

Unrelated Business Income Tax (“UBIT”)

Special Circumstances and Guidelines

13. Advertising

As a general rule, income from the sales of advertising is treated as UBI, even though the advertising is published in an exempt organization’s periodical (e.g. the publication of a newsletter, magazine, scholarly journal, or website, or the sale of advertising in sports programs) that contains editorial matter related to the exempt purposes of the organization.

Like all other income derived by the University, advertising income must be tested against the three basic tests to determine if it constitutes UBI.

(1) Trade or Business

In most cases, the sales of advertising space to commercial goods or services meets the “trade or business” test, as long as either the advertising activity or the sales of the publication itself is generally profitable.

(2) Regularly Carried On

The advertising is clearly “regularly carried on” if it is a part of a journal, newspaper, or similar periodical published on a regular basis. However, if the advertising is published in connection with a publication in related to a single event is not considered “regularly carried on”. The IRS has ruled that the solicitation and sales of advertising by an organization in a book that was distributed at an annual charity ball did not meet the “regularly carried on “ test (Rve. Rul. 75-201, 1975-1, CB164).

(3) Substantially Unrelated

Most commercial advertng contained in the University publication will not be treated substantially related. The Supreme Court has held that in determining whether advertising is substantially related to an organization’s exempt purpose, the focus should be on whether the organization conducted the advertising business in a manner that evidences an intent to further an educational purpose. Therefore, only a relatively small number of cases will pass this fairly strict test. For example:

Consumer advertising may be regarded as related to the exempt purpose if students are actively involved in the solicitation, sale and publication of the advertising under the supervision and instruction of the university/agency (Reg. 1.513-1(d)(4)(iv)).

However, just because students are involved, the activity is not automatically considered exempt from UBIT. The deciding factor lies with the overall purpose of the program. For example, a university acquires a radio station that serves as a laboratory for training

students in the radio industry. The radio station also provides a source of income to the school, serves as a medium for advertising the university, and serves as a medium for adult education. If the greatest portion of time is devoted to the activities conducted by regularly constituted commercial radio stations and not student training, the advertising activity will be deemed taxable (Rev. Rul. 55-676, 1955-2 CB266).