

Sponsorships, Advertising, Endorsements, and Cause Marketing:

Understanding Critical UBIT Issues for Nonprofits

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Legal Quick Hit



UBIT Basics

- General Rule  Organization recognized as exempt does not pay income tax on most income received by organization.
- Exception  If the income received is unrelated business income (UBI), it is subject to taxation. Organization must report and pay tax at corporate rates.



Is the Income Taxable?

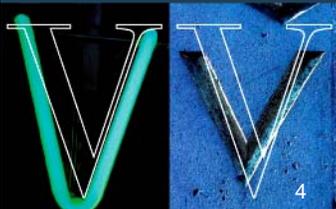
- Unrelated Business Income Tax (UBIT)
 - It is a **trade or business**,
 - It is **regularly carried on**, and
 - It is **not substantially related** to furthering the exempt purposes of the organization.
- Taxability of the income received will **depend on contents of contract, reality of relationship**
- **Educational event** registration fees — ALMOST NEVER
- **Conference and Trade Show Revenue** – ALMOST NEVER
- **Advertising** — ALMOST ALWAYS
- **Consumer products unrelated to mission** – ALMOST ALWAYS
- **Job banks / referral activities** – ALMOST ALWAYS



Corporate Partnerships Maximizing Income

Qualified Sponsorship Payments

- Goods or services, or other benefits, the total value of which does not exceed **two percent** of the sponsorship payment; and
- **Recognition**, *i.e.*, use or acknowledgment of the sponsor's name, logo, or product lines in connection with the nonprofit's activities



Corporate Sponsorship Income

Permissible forms of use or acknowledgment:

- Use or acknowledgment of the **name or logo** (or product lines) of the sponsor's business, as long as use is not qualitative or comparative
- List of **sponsor's location, telephone number**, and/or web address, including a **hyperlink** from the exempt organization's website to the sponsor's website
- Product **samples okay**



Corporate Sponsorship Income

- Unlike sponsorship payments, payments received for advertising are characterized as UBI
- Characteristics of advertisements include:
 - Comparative or qualitative language
 - Price, savings or value information
 - Endorsements
 - Inducement to buy
- A hyperlink may convert acknowledgment to advertising



Acknowledgment vs. Advertising

Banners

- 2000 EO CPE, the IRS stated that “a moving banner is probably more likely to be classified as an advertisement.”
- Fees based on “pay-per-view” or “pay-per-click” measures are also likely to be characterized as advertisements.



What is a Royalty?

- Name, marks (e.g., logo), and membership list
- Third-party product
 - e.g., affinity card, not medical journal
- No active promotion (or quantify value and pay tax)
 - Announcement letter okay
 - Quality control measures okay



Cause Marketing

- **Attributes**
 - Commercial entity uses your name or logo in its advertisements with promise to pay a portion of purchase price to you
 - Passive
 - Lack of control

- **Rewards**
 - Increased donations
 - Increased awareness of your organization

- **Risks**
 - No control over where advertisements are displayed
 - Possible state reporting requirements
 - Problems with having underlying product associated with your organization



Questions?

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