accrued under the lease is excludable from unrelated business taxable income under Section 512(b)(3).

IRC Section and Treas. Regulation

The rental exclusion to the definition of unrelated business taxable income under Section 512(a) is found in:

- IRC Section 512(b)(3)(A)(i) Rents from real property
- IRC Section 512(b)(3)(A)(ii) Rents from personal property leased with real property
- Treas. Reg. Section 1.512(b)-1(c) Rents

Resources (Court Cases, Chief Counsel Advice, Revenue Rulings, Internal Resources)

- Rev. Rul. 60-206 Income received by an exempt employees' trust from the lease of railroad tank cars constitutes unrelated business taxable income because rents derived from personal property are not within the exception provided by section 512(b)(3).
- [IRM 7.27.6.7.4 Rents](#)
- [IRM 7.27.6.7.4.3 Exception for Mixed Leases](#)

Analysis

Personal property is commonly defined as any property that is not attached to the land or to structures on real estate. The main characteristic of personal property is that it is movable, unlike real property or real estate. Property described in Section 1245(a)(3)(B) is treated as personal property for purposes of Section 512(b)(3). See also Treas. Reg. Section 1.512(b)-1(c)(3)(ii).

In the case of personal property leased along with real property, referred to in the IRM as a “mixed lease,” the rental income is excludable from unrelated business taxable income if the rents that are attributable to the personal property are not more than 10% of the total rents received under the lease.

If the rental income attributable to personal property is more than 10%, but not more than 50%, only the rent attributable to the real property is excludable from unrelated business taxable income.

If more than 50% of the rental income received is attributable to personal property, the exclusion from unrelated business taxable income under Section 512(b)(3) does not apply, which means all the income received under that lease is considered unrelated business income and subject to UBIT. See Treas. Reg.

Section 1.512(b)-1(c)(2)(iii)(a). If separate leases are entered into for real and personal property and the properties have an integrated use (e.g., one or more leases for real property and another lease or leases for personal property to be used upon such real property) the leases will be considered as one lease. Treas. Reg. Section 1.512(b)-1(c)(3)(iii).

Treas. Reg. Section 1.512(b)-1(c)(4) provides several examples of the issues dealing with mixed and multiple leases.

Issue Indicators or Audit Tips

Issue Indicators:

- Does Form 990, Part VIII – Statement of Revenue, Line 6(a), show an amount for gross rents? Is rental income reported in an "other" income category on the return?

Audit Tips:

- Request the taxpayer provide documentation such as a lease agreement(s) showing the terms attributable to the personal property?
- In the agreement were the rents attributable to personal property no more than 10% of the total rents received or accrued under the lease?
- If the income from the rent of personal property was more than 50% was Unrelated Business Income considered?
- How is the personal property valued?
- Tour the facilities, asking what various spaces are used for, and whether any areas are leased out.

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IRS Link:

<https://www.irs.gov/charities-non-profits/rents-from-personal-property-mixed-leases-and-the-rental-exclusion-from-ubti>