

State of Oregon Higher Education Update

Tax and Compliance Update

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Create Opportunities

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Session Objectives

At the end of this session, you will be able to:

- Identify recent legislative actions impacting higher education
- Prepare for upcoming compliance matters (student financial aid, tax updates, unrelated business income tax, and other matters)
- Identify COVID-19 legislation tax opportunities
- Identify potential tax and compliance risks in your institution





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
 - ◇ Relevance to student orgs and 4-H



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





Tax Relief and Reform

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COVID-19 Tax Relief and Reform

- Filing deadline and estimated tax payment due date changes
- International students and scholars
- Tax credit opportunities
- Self-insured employer for unemployment purposes
- Deferral of employers portion of social security (6.2%) tax



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



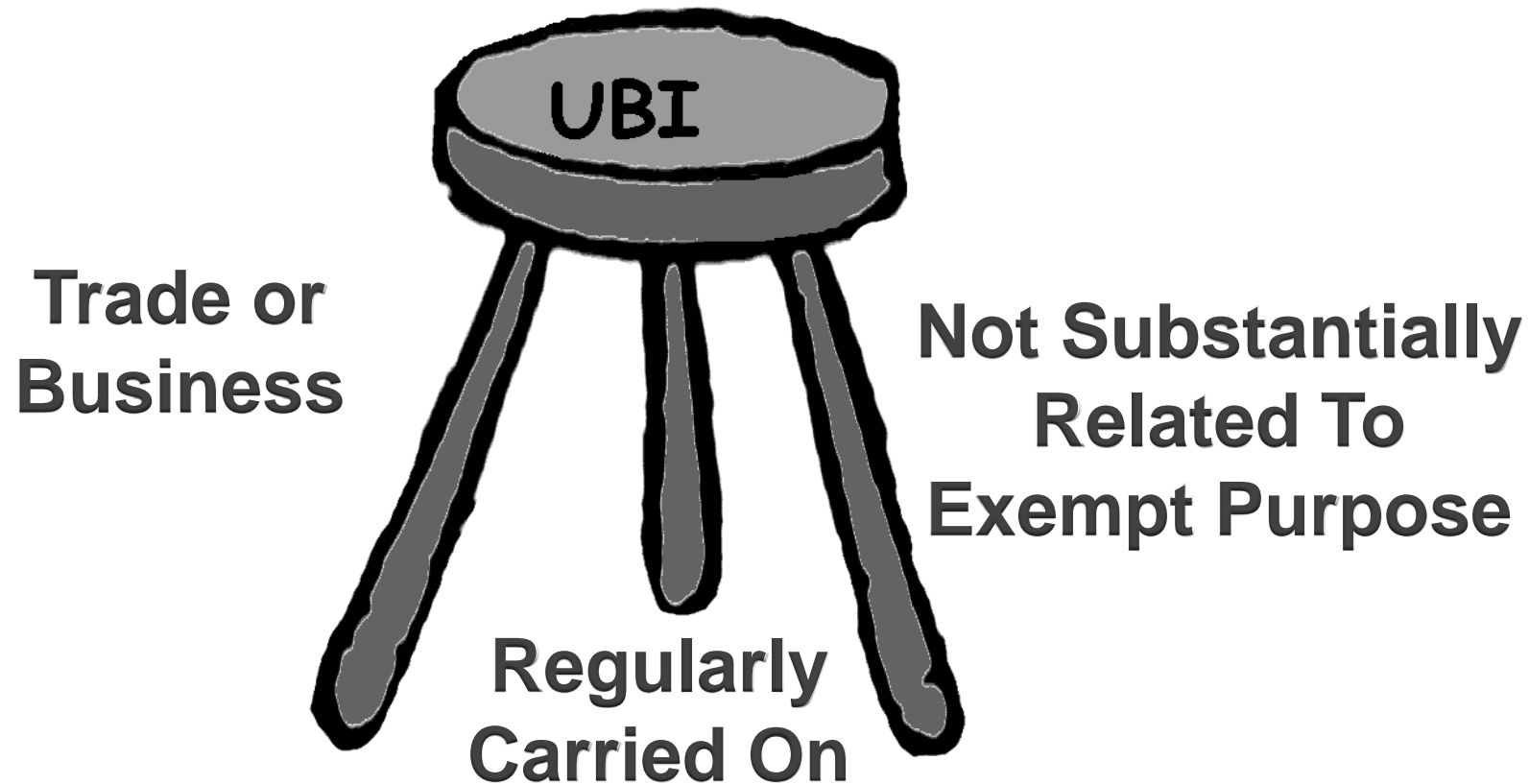


Unrelated Business Income Tax and Tax Reform

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UBI Defined – IRC § 512(a)(1)



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, cafeteria, childcare, etc.
- Royalties



Advertising vs. Qualified Sponsorship



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
- Advertising vs. Sponsorships
 - Fundraising events
 - 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?

- Employees vs. Independent Contractors
- 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





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Thank you!

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