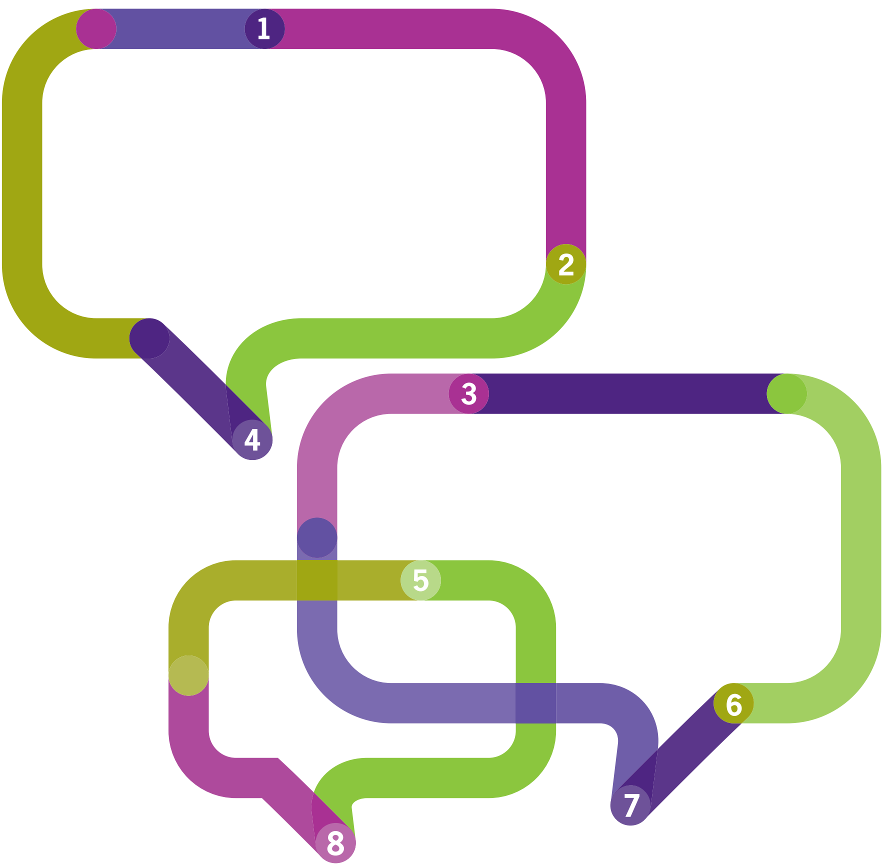
Grant Thornton

A tax how-to guide for

UNRELATED BUSINESS INCOME



Rosemarie Brown, Director, Tax Services, Not-for-Profit and Higher Education Practices
Landi Morris, Manager, Tax Services, Not-for-Profit and Higher Education Practices
Mary Torretta, Senior Manager, Tax Services, Not-for-Profit and Higher Education Practices

INTRODUCTION

An exemption from income taxation is often an organization's greatest asset — without it, a substantial part of the organization's revenues would be allocated to taxes, making it difficult to fund activities that support its tax-exempt mission. That said, it is important to note that exemption from income taxation does not apply to all income; sometimes, tax-exempt organizations must pay income taxes. The key is knowing when to pay and managing that aspect of your organization so that it doesn't affect your tax-exempt mission.

Grant Thornton LLP's tax professionals address issues affecting all types of tax-exempt organizations on a daily basis. With this broad experience comes a deep understanding of both the technical and practical issues that exempt organizations face.

No question is trivial.

And because it is difficult to diagnose and measure unrelated business taxable income (UBTI), we offer this Q&A to help address issues your organization may face.

If you have further questions, contact us. We're here to help.

Visit us at **grantthornton.com/nfp** for insights and information about how we can assist your not-for-profit organization.


1
2
3
4
5
6
7
8

How to:

UNDERSTAND UBI, UBIT AND UBTI

Q: If an organization is tax-exempt, why does it have to worry about income taxes?

A: The Internal Revenue Code (IRC or code) requires tax-exempt organizations to organize and operate exclusively for their stated exempt purposes. When organizations carry out their mission, they are not subject to federal income tax on the revenues generated. However, when revenues are generated from sources that fall outside of an organization's exempt purpose, these amounts are called unrelated business income (UBI).

The concept of UBI came into the IRC as a matter of public policy in the 1950s. It stemmed from concern that tax-exempt entities were unfairly exploiting their exempt status to engage in commercial businesses with a de facto government subsidiary — not having to pay income taxes. To avoid the perception of unfair competition, Congress changed the tax-exempt organization laws to subject unrelated revenue streams to taxation. The resulting tax is imposed at the regular corporate income tax rate (or trust rates if the organization is created as a trust) and is known as unrelated business income tax (UBIT).

Q: Okay, I get it. Sometimes a tax-exempt organization has to pay income taxes. But how do you know when to pay?

A: An organization must pay income taxes when it earns revenue from a regularly carried on trade or business not related to the organization's tax-exempt purposes.

Defining UBI: A three-part test

UBI is generated from activities that do not constitute the basis for the organization's tax-exempt status.[1] A three-part test determines whether an activity is UBI. If the activity is (1) a trade or business, (2) not substantially related to the organization's tax-exempt purpose and (3) regularly carried out by the organization, it is UBI. All three requirements must be met, so if any of these factors are absent, the revenue stream is not taxable as UBI.

Determining whether an income source or activity creates UBI requires a factual inquiry. The three-part test is not always clear-cut, so here is some general guidance that tax-exempt organizations can use to identify UBI.

1. **Trade or business**
   An activity is a trade or business if it is carried on for the production of income, sells goods or performs services. This definition is consistent with the general meaning of IRC §162, which defines trade or business expenses as deductible when incurred while carrying on a trade or business. One test tax-exempt organizations can use to determine whether an activity is a trade or business is to consider the commerciality doctrine. This is a theory developed under the common law that looks at the similarities between the activities of a tax-exempt organization and those of a for-profit organization. If the activities are similar, the commerciality doctrine would say the activity is a trade or business, and perhaps UBI if the other two factors of the test are met. For example, the commerciality doctrine applies when an organization annually sells commercial-quality holiday greeting cards as part of its fundraising efforts. Unless the cards somehow further the tax-exempt purposes of the organization, the activity may be taxable as a business venture. Under this doctrine, determining factors include the use of pricing strategies aimed at maximizing profits, methods used to market an activity, and whether the products or services are aimed at the general public or a charitable class.

[1] These rules are applicable to most tax-exempt entities but not governmental organizations.

The profit motive test also looks at whether the predominant motive behind the activity is to generate a profit. Treasury regulations describe nine distinct factors used to determine whether a taxpayer is operating an activity with a profit motive. These factors include (1) the manner in which the taxpayer carries out the activity, (2) the expertise of the taxpayer or its advisers, (3) the time and effort expended by the taxpayer in carrying out the activity, (4) the expectation that assets used in the activity may appreciate in value, (5) the success of the taxpayer in carrying out similar or dissimilar activities, (6) the taxpayer's history of income or losses with respect to the activity, (7) the amount of occasional profits earned, (8) the financial status of the taxpayer and (9) elements of personal pleasure or recreation.[2] An organization should consider all of these factors when determining whether it has a profit motive. If a profit motive is present, the activity may likely be UBI. Taxpayers would benefit from documenting all factors to support the position that the activity has profit motive.

It should also be noted that if an activity is related to or stemming from otherwise exempt activities, the IRS has the authority to separate that activity and apply the three-part test to determine whether the activity is taxable. The fragmentation rule states that an activity does not lose its identity as a trade or business simply because it is part of a larger group of activities that may or may not be related to the organization's exempt purpose. Thus, it is always important to examine the relationship between the business activities that generate income and the organization's exempt purpose to determine their relatedness.

[2] This is the most common factor used by the IRS when disallowing losses utilized against other profitable activities.

2. **Not substantially related to tax-exempt purposes**
   Part two of the test is whether an activity is substantially related to the tax-exempt purposes of the organization. A substantial relationship exists if it has a causal and important relationship to the achievement of the organization's exempt purpose. If these requirements are met, the activity is not UBI.

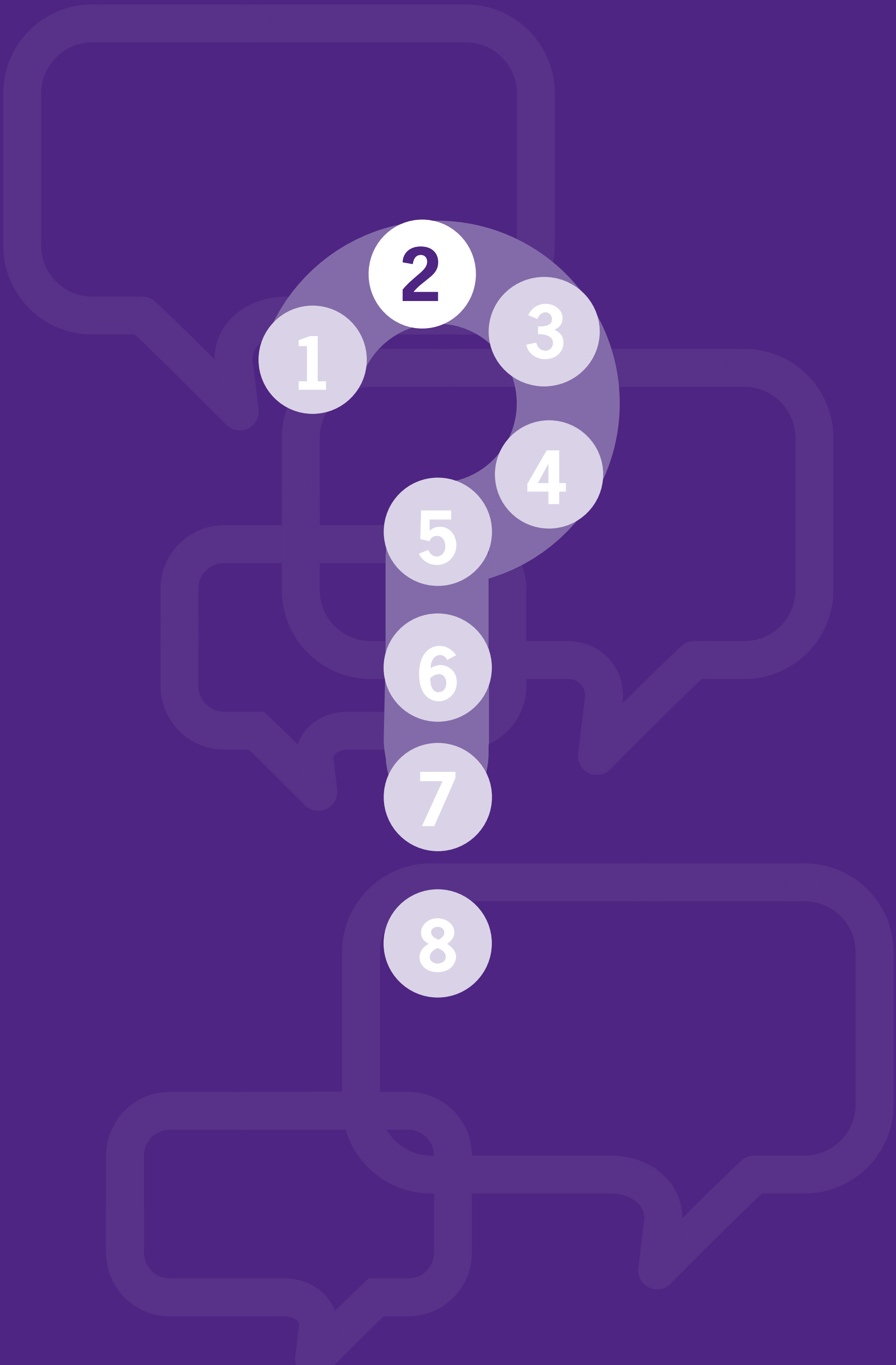
   An activity is not mission-related just because it raises funds that can be spent on mission activities. The IRS has ruled that the nature of the activity is what must be considered to be substantially related to the mission — not how the money will eventually be spent.

3. **Regularly carried on**
   The final requirement is to examine whether the activity is regularly carried on by the organization. Considerations include both the frequency and continuity with which the activities are conducted, and the manner in which the activities are pursued. Short-term activities, which are sporadic or intermittent, are not activities regularly carried on by the organization. However, seasonal activities may be regularly carried on even if they only occur for a short period each year (e.g., annual summer conferences or holiday activities). Therefore, the activity doesn't need to be ongoing throughout the year to be labeled as regularly carried on.

Q: If an activity meets the three-part UBI test, is it automatically taxable?

A: Not necessarily. The IRS has carved out certain types of passive income that are not taxable, even if they meet the test criteria for UBTI.

It is important to note that even if an activity meets all requirements of the three-part test, it may not be taxable if it falls within one of the statutory modifications or exceptions to the general rules to avoid taxation.


1
2
3
4
5
6
7
8

How to:

UNDERSTAND MODIFICATIONS TO UBI

Modifications to UBI

Congress has specifically stated that certain revenue streams will not be taxable as UBI. These activities are generally passive in nature and include:

- Interest
- Dividends
- Royalties (passive with no services rendered in association with income)
- Capital gains
- Some research activities (if conducted in the public interest)
- Rental income from real property

However, any income derived from debt-financed property is generally subject to the UBI rules.[3]

[3] Except in the case of colleges/universities and pension trusts where the passive rental income is generally no taxable, even if the property is financed by debt.

Statutory exceptions from UBI

In addition to the list of modifications previously mentioned, there are several types of activities that Congress has excluded from the definition of UBI for public policy reasons. These include:

Volunteer labor
An exception to the UBI rule exists when substantially all of the work for an activity is performed by volunteers (people who are not compensated and have no expectation of financial benefit for their work). Compensation generally means remuneration for services but not reimbursement of expenses. There is a clear advantage to this exception: Many organizations rely on unpaid individuals to accomplish their mission without negatively affecting the bottom line.

The volunteer exception does not preclude the use of paid employees for the activity, but substantially all of the activity must be performed by persons who are not compensated. Although not defined by statute, the standard is at least 85%.

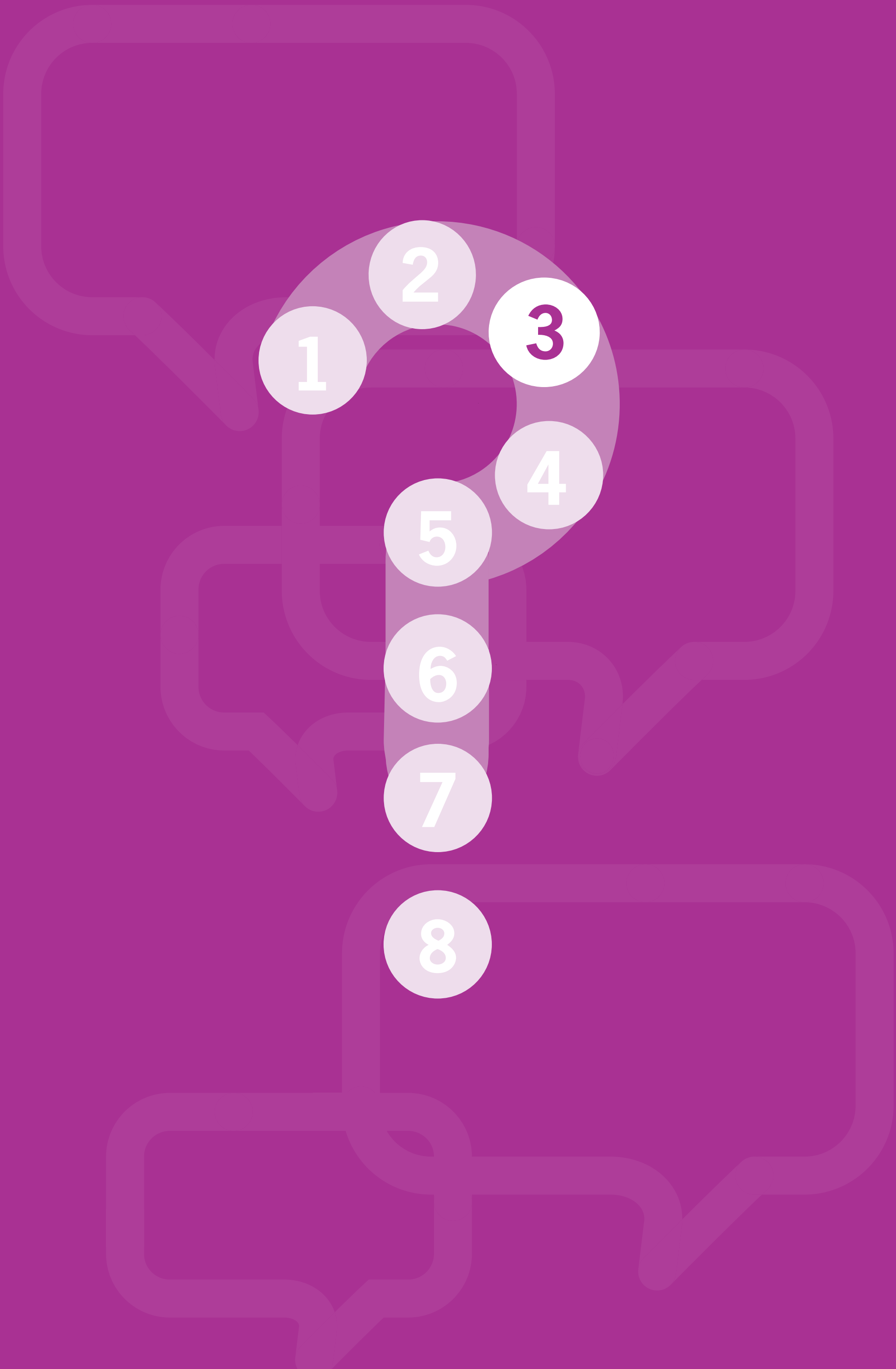
Convenience of members
Excluded from the definition of UBI are activities provided for the convenience of an organization's members, students, patients, officers or employees. The convenience exception applies to those individuals who have a direct relationship with the organization. Some common examples include school cafeterias, hospital gift shops, patient parking lots and laundry facilities at universities.

Sale of donated items

Another exception to UBI is revenue generated from the sale of donated items. Known as the thrift shop exception, this rule extends to all tax-exempt businesses that sell donated goods. Examples include charity secondhand stores or the auction of donated items at charity fundraisers — all revenue is excluded by statute when all items sold were received as donations to the organization. It should be noted that modifying a donated item before sale would likely negate the exception.

Low-cost items and incidentals

Activities relating to the distribution of low-cost articles are not UBI if the distribution is incidental to the solicitation of charitable contributions. An example would be when an organization has a fundraising drive and gives a very small gift in return for a donation. There are tests to ascertain if the item provided is low cost. Common examples include coffee mugs and tote bags.


1
2
3
4
5
6
7
8

How to:

UNDERSTAND THE IRS FOCUS ON UBI

Q: Why all the emphasis on UBI? Organizations have had UBI for years — why does it seem that the IRS is more focused on it now?

A: Tax-exempt organizations represent a huge sector of the economy that generally does not pay taxes. To finance the budget, Congress needs to generate as much money as possible. To satisfy this funding need, Congress encourages governmental agencies to collect as much revenue as they can under the currently enacted laws. This encourages the IRS to focus on collecting revenue from new sources, including UBI activities of tax-exempt organizations.

IRS focus: Higher education

The IRS has shifted its energy and resources from granting or denying tax-exempt status to monitoring organizations that are already tax-exempt. In the current environment, it might be easier to gain tax-exempt status, but it's harder to keep it.

In 2008, the IRS launched an in-depth study into the higher education industry that brought to light governance and practice issues that had been suspected but never quantified. Although the study focused on colleges and universities, the findings apply to many tax-exempt organizations.

In the study, the IRS reviewed questionnaires from 400 college and university respondents. Of the responses, the IRS selected 34 schools and conducted full examinations of all their IRS filings (including Forms 990 and 990-T, employee benefit plan returns, excise tax returns and employment tax returns). As part of the review, the IRS considered how the organizations reported business activities, including whether or not certain activities were characterized as exempt or unrelated business.

As a result of the IRS review, 90% of the schools examined were required to increase the amount of UBI reported on Forms 990 and 990-T, resulting in nearly $90 million in adjustments and $60 million in additional assessed taxes. The IRS identified a list of activities that generate UBI but were not previously reported as taxable. They include (1) fitness and recreation centers and sports camps, (2) advertising, (3) facility rentals, (4) arena use and (5) golf courses. Facility rentals and advertising led to an increase in UBI for nearly 50% of study participants.

As part of its final report of the college and university examinations, the IRS outlined the key issues resulting in previously unreported UBI:

- **Lack of profit motive**
  The first issue looks at whether the taxpayer met the profit motive test. As previously discussed, an activity qualifies as a trade or business if the taxpayer had a genuine profit motive — an intent to make a profit by engaging in the activity. The IRS noted that a pattern of repeated losses is generally sufficient to show a lack of profit motive. Although other proof may satisfy this requirement, an activity with no profit motive cannot be claimed as a loss and reported on Form 990-T. Without profit motive, organizations that previously reported taxable income and utilized net operating losses on Form 990-T to offset this income will be unable to utilize the losses.

- **Misallocation of expenses**
  Next, the IRS reported that several organizations were improperly allocating expenses between exempt and unrelated business activities. Per IRC §512(a), when a trade or business activity serves both exempt and unrelated purposes, the income and expenses from the activity must be allocated between the two on a reasonable basis. The study clarifies that expenses attributable to accomplishing an organization's exempt purpose may not be deducted against UBI on a Form 990-T — only expenses allocated to UBI are allowable as a Form 990-T deduction. The study found that misallocating expenses led to improper filings and additional tax assessments for some study participants.

- **Misclassification and errors in computation or substantiation**
  The IRS determined that 40% of participating colleges and universities misclassified activities as exempt when, in fact, those activities were unrelated and should have been reported on Form 990-T. The majority of these adjustments came from fitness and recreation centers, sports camps, advertising, facility rentals, arenas and golf activities. Another common issue noted was the miscalculation and underreporting of UBI due to mathematical errors. Finally, the IRS found that many activities and losses reported on Form 990-T were not substantiated with appropriate documentation.


1
2
3
4
5
6
7
8

How to:

KNOW WHAT EXPENSES CAN BE DEDUCTED

Q: If I have UBI, what expenses can I deduct against the revenue to lower my tax liability?

A: The rules pertaining to allowable deductions follow the corporate income tax rules in that the expenses must be directly connected to the revenue derived. Because many expenses, such as utilities or overhead, are allocable to both exempt and unrelated activities, it can be tricky to identify an appropriate methodology to track and allocate those expenses.

The rules to compute expenses deductible from UBI are similar to the laws for for-profit organizations. Expenses must have a proximate relationship to the production of the revenue. Only those expenses that are directly connected with the carrying out of such trade or business are deductible against revenue on Form 990-T. This includes direct expenses of an activity (i.e., meal costs for an event) and allocations of overhead or indirect expenses based on a percentage of time, space or other factor that is in direct correlation to the activity. Expenses that the organization would have incurred regardless of the unrelated activity may not be allowed as a deduction on Form 990-T.

When identifying expenses to deduct, organizations should make sure they have a reasonable basis for their allocation methods, as well as adequate records to support their position. Records may include additional time sheets or updated computer systems to track UBI information to the level of detail that may be required by the IRS.


1
2
3
4
5
6
7
8

How to:

PROPERLY DEAL WITH ADVERTISING

Q: What is the line between sponsorship (nontaxable) and advertising revenue (taxable)?

A: This is an issue we see frequently, and the answer depends on the specific facts and circumstances of the communications.

Organizations, especially public charities, often seek sponsorship revenue for events including galas, golf outings, conferences, stadium games, etc. An organization must be careful to structure these transactions so that the sponsor remains a donor and the transaction retains the nature of a charitable contribution. If not, the transaction's components must be examined to determine if it is otherwise excluded from UBTI or subject to tax as if it were advertising.

Corporate sponsorship must always have a quantitative nature. If language becomes qualitative, the end result changes. For example, if ABC Company donates $10,000 to your annual dinner, and in return, you post its name and logo on a sign that says "Thank you to our sponsor, ABC Company!" that is corporate sponsorship, and there is no UBI. However, if your sign says "ABC Company is the best at what they do! Thank you for your support!" you have crossed the line into taxable advertising and potential private benefit issues, and you have made it impossible for the donor to claim a charitable donation for the payment. Advertising revenue doesn't generally operate at a loss or create a net operating loss to offset other profitable lines of unrelated income.

Q: We have advertising in our publications. How can we make sure we are reporting it correctly for UBI purposes?

A: If the publication includes advertising along with substantive mission-related material, you are likely going to have questions as to how to track the revenue and expenses so that the correct UBI amount is reported.

We frequently see advertising in publications and on websites. IRS rulings show that journals, brochures, job placement boards, membership directories and online trade shows are prime locations for advertising to hide.

The IRS will accept a reasonable methodology to allocate advertising expenses. In a print publication, organizations generally allocate expenses based on page count or the relative size of the ad. For example, if there are four quarter-page ads in a 10-page brochure, then one-tenth of the total expenses can be allocated against the advertising revenue on Form 990-T. When considering employees who spend their time on a variety of projects, time sheets or another estimate of how much of the employee's total time is spent on advertising would reasonably allocate the cost of the employee's salary and benefits between advertising and exempt activities. If your organization has direct advertising expenses, having different cost centers will help attribute them to the corresponding advertising revenue.

What can further complicate publications are limitations on readership costs and circulation income. In addition to the direct advertising costs associated with a publication, you can deduct readership costs in excess of circulation income. Readership costs are costs related to the publication of editorial or nonadvertising content. Circulation income is the revenue earned by the publication — either the direct sale price or the allocation of membership dues that cover the included publication. You may deduct excess readership costs if your direct costs are less than your advertising income, but only to the extent that net revenue is zero (i.e., excess readership costs are capped at the difference between advertising revenue and direct or indirect advertising costs).

Q: Are advertisements found in other places?

A: Advertisements are often found on organizations' websites and electronic communications in the form of banner advertisements, job placement boards or virtual trade shows.

It is tricky to allocate expenses to website advertisements. Unless you have the technology to track click-through rates or hits on specific pages, it is very difficult to substantiate and allocate website expenses against advertising income.

Job placement boards can be another source of advertising revenue. The IRS has stated that job placement boards are usually advertising because they are commercial in nature and do not typically further a tax-exempt mission.

Virtual trade shows, unlike in-person trade shows, are often fully taxable. The general exclusion that trade show income is not taxable does not apply to trade shows conducted solely online.


1
2
3
4
5
6
7
8

How to:

RECOGNIZE OTHER POTENTIAL UBI

Q: We share our mailing lists with other companies and organizations for a fee, and we get a licensing fee for letting others use our logos or trademarks. Are these fees taxable?

A: Maybe. Although passive royalty revenue streams can be exempt from income tax, they can easily become taxable if services are also provided by the organization. The contracts must be very specific and limit the activities the organization will perform. The organization needs to remain passive in the provision of logos or trademarks to other organizations.

IRC §512(b)(2) excludes royalty revenue from UBI. Royalties can be defined as revenue earned by licensing a valuable asset. We frequently see this in the context of logos, trademarks and mailing lists.

The difficult part of this revenue stream exclusion stems from whether the organization will provide any services in conjunction with licensing the asset. Organizations can provide certain — very limited — administrative services to facilitate the transaction, such as having final approval over marketing plans or the original download of the mailing list, but for the most part, the organization must not engage in marketing or distribution activities. If it does, the entire revenue stream could be tainted and could be taxable as UBI. If your organization engages in this type of transaction, it must be very careful to document the transaction, or be prepared to pay taxes on the income stream.

Q: We rent property, and sometimes it's excluded from taxation. When is it taxable?

A: Revenue earned by renting real property is generally excluded from taxation. However, if the property was financed by debt, the rental revenue is taxable to the extent the property has acquisition indebtedness. The calculation is complicated, but it is important to be aware of the debt-financing rules.

An example of a debt-financing activity is obtaining a mortgage to purchase or improve a property or taking out a loan to finance other activities (and avoid tying up cash in a property). To the extent there is acquisition indebtedness, the rental revenue is taxable under IRC §514. The calculation of taxable income from acquisition indebtedness is nuanced and challenging, so it must be monitored and performed carefully.

Further, there are exceptions, such as when substantially all of the property is used for the organization's tax-exempt purposes. For instance, if you purchase a building for your headquarters, obtain a mortgage to finance the building and then use 90% of the building as your headquarters, the entire rental revenue stream is not taxable.

The rental of personal property is generally taxable as UBI. Further, providing services in conjunction with rental activities is taxable. For example, if you have a conference center (which is not debt-financed), renting out the conference center's facilities may generate tax-free rental revenue, but it becomes taxable revenue — in whole or in part — if catering or audio visual services are provided by the organization.

Q: What are some other situations that involve UBI?

A: Fees for services. Sometimes an organization may be really good at performing a particular service. The organization may begin to provide that service for other exempt organizations or even for-profit companies. This is a great way to generate additional revenue for the organization, though the revenue is likely taxable. For example, a global social services organization distributes a monthly journal to communicate its successes worldwide, and becomes very good at designing and publishing journals. Although the publication of the journal furthers the tax-exempt purposes of the organization, designing and publishing journals for other groups are not related to the organization's tax-exempt mission, so those services are taxable.

It is important to note that if an organization provides services to another entity — unless it furthers the tax-exempt mission of the organization — the services must be provided at fair market value. Typically, there must be a profit motive and a markup over cost. The reason for this is that tax-exempt organizations must avoid private benefit, and if the organization provides services at or below cost to others, a private benefit may be realized even if unintentional.

Certain back-office services (e.g., HR or IT support, accounting services) can sometimes be provided to other organizations at cost.

Pass-through income. Many tax-exempt organizations may not directly engage in UBI-producing activities, but may be liable for income taxes due to the pass-through nature of investment activity. For example, a tax-exempt association that owns an interest in a hedge fund may receive a Schedule K-1 from the partnership that reports the tax gains and losses during the year. The Schedule K-1 should provide the organization with information to help determine if any of the investment earnings are taxable. The majority of UBI flowing from pass-through entities is attributable to debt-financed real estate and other investments.

However, not all pass-through activities generate a Schedule K-1, so identifying UBI is not always clear. Under most U.S. state laws, a partnership can be formed without filing legal documents. An organization conducting activity in conjunction with another entity could be participating in a joint venture. Income from these activities should also be reviewed to consider whether it constitutes UBI, even if the organization isn't performing the activity directly.

Dues from associate members. If an organization has multiple membership classes, such as associate members, the dues may be taxable if the membership classes do not have a business purpose for existing. If an organization has multiple membership classes, it should document the mission and business purposes of having the various classes.

Rental of parking lots or garages. If an organization has extra spaces in its parking lot, it may rent them to the public. Organizations may generate revenue from parking garages, but it is taxable if it's not mission- or employee-related. An organization would be able to offset parking revenue by deducting expenses related to the operations of the parking garage; however, because the parking lot is also likely used by employees or in an otherwise excludable fashion, it is possible to find a fair method to allocate the expenses.

Intercompany transactions. Often, tax-exempt entities have a subsidiary or otherwise related for-profit corporation. These organizations often find efficiencies in sharing resources and expenses. Because of the transfer pricing rules identified in IRC §482, it is essential that proper fees are charged for services, and services are provided at fair market value.

Similarly, if an entity loans money at a below-market rate (or does not charge interest at all), the interest revenue is imputed to the lender and is taxable to the exempt organization.

Securities purchased on margin. The debt-financed rules of IRC §514 apply not just to real estate but to all property purchased with debt. This includes investments (e.g., securities) purchased on margin. Determining if you have purchased securities on margin can be tricky and requires consultation with investment advisers and a review of investment documents.


1
2
3
4
5
6
7
8

How to:

DETERMINE A REASONABLE LEVEL OF UBI

Q: I'm pretty sure we have UBI, but how do I know if we have too much?

A: Organizations are able to report some UBI, but not too much. Organizations must track the amount and extent of their UBI to make sure they have not strayed too far from their tax-exempt purposes.

If UBI comprises a substantial or disproportionate portion of an exempt organization's income, it could lose its tax-exempt status. There is no fixed percentage or mechanical test to measure substantiality, so the determination rests on the facts and circumstances of the situation.[4]

Legal precedence has been wide-ranging in the amount allowed. On one hand, the IRS has defined substantial, in relation to the legislative activities of exempt organizations, as 5% or greater. On the other hand, under Rev. Rul. 57-313, the IRS did not revoke an organization's tax-exempt status even though 75% of its income was derived from unrelated sources.

In the absence of a definitive threshold level, practitioners may wish to follow a 20% guideline. If an organization's UBI income exceeds 20% of gross income, then the legal risks and options available to the organization should be carefully evaluated and monitored. In such a case, the organization may wish to establish a for-profit subsidiary or other related organization.

[4] Reg. 1.513-1(d)(2)


1
2
3
4
5
6
7
8

How to:

APPROPRIATELY MANAGE UBI

Q: What can we do to make sure we manage our UBI appropriately?

A: Some of the recommendations we make to our clients include requiring accounting or finance office approval in advance of operating new activities; having uniform agreements that have been vetted by tax specialists (not just general business lawyers); keeping track of UBI so it does not grow to be a substantial portion of overall revenues; having a business plan in place to monitor activities and making sure a business plan exists for those activities that currently have losses; calling your tax specialist in advance of entering into new activities; and conducting a study of either the whole operation or just a targeted section for the purpose of ascertaining whether your organization is reporting its UBI correctly or if some revenue or expenses are missed or not calculated correctly.

Conclusion

It is important to emphasize that generating UBI is okay and sometimes can be extremely helpful in supplementing contributions or other exempt income with more predictable revenue streams. Having some UBI is a concept to embrace — these revenues can be used to further an organization's mission, despite being subject to tax. Although some unrelated business activities can occur, the primary activities of the organization must be exempt. Therefore, it is important to monitor the amount of activity generating UBI and related expenses on Form 990-T and to pay taxes on net income.

Contact

Dan Romano
National Partner-in-Charge
Tax Services
Not-for-Profit and
Higher Education Practices
T +1 212 542 9609
E daniel.romano@us.gt.com

Tax professional standards statement

This content supports Grant Thornton LLP's marketing of professional services and is not written tax advice directed at the particular facts and circumstances of any person. If you are interested in the topics presented herein, we encourage you to contact us or an independent tax professional to discuss their potential application to your particular situation. Nothing herein shall be construed as imposing a limitation on any person from disclosing the tax treatment or tax structure of any matter addressed herein. To the extent this content may be considered to contain written tax advice, any written advice contained in, forwarded with or attached to this content is not intended by Grant Thornton LLP to be used, and cannot be used, by any person for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

GrantThornton