

Unrelated Business Income Tax (UBIT) Fundamentals

Presented by: Financial Services, Tax Compliance



TAX EXEMPT OR NOT?

Isn't the University exempt from Federal Income Tax?



Yes and No



EXEMPT ACTIVITY

Why is UA partially income tax exempt?

- UA is income tax exempt as an integral part of the State of Arizona

Which activities are tax exempt?

- Those that are related to the exempt purposes of colleges and universities:
 - Research and Discovery (with restrictions)
 - Teaching and Learning
 - Outreach and Public Service
 - Fostering national or international amateur sports competition



BUT...



TAXABLE ACTIVITY

UA is not tax exempt under § 513 of the Internal Revenue Code for activities which are:



- Substantially unrelated to the exempt purposes of colleges and universities, even if the funds produced are used to support the University's exempt functions

UBIT DEFINED: 3 PRONG TEST

In order to be subject to UBIT, an activity must meet all three designations:

- Conducted like a trade or business, AND
- Regularly carried on, AND
- Not substantially related to UA's tax exempt purpose



TRADE OR BUSINESS

- In general, a trade or business is an activity conducted for the production of income from:
 - The sale of goods, or
 - The performance of services
- In order to be a trade or business, an activity must be:
 - Conducted with an intent to profit
 - Not resulting in profit in the short term does not exclude the activity from being a trade or business
 - Prolonged losses could signify a lack of intent to profit and disqualify the activity as UBIT



REGULARY CARRIED ON

- In general, an activity is regularly carried on if:
 - It shows frequency and continuity
 - Is conducted in a manner similar to a non-exempt organization running a similar business
- An activity should not be considered regularly carried on if it is:
 - Conducted only on an infrequent basis
 - Conducted without competitive or promotional effort
- More to know:
 - Year-round activities are regular even if they are conducted only one day a week
 - Seasonal activities may be considered regularly carried on even though they are conducted only for a short period annually



SUBSTANTIALLY UNRELATED TO EXEMPT PURPOSE

- In general, an activity is unrelated if:
 - It does not contribute importantly to the exempt purposes of the University other than through the production of income
 - Is conducted to a size or extent larger than necessary for the exempt function



EXCEPTIONS



- Volunteer workforce
 - 85% or more of the activity is conducted by volunteers
- Convenience of members
 - Trade or business provided for the convenience of members
 - UA members include students, faculty, employees, officers and patients
 - Alumni and members of the general public are not members for UBIT purposes
- Sale of donated merchandise
- Qualified sponsorship
 - Payment to UA by a corporation or business for which the company receives no substantial return of benefit other than the use or acknowledgement of its products or services

SUBSTANTIAL RETURN OF BENEFITS: EXAMPLES

- Non-qualified Sponsorships are potentially subject to UBIT and might include such return of benefits as:
 - Advertising
 - Contains comparative or qualitative language
 - Contains price or savings information
 - Includes a call to action
 - Includes an endorsement or inducement to purchase sponsor's product or service
 - Exclusive provider arrangements
 - Goods, facilities, services or other privileges
 - Exclusive or non-exclusive right to use the University's intangible assets
 - Trademark
 - Logo



EXCLUSIONS



- Investment income, such as:
 - Interest
 - Annuities
- Royalty income
- Gains or losses from the sale of property (other than inventory or property held primarily for sales)
- Rents from real property, if:
 - Does not include personal property rental
 - Graduated taxability based on inclusion of personal property of <10%, 11-50%, or 51%
 - Rents are not based on net profit
 - Personal services are not provided
 - Property is not debt financed
 - If used 85% or more for exempt purposes, property is not considered debt financed
- Research, except...



TAX CUTS & JOBS ACT: SOME UBIT IMPACTS

	BEFORE	AFTER
Tax Rate(s)	Graduated; up to 39%	Flat 21%
Qualified Transportation Fringes	Costs not included in UBTI	Costs included in UBTI if not included in employee taxable wages – REPEALED 12.20.19
Activity Bucketing	Gains and losses of all UBI activity consolidated	Gain and losses bucketed by activity, no longer consolidated



UBIT ESTIMATED PAYMENT AND RETURN

- Tax Services annually makes an estimate of UBIT liability
 - Estimated payment is due October 15th
- Tax Services annually prepares IRS Form 990-T
 - Return is due November 15th and covers the FY ending June 30th

Form 990-T Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)) OMB No. 1545-0047

For calendar year 2020 or other tax year beginning _____, 2020, and ending _____, 20**20**

Department of the Treasury Internal Revenue Service

Go to www.irs.gov/Form990T for instructions and the latest information.
Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

Open to Public Inspection for 501(c)(3) Organizations Only

A Check box if address changed.

B Exempt under section: 501(c)(1) 501(c)(2) 408A 529(a) 529A

C Book value of all assets at end of year _____

D Employer identification number _____

E Group exemption number (see instructions) _____

F Check box if an amended return. Yes No

G Check organization type: 501(c) corporation 501(c) trust 401(a) trust Other trust Applicable reinsurance entity

H Check if filing only to: Claim credit from Form 8941 Claim a refund shown on Form 2439

I Check if a 501(c)(3) organization filing a consolidated return with a 501(c)(2) titleholding corporation Yes No

J Enter the number of attached Schedules A (Form 990-T) _____

K During the tax year, was the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? Yes No

L The books are in care of _____ Telephone number _____

Part I Total Unrelated Business Taxable Income

1 Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions)	1
2 Reserved	2
3 Add lines 1 and 2	3
4 Charitable contributions (see instructions for limitation rules)	4
5 Total unrelated business taxable income before net operating losses. Subtract line 4 from line 3	5
6 Deduction for net operating loss. See instructions	6
7 Total of unrelated business taxable income before specific deduction and section 199A deduction. Subtract line 6 from line 5	7
8 Specific deduction (generally \$1,000, but see instructions for exceptions)	8
9 Trusts. Section 199A deduction. See instructions	9
10 Total deductions. Add lines 8 and 9	10
11 Unrelated business taxable income. Subtract line 10 from line 7. If line 10 is greater than line 7, enter zero	11

Part II Tax Computation

1 Organizations taxable as corporations. Multiply Part I, line 11 by 21% (0.21)	1
2 Trusts taxable at trust rates. See instructions for tax computation. Income tax on the amount on Part I, line 11 from: <input type="checkbox"/> Tax rate schedule or <input type="checkbox"/> Schedule D (Form 1041)	2
3 Proxy tax. See instructions	3
4 Other tax amounts. See instructions	4
5 Alternative minimum tax (trusts only)	5
6 Tax on noncompliant facility income. See instructions	6
7 Total. Add lines 3 through 6 to line 1 or 2, whichever applies	7

For Paperwork Reduction Act Notice, see instructions. Cat. No. 11291-J Form 990-T (2020)



UBIT CASE STUDIES

- **PLR 201630009:**
 - Tax Exempt Organization rented real property with personal property equaling 5% of FMV of the rental price. Rental price was not based on net income or profits of the activity.
 - Rent from real property held nontaxable; rental from personal property held incidental and nontaxable
- **PLR 201710002:**
 - Tax Exempt Organization specialized in data analysis on community issues, the results of which were made freely available to the general public. The organization offered the same technical assistance services to other organizations and provided them based on a sliding scale.
 - Income from the sale of the services was held to be substantially related to the organizations tax exempt purposes



UBIT CASE STUDIES

- **PLR 201645017:**
 - Tax Exempt Organization operated a coffee shop in connection to their facilities. The shop was advertised widely and operated in a commercial manner. The profits were used to support the organizations exempt functions.
 - The coffee shop was deemed substantially unrelated to the organization's exempt purposes and held subject to UBIT.
- **PLR 201710005:**
 - Tax Exempt Organization (Cultural Center) operated coffee shop housed inside the center. There were no exterior doors to the coffee shop nor any external advertising of any kind.
 - As there was no call to non-visitors of the Cultural Center to purchase coffee in any other circumstance than while they happened to be visiting the Center, the activity was held not unrelated to the organizations exempt purpose.



RESOURCES AND CONTACT INFORMATION

- Tax Services webpage:
<http://www.fso.arizona.edu/tax-services>
- Contact information:
Email: taxservices@fso.arizona.edu
Direct Line: 520-621-1957
- FSM 20.10:
<https://policy.fso.arizona.edu/fsm/2000/2010>
- Research Gateway:
<https://research.arizona.edu/research-support-home>
- Internal Revenue Code including but not limited to §§ 511, 512, 513:
<https://www.irs.gov/privacy-disclosure/tax-code-regulations-and-official-guidance>
- Title 26 of the Code of Federal Regulations including but not limited to §§ 1.511, 1.512, and 1.513:
<https://www.law.cornell.edu/cfr/text>
- Internal Revenue Service Publication 598:
<https://www.irs.gov/forms-instructions>

