

Welcome

Our Presentation

Will Begin at 12pm

- All viewers are muted. Audience cameras cannot be turned on.
- Who's with us today? Feel free to share your nonprofit's name in the chat box.



Why UBIT is not a Four Letter Word

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Mission of Pro Bono Partnership of Atlanta

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

PBPA Learning Center for Georgia Nonprofits

www.pbpatl.org/resources

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Client Criteria

In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.
- Employ at least one paid staff person.

Visit our website at www.pbpatl.org to apply.

Legal Information

This webcast presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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Agenda

- Definition of Unrelated Business Income
- Exceptions/Exclusions/Modifications to UBI
- Specific Revenue Generating Activities and Potential UBI Requirements

UBI – General Rule

Income derived from trade or business activities not substantially related to the tax-exempt organization's purposes is taxable as if earned by a comparable for-profit enterprise.

The UBI Test

- Trade or Business - Activity carried on for production of income from sale of goods or services
- Regularly carried on
 - Regularity and continuity
 - Carried on in same way as a comparable commercial activity
- Not substantially related to mission
 - No causal relationship to exempt purpose
 - Note: The mere fact that the income produced will be used to carry out the mission is not a sufficient causal relationship.
The activity must be related.

“Trade or Business”

➤ Trade or business activities typically exhibit an intent to derive a profit from their conduct.

➤ In addition, the activities must be regularly carried on.

Tip: When considering whether the activity is “regularly carried on” measure the frequency of the activity against the frequency with which a commercial enterprise would conduct it.

“Regularly Carried On”

➤ If

- the activity is infrequent;
- the activity is conducted only for a short period during the year; or
- the activity is not engaged in with a competitive or promotional intent,

➤ Then

- It should not be considered as regularly carried on.

“Unrelated”

- Is there a substantial causal relationship between the revenue-generating activity and the organization’s exempt purpose?
 - The activity must contribute importantly to the accomplishment of the tax-exempt purposes)
- Note: The mere fact that the income produced will be used to carry out the mission is not a sufficient causal relationship. The activity must be related.

Example 1



Exempt organization derives revenue from distribution of holiday cards once a year.



Taxable?

Yes!

BUT WHY?

- Cards deemed to be sold at “retail” not distributed for “charitable contribution”
- Enterprise involved commercial co-venturer who was engaged in the “seasonal” activity for profit.
- PLR 8203134

Example 2



Nonprofit Law School purchases a spaghetti factory. The revenues from the spaghetti factory are used to support the Law School's exempt purposes.



Taxable?

Yes...

And potential loss of exemption!

- NYU School of Law purchased the factory prior to the enactment of UBI legislation.
- The IRS sued....
- Congress and the public believed:
 - Such a tax-shelter was unfair to other taxable companies
 - The mission of a charitable organization must remain charitably-focused and not on running for-profit businesses
- If the taxable activity tail wags the charitable dog, loss of exemption can occur.

Exceptions & Exclusions to UBI

- Volunteers
- Benefit/Convenience of Members
- Contributed Property
- Rents from Real Property
- Sale of Property
 - e.g. Capital gains
 - Note: Does not apply to inventory or property held in ordinary course of business

Passive Income

Passive Income¹ excepted from UBI:

- Dividends
- Interest
- Annuities
- Royalties²

¹ Not generated through activities of controlled organizations or through borrowed funds.

² So long as there is no active business associated

Revenue Generating Activities

➤ Selling Merchandise

- Key Questions

- What is being sold?
- What services are provided?
- Who is providing the services?

- Examples

- Name & Logo – marketing message/mission
- Donated merchandise
- Volunteer sales – Girl Scout Cookie Exception
- Low-cost article

➤ Rental Property

- Debt financed property?
- Services provided?

Revenue Generating Activities (cont.)

➤ Qualified Sponsorship v. Advertising

- 26 C.F.R. § 1.513-4
- Advertising = unrelated business income
- Corporate Sponsorship Rules
 - No statements endorsing products
 - If website/email acknowledgement, no language endorsing or inducing
 - Site visitors to purchase or use sponsor's products
- No other "substantial return benefit"
 - Substantial return benefit could = substantial private benefit = loss of exemption
 - Insubstantial value = all goods and services received from the charity by the sponsor must NOT exceed 2% of sponsorship payment for year

Revenue Generating Activities (cont.)

➤ Qualified Sponsorship v. Advertising (cont.)

- Sales Tax Ramifications
- Webcast on Corporate Sponsorship:
<https://pbpatl.org/corporate-sponsorships/>
- Article on Do's and Don'ts of Corporate Sponsorship:
<https://pbpatl.org/dos-and-donts-of-corporate-sponsorship/>

Revenue Generating Activities (cont.)

➤ Cause Marketing/Commercial Co-Ventures

- As part of sales promotion, for-profit company uses charity's name to sell its products or services and makes a charitable donation based on sales
- A marketing approach to charitable giving Company A does well by doing good for Charity B.
- Payments structured as royalties for use of name and logo.
- Webcast: <https://pbpatl.org/conducting-fundraising-activities-with-for-profits-2/>

Revenue Generating Activities (cont.)

- Large Tax-Exempt Organizations
 - Publication of periodicals/books
 - Membership list sales
 - Provision eating facilities
 - Parking Decks

Questions?

Pro Bono Partnership of Atlanta

www.pbpatl.org

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