

**University Of New Mexico
Banking & Taxation Department**

Unrelated Business Income Tax

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UNM Revenue May be Subject to Two Types of Taxes

- NM Governmental Gross Receipts Tax (GGRT) – this is a state tax (5%-five percent) on gross receipts from specific types of sales.
- Unrelated Business Income Tax (UBIT) – this is a federal tax (15-35%) on net income from specific types of activities.

Gross Receipts Subject to Governmental Gross Receipts Tax (GGRT)

- Sale of goods, other than water, from facilities open to the general public;
- Performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;
- The renting of parking.

Governmental Gross Receipts Tax

- **Recommendation: Document what is being sold and seek advice from UNM Banking & Taxation Department at 277-0213.**

Unrelated Business Income (UBI)

Must Be All Three

- 1. Trade or Business:** any activity carried on for the production of income
- 2. Regularly Carried On:** Business activity that exhibit frequency and continuity
- 3. Not Substantially Related:** A business activity is not substantially related to an organization's exempt purpose if it does not contribute importantly to accomplishing that purpose

UBIT – What is not substantially related?

- **UNM's exempt purposes are education and research, so an activity whose purpose is not substantially related to one of those purposes would be considered unrelated. It is irrelevant that the proceeds from an activity go to fund education or research. The determining factor is the nature of the activity itself.**

Exceptions to UBI

- Revenue from an activity conducted for the convenience of students or staff
- Passive Income from interest, royalties, or rental of real estate (without services)
- Revenue generated from an activity where substantially all the work is performed by volunteers
- Income derived from qualified sponsorship payments

Problem Areas for Colleges and Universities

- **Agreements allowing for the sale of merchandise to the general public.**
- **Travel Tours.**
- **Links from UNM Web Pages** – Recent releases from IRS demonstrate a focus on where the link leads. For example, if the link leads to the main web page of a sponsor/advertiser, the IRS may be less likely to view this as advertising, and the payment may be eligible for treatment as a qualified sponsorship payment.

Please document any links that may be subject to tax and notify Banking & Taxation.

Problem Areas for Colleges and Universities

- **Difference Between Research and Testing**

Revenues from testing are not protected from UBIT

Reg. Section 1.512(b)-1(f)(4) defines “research” for IRC section 512 as not including “activities of a type ordinarily carried on as an incident to commercial or industrial operations.” For example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings etc.

Problem Areas for Colleges and Universities

- **Sponsorships vs Advertising** -for a payment to constitute a qualified sponsorship payment, there must be no call to action, coupons, or qualitative language, and no expectation that the sponsor will receive any substantial return benefit for its payment other than the use or acknowledgement of the sponsor's name, logo, or product lines

Specific UBIT Issues

- The **sale of advertising**, non-sponsorship, in UNM's Journals as well as the Internet. (Internal Revenue Code 513 (c), IRS Revenue Ruling 76-93, United States v. American College of Physicians, US Supreme Court, 475 US 834 1986)
- **Pharmacy Sales to members of the general public.** (IRS Revenue Ruling 68-374)
- Joint ventures with “for profit entities” where the University lacks “effective control” of the entire decision process. (IRS Revenue Ruling 2004-51, Revenue Ruling 98-15)
- Joint ventures conducted in tax-exempt bond financed facilities.

Tax Reporting Responsibility

- If it appears to you that a department may be conducting an activity that is subject to tax, please contact Banking & Taxation Department at 277-0213.
- <http://www.unm.edu/~taxweb/>
- Banking & Taxation files IRS Form 990-T annually to report UBIT.

Audits, Fines and Penalties

IRS periodically reviews college and university web pages for UBI activity.

- IRS Audit Guidelines for Colleges and Universities
- IRS Audit Guidelines for Hospitals – Announcement 92-83
- IRC section 6001, Regulations Requiring Records, Statements, and Special Returns
- IRC section 6651 Failure to File Information Returns
- IRC section 6651 Failure to Pay
- IRC section 6710, 6113 Failure to Disclose
- IRC section 6104 Failure to Make Return Available
- Failure to Furnish Correct Payee Statement