

Unrelated Business Income Tax (“UBIT”)

Special Circumstances and Guidelines

12. Corporate Sponsorship

A corporate sponsorship payment is a payment made by a corporation or business to the University in return for which the company receives some mention or acknowledgement of its products or services. An unrelated trade or business does not include the activity of soliciting and receiving qualified sponsorship payments.

(1) Qualified sponsorship payment

Qualified sponsorship payment means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo (or product lines) of such person’s trade or business in connection with the activities of the organization that receives such payment.

Limitation of Qualified Sponsorship

- A payment is not qualified sponsorship payment if it entitles the payer to the use or acknowledgement of the business name, logo, or product lines in the University’s periodical. For this purpose, the periodical is any regularly scheduled and printed materials (for example, a monthly journal) published by or on behalf of the University. It does not include material that is related to a specific event conducted by the University (such as a program or brochure distributed at a sponsored event).
- A payment is not a qualified sponsorship if its amount is contingent upon the level of attendance, broadcast ratings, or other factors indicating the degree of public exposure.

(2) Substantial Return Benefit

Providing “substantial return benefit” in connection with a sponsorship payment does not affect whether the payment is qualified sponsorship payment. Instead, providing these goods or services is treated as a separate transaction.

Substantial return benefit is defined as any benefits other than (1) the use or acknowledgment by the University of the payor’s name or logo, or (2) goods and services with aggregate fair market value (FMV) of less than 2% of the total payments. If the aggregate of the benefits exceeds 2% of the payment, the entire FMV of the benefits are a substantial return of benefit.

If the University establishes that the payment exceeds the FMV of any substantial return benefit, then the portion that exceeds the FMV of the substantial return benefit is qualified sponsorship. However, if the University does not establish that the payment exceeds the FMV of the substantial return benefit, then no portion of the payment constitutes a qualified sponsorship payment.

Benefits provided to the payor may include:

- advertising (see (4) below)
- goods, facilities, services or other privileges
- exclusive provider arrangements (may be excluded from UBI - see (5) below)
- exclusive or nonexclusive rights to use an intangible asset, such as trademark, patent, logo, or designation of the University (may be excluded under royalty exclusion)

(3) Use or Acknowledgement

A substantial return of benefits does not include the use or acknowledgement of the name or logo (or product line) of the payor’s trade or business. Use or acknowledgement may include:

- exclusive sponsorship arrangements (e.g. announce the event is sponsored exclusively by the payor)
- logos and slogans that do not contain qualitative or comparative descriptions of the payor's products, services, facilities or company
- a list of the payor's locations, telephone numbers, Internet address
- value-neutral descriptions, including displays or visual depictions, of the payor's product-line or services
- the payor's brand or trade names and product or service listings.

Logos or slogans that are an established part of a payor's identity are not considered to contain qualitative or comparative descriptions. Mere display or distribution,

whether for free or remuneration, of a payor's product by the payor or the University to the general public at the sponsored activity is not considered an inducement to purchase, sell or use the payor's product and, thus, will not affect the determination of whether a payment is a qualified sponsorship payment.

Sometimes the University receives payment from a sponsor in exchange for the sponsor's hypertext links or banners on the University's website. If the banners or links only identify the sponsor, the IRS will characterize them as acknowledgement of a sponsor. The IRS also believes that a static banner will retain its nature as acknowledgement while a dynamic banner may be considered as an advertisement.

(4) Advertising

Advertising means any message or other programming material which is broadcast or otherwise transmitted, published, displayed or distributed, and which promotes or markets any trade or business, or any service, facility or product. Advertising the payor's products or services is subject to the substantial return benefits test.

Advertising includes

- messages containing qualitative or comparative language (unless such language is an established part of the sponsor's identity)
- price information or other indications of savings or value
- an endorsement
- an inducement to purchase, sell, or use any company, service, facility or product.

A single message that contains both advertising and an acknowledgment is advertising.

The provisions do not apply to activities conducted by a payor on its own. For example, if a payor purchases broadcast time from a television station to advertise its product during commercial breaks in a sponsored program, the University's activities are not thereby converted to advertising.

(5) Exclusive Provider Arrangement

An exclusive provider arrangement is an arrangement that limits the sales, distribution, availability, or use of competing products, services, or facilities in connection with the University's activity. An exclusive provider arrangement generally results in a substantial return benefit; however, the income from some exclusive provider arrangement may be excluded from UBI under other theories.

If the contract grants the company a license to market its products using the university's name and logo, the portion of the total payment attributable to the license maybe excludable from UBI as a royalty. In some cases, payments in connect with the grant of

an exclusive concession, such as for the operation of a campus bookstore or cafeteria, may be treated as rental income from real property, therefore, are not included in UBI.

However, when the University agrees to perform **substantial services** in connection with the exclusive provider arrangement, income received by the University may be includable in the UBI.

Example:

The University enters into a multi-year contract with a sports drink company under which the company will be the exclusive provider of sport drinks for the University's athletic department and concessions.

If the company agrees to provide, stock, and maintain on-campus vending machines as needed, leaving little or no obligation on the University's part to perform any services or conduct activities in connection with the enterprise, then the income from the exclusive provider arrangement is excludable from UBI.

If as part of the contract, the University agrees to perform various services for the company, such as guaranteeing that coaches make promotional appearance on behalf of the company (e.g. attending photo shoots, filmed commercials, and retail store appearances), assisting the company in developing marketing plans, and participating in joint promotional opportunities. In this case, the income from this exclusive provider arrangement is not excludable from UBI.

(IRS Memorandum August 14, 2001)

Appendix: Examples of Qualified Sponsorship and Non-qualified Sponsorship

The IRS has illustrated the corporate sponsorship principles with a series of different examples.

Example 1

M, a local charity, organizes a marathon and walkathon at which it serves to participants drinks and other refreshments provided free of charge by a national corporation. The corporation also gives M prizes to be awarded to winners of the event. M recognizes the assistance of the corporation by listing the corporation's name in promotional fliers, in newspaper advertisements of the event and on T-shirts worn by participants. M changes the name of its event to include the name of the corporation. M's activities constitute acknowledgment of the sponsorship. The drinks, refreshments and prizes provided by the corporation are a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 2

N, an art museum, organizes an exhibition and receives a large payment from a corporation to help fund the exhibition. N recognizes the corporation's support by using the corporate name and established logo in materials publicizing the exhibition, which include banners, posters, brochures and public service announcements. N also hosts a dinner for the corporation's executives. The fair market value of the dinner exceeds 2% of the total payment. N's use of the corporate name and logo in connection with the exhibition constitutes acknowledgment of the sponsorship. However, because the fair market value of the dinner exceeds 2% of the total payment, the dinner is a substantial return benefit. Only that portion of the payment, if any, that N can demonstrate exceeds the fair market value of the dinner is a qualified sponsorship payment.

Example 3

O coordinates sports tournaments for local charities. An auto manufacturer agrees to underwrite the expenses of the tournaments. O recognizes the auto manufacturer by including the manufacturer's name and established logo in the title of each tournament as well as on signs, scoreboards and other printed material. The auto manufacturer receives complimentary admission passes and pro-am playing spots for each tournament that have a combined fair market value in excess of 2% of the total payment. Additionally, O displays the latest models of the manufacturer's premier luxury cars at each tournament. O's use of the manufacturer's name and logo and display of cars in the tournament area constitute acknowledgment of the sponsorship. However, the admission passes and pro-am playing spots are a substantial return benefit. Only that portion of the payment, if any, that O can demonstrate exceeds the fair market value of the admission passes and pro-am playing spots is a qualified sponsorship payment.

Example 4

P conducts an annual college football bowl game. P sells to commercial broadcasters the right to broadcast the bowl game on television and radio. A major corporation agrees to be the exclusive sponsor of the bowl game. The detailed contract between P and the corporation provides that in exchange for a \$1,000,000 payment, the name of the bowl game will include the name of the corporation. In addition, the contract provides that the corporation's name and established logo will appear on player's helmets and uniforms, on the scoreboard and stadium signs, on the playing field, on cups used to serve drinks at the game, and on all related printed material distributed in connection with the game. P also agrees to give the corporation a block of game passes for its employees and to provide advertising in the bowl game program book. The fair market value of the passes is \$6,000, and the fair market value of the program advertising is \$10,000. The agreement is contingent upon the game being broadcast on television and radio, but the amount of the payment is not contingent upon the number of people attending the game or the television ratings. The contract provides that television cameras will focus on the corporation's name and logo on the field at certain intervals during the game. P's use of the corporation's name and logo in connection with the bowl game constitutes acknowledgment of the sponsorship. The exclusive sponsorship arrangement is not a substantial return benefit. Because the fair market value of the game passes and program advertising (\$16,000) does not exceed 2% of the total payment (2% of \$1,000,000 is \$20,000), these benefits are disregarded and the entire payment is a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 5

Q organizes an amateur sports team. A major pizza chain gives uniforms to players on Q's team, and also pays some of the team's operational expenses. The uniforms bear the name and established logo of the pizza chain. During the final tournament series, Q distributes free of charge souvenir flags bearing Q's name to employees of the pizza chain who come out to support the team. The flags are valued at less than 2% of the combined fair market value of the uniforms and operational expenses paid. Q's use of the name and logo of the pizza chain in connection with the tournament constitutes acknowledgment of the sponsorship. Because the fair market value of the flags does not exceed 2% of the total payment, the entire amount of the funding and supplied uniforms are a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 6

R is a liberal arts college. A soft drink manufacturer enters into a binding, written contract with R that provides for a large payment to be made to the college's English department in exchange for R agreeing to name a writing competition after the soft drink manufacturer. The contract also provides that R will allow the soft drink manufacturer to be the exclusive provider of all soft drink sales on campus. The fair market value of the exclusive provider component of the contract exceeds 2% of the total payment. R's use of the manufacturer's name in the writing competition constitutes acknowledgment of the sponsorship. However, the exclusive provider arrangement is a substantial return benefit.

Only that portion of the payment, if any, that R can demonstrate exceeds the fair market value of the exclusive provider arrangement is a qualified sponsorship payment.

(Note: the exclusive provider arrangement may be exempt from UBIT as royalty)

Example 7

S is a noncommercial broadcast station that airs a program funded by a local music store. In exchange for the funding, S broadcasts the following message: “This program has been brought to you by the Music Shop, located at 123 Main Street. For your music needs, give them a call today at 555-1234. This station is proud to have the Music Shop as a sponsor.” Because this single broadcast message contains both advertising and an acknowledgment, the entire message is advertising. The fair market value of the advertising exceeds 2% of the total payment. Thus, the advertising is a substantial return benefit. Unless S establishes that the amount of the payment exceeds the fair market value of the advertising, none of the payment is a qualified sponsorship payment.

Example 8

T, a symphony orchestra, performs a series of concerts. A program guide that contains notes on guest conductors and other information concerning the evening's program is distributed by T at each concert. The Music Shop makes a \$1,000 payment to T in support of the concert series. As a supporter of the event, the Music Shop receives complimentary concert tickets with a fair market value of \$85, and is recognized in the program guide and on a poster in the lobby of the concert hall. The lobby poster states that, “The T concert is sponsored by the Music Shop, located at 123 Main Street, telephone number 555-1234.” The program guide contains the same information and also states, “Visit the Music Shop today for the finest selection of music CDs and cassette tapes.” The fair market value of the advertisement in the program guide is \$15. T's use of the Music Shop's name, address and telephone number in the lobby poster constitutes acknowledgment of the sponsorship. However, the combined fair market value of the advertisement in the program guide and complimentary tickets is \$100 (\$15 + \$85), which exceeds 2% of the total payment (2% of \$1,000 is \$20). The fair market value of the advertising and complimentary tickets, therefore, constitutes a substantial return benefit and only that portion of the payment, or \$900, that exceeds the fair market value of the substantial return benefit is a qualified sponsorship payment.

Example 9

U, a national charity dedicated to promoting health, organizes a campaign to inform the public about potential cures to fight a serious disease. As part of the campaign, U sends representatives to community health fairs around the country to answer questions about the disease and inform the public about recent developments in the search for a cure. A pharmaceutical company makes a payment to U to fund U's booth at a health fair. U places a sign in the booth displaying the pharmaceutical company's name and slogan, “Better Research, Better Health,” which is an established part of the company's identity.

In addition, U grants the pharmaceutical company a license to use U's logo in marketing its products to health care providers around the country. The fair market value of the license exceeds 2% of the total payment received from the company. U's display of the pharmaceutical company's name and slogan constitutes acknowledgment of the sponsorship. However, the license granted to the pharmaceutical company to use U's logo is a substantial return benefit. Only that portion of the payment, if any, that U can demonstrate exceeds the fair market value of the license granted to the pharmaceutical company is a qualified sponsorship payment.

(Note: the license granted to the pharmaceutical company to use U's logo may be exempt from UBIT as royalty)

Example 10

V, a trade association, publishes a monthly scientific magazine for its members containing information about current issues and developments in the field. A textbook publisher makes a large payment to V to have its name displayed on the inside cover of the magazine each month. Because the monthly magazine is a periodical within the meaning of paragraph (b) of this section, the section 513(i) safe harbor does not apply. See §1.512(a)-1(f).

Example 11

W, a symphony orchestra, maintains a website containing pertinent information and its performance schedule. The Music Shop makes a payment to W to fund a concert series, and W posts a list of its sponsors on its website, including the Music Shop's name and Internet address. W's website does not promote the Music Shop or advertise its merchandise. The Music Shop's Internet address appears as a hyperlink from W's website to the Music Shop's website. W's posting of the Music Shop's name and Internet address on its website constitutes acknowledgment of the sponsorship. The entire payment is a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 12

X, a health-based charity, sponsors a year-long initiative to educate the public about a particular medical condition. A large pharmaceutical company manufactures a drug that is used in treating the medical condition, and provides funding for the initiative that helps X produce educational materials for distribution and post information on X's website. X's website contains a hyperlink to the pharmaceutical company's website. On the pharmaceutical company's website, the statement appears, "X endorses the use of our drug, and suggests that you ask your doctor for a prescription if you have this medical condition." X reviewed the endorsement before it was posted on the pharmaceutical company's website and gave permission for the endorsement to appear. The endorsement is advertising. The fair market value of the advertising exceeds 2% of the total payment received from the pharmaceutical company. Therefore, only the portion of the payment,

if any, that X can demonstrate exceeds the fair market value of the advertising on the pharmaceutical company's website is a qualified sponsorship payment.