

# Nonprofit Joint Ventures – Partnering with For-Profit Organizations

LOUIS E. MICHELSON  
Law Offices of Louis E. Michelson  
A Professional Corporation  
(310) 843-0700  
www.lerntax.com

1

## Topics to be Covered

- **Income Tax Considerations**
  - What is a joint venture?
  - Loss of income-tax exemption
  - Unrelated business income
- **Partnership Tax Reporting**
  - Pass-through of income from Joint Venture
  - Cases and Rev. Rul 98-15 and Rev. Rul. 2004-51
- **For-Profit Subsidiaries**
  - Attribution versus Separate Corporate Identity
  - Agency Relationships
  - Controlled Corporations and Subsidiaries
- **Reporting and Planning for Joint Ventures**
  - Disclosures: Schedule R and Form 990, Part VI
  - Joint Venture Policy and Planning

2

## What is a Joint Venture?

- a joint venture or similar arrangement (or a “venture or arrangement”) means any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity . . .

3

## What is a Joint Venture? (cont'd)

- . . . without regard to (1) whether the organization controls the venture or arrangement, (2) the legal structure of the venture or arrangement, or (3) whether the venture or arrangement is treated as a partnership for federal income tax purposes, or as an association, or corporation for federal income tax purposes.

– Form 990 Instructions

4

## Forms of Joint Ventures

- May include any of the following (even if not appear to be a joint venture):
  - Contract, e.g., a joint operating agreement or lease
  - Loan
  - Limited partnership
  - Partnership
  - Limited liability company
  - Nonprofit or for-profit corporation

5

## Rewards and Risks

- Potential rewards
  - Accomplish program goals
  - New revenue sources and fundraising
- Potential risks
  - Failure to fulfill tax-exempt purpose
  - Private inurement
  - Impermissible private benefit
  - Loss of income tax-exemption
  - Unrelated business income

6

## Tax-Exempt Purpose

- IRC Section 501(c)(3): “. . . organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes . . .”

7

## Tax-Exempt Purpose Reg. Sec. 1.501(c)(3)-1(e)

- (e) Organizations carrying on trade or business -(1)In general. An organization may meet the requirements of section 501(c)(3) **although it operates a trade or business** as a substantial part of its activities, if the operation of such trade or business **is in furtherance of the organization's exempt purpose or purposes** and if the organization is **not organized or operated for the primary purpose of carrying on an unrelated trade or business**, as defined in section 513. In determining the existence or nonexistence of such primary purpose, **all the circumstances must be considered**, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

8

## Loss of Exemption: Substantial Non-Charitable Purpose

- This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.
- *Better Business Bureau v. United States*, 326 US. 279 (1945) an important if not the primary object of which is to promote not only an ethical but also a profitable business community, held not exempt from social security taxes

9

## Loss of Exemption Commerciality Doctrine

- A tax-exempt organization is engaged in nonexempt activity when that activity is engaged in in a manner that is commercial in nature.
- Analysis: does the activity have a direct counterpart in or is conducted in the same manner as for-profit organizations?

10

## Loss of Exemption Commerciality Doctrine

- *Living Faith* 950 F2d 365 (7th Cir 1991) affirming lower court. Elements evidencing commerciality:
- sale of goods and/or services (this element raises a presumption of commerciality)
- org in direct competition with for-profit restaurants and food stores
- prices set by the org were based on pricing formulas common in the retail food business
- pricing structure loomed large in court's analysis
- court criticizing the org for not having below-cost pricing
- utilized promotional materials and "commercial catch phrases" to enhance sales
- org's hours of operation were basically the same as for-profit businesses

11

## Loss of Exemption Commensurate Test

- **Activities of organization should be commensurate with their financial resources**
- Requires that charity have a charitable program that is both real and substantial, taking organization's circumstances and financial resources into account.
- In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. Treas. Reg. Sec. 1.501(c)(3)-1(e)

12

## Polling Question

- Which statement is true concerning the commensurate test?
- A: this test is on Part VI of Form 990
- B: Income of an organization should be commensurate with its expenses
- C: An organization's activities should be commensurate with its financial resources
- D: Good intentions need to be commensurate with ones resources

13

## Unrelated Business Taxable Income: Overview

- General Rule:
  - Tax-exempt organizations are subject to tax under Internal Revenue Code Section 511 on their income from any unrelated trade or business
- To Generate UBTI, the activity must be:
  - A trade or business
  - Not substantially related to the organization's exempt purpose
  - Regularly carried on

14

## “Trade or Business”

- Not necessarily the integrated, aggregate view of assets, activities and goodwill
- “Fragmentation Rule”
  - sub-divides a particular business into component parts: some of which may be related and some unrelated
  - An activity, such as advertising, does not lose its identity merely because it is carried on in conjunction with other exempt functions
    - Treas. Reg. Sec. 1.513-1(b)

15

## Advertising versus Corporate Sponsorship

- Advertising:
  - The income may be subject to UBTI
- Corporate Sponsorship:
  - solicitation and receipt of “qualified sponsorship payments” (QSPs) by an exempt organization does not constitute UBTI

16

## Qualified Sponsorship Payments (QSPs)

- Definition:
  - Any payment made by any person engaged in a trade or business where there is no arrangement or expectation that person will receive any “substantial return benefit” for the payment
  - Internal Revenue Code Section 513(i)
- Use or Acknowledgement must not include:
  - Any qualitative or comparative language or price information
  - Other indications of savings, value, endorsement or inducement to purchase sell or use the products or services

17

## Partnership Taxation: Aggregate Principle

- Activities of the partnership are considered to be the activities of the partners
  - *Butler v. Commissioner*, 36 T.C. 1097 (1961)
  - IRC 512(c) Special rules for partnerships.
- ... If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, **such organization** in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), **include its share (whether or not distributed) of the gross income of the partnership** from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

18

## Two Prong Test

- **First Prong: Charitable Purpose**
  - Is joint venture operating in furtherance of exempt purpose?
  - Example:
    - Participation in low-income housing project
    - Requires showing that provision of housing is “charitable”

19

## Two Prong Test (cont'd)

- **Second Prong:**
  - Does structure of joint venture protect exempt assets from risk for benefit of for profit partners?
  - Does structure minimize potential for private inurement?
- **Favorable factors versus unfavorable factors**
  - *Plumbstead Theatre Society, Inc.* 74 T.C. 1324 (1980) and GCM 39005 (1982)

20

## Polling Question

- Which facts accurately describes the fragmentation rule?
- A: a coffee shop will always be exempt
- B: some items sold in museum gift shop may be related and some may be unrelated
- C: all revenue received by a nonprofit is related to exempt purpose
- D: revenue that is generate offsite always is unrelated

21

## IRS Guidance on Joint Ventures

- Revenue Ruling 98-15: Whole hospital joint ventures
  - Example 1 (Good example)
    - Hospital continue to be recognized as charitable organization
    - Governing documents of LLC committed LLC to provide healthcare services to community as a whole
    - Achievement of charitable purposes priority over profit maximization
    - EO had voting control over LLC, specifically enumerated power over primary activities
    - Grantmaking contingent on receipt of LLC distributions; primary activity would be provision of medical care

22

## IRS Guidance on Joint Ventures

- Revenue Ruling 98-15: Whole hospital joint ventures
  - Example 2 (Bad example)
    - Charitable organization would not be engaged primarily in activities that further charitable purposes
    - LLC could deny care to indigent because there was not binding obligation on LLC to serve charitable purposes or provide services to entire community
    - Because EO did not have control over governing body of LLC, EO would not be able to initiate programs within the LLC without the vote of one board member appointed by the for profit
    - Management company could unilaterally renew management agreement
    - Management company could enter unusually large contracts without board approval

23

## Ninth Circuit Case

- *Redlands Surgical Services, Inc. v. Commissioner*, 113 T.C. 47 (1999) affirmed by Ninth Circuit (2001)
  - Denied exempt status
  - Ceded control over operations to private parties and conferred private benefit
  - No indication of informal private control

24

## Joint Venture Guidance

- *St. David's HealthCare System Inc. v. U.S.*
  - IRS revoked exempt status
    - Presence of community board not an absolute requirement; met by St. David's
    - Operated for community interest and not private interest
    - Voting rules and rights of non-profit partner critical
    - Use by IRS of facts-and-circumstance test
  - Subsequent history
    - District Court summary judgment for EO; 5<sup>th</sup> Cir. Vacated Dist. Ct.; Trial court jury voted EO retain exemption; gov't appealed, then withdrew appeal (EO agreed not to seek attorney's fees)

25

## IRS Guidance on Ancillary Joint Ventures

- Revenue Ruling 2004-51
  - Public charity in arrangement with for-profit entity will not lose tax-exempt status if:
    - Involvement is an insubstantial part of its total operations
    - It will not be subject to unrelated business income tax if
      - the charity retains control over the partnership, and
      - operations are one or more related businesses

26

## Affinity Card Programs

- Structure:
  - Charitable organization permits credit card issuer to display that organization's name or logo on credit card which is marketed to members or supporters
  - Organization receives percentage of total amount charged on card
- Tax treatment of payment to charity
  - If payment is in consideration for intangible property right, nontaxable as royalty
  - If payment for services, taxable as UBTI

27

## Affinity Card Programs (cont'd)

- Tax Court has upheld payments do not result in UBTI because payments constituted royalties
- Referral Payments from commercial websites to display web merchant's logo or products
  - Query: what intangible is involved?
  - Does the link and the purchase further the exempt purpose of the organization by providing its members with materials that are integral to its program and therefore income might not be UBTI?

28

## Polling Question

- Which statement is true?
- A: payments that are royalties are UBTI
- B: payments that are royalties are not UBTI
- C: royalties should be taxed because they are related to foreign sources
- D: payments for services that are labelled royalties are not UBTI

29

## Is Corporation Treated as Separate or as an Agent

- Sometimes one wants to assert separate existence or corporate entity or sometimes want to disregard it, depending on the facts
- *Moline Properties, Inc. v. Commissioner*, 319 U.S. 436 (1943)
  - For income tax purposes, a taxpayer cannot ignore the form of the corporation that he creates for a valid business purpose or that subsequently carries on business, unless the corporation is a sham or acts as a mere agent.

30

## Separate Corporate Identity

- If EO has wholly owned taxable subsidiary:
  - Separate board of directors
  - Independent management of daily activities
  - Separate operation of subsidiary: maintain
    - Minutes of Board meetings
    - Operating budgets
    - Financial reports
  - Gen. Coun. Memos 39326 and 39598

31

## Governance and Valid Business Purpose

- Governance
  - Majority of members of subsidiary's board of directors are not officers or directors of nonprofit parent
    - PLR 200321021
- Valid business purpose
  - Business league created subsidiary to house all of its unrelated business activities
    - Creation of subsidiary did not jeopardize exempt status of parent
    - Earnings of subsidiary will not be UBTI to parent
    - Payment of dividend by subsidiary will not jeopardize exempt status of parent
    - PLR 9119060

32

## Sharing of Facilities or Employees

- EO's expenditures should further its exempt purpose
- Document allocable portion of each expense. Could be based on:
  - Time
  - Space
  - Cost
  - Usage/logs
- E.g. PLR 8944017

33

## An Agency Relationship Exist?

- Two requirements for determining that an agency relationship exists
  - *National Carbide Corp. v. Commissioner*, 336 U.S. 422, 437 (1949)
- If the corporation is a true agent, its relations with its principal must not be dependent upon the fact that it is owned by the principal, if such is the case
- The corporation's business purpose must be the carrying on of the normal duties of an agent. The opinion set forth four relevant considerations in determining whether a true agency exists: whether the corporation
  - (1) operates in the name and for the account of the principal,
  - (2) binds the principal by its actions,
  - (3) transmits money received to the principal, and
  - (4) receives income that is attributable to the services of employees of the principal and to assets belonging to the principal.

34

## Agency Relationships

- *State Police Ass'n. of Massachusetts v. Commissioner*
  - Advertising from annual publication was UBTI
  - Held that agreement between publisher and 501(c)(5) organization set forth an agency relationship:
    - Authority to use association's name in soliciting advertising
    - Publisher collected payments payable to association

35

## Agency Relationships (cont'd)

- *Arkansas State Police Ass'n. v. Commissioner*
  - Substantially participated in, and maintained control over publication
  - Distinguished the mailing list and affinity card cases
- “Agency: Exempt Organizations and UBIT Issues”
  - Article in Exempt Organizations Continuing Professional Education (CPE) Technical Instruction Program For Fiscal Year 2002
  - <https://www.irs.gov/pub/irs-tege/eotopic02.pdf>

36

## Controlled Corporations and Subsidiaries

- Revenue from Controlled Organization
  - UBTI
  - Control threshold: 50%
- Types of Payments
  - Interest
  - Royalty
  - Rents
  - (Not Dividends)

37

## Controlled Corporations and Subsidiaries (cont'd)

- Other Tax Considerations
  - Is it an unrelated trade or business?
  - No adverse impact on parent's exempt status
  - Capital gain exclusion – IRC Section 512(b)(5)
- Non-tax factors
  - Administrative
  - Liability
  - Property taxes

38

## Polling Question

- What is the control threshold for revenue from a controlled corporation?
- A: 25%
- B: 33%
- C: 50%
- D: 75%

39

## Schedule R

- Related organizations
  - Parent/subsidiary
  - Brother/sister
    - Glossary
    - Schedule R instruction
  - Supporting/supported
    - 509(a)(3)

40

## Schedule R

- Definition of Control – if without owners
  - Parent/subsidiary: power to remove/replace majority of directors
  - Brother/sister: management or board overlap
- Definition of Control – if with owners
  - > 50% of stock – voting power of corp
  - > 50% of profits or capital interests of p/s
  - > 50% beneficial interest in trust

41

## Brother/Sister Related Organizations

- Org A and Org B
  - each appoint 1/3 of the board members of Org C and Org D
  - Are not otherwise related to Org C and Org D
- Neither Org A nor Org B are parents of C,D
- Org C and Org D are controlled by the same persons => related organizations
- Ex. 1. for Schedule R – Control by Multiple Persons

42

## Indirect Control Example

- Org B wholly owns (voting power) C, taxable corp.
- C holds 51% profits interest in D, a p/s
- B is deemed to own 51% of D (100% of C's 51% interest in D) under IRC § 318
- B controls C and D; both are related orgs with respect to B
- Ex. 1 for Schedule R – Indirect Control

43

## Indirect Control Example 2

- EO T owns 40% of U, taxable corp.
- T and U each own 40% stock of V, taxable corp.
- T and U are not related
  - As parent/sub: T does not own >50% of U
  - None of U's holdings attributed to T because T owns less than 50% of U stock- IRC 318
- T and V are not related
- Ex. 5 for Schedule R – Indirect Control

44

# Schedule R

- Information requested in Parts I – III

**Part I Identification of Disregarded Entities** (Complete if the organization answered "Yes" to Form 990, Part IV, line 33.)

| (a)<br>Name, address, and EIN (if applicable) of disregarded entity | (b)<br>Primary activity | (c)<br>Legal domicile (state or foreign country) | (d)<br>Total income | (e)<br>End-of-year assets | (f)<br>Direct controlling entity |
|---|-------------------------|--|---------------------|---------------------------|----------------------------------|
| (1)   |                         |  |                     |                           |                                  |

**Part II Identification of Related Tax-Exempt Organizations** (Complete if the organization answered "Yes" to Form 990, Part IV, line 34 because it had one or more related tax-exempt organizations during the tax year.)

| (a)<br>Name, address, and EIN of related organization | (b)<br>Primary activity | (c)<br>Legal domicile (state or foreign country) | (d)<br>Exempt Code section | (e)<br>Public charity status (if section 501(c)(3)) | (f)<br>Direct controlling entity | (g)<br>Section 512(b)(13) controlled entity? |    |
|---|-------------------------|--|----------------------------|---|----------------------------------|--|----|
|   |                         |  |                            |   |                                  | Yes  | No |
| (1)   |                         |  |                            |   |                                  |  |    |

**Part III Identification of Related Organizations Taxable as a Partnership** (Complete if the organization answered "Yes" to Form 990, Part IV, line 34 because it had one or more related organizations treated as a partnership during the tax year.)

| (a)<br>Name, address, and EIN of related organization | (b)<br>Primary activity | (c)<br>Legal domicile (state or foreign country) | (d)<br>Direct controlling entity | (e)<br>Predominant income (related, unrelated, excluded from tax under sections 512-514) | (f)<br>Share of total income | (g)<br>Share of end-of-year assets | (h)<br>Depreciation allocations? |    | (i)<br>Code V—UBI amount in box 20 of Schedule K-1 (Form 1099) | (j)<br>General or managing partner? |    | (k)<br>Percentage ownership |
|---|-------------------------|--|----------------------------------|--|------------------------------|------------------------------------|----------------------------------|----|--|-------------------------------------|----|-----------------------------|
|   |                         |  |                                  |  |                              |                                    | Yes                              | No |  | Yes                                 | No |                             |
| (1)   |                         |  |                                  |  |                              |                                    |                                  |    |  | 45                                  |    |                             |

# Schedule R

- Information requested in Parts IV

**Part IV Identification of Related Organizations Taxable as a Corporation or Trust** (Complete if the organization answered "Yes" to Form 990, Part IV, line 34 because it had one or more related organizations treated as a corporation or trust during the tax year.)

| (a)<br>Name, address, and EIN of related organization | (b)<br>Primary activity | (c)<br>Legal domicile (state or foreign country) | (d)<br>Direct controlling entity | (e)<br>Type of entity (C corp, S corp, or trust) | (f)<br>Share of total income | (g)<br>Share of end-of-year assets | (h)<br>Percentage ownership | (i)<br>Section 512(b)(13) controlled entity? |    |
|---|-------------------------|--|----------------------------------|--|------------------------------|------------------------------------|-----------------------------|--|----|
|   |                         |  |                                  |  |                              |                                    |                             | Yes  | No |
| (1)   |                         |  |                                  |  |                              |                                    |                             |  |    |

46

# Schedule R

- Information reported in Part V

**Part V Transactions With Related Organizations** (Complete if the organization answered "Yes" to Form 990, Part IV, line 34, 35b, or 36.)

**Note.** Complete line 1 if any entity is listed in Parts II, III, or IV of this schedule.

**1** During the tax year, did the organization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?

|          |  |    |
|----------|--|----|
| <b>a</b> | Receipt of (i) interest (ii) annuities (iii) royalties or (iv) rent from a controlled entity . . . . .   |    |
| <b>b</b> | Gift, grant, or capital contribution to related organization(s) . . . . .                                |    |
| <b>c</b> | Gift, grant, or capital contribution from related organization(s) . . . . .                              |    |
| <b>d</b> | Loans or loan guarantees to or for related organization(s) . . . . .                                     |    |
| <b>e</b> | Loans or loan guarantees by related organization(s) . . . . .  |    |
| <b>f</b> | Dividends from related organization(s) . . . . .   |    |
| <b>g</b> | Sale of assets to related organization(s) . . . . .  |    |
| <b>h</b> | Purchase of assets from related organization(s) . . . . .  |    |
| <b>i</b> | Exchange of assets with related organization(s) . . . . .  |    |
| <b>j</b> | Lease of facilities, equipment, or other assets to related organization(s) . . . . .                     |    |
| <b>k</b> | Lease of facilities, equipment, or other assets from related organization(s) . . . . .                   |    |
| <b>l</b> | Performance of services or membership or fundraising solicitations for related organization(s) . . . . . |    |
| <b>m</b> | Performance of services or membership or fundraising solicitations by related organization(s) . . . . .  |    |
| <b>n</b> | Sharing of facilities, equipment, mailing lists, or other assets with related organization(s) . . . . .  |    |
| <b>o</b> | Sharing of paid employees with related organization(s) . . . . .   |    |
| <b>p</b> | Reimbursement paid to related organization(s) for expenses . . . . .                                     |    |
| <b>q</b> | Reimbursement paid by related organization(s) for expenses . . . . .                                     |    |
| <b>r</b> | Other transfer of cash or property to related organization(s) . . . . .                                  | 47 |
| <b>s</b> | Other transfer of cash or property from related organization(s) . . . . .                                |    |

# Schedule R – Part VI

- Unrelated organizations taxable as partnership may result in:
  - Unrelated business taxable income
  - Private benefit
  - Inurement
  - Exempt status issues, where EO does not control venture

## Schedule R – Part VI

- Information reported

**Part VI Unrelated Organizations Taxable as a Partnership** (Complete if the organization answered "Yes" to Form 990, Part IV, line 37.)

Provide the following information for each entity taxed as a partnership through which the organization conducted more than five percent of its activities (measured by total assets or gross revenue) that was not a related organization. See instructions regarding exclusion for certain investment partnerships.

| (a)<br>Name, address, and EIN of entity | (b)<br>Primary activity | (c)<br>Legal domicile (state or foreign country) | (d)<br>Predominant income (related, unrelated, excluded from tax under section 512-514) | (e)<br>Are all partners section 501(c)(3) organizations? |    | (f)<br>Share of total income | (g)<br>Share of end-of-year assets | (h)<br>Disproportionate allocations? |    | (i)<br>Code V—LBI amount in box 20 of Schedule K-1 (Form 1065) | (j)<br>General or managing partner? |    | (k)<br>Percentage ownership |
|---|-------------------------|--|---|--|----|------------------------------|------------------------------------|--------------------------------------|----|--|-------------------------------------|----|-----------------------------|
|   |                         |  |   | Yes  | No |                              |                                    | Yes                                  | No |  | Yes                                 | No |                             |
| (1).....                                |                         |  |   |  |    |                              |                                    |                                      |    |  |                                     |    |                             |

49

## Polling Question

- Unrelated organizations taxable as partnership may result in:
  - A: Unrelated business taxable income
  - B: Exempt status issues where EO does not control the venture
  - C: A and B
  - D: Neither A nor B

50

## Form 990, Part VI, Line 16a

- Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?

51

## Form 990, Part VI, Line 16b

- If “Yes,” did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization’s exempt status with respect to such arrangements?

52

## Joint Venture Policy

- Form 990 Policies Series Memorandum ([http://www.publiccounsel.org/useful\\_materials?id=0025](http://www.publiccounsel.org/useful_materials?id=0025))
  - Summary
  - Rationale for Adoption of Joint Venture Policy
  - Requirements/Sources for the Policy
  - Considerations and Procedures for Implementation of the Policy
  - Sample Policy

53

## Protection of Exempt Status

- Operated exclusively for tax-exempt purpose or risk loss of tax-exempt status
- “exclusively” – *Better Business Bureau (slide 9)*
- Prohibition on political intervention or substantial lobbying
- Activities of partnership attributed to partners

54

## Control

- Does venture further tax-exempt purpose of EO?
  - If insubstantial portion of EO's assets: 50:50 control provided activities will further exempt purposes
- Refer to case law discussed slides 22, 23 and *Plumbstead Theatre Society, Inc.* 74 T.C. 1324 (1980)

55

## Polling Question

- Form 990, Part VI, line 16b inquires:
- A: Did the org follow a written policy or procedure requiring the org to evaluate its participation in joint venture arrangements under applicable federal tax law
- B: take steps to safeguard the org's exempt status with respect to such arrangements
- C: Both A and B
- D: Neither A nor B

56

## Other Factors

- Priority of tax-exempt purpose
- Arm's length standard
  - Private inurement
  - Impermissible private benefit
- Reporting of joint venture information
- Hospital compliance with Section 501(r)
- Negotiation by management/counsel
- Income recognition (UBTI)

57

## Questions and Comments

- Questions?
- Comments?

58

LOUIS E. MICHELSON  
Law Offices of Louis E. Michelson,  
A Professional Corporation  
10811 Washington Boulevard, Suite 258  
Culver City, CA 90232  
(310) 843-0700  
Fax (818) 304-7122  
louis@lemtax.com

59