

# Unrelated Business Income in the Higher Ed Landscape

# **Learning Objectives**



- ▶ The participant will be able to describe types of UBTI commonly encountered by higher education institutions.
- ▶ The participant will be able to identify relevant factors for consideration with respect to UBTI.
- ▶ The participant will be able to consider whether their institution can take advantage of planning opportunities with respect to UBTI.



# **What is Unrelated Business Income and Why is it Important?**

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# Unrelated Business Taxable Income (“UBTI”)

## Active Trade or Business

- Activity carried on for production of income from sale of goods or services
- A key factor is profit motive

## Regularly Carried On

- Frequency and continuity similar to comparable commercial activities of non-exempt organizations

## Not Substantially Related to Exempt Purpose

- Does the conduct of the activity substantially contribute to furthering the organization’s exempt function?



# Exceptions to UBTI

- ▶ **Passive / Portfolio Income**
- ▶ **Scientific Research**
- ▶ **Volunteer Exception**
- ▶ **Donation Exception**
- ▶ **Convenience Exception**



# Debt Financed Income

## Leverage

- Margin Loan
- Line of Credit
- Secured Note
- Inter-organizational loans

## Real Property Rents

- Qualified organizations exempted
- Minimal personal property rents allowed



# Key Questions

- ▶ Is there a risk a substantial non-exempt purpose exists that would jeopardize an organization's exempt status?
- ▶ Are substantial resources required to conduct an activity (e.g. employee time, overhead costs, physical assets)?
- ▶ What portion of total revenue does a particular activity contribute?





# **Common Activities in the Higher Education Context**

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# Corporate Sponsorships

A “Qualified” sponsorship provides no substantial return benefit other than use of name, logo, or product lines.

## Exclusive Provider Arrangements

- Exclusivity acceptable
- May be UBI if significant services provided by the exempt organization

## Advertising

- Specifically excluded from qualified activity
- Messages containing qualitative or comparative language, pricing or other indications of savings or value.



# Alternative Investments

## Partnerships and Joint Ventures

- UBTI determined at partnership level
- Character of income passed through to investors

## “Blocker” Corporations

- Unless leveraged, captures business income in corporation only
- Often used with offshore investments



# Activities Involving Real Property



# Activities Involving Sales



# **Planning Considerations for UBTI**



# Common Strategies



# Create Separate Organizations

- ▶ Isolate activities in separate organizations
  - Risk management
  - Resource management
- ▶ Analyze overall financial and organizational impact
  - Effective tax rates
  - Administrative costs
  - Cost / benefit analysis





# Thank you!

Presented by: Paula Wendling, CPA  
Director, Nonprofit Tax Services  
[paula.wendling@cbh.com](mailto:paula.wendling@cbh.com)

# Check Out Code

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