Unrelated Business Taxable Income (UBTI)

SECTION 1. Policy Statement

I. **Generally**

A. The University of Tennessee is tax-exempt as an instrumentality of the State of Tennessee (IRS Determination Letter dated March 27, 1998). The Internal Revenue Code provides the exempt purposes of state colleges and universities include educational, charitable, scientific, testing for public safety, literary, fostering national or international amateur sports competition, or preventing cruelty to children or animals.

B. The University is not, however, exempt from applicable tax imposed by Code Sections 511, 512 and 513 on activities which are unrelated to those exempt purposes and therefore is Unrelated Business Taxable Income (UBTI).

II. IRS Form 990-T

A. The University must file Form 990-T annually on gross income from unrelated trade or business of $1,000 or more per fiscal year. All three elements listed below must be present in order for an activity conducted by the University to generate unrelated business income (UBI):

1. Trade or Business – the term “trade or business” generally includes any activity carried on for the production of income. The IRS and the courts have long held that for any entity to classify an activity as a trade or business, it must conduct the activity with the intent to earn profit. Treas. Reg. §1.183-2(b) sets forth nine different factors taken into account in making this profit motive determination, one of which is “history of income or losses with respect to the activity”. The IRS often disallows losses on Form 990-T if an activity incurs two or three consecutive years of losses. For example, a 4-H camp earns a net profit in 2019 but incurs net losses in years 2020, 2021 and 2022. The IRS would likely disallow the University from taking a loss on its 2023 990-T and would continue to disallow future losses until the 4-H camp earns a net profit again. If a department has an activity that might not meet the profit motive test but is otherwise considered UBI, departments must proceed with reporting the activity to the Controller’s Office for final determination.

2. Regularly Carried On – activities ordinarily are considered regularly carried on if they show frequency and continuity of sales and are pursued in a manner similar to comparable commercial activities of nonexempt organizations. Seasonal activities may be regularly carried on even though they are conducted for a short period of time each year.

3. Substantially Unrelated to the Exempt Purpose of the University – see above for definition of exempt purpose for state colleges and universities.

III. Statutorily Exempted Activities

A. Activities that meet one of the following criteria will <u>not</u> be subject to the unrelated business income tax (UBIT):

1. Performed substantially (85% or more) by volunteer labor
2. Conducted primarily for convenience of University students, faculty, staff, or patients
3. Sales of donated merchandise
4. Qualified sponsorship payments – a payment for which the sponsor receives no substantial return benefit (see “Examples of UBTI” below) other than mere acknowledgement by the University. Acknowledgement might include the following:
   a) The sponsor’s name and logo
   b) Contact information and locations
   c) General description of the sponsor’s products or services
   d) Slogans that do <u>not</u> contain qualitative or comparative descriptions of the sponsor’s products or services.
   e) A “click-through” logo on a University website, as long as no endorsement by the University is present on the University’s website or the sponsor’s website.
5. Distribution of low-cost articles
6. Exchange or rental of member lists between tax-exempt organizations

B. Additionally, the following types of income are excluded from UBI:

1. Passive investment income (dividends, interest, etc.)
2. Gains or losses from sale of property (not inventory)
3. Rents from real property, which is contingent with debt finance issues, and some personal property (see “Sales or rentals to the general public” below – rental of real property becomes taxable when the University provides services to the general public with the rental)
4. Royalty income
5. Research income (not ordinary testing or inspection of products)

IV. Examples of UBTI

A. Below are examples of unrelated business taxable income, and these types of activities are subject to the unrelated business income tax (UBIT):

1. Sales of commercial advertising in University publications.
2. Revenues from summer camps administered by third parties, and 4-H camps hosted on University property.
3. UBTI passed through from partnership investments within the University’s Consolidated Investment Pool (CIP).
4. Sales or rentals to the general public, including, but not limited to, rooms in dormitories and residence halls, and access to recreation facilities. Providing services, except for landlord general services (heat and light, trash

pick-up, indoor cleaning, security services, etc.), makes rental to the general public subject to tax.

5. Recreational or athletic facility membership fees when the income is collected from spouses, dependents, alumni, or guests rather than students, faculty, and staff that are excluded based on the convenience exception.
6. Sales of non-excluded items at University bookstores. Online sales do not qualify for the convenience exception.
7. Parking revenues generated from general public attendance at non-University sponsored events.
8. Routine analytical or testing services to non-University users.
9. Substantial Return Benefit – value of items given to corporate sponsors, if the value of those items exceeds 2% of the sponsorship payment.
    a) Departments that receive qualified sponsorship payments (e.g., Athletics, etc.) must track the value of any items given to the sponsor, such as tickets, goods, ads, facilities use, services, rights to intangible assets, etc., and determine if the total value of those items exceeds 2% of the sponsorship payment.
    b) Do not include the value received from mere acknowledgement of the sponsor in this calculation (see examples of acknowledgement in Section 3 above).
    c) If the value of the items given exceeds 2% of the sponsorship payment, the sponsor has received a "substantial return benefit", and the value of those items must be included in UBTI. Only the portion of the sponsorship payment that exceeds the fair market value of the substantial return benefit will be deemed a qualified sponsorship payment.
    d) Departments are strongly encouraged to keep good records of these calculations, even if no "substantial return benefit" is received. The IRS can tax an entire sponsorship payment if a department cannot prove the value of items given to the sponsor were less than 2% of the sponsorship payment for "substantial return benefit" purposes.
    e) Please see IRC Reg. §1.513-4 for several good examples of a variety of sponsorship issues.

SECTION 2. Reason for the Policy

This policy ensures that the University is in compliance with IRS rules and regulations regarding unrelated business taxable income and required Form 990-T filing.

SECTION 3. Scope and Application

This policy applies to all University departments. Departments that engage in activities regulated by this policy must comply with this policy and all applicable procedures.

SECTION 4. Procedures

I. Generally
II. Revenue Questionnaire
III. Annual Review
IV. Annual UBI Worksheet
V. Notifications
VI. Federal Income Tax Payment

SECTION 5. Definitions

UBTI: Unrelated business taxable income means the gross income derived from any unrelated trade or business regularly carried on by the University, less the deductions "directly connected" with carrying on the trade or business.

UBIT: Unrelated business income tax.

SECTION 6. Penalties/Disciplinary Action for Non-Compliance

Compliance with this UBTI policy is necessary to ensure that the University timely files Form 990-T with the IRS to avoid penalties and interest. University employees who fail to comply could face human resources adverse actions, up to and including termination. Departments that fail to comply might incur penalties and interest, for which their department will be responsible. In some cases, the penalties and fees could be large, and departments will be responsible for paying the entire amount from their departmental budgets.

SECTION 7. Responsible Official & Additional Contacts

All University of Tennessee campuses

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Controller's Office	(865)974-2498	https://controller.tennessee.edu/tax

Policy Training	Controller's Office	(865)974-2498	https://controller.tennessee.edu/tax

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SECTION 8. Policy History

List the history of any prior revisions of the policy or whether this policy replaces an existing policy.

Revision 2: 12/08/2017
Revision 1: 01/01/2010

SECTION 9. Related Policies/Guidance Documents

To view links to campus policies and procedures, click here:

https://policy.tennessee.edu/campus-policies-procedures/
