

Siloing of UBI: What Nonprofits Need to Know

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WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

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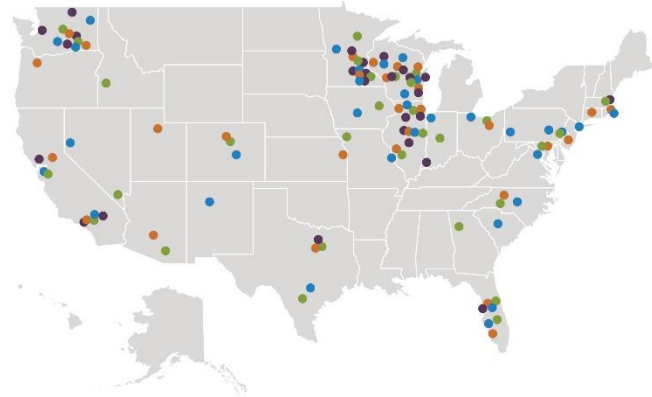
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- A professional services firm with three distinct business lines
 - Wealth Advisory
 - Outsourcing
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- More than 6,100 employees
- Offices coast to coast
- Serving over 6,000 nonprofits



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Speaker Introduction

David Trimner

- CLA national tax leader
- More than 20 years of experience in providing specialized tax consulting and compliance services to hundreds of tax-exempt clients.
- Also assists clients with unrelated business income, intermediate sanctions, obtaining and maintaining exempt status, IRS examinations, executive compensation and benefits disclosures, and state solicitation requirements.

Learning Objectives:

- Explain new “silo” rules and how they impact nonprofits
- Discuss the current regulatory environment associated with unrelated business income and why it is important to properly classify the revenue
- Identify common sources of unrelated business income



Unrelated Business Income: Separate Line of Business Reporting

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When Does This Apply to Me?

Effective for tax years beginning after December 31, 2017

No

- Full- and Short- Year returns that began *before* January 1, 2018
 - FYE June 30, 2018
 - FYE September 30, 2018

Yes

- Full- and Short- Year returns that began *on or after* January 1, 2018
 - FYE June 30, 2019
 - FYE September 30, 2019

When Does This Apply to Me?

Organizations with multiple taxable activities may no longer aggregate activities to arrive at taxable income

- Net operating losses (NOLs) from one business activity may not offset other profitable activities
- NOLs which are unable to be used in current year are suspended (carried forward) until the same activity produces positive UBI



What is an 'Activity'?

Notice 2018-67 – Interim Guidance

- Reasonable, good faith interpretation
- Use of 6-digit NAICS codes
- Reasonable allocation of expenses
- Qualified transportation fringe benefits is not treated as a separate unrelated trade or business

What is an 'Activity'?

https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf

- Code 511120 – Advertising periodical publishers (except exclusive Internet publishing)
- Code 51140 – Directory and mailing list publishers (except internet)
- Code 519130 – Advertising Periodical Publishers, exclusively on Internet
- Code 531110 – Lessors of Residential Buildings and Dwellings
- Code 531120 – Lessors of Non-Residential Buildings (excl. mini-warehouses)
- Code 525990 – Other Financial Vehicles
- Code 541380 – Testing Labs
- Code 713910 – Golf Courses and Country Clubs
- Code 722514 – Limited-Service Restaurants
- Code 722320 – Caterers
- Code 722514 – Cafeterias and Buffets
- Code 722440 – Drinking Place (alcoholic beverages)
- Code 722515 – Snack and Non-alcoholic Beverage Bars

What is an 'Activity'?

Interim guidance for aggregating UBTI from partnerships

- IF the investment meets
 - 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
- THEN the EO may aggregate all qualifying partnership interests and treat the aggregate group as a single trade or business.

What is an 'Activity'?

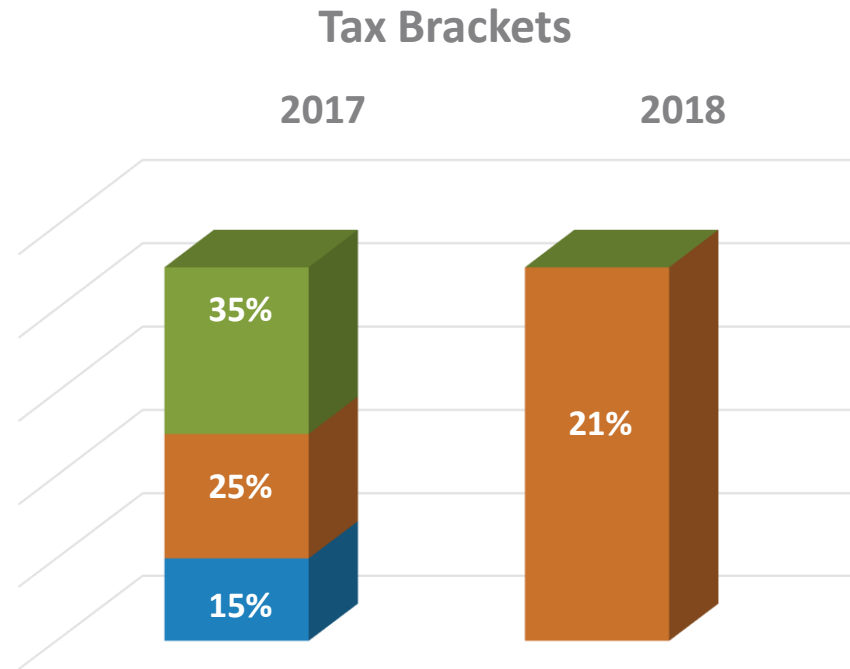
Transition Rule for aggregating UBTI from partnerships

- IF the investment *doesn't* meet
 - De minimis test **–or**
 - Control test
- THEN for partnership interests acquired prior to August 21, 2018, the EO is permitted to treat each partnership interest as a single trade of business, even though more than one activity is conducted by the partnership.

Net Operating Losses

- Pre-January 1, 2018 NOLs
 - Applicable to any activity
 - 2-year carryback and 20-year carryforward
 - May reduce up to 100% of UBTI
- Post-December 31, 2017 NOLs
 - Applicable only to the same activity that generated it
 - No carryback, indefinite carryforward
 - May reduce up to 80% of UBTI

UBI Tax Rate



2018 Form 990-T

- Requests the number of separate UBI activities
- Schedule M used for each separate UBI activity

Form 990-T Department of the Treasury Internal Revenue Service	Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))		OMB No. 1545-0087 2018	
For calendar year 2018 or other tax year beginning _____, 2018, and ending _____, 20____.				
▶ Go to www.irs.gov/Form990T for instructions and the latest information. ▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).				
A <input type="checkbox"/> Check box if address changed B Exempt under section <input type="checkbox"/> 501(c) () () <input type="checkbox"/> 408(a) <input type="checkbox"/> 220(a) <input type="checkbox"/> 408A <input type="checkbox"/> 530(a) <input type="checkbox"/> 529(a)	Print or Type	Name of organization (<input type="checkbox"/> Check box if name changed and see instructions.) Number, street, and room or suite no. if a P.O. box, see instructions. City or town, state or province, country, and ZIP or foreign postal code	D Employer identification number (Employees' trust, see instructions.) E Unrelated business activity code (See instructions.)	
C Book value of all assets at end of year		F Group exemption number (See instructions.) ▶ G Check organization type ▶ <input type="checkbox"/> 501(c) corporation <input type="checkbox"/> 501(c) trust <input type="checkbox"/> 401(a) trust <input type="checkbox"/> Other trust		
H Enter the number of the organization's unrelated trades or businesses. ▶ _____ Describe the only (or first) unrelated trade or business here ▶ _____. If only one, complete Parts I–V. If more than one, describe the first in the blank space at the end of the previous sentence, complete Parts I and II, complete a Schedule M for each additional trade or business, then complete Parts III–V.				

2018 Form 990-T Schedule M

SCHEDULE M (Form 990-T)

Unrelated Business Taxable Income for Unrelated Trade or Business

OMB No. 1545-0047

2018

Department of the Treasury
Internal Revenue Service

For calendar year 2018 or other tax year beginning _____, 2018, and ending _____, 20____.

▶ Go to www.irs.gov/Form990T for instructions and the latest information.

▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

Open to Public Inspection for
501(c)(3) Organizations Only

Name of the organization

Employer identification number

Unrelated business activity code (see instructions) ▶

Describe the unrelated trade or business ▶

Part I Unrelated Trade or Business Income			(A) Income	(B) Expenses	(C) Net
1a	Gross receipts or sales				
b	Less returns and allowances				
	c Balance ▶		1c		
2	Cost of goods sold (Schedule A, line 7)		2		
3	Gross profit. Subtract line 2 from line 1c		3		
4a	Capital gain net income (attach Schedule D)		4a		
b	Net gain (loss) (Form 4797, Part II, line 17) (attach Form 4797)		4b		
c	Capital loss deduction for trusts		4c		
5	Income (loss) from a partnership or an S corporation (attach statement)		5		
6	Rent income (Schedule C)		6		
7	Unrelated debt-financed income (Schedule E)		7		
8	Interest, annuities, royalties, and rents from a controlled organization (Schedule F)		8		
9	Investment income of a section 501(c)(7), (9), or (17) organization (Schedule G)		9		
10	Exploited exempt activity income (Schedule I)		10		
11	Advertising income (Schedule J)		11		
12	Other income (See instructions; attach schedule)		12		
13	Total. Combine lines 3 through 12		13		

Provisions That Affect Nonprofits:

“Siloing” of UBI by Activity, IRS Notice 2018-67

Rental
Income
from
Personal
Property
(Sch C)

Rental
Income
from Debt-
Financed
Property
(Sch E)

UBI from
Controlled
Sub (Sch F)

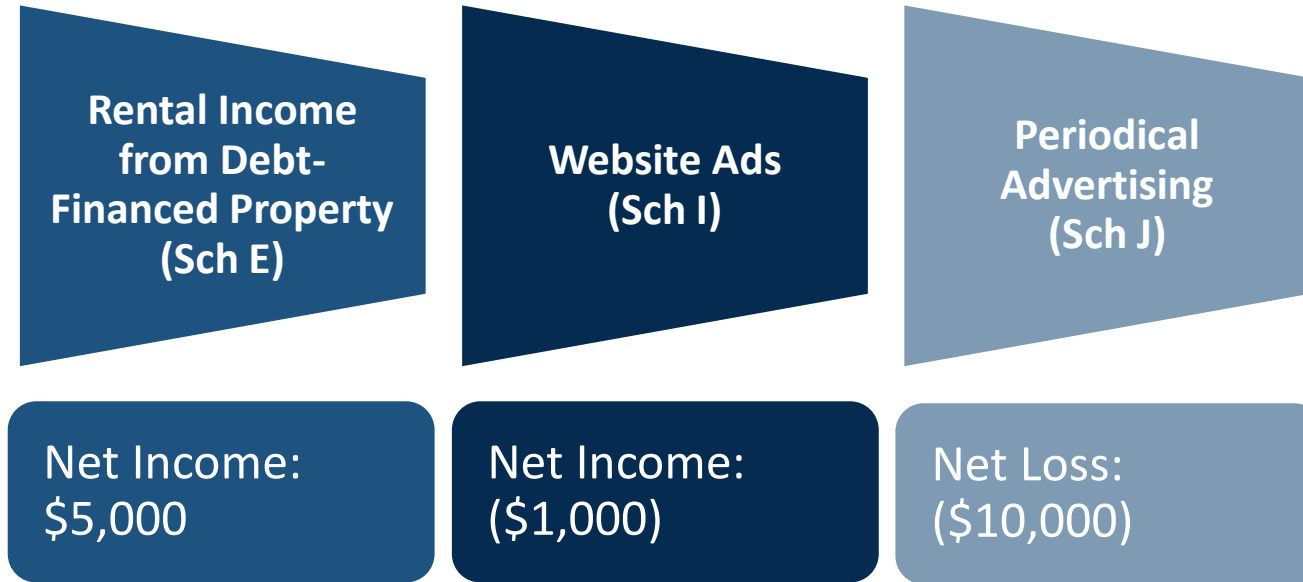
Website
Ads
(Sch I)

Periodical
Advertising
(Sch J)

UBI from K-
1

Provisions That Affect Nonprofits:

“Siloing” of UBI by Activity, IRS Notice 2018-67



What is the UBTI in 2017? In 2018?

Provisions That Affect Nonprofits:

“Siloing” of UBI by Activity

2017

Rent \$5,000
Web Ads (\$1,000)
Periodical (\$10,000)

Tax: \$0
NOL: \$6,000

2018

Rent \$5,000
Web Ads (\$1,000)
Periodical (\$10,000)

Tax: \$0
2017 NOL: \$1,000
Web Ad NOL: \$1,000
Periodical NOL: \$10,000

2019

Rent \$8,000
Web Ads (\$1,000)
Periodical \$10,000

Tax: \$1,680
2017 NOL: 0
Web Ad NOL: \$2,000
Periodical NOL: \$2,000

2020

Rent (\$5,000)
Web Ads (\$2,000)
Job Board \$8,000

Tax: \$1,470
Rent NOL: \$5,000
Web Ad NOL: \$4,000
Periodical NOL: \$2,000

Provisions That Affect Nonprofits:

“Siloing” of UBI by Activity

Planning Consideration: Create a for-profit subsidiary to hold unrelated business activities

- Activity-by-activity reporting is not required on Form 1120
- Creates additional filings and organizational complexity
- May create UBI issues if the nonprofit parent receives certain income from its taxable sub
 - ◇ Interest
 - ◇ Annuities
 - ◇ Royalties
 - ◇ Rent

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Questions?

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