Information

Unrelated Business Income Tax

Effective

September 18, 2009

Applicability

This policy applies to University Employees (administrators, faculty, and staff).

Administrative Authority

Vice President for Finance and Chief Financial Officer

Responsible Unit

Controller's Office
Service Complex, Louisville, KY 40292
Phone: 502-852-6164
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History

Revision Date(s): December 1, 2013; February 22, 2024

Reviewed Date(s): December 1, 2013; January 1, 2015; September 11, 2017; January 15, 2020; February 22, 2024

Categories

Reason for Policy:

Background

In 1950, Congress established the Unrelated Business Income Tax in order to impose taxes on certain activities of exempt organizations when such activities are not related to the organization's exempt purpose. The purpose of this tax was to allow for exempt entities to engage in activities with a profit motive while retaining their exempt status but also to eliminate the unfair competition that these activities cause between exempt entities and for-profit organizations.

As an exempt, non-profit organization, the University of Louisville (University) must comply with Internal Revenue Service (IRS) rules and regulations relating to the reporting and payment of any applicable unrelated business income tax (UBIT).

The purpose of the UBIT policy is to provide guidelines for the discovery and reporting of income and expenses to the Controller's Office for "Unrelated Activities" undertaken by University departments. This policy is not intended to discourage or eliminate unrelated activities but rather to gather information so that proper reporting to the IRS and other taxing authorities is done timely and accurately.

Statement:

Departments and program administrators are responsible for the initial identification of activities or programs that have the potential to generate unrelated business income. When such activities have been identified, the department must notify the Controller's Office. It is strongly suggested that any new revenue producing programs be reviewed by the Controller's Office prior to setup.

Related Information:

Internal Revenue Code Sections 511, 512, and 513

IRS Publication 598

Definitions:

An activity is considered **unrelated** by the IRS and therefore subject to tax when it meets the following three criteria.

1. The activity is a trade or a business.
2. The activity is regularly carried on.
3. The activity is not substantially related to the exempt purpose of the organization.

If an activity is undertaken with the intent to create a profit through the sale of goods or the performance of a service it is considered a **trade or business**. The determination of whether an activity constitutes a trade or business depends on the facts and circumstances of each situation, however certain factors may indicate whether such a motive exists including active solicitation of clientele, charging at rates above cost, and openly competing with other commercial enterprises.

An activity is **regularly carried on** unless it is performed infrequent or discontinuously. In determining whether intermittently conducted activities are regularly carried on, the manner of the activity must be compared with the manner in which similar commercial activities are performed. For example, where an exempt organization sells greeting cards for only a few weeks during the holiday season, this activity would be considered "regularly carried on" if it is expected to routinely occur each holiday season.

An activity is **not substantially related** when it does not contribute to the exempt purpose of the organization. For example, tuition revenue clearly contributes to the exempt purpose of a university as it is the revenue collected for the educational service a university provides. Revenue generated from operating a grocery store that sells merchandise to the general public, however, would likely not be substantially related to a university's exempt purpose.

Common Examples of Activities Subject to UBIT

The laws regarding UBIT are complex and determining when an activity is subject to tax is highly dependent upon the facts and circumstances of each situation. However, below is a list of activities that usually trigger UBIT concerns in a college or university setting:

- Advertising, such as that contained in University publications, on billboards, or in other printed materials distributed at University events;
- Corporate sponsorships that impart a substantial return benefit upon the part of the sponsor;
- Rental income from the use of equipment or other tangible personal property;
- Rental of parking lot spaces to the general public;
- Rental of dorm space to non-students;
- Certain forms of research or product testing conducted for commercial businesses;
- Travel tours;
- Catering or event planning services conducted for members of the general public.

Exceptions to UBIT

Exceptions to UBIT are likewise complex and too numerous to list. A list of exceptions that most frequently apply is provided below:

- Dividends, interest, capital gains and similar portfolio income;
- Royalties, unless the agreement calls for substantial services to be provided by the organization such as management services;
- Scientific research conducted for government;
- Business operated for the convenience of students or employees, such as student laundry services, parking revenue received from students or employees, or the sale of supplies to students or employees;
- Certain qualified sponsorships, if properly structured;
- Work performed substantially by volunteers;
- Sale of merchandise which was received by the University as a gift or contribution;
- Meetings, conferences and seminars where education or training is provided by the University;
- Entertainment events that include music and drama for students, faculty, and the general public.

Procedures:

The Controller's Office will distribute a questionnaire to each division annually. This questionnaire will require the approval and signature of the division dean, vice president, or department head in order to verify that they are aware of the unrelated activities that are being performed within their division, that no new activities have been undertaken during the year for which proper notification was not sent to the Controller's Office, and to provide information for activities that may need further investigation by the Controller's Office to determine their taxability. The Controller's Office will perform additional reviews as necessary.

The Controller's Office will offer guidance in interpreting the laws regarding taxability of an activity and assist in determining whether any exceptions to UBIT may apply.

Additionally, the Controller's Office will prepare and file all applicable tax returns with the IRS and state/local taxing authorities as well as manage any correspondence with these agencies. Any liability resulting from UBIT will be charged to the program generating the taxable income.

Responsibilities:

Summary of Department Responsibilities:

1. Consult with Controller's Office on new revenue streams.
2. Track revenue and expenses for activities identified as subject to UBIT.
3. Accrue for tax as applicable.
4. Complete UBIT questionnaire annually; return to Controller's Office by October 15th.
5. Submit revenue and expense items for UBI activities to Controller's Office by December 31st.

Summary of Controller's Office Responsibilities:

1. Consult with departments and advise as to UBIT applicability throughout year.
2. Send UBIT questionnaires to departments by September 15th.
3. Analyze information gathered from departments, financial statements, and other books & records and document findings by March 1st.
4. File Form 990-T and any other applicable returns by May 15th.

5. Manage correspondence with tax agencies as needed.

Forms/Online Processes:

Interactive UBIT Questionnaire:
http://louisville.edu/finance/controller/tax/annualactivity