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Higher Education Tax Update

Southern Association of College and University
Business Officers Workshop
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Agenda

- Unrelated business income**
- IRC section 501(r)**
- Benefits update**

Unrelated Business Income

Unrelated Business Income Tax

- **Who is subject to UBIT?**
 - IRC 501(c) organizations, Pension plans/pension trusts and state and municipal colleges and universities
- **Elements of unrelated business taxable income (“UBTI”):**
 - “Income” derived from a:
 - “Trade or business” that is
 - “Regularly carried on” and
 - Not “substantially related” to the organization’s exempt purposes
 - Subject to exceptions/modifications

UBIT Modifications

- **Interest, dividends, and similar income**
- **Royalties**
- **Rental income from real property**
- **Gains and losses from sales, exchanges, or other dispositions**
- **Qualified sponsorship payments**

UBIT Modifications, cont'd

- **Income from controlled entities**
- **Unrelated debt financed income**
- **Research income**

Unrelated Business Income

IRS focus on:

- **Loss generating activities**
- **Potential disallowance of losses**
- **Reason for losses – start-up or wind-up phase, competitive pressures on pricing, business cycle downturn, budgeted to generate a loss in support of exempt mission of charity**
- **Anticipated future profits?**
- **Business plan to generate profits?**
- **Third-party managed or operated?**

Sponsorship: Acknowledgement

- ✓ Mere recognition of a sponsor
- ✓ Logos and slogans that do not contain comparative and qualitative descriptions of the sponsor's products, services, facilities, or company
- ✓ Sponsor locations and telephone numbers
- ✓ Value-neutral descriptions, including displays or visual depictions of a sponsor's product line or services
- ✓ Sponsor brand or trade names and product or service listings
- ✓ Logos or slogans that are an established part of a sponsor's identity are not considered to contain comparative or qualitative descriptions

Sponsorship: Advertising

- **Subject to unrelated business income tax**
- **“Any message or other programming which is broadcast, published, displayed or distributed in exchange for any remuneration, and which promotes or markets any company, service, facility or product.”**
 - Call to Action
 - Comparative language
- **Acknowledgements in periodicals are advertising**
- **Advertising does not include acknowledgements in other media**

Sponsorship

■ How to evaluate a contract

- Determine the fair market value of the sponsorship payment received by the exempt organization
 - Cash
 - Goods & Services
- Review the agreement to separate acknowledgement from “other benefits” given to sponsor
- Determine FMV of “other benefits” and determine substantial return benefit
- If exceeds 2%, then not a qualified sponsorship payment and must be evaluated under other UBI rules to determine if excludible, say as a royalty

Facility Rentals

- **Telecom and Tower Rentals**
- **Campus Facility Rentals**
- **Parking Lot Operations (PLR 201422027)**
 - As required by city ordinance, the apartment complex provides off-street parking to all of its residents.
 - Tenants cannot “opt out” of their parking spaces or lease them to non-residents, and no parking is made available to the general public. No services, such as a security guard, are provided.
 - The IRS ruled that the parking spaces are “incidental to occupancy” and that any incidental payment for parking is excluded from UBTI as rents from real property under IRC section 512(b)(3).

Miscellaneous UBTI issues addressed during past 6 months

- **Review ISP agreement for UBTI**
- **Partnership investment structure / state taxes**
- **Building naming rights**
- **Timber sales**
- **Antenna system throughout campus**
- **Bookstore agreement**

**Affordable Care Act
requirements for hospitals
under IRC section 501(r)**

Affordable Care Act requirements of tax-exempt hospitals under IRC section 501(r)

- **Emergency medical care**
- **Financial assistance policy**
- **Billing and collections**
- **Community Health Needs Assessments and Implementation Strategies**

Final regulations now issued. Effective date for tax years beginning after December 29, 2015. Until that time, hospital facilities can rely on a reasonable, good faith interpretation of section 501(r) and will be deemed to have done so if it has complied with the provisions of the proposed or final regulations.

Application of IRC section 501(r) to joint ventures.

Benefits Update

Fringe benefits

- **Internal Revenue Code section 132**
 - No additional cost
 - Qualified employee discount
 - Working condition fringe
 - De minimis fringe

- **IRC section 117**

- **IRC section 127**

Miscellaneous fringe benefit and payroll tax issues addressed during past 6 months

- **Benefits to incoming president**
- **Professor services contract in Mexico**
- **W-2 reporting for loan forgiveness**
- **Benefits to coach**
- **Grant income classification as wage v scholarship; nonqualified scholarship reporting**
- **LTD options and reporting**

Miscellaneous fringe benefit and payroll tax issues addressed during past 6 months (continued)

- **MBA tuition benefit**
- **Spousal travel**
- **Long term care premiums**
- **Student loan forgiveness**
- **Other: CRATs, CRUTS, lodging sales tax, foreign statute of limitations**

Fringe benefits and tuition for MBA program

In order to exclude the tuition from income and treat it as a working condition fringe under 132, we need to determine if the expense qualifies as an ordinary and necessary business expense. To do that, we need to examine whether the MBA classes she is attending:

- **maintain or improve skills required by the individual in her employment, or**
- **meets the express requirements of the individual's employer or by law imposed as a condition of retaining a position . . .**
- **And the education**
 - is not required to meet the minimum educational requirements for qualification in the individual's employment, and
 - does not constitute a course of study that would lead the employee to qualify for a new trade or business.

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Thank you

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