

# Higher Education Webinar Series

## Higher Education Tax Update

Tax Update

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Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor



Create Opportunities

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# Learning Objectives

- Review recent legislative actions impacting higher education
- Identify UBI risk areas
- Recognize potential tax and compliance risks in your institution

# 990 Importance – Beyond Compliance

- Publicly available
- Complement marketing for savvy donors
- Supports your continued exempt status



# Polling Question

- Does your organization have an in-house tax professional?
- Do you prepare your 990 and / or 990-T in house?





# Priority Guidance Plan & Compliance Initiatives

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# 2019-2020 Priority Guidance Plan & Compliance Initiatives

- Implementation of Tax Cuts and Jobs Act (TCJA)
  - Excess compensation excise tax
  - Unrelated business income reporting
  - Retroactive repeal of Code Section 512(a)(7)
    - ◇ Tax on transportation fringe benefits
    - ◇ Refund opportunities





# 2019-2020 Priority Guidance Plan & Compliance Initiatives

- Taxpayer First Act guidance
  - Nonprofits must file 990 series electronically
    - ◇ Calendar year organizations - tax years beginning after 1/1/20
    - ◇ Fiscal year organizations – tax years beginning after 7/2/19
    - ◇ NEW: Includes 990-T's
  - IRS must now notify exempt orgs before revoking tax-exempt status due to failure to file for 3 years
    - ◇ Student orgs





# 2019-2020 Priority Guidance Plan & Compliance Initiatives

- Worker misclassification and W-2/1099 matches
  - Behavioral control
  - Financial control
  - Relationship
  - DOL – Economic dependence
- Backup withholding
  - 1099 and 1042-S



# State Compliance Concerns

- State nexus considerations
  - Payroll
  - Sales and use tax
  - Business registration
  - Charitable solicitation registration





# Tax Relief and Reform

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# COVID-19 Tax Relief and Reform

- Tax credit opportunities
- Self-insured employer for unemployment purposes
- Deferral of employers portion of social security (6.2%) tax



# Polling Question

Did you participate in the payroll tax holiday?

- Participated and glad we did
- Participated and wish we hadn't
- Did not participate, wish we did
- No way! Did not participate

# COVID-19 Tax Relief and Reform

- CARES Act Net Operating Loss
  - Tax years 2018, 2019, 2020
  - 5 year carryback
  - Removes taxable income limitation
  - Rev. Proc. 2020-24



# Excise Tax on Compensation

- An “applicable tax-exempt organization” (ATEO) is subject to a 21% excise tax on
  - Remuneration over \$1m paid to a covered employee
    - ◇ Generally Federal taxable wages (box 1) of calendar year within fiscal year if fiscal year filer.
    - ◇ Includes 457(f)
    - ◇ Does not include amounts paid to licensed medical professionals
  - Excess parachute payments paid to a covered employee
- ATEO = your related 501(c)(3) organizations
  - Excludes governmental unit (including a state college or university) without an IRS determination letter





# Excess Parachute Payments

- Compensatory payment to a covered employee if:
  - The payment is contingent on an employee separation from employment with the employer and
  - Aggregate present value of the payment exceeds three times the base amount, which is the average annual compensation over the preceding 5-years
- Notice 2019-9
  - Payment is deemed to be a parachute payment only if the payment is contingent on involuntary separation from service



# Reporting the Excise Tax

- Additional filing (Form 4720) is required
- Same due date as Form 990
  - Separate extension is required
- Potential tax liability must be paid with extension

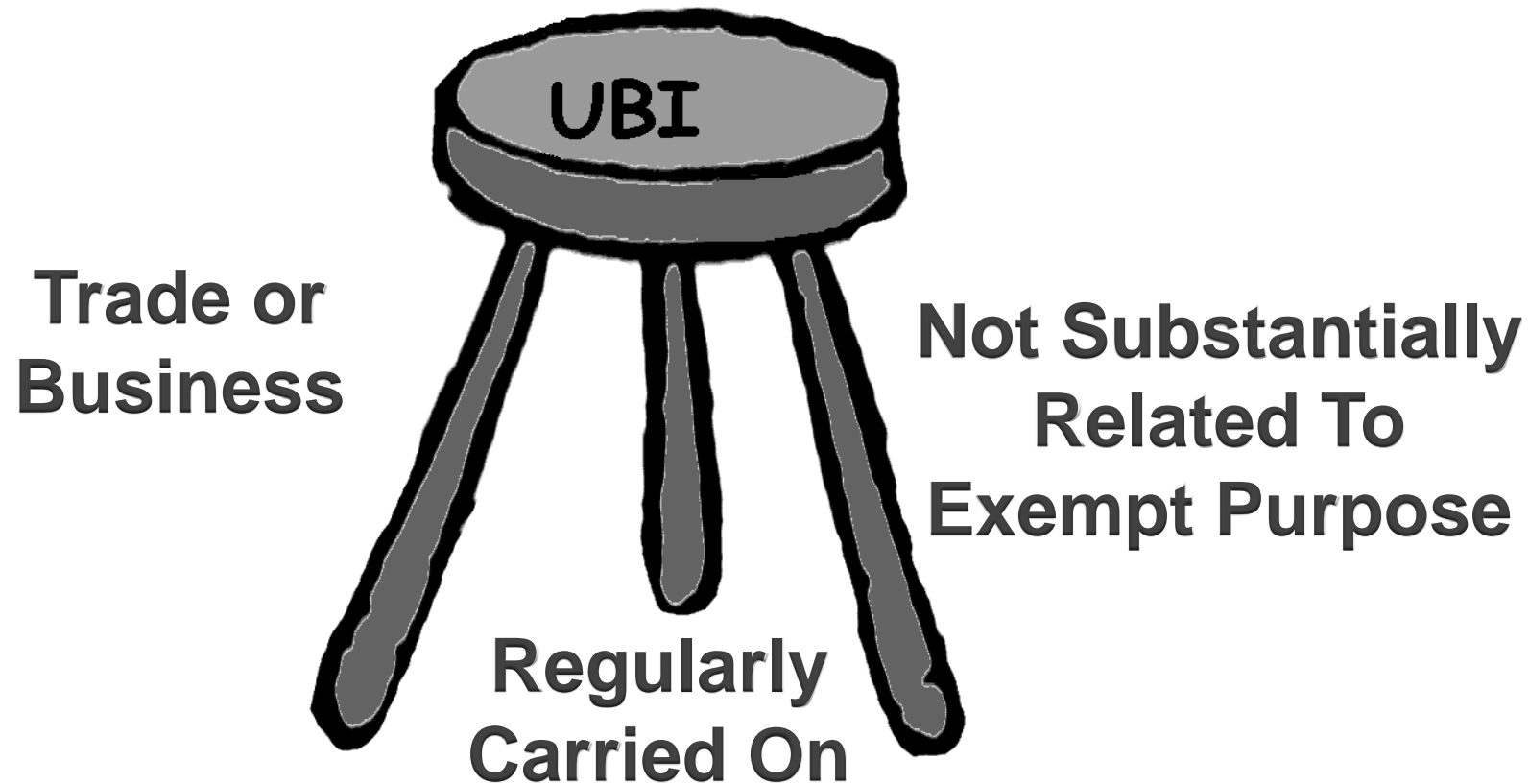


# Unrelated Business Income Tax and Tax Reform

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# UBI Defined – IRC § 512(a)(1)



# Polling Question

- Which of these common UBI activities is the most significant to your campus?
  - Advertising
  - Partnership investments
  - Public usage of facilities
  - UBI is not a risk

# Unrelated Business Income

## Potential Sources of UBI

- Advertising (qualified sponsorship payments are not UBI)
- Exclusivity contract
  - Exclusive sponsor vs. exclusive provider
- Alternative investments (Partnerships and S-Corp interests)
- Laboratory revenue, drug trials, clinical studies
  - Public vs. proprietary purpose
- Fitness centers, ice rinks, swimming pools, golf courses, cafeteria, childcare, etc.
- Royalties and personal property or mixed rental income



# Advertising vs. Qualified Sponsorship





# Unrelated Business Income Considerations

- Tracking public revenue separately
- Allocating expenses in mixed use activities
- Direct versus indirect costs
- Allocation methodology
- Reviewing business activities with continual losses
- UBI is not always bad, budget for the tax



# UBI Separate Line of Business



- UBTI is computed separately for each business
- No longer aggregate activities to arrive at taxable income
- Notice 2018-67
  - Reasonable, good faith interpretation must be used until additional guidance is issued
  - Use of NAICS codes, proposed regulations released 4/23/20
    - ◇ 2 Digit NAICS codes instead of 6 digit codes
    - ◇ Only report each code once

<https://www.federalregister.gov/documents/2020/04/24/2020-06604/unrelated-business-taxable-income-separately-computed-for-each-trade-or-business>

# Notice 2018-67 – Partnership Investments

- Interim guidance for aggregating UBTI from partnerships
  - De minimis test – EO holds no more than 2% of partnership profits and capital interest, combining all related interests **or**
  - Control test – EO holds no more than 20% of the partnership capital interest **and** does not have control or influence over the partnership, combining all related interests
    - ◇ Related interests includes: interests held by disqualified persons, supporting organization, or controlled entity
  - Proposed regulations –
    - ◇ 2 digit NAICS code application does not apply to investments
    - ◇ No new guidance on control tests



# Net Operating Losses (Pre-COVID Changes)

- Post-December 31, 2017 NOLs (tax years beginning after 12/31/17)
  - Cannot be carried back to prior years
  - May be carried forward indefinitely
  - May only be applied against the same unrelated activity that generated the losses
  - NOLs limited to 80% of income
- Pre-January 1, 2018 NOLs
  - Apply to the combined net taxable income
  - Carryback and carryover provisions apply
  - Deferred tax asset





# Tax and Compliance Risk areas

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# Penalty Risks

- Late filing/incomplete return penalties
  - “Large” Exempt org (annual gross receipts greater than \$1,000,000)
    - ◇ \$100 per day up to \$50,000
- Abatable
  - Requires explanation of reasonable cause

# Tax Risk Areas

- Compensation Reporting (related 501(c)(3)'s)
  - Does it appear reasonable? How was it determined?
  - Compensation in excess of \$1,000,000 or spike in reported comp
- Education
  - Fundraising teams
  - Athletic departments
- Foreign Accounts / Transactions
  - Foreign bank accounts / investments
  - Operational activities abroad
  - Foreign grantees / payees (nonresident aliens)





# What should you be on the lookout for?

- Political or Lobbying Activities
- Frequency of fundraising events held by related 501(c)(3)'s
- Benefits provided to employees not included in compensation
  - Gift cards
  - Department attire (i.e. coaches, grounds crew, etc.)
  - Housing, janitorial, catering
- Payments to foreign individuals
  - Students
  - Contractors
  - Employees



# What can you do to assess tax and compliance risk?

- Monitor new revenue streams and/or perform a UBI assessment
- Identify and train staff that have potential to generate UBI
  - Education outside of finance (development, athletics, marketing, etc.)
- Review contracts for potential UBI
  - Sponsorships, royalties, advertising, etc.
- Establish a system to flag payments to nonresident aliens
- Review independent contractor contracts for services to identify potential employment relationships
- Identify foreign activities and related risks including nexus, employment and labor law, import and export



# Questions







Thank you!

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