Tax planning for Non-Profits – Understanding UBIT and the new laws

Gregg S. Bossen CPA
Share with your neighbor – how many non-profits do you currently serve?

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Today’s speaker

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About today’s speaker

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Agenda

The Origins of UBIT
What gets Taxed: The Basics – 3 Prong Test
Get out of Jail Free Card: The 20 Exclusions
Calculating The Tax
NEW LAW: Parking Tax Freak Out
Let’s Play a Game!
Lack of knowledge creates fear. Seeking knowledge creates courage.

Candice Swanepoel
Unrelated Business Income Tax (UBIT)

Huge factor in deciding earned income activities

Clients rely on us

Need at least the basics
Mad at UBIT ? – Blame pasta

DONATED TO NYU 1947
Mad at UBIT? – Blame pasta

MUELLER WON!: CAN SELL ANYTHING TAX FREE!
Mad at UBIT? – Blame pasta

LOBBIED CONGRESS

UBIT WAS BORN
BOUNCING BABY
UBIT

GIMME YOUR
MONEY!!!!
1950 : New UBIT Law (Pub. 598)

Tax activities unrelated to organization’s tax-exempt purpose

Using funds raised is not enough to avoid tax
The acronyms – UBTI vs. UBIT

UBTI: Unrelated Business Taxable Income
UBIT: Unrelated Business Income Tax

UBTI (the income)  
\[ \times 21\% \]  
\[ = UBIT \ (the \ tax) \]
When does UBIT apply?  All 3 must be true

Trade or business
Regularly conducted
Not substantially related
1.) Trade Or Business
Selling a Product/Service
Intent to make a Profit

Note: Activities looked at separately
A nonprofit school puts on a fair with lots of rides. They also decide to sell designer T-Shirts at the event from local designers. They sell the shirts at cost.

Is this a trade or business subject to UBIT?

NOPE – not engaged in for profit
2) Regularly Conducted
Frequency and Continuity that is similar to comparable commercial activities of for-profits
A nonprofit arts organization sells hotdogs at the state fair for 3 weeks every year.

Is this subject to UBIT?

**NOPE** – not conducted regularly
Regularly conducted quiz:

The same nonprofit arts organization starts selling hotdogs at other fairs and festivals throughout the year?

Is this subject to UBIT?

YUP – they are directly competing with for-profit food truck businesses
3) NOT Substantially Related

To tax exempt purpose

Doesn’t contribute “importantly”

Facts and circumstances test
NOT Substantially Related (Pub. 598)

Keep the following in mind

Consider relative “size and scope”

How important is it?
NOT Substantially Related

Keep the following in mind

Activities considered in isolation:

• Asset also used for exempt stuff?

• Activity part of larger programmatic activity?

IRRELEVANT! ACTIVITY MAY STILL BE UNRELATED

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IRRELEVANT! ACTIVITY MAY STILL BE UNRELATED
A charity in Atlanta that promotes public interest in arts rents apartments to artists in a building they own?

Is this substantially related?

NO – housing artists does not stimulate public interest in art – may be subject to UBIT
NOT Substantially Related quiz:

A charity in Atlanta that trains artists via a residency program rents apartments to artists in a building they own

Is this substantially related?

YES – housing artists is an important part of the program – UBIT exempt
A museum runs a café and restaurant inside the museum for employees and museum patrons. It’s not open to the general public.

Is this substantially related?

**YEP** – allows the patrons to spend more time there – UBIT exempt
A museum runs a café and restaurant inside the museum for employees and museum patrons and the general public. There is external entrance doors for the diners who are not going to the museum. There is museum art on the walls.

Is this substantially related?

**NO** – They are competing directly with other restaurants on the same block – may be subject to UBIT
NOT Substantially Related

Regarding selling products
Result of exempt function
That are not altered afterwards
Then ….. NOT subject to UBIT
NOT Substantially Related

A charity helping the mentally disabled population sells coffee tables and bookshelves that are made by their clients during their day program.

Is this subject to UBIT?

NOPE – The manufacturing of the products is essential to the day program
WHEN DOES UBIT APPLY?  
ALL 3 MUST BE TRUE

1) Trade or Business  
2) Regularly Conducted  
3) Not Substantially Related
20 Activities are specifically excluded

The Big 5
Interest, Dividends (non-debt financed)
Rental Income (non-debt financed)
Sale of Donated Items – silent auctions
Sponsorship Income
Convenience of Members, Patients, Students …
Sponsorship income

Excluded if

Only acknowledging sponsor

No advertising

• Complimentary language “They are great”
• Pricing or wording about a sale
• Endorsements
• Call to Action “go to their website”
Sponsorship Income Quiz – Excluded from UBIT?

YUP!!!!
Sponsorship Income Quiz – Excluded from UBIT?

NOPE!!!!
Sponsorship Income Quiz – Excluded from UBIT?

YUP!!!!

ESTABLISHED LOGOS/SLOGANS ARE OK!!!
Excluded for convenience of members.....

This one is a biggie

501(C)(3)’s or schools only

Members, students, patients, officers, employees

• Selling food
• Laundry services
• Drinks
• etc......
The other 15 exclusions.....

| Convention, Trade Shows, Annual Meetings | Voluntary Workforce |
| Gains On Sales Of Assets                  | Royalties           |
| Distribution Of Low-cost Items            | Research Grants/Contracts |
| Employee Association Sales (501-c-4)      | Services Provided Under Federal License |
| Exchange Of Rental/Member Lists           | Emc Memberships      |
| Exempt Hospital Services                  | Games Of Chance In North Dakota |
| Utility Pole Rentals                      | Bingo                |
| Public Entertainment At Agri/Educ Fares   |                     |
You can deduct costs from UBIT revenue

You can deduct costs

Direct costs

Indirect shared costs (PRORATED)

• Payroll
• Facility costs
• Readership costs in a periodical with Ads
CALCULATING THE TAX for each activity

\[
\text{GROSS REVENUE} - <\text{COSTS}> = \text{NET UNRELATED INCOME}
\]

\[
= <\text{NOL}> = \text{NET UNRELATED INCOME after NOL}
\]

Do this for each activity
CALCULATING THE TAX – Add the activities together

Losses from one DO NOT off gains in another

Activity A = $12,000
Activity B = <$ 2,000>
Activity C = $ 3,000

Total is $15,000

$1,000 * just one of these
= UNRELATED TAXABLE INCOME
x 21%
= THE TAX
THE TAX: Don’t forget your state!!!!!

Most States also tax UBIT

Using similar rules

In Ga. = 6% + 21% = 27%
PARKING (and transportation) TAX FREAK-OUT
The new law about tax on employee benefits

TAXING EXPENSES!?!?!
Using logic to arrive at an illogical conclusion

Goal: Make Filing Taxes Easier

Double Standard Deduction

Remove Unreimbursed Business Exp. = Trans/Parking

TO BE FAIR

For –Profit Corps Can’t Deduct Either

TO BE FAIR

MORE PEOPLE USE THE STANDARD

DON’T PAY TAXES

TO BE FAIR

TAX NONPROFITS!!
The flaw in the logic

FOR –PROFIT CORPORATIONS

LOWER TAX RATES

REMOVED WRITE-OFFS

NONPROFIT CORPORATIONS

NEW TAXES
The Rules

Applies to
Transportation
• Van pools
• Transit passes
• Ride shares (Uber/Lyft)

Parking

IF EMPLOYER PAID

IF EMPLOYER PROVIDED
The Rules – Parking

Applies to

Parking paid by employer to 3rd party
Parking provided by employer (free)
- Employer Owned Office Space and Parking Lot
- Employer Leased Office Space and Lot – even if parking is free of charge
The Rules – Parking

The tax is part of UBIT: 21% + State%
The Rules – Parking

How to avoid/minimize (Notice 2018-99)

3rd Party paid: Amounts > $265 per month/per person excluded (but added to wages)

Owned or Leased with office: Parking is excluded if:

✓ No reserved space
✓ Lot used by others
✓ Less 50% employee used
The Rules – Parking

Things to keep in mind

Leased with office space
• Use reasonable method for deciding parking portion of rent

Owned lot
• Include expenses (repairs, util., ins. etc…)
• Not depreciation
The Rules – Parking

Things to keep in mind

For more info go to:
IRS Notice 2018-99
Bills currently in play to remove this tax

**HR 1223** sponsored by House Majority Whip Clyburn (D-SC)

**HR 513** sponsored by Representative Conaway (R-TX)

**HR 1545** sponsored by Representatives Walker (R-NC) and Suozzi (D-NY)

**S.632** sponsored by Senators Lankford (R-OK) and Coons (D-DE) introduced the LIFT for Charities Act

**S.1282** sponsored by Senators Cruz (R-TX) and Shaheen (D-NH) introduced the Preserve Charities and Houses of Worship Act, each of which would repeal the tax on nonprofit transportation benefits.
If you can’t understand what someone is explaining to you, consider the possibility that they don’t actually understand it themselves.

Gregg S. Bossen ;)

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