

**PROCEDURES FOR IDENTIFYING
UNRELATED BUSINESS ACTIVITIES
CARRIED ON AT
THE UNIVERSITY OF CALIFORNIA**



NONFINANCIAL QUESTIONNAIRE

**EXECUTIVE VICE PRESIDENT
AND
CHIEF FINANCIAL OFFICER**

November 4, 2011

NONFINANCIAL QUESTIONNAIRE GENERAL INSTRUCTIONS

Purpose

The following instructions were prepared by the Chief Financial Officer Division of the Office of the President (CFO) to assist campuses in identifying any unrelated business activities carried on at the University of California. Once it has been determined that an activity generates unrelated business income, the activity will be included on the University's consolidated Exempt Organization Business Income Tax Return (Form 990-T), prepared each year by FM for submission to the Internal Revenue Service.

Background

Any organization exempt under section 501(c)(3) of the Internal Revenue Code (IRC) must file a Form 990-T if it has gross income from an unrelated trade or business of \$1,000 or more. Colleges and universities or other governmental units also are subject to the filing requirement to the extent that they have business income from activities that are unrelated to the purpose for which their exemption was granted.

An activity will be subject to unrelated business income tax if it meets the following criteria: (1) it is a trade or business, (2) it is "regularly carried on", and (3) it is *not* be substantially related to the organization's exempt purpose (aside from the need of the organization to raise funds).

However, an activity may not be taxable even if it meets all three criteria if one of several exceptions and modifications found in the IRC are satisfied (See Exhibit A).

Reporting Criteria

The Nonfinancial Questionnaire provides the basis for establishing the tax status of an activity. The Tax Coordinator or activity director must complete a questionnaire for any of the following types of activities:

- Each "new" activity initiated during the past year with a potential for generating unrelated business income;
- Any activity reviewed in a prior reporting year that has changed its mode or scope of operations during the past year, and
- Highly visible activities (e.g., advertising, facilities usage, joint venture, printing, etc.) that are similar to activities determined to be unrelated at another campus or at other universities.

A Nonfinancial Questionnaire need not be completed for any of the unrelated business activities reported previously (see Exhibit B). These activities will automatically be considered *unrelated* unless their mode or scope of operations has changed in the last year, to the extent that the activity should now be considered related to the University's exempt purpose. In that case, a new questionnaire must be completed for the activity. Conversely, a new questionnaire need not be completed for any activity reviewed last year that was determined to be *related* to the University's exempt purpose, unless the activity has changed its mode or scope of operations.

Due Date

All completed Nonfinancial Questionnaires (*each section of the questionnaire must be completed*) should be returned to CFO Division (John Barrett) by January 13, 2012.

Review by CFO

CFO will review all questionnaires in consultation with the University's external auditors, PricewaterhouseCoopers. For each unrelated activity conducted during the past year, CFO will request that a Financial Worksheet be completed identifying the activity's revenues and expenses. The information provided in these worksheets will be used to prepare the University's consolidated tax return.

If you have any questions, please contact John Barrett at (510) 987-0903.

REVIEW GUIDELINES

The University of California is tax-exempt both as a charitable educational organization under Internal Revenue Code (IRC) Section 501(c)(3) and as an instrumentality of the State of California. The University's stated purpose is to provide education, research, and public service. Public service, however, does not in itself provide the basis for the University's tax exemption. Therefore, each activity that is public service oriented must be scrutinized to determine whether an educational or research purpose is also being served.

Three elements must be present for an activity to be considered unrelated to the University's tax-exempt purposes of education and research. The activity must be 1) a trade or business, 2) "regularly carried on," and 3) *not* substantially related to the University's exempt purpose.

GENERAL

- A. **Trade or Business** - Generally, a trade or business for unrelated business income tax purposes is any activity that is carried on for the production of income from the sale of goods or the performance of services. However, an activity will not lose its identity as a trade or business merely because it is carried on within a larger framework of activities that may relate to an organization's exempt purpose. In addition, the regulations state that where an activity carried on for the production of income constitutes an unrelated trade or business, no part of the trade or business shall be excluded from such classification merely because it does not result in a profit (Reg. 1.513-1(b)).
- B. **Regularly Carried On** - The regulations consider the frequency and continuity of the activity and the manner in which it is pursued. Thus, the unrelated business income tax applies only to a business activity that is "regularly carried on" as distinguished from commercial transactions that are sporadic or infrequent. However, the conduct of a year-round business activity for one day each week would constitute the regular carrying on of a trade or business (Reg. 1.513-1(c)(2)(i)).

Short-term activities conducted by an exempt organization are not considered "regular" if the activities are of a kind normally conducted by a nonexempt business on a year-round basis. Intermittent, casual, or sporadic activities are generally not regular. The conduct of activities on a seasonal basis is considered regular where the activities are of a kind normally undertaken by commercial organizations on a similar basis (Reg. 1.513-1(c)(2)(ii)).

- C. **Related to University Exempt Purpose** - To be related to the University's education or research exempt purposes, there must be a substantial causal relationship to the achievement of those purposes, i.e., the activity must contribute importantly to the accomplishment of the exempt purposes (other than the University's need to produce income) (Reg. 1.513-1(d)(2)).

1. **Size and Extent** - Particular emphasis is placed on the size and extent of an activity. If an

activity is conducted on a scale larger than reasonably necessary to carry out the exempt purpose, it is more likely to be treated as unrelated (Reg. 1.513-1(d)(3)).

2. Dual Use of Facilities or Personnel - The use of facilities or personnel for both exempt and commercial purposes will not exempt the income derived from the commercial use unless the commercial activity "contributes importantly" to the accomplishment of an organization's exempt purposes (Reg. 1.513-1(d)(4) (iii)).

STATUTORY EXCEPTIONS

Even if an activity meets the definition of an unrelated trade or business, it may not be subject to tax if it meets one of the following criteria:

- A. Volunteer Labor - Any activity in which substantially all the work of the trade or business (probably 85%) is performed *without compensation* is immune from tax. In assessing the contribution made by volunteers, such factors as the monetary value of the services rendered, the number of hours worked, the intrinsic importance of the volunteer work performed, and the degree of reliance placed upon volunteers should be considered (Reg. 1.513-1(e)(1)).
- B. Convenience of University Members - Any unrelated activity conducted primarily for the convenience of University students, faculty, staff or patients is exempt from tax. The convenience exception applies *only* to members of the University. Any sales to nonmembers, e.g., the general public, are taxable unless the sales are not regularly carried on (Reg. 1.513-1(e)(2)).

The IRS has ruled that alumni should be treated the same as members of the general public since there is no stipulation in the IRC that alumni should be treated otherwise (PLR 8020010).

- C. Donated Merchandise - Any unrelated activity involving the sale of merchandise, substantially all (probably 85%) of which was received as gifts or contributions, is exempt regardless of whether the labor to operate the activity is paid or volunteer (Reg. 1.513-1(e)(3)).

MODIFICATIONS TO INCOME

The IRC contains several modifications that have the effect of exempting various kinds of income from the unrelated business income tax. These include income from dividends, interest, annuities, royalties, rents from real property, and certain forms of research. The modifications, however, generally do not apply to income derived from debt-financed property.

- A. Royalties - A royalty is defined as a tax, duty, or compensation paid to owners of a patent or copyright for the use or right to act under such patent or copyright. The royalty exclusion includes overriding royalties and royalty income received from licenses accorded the University as the legal and beneficial owner of patents assigned to it by inventors (IRC 512(b)(2) and Reg. 1.512(b)-1(b)).

However, where the royalty income is derived in part from the performance of services, the

payment will not constitute royalty income (Rev. Rul. 73-193).

B. Rents - The rules covering rents vary depending on whether the rents are derived from real or personal property or from a mixed lease of both real and personal property (Reg. 1.512(b)-1(c)).

1. Real Property - Rents from real property are excludable from income (Reg. 1.512(b)-1(c)(ii)(a)).
2. Personal Property - Rents from personal property are excluded only if there is a mixed lease and the rents attributable to the personal property are an "incidental" part of the total rents received under the lease. The following rules apply to personal property rents:
 - a. 10% or less is considered incidental and not subject to tax;
 - b. 11-50% is considered taxable in proportion to the percent of personal property rents to the total rents;
 - c. 51% or more is considered 100% taxable (Reg. 1.512(b)-1(c)(ii)(b)).
3. Rendering of Services - Amounts paid for the occupancy of space do not qualify as excludable rents if the owner of the property renders services for the convenience of the occupant. Services are considered rendered to the occupant if they are primarily for his/her convenience and are other than those usually rendered in connection with the rental of rooms or other space for occupancy only (Reg. 1.512(b)-1(c)(5)).

For example, the supplying of maid or linen services constitutes such services whereas the furnishing of heat and light, cleaning of public entrances, exits, stairways, or lobby does not.

The IRS has determined that the rental of parking spaces to the general public is not considered rent from real property, regardless of whether any services are being provided.

4. Debt-Financed Property - The IRC contains an exception to the debt-financed property rules for the acquisition of real estate by "qualified organizations," including educational institutions. The term "acquisition indebtedness" does **not** include debt incurred by a qualified organization to purchase real property where the following conditions are present:
 - a. The purchase price is a fixed amount;
 - b. The amount of an indebtedness, and the time for payment of such indebtedness, is not dependent on revenue, income, or profits derived from the real property;
 - c. The real property is not leased back to the seller or a party related to the seller; and

- d. The real property is held by a partnership and one or more of the partners is not a qualified organization. In such a case, allocations to the partners must be qualified allocations or must not have as a principal purpose the avoidance of income tax (IRC 514(c)(9)).
 - 5. Percentage - Rents dependent on profits or income derived from real property do not qualify for the exclusion unless they are based on a fixed percentage of gross receipts or sales. Rents based on a percentage of net profits are taxable (Reg. 1.512(b)-1 (c)(2)(iii)).
- C. **Research** - Income from certain research grants or contracts may be exempt from the unrelated business income tax depending on the type of research. The following types of research are exempt:
- 1. Research performed for any level of government (IRC 512(b)(7));
 - 2. Research performed by a college, university, or hospital "for any person" (IRC 512(b)(8)); and
 - 3. Research performed for any person in the case of an organization operated primarily for the purpose of carrying on "fundamental" research (as distinguished from "applied" research), the results of which are made available freely to the general public (IRC 512(b)(9)).

The regulations further limit these exclusions by defining research as activities other than those of a type ordinarily carried on as an incident to commercial or industrial operations. The ordinary testing and inspection of products or materials is not exempt (Reg. 1.512 (b)-1(f)(4)).

SPECIAL CIRCUMSTANCES

The conduct of an unrelated business activity may be recognized as serving an exempt purpose due to the presence of unique or special circumstances. Whether such circumstances exist must be decided on a case-by-case basis (Rev. Rul. 85-110). Examples of special circumstances include the provision of the following:

- A. Services or facilities otherwise unavailable in the community that fulfill an important community or medical need (see below); and
- B. Services, facilities, or equipment that are technically advanced or unique.

HOSPITAL SERVICES

The promotion of health, including the provision of patient care, is considered to be a charitable purpose exempt under IRC Section 501(c)(3). In examining the sales activities of a hospital, the IRS typically

considers the relatedness of such activities to patient care, or the applicability of the convenience exception to a hospital's members, in determining whether the sales income is exempt from tax. However, the IRS considers other factors, such as whether the hospital has exempt educational or scientific purposes, any unique facilities or equipment owned by the hospital, the local health care needs of the community, or other special circumstances. The sales activities of the University's hospitals and clinics may be exempt from tax under one or more of these criteria.

A. Hospital Patients - In general, the IRC excludes from tax any services provided by an exempt hospital for the convenience of its patients. The following list consists of persons considered to be "patients" of a hospital for purposes of IRC 513(a)(2):

Inpatients; outpatients (receiving general or emergency diagnostic, therapeutic, or preventive health services); a former patient refilling a prescription; and a person receiving medical services as part of a hospital administered home care program, or receiving medical care and services in a hospital-affiliated extended care facility.

The IRS has ruled that private patients of doctors who are staff members of a hospital, but engaged in private practice in a nearby building, are to be regarded as the general public (Rev. Rul. 68-375).

B. Services Provided to Nonpatients - Income generated from a hospital's pharmacy sales to nonpatients and the testing of nonpatient specimens is considered to be income from an unrelated trade or business.

1. Pharmacies - The sale of pharmaceutical products by an exempt hospital to the general public is considered to be an unrelated trade or business. The IRS has determined that income from pharmacy sales made by an exempt hospital to the private patients of staff physicians represents unrelated business income unless the sales are of a casual nature. Casual sales are defined as sales that are not systematically and consistently promoted, do not occur with frequency, and represent only an insignificant portion of the pharmacy's total sales (Rev. Rul. 68-374).
2. Lab Testing - As with pharmacy sales, the laboratory testing of referred specimens from nonpatients is considered to be an unrelated trade or business unless the testing is part of an established teaching program (Reg. 1.513-1(b)).
3. Community Need Exception - An exempt hospital's testing of nonpatient specimens may fulfill an important community medical need and thus serve the hospital's exempt purposes. For example, if testing facilities are otherwise unavailable within a reasonable distance from the area served by a hospital, or if the available facilities are clearly inadequate to conduct the tests needed by the local community, the furnishing of testing services by a hospital may further its exempt function of promoting community health (Rev. Rul. 85-110).

C. Services Provided to Another Tax-Exempt Hospital - The IRC provides that the furnishing of certain services by an exempt hospital to another exempt hospital is not taxable provided that the

services are:

1. Furnished solely to hospitals with facilities for not more than 100 inpatients;
2. Consistent with the recipient hospital's exempt purpose; and
3. Performed at no more than actual cost (IRC 513(e)).

The list of such exempt services includes the following: data processing, purchasing, warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personal services (including selection, testing, training, and educational or personnel) (IRC 501(e)(1)(A)).

However, the exception does not apply to services that are not listed above, e.g., laundry services. An exempt hospital performing laundry services for another hospital is engaged in an unrelated trade or business (Rev. Rul. 69-633).

D. Services Provided to a For-Profit Hospital

As with services provided to nonpatients, the provision of services to a hospital that is *not* tax-exempt represents the conduct of an unrelated trade or business (IRC 513(a)(2)).

ADVERTISING

A. Advertising - The sale of commercial advertising is taxable even though the advertising is published in an exempt organization's periodical (e.g., a newsletter, magazine or scholarly journal) that contains editorial matter related to the exempt purpose of the organization (IRC 513(c)).

1. Related - Advertising published in a college newspaper as part of an instructional program or advertising which serves an "informational function," as opposed to providing a means of stimulating demand for products, is considered related to the college's exempt purpose.

However, consumer advertising may be regarded as related to the University's exempt purpose if students are actively involved in the solicitation, sale and publication of the advertising under the supervision and instruction of the University.

For example, a campus newspaper operated by students publishes paid advertising. Although the services rendered to the advertisers are of a commercial character, the advertising business contributes importantly to the University's educational program through the training and participation of the students involved (Reg. 1.513-1 (d)(4)(iv) Example (5)).

2. Unrelated - The sale of general consumer advertising in an exempt organization's journal

is considered to be an exploitation of the organization's exempt purpose. Such advertising is not substantially related to the accomplishment of the purpose that constitutes the basis for the organization's exemption (Reg. 1.513-1(d)(4)(iv)).

However, the publication of advertising in programs for sports events or music or drama performances will not ordinarily be deemed to be the regular carrying on of a trade or business (Reg. 1.513-1(c)(2)(ii)).

B. Corporate Sponsorship Income - Generally, contributions received by a charitable organization are not considered unrelated business income if the organization does not provide a valuable service or benefit to the donor. However, if an organization goes beyond mere acknowledgement of a contribution and extensively promotes the sponsor of a special event, such as a post-season tournament, bowl game, or fundraiser, the income may be subject to tax because a valuable benefit or service in the form of advertising is being provided in exchange for the contribution. Furthermore, if an organization, in exchange for a payment, agrees that products or services that compete with the sponsor's products or services will not be sold or provided in connection with one or more activities of the organization, the portion of the payment attributable to the exclusive provider arrangement may be considered taxable income (IRC Reg. 1.513-4).

1. Non-Taxable Acknowledgements. Sponsorship activities that merely acknowledge a corporate sponsorship payment by using the following means of sponsor identification are not considered taxable:
 - a. The name of the corporation in the title of an event;
 - b. Sponsor logos and slogans that do not contain comparative or qualitative descriptions of the sponsor's products, services, facilities, or companies;
 - c. Sponsor locations and telephone numbers;
 - d. Value neutral descriptions, including displays or visual depictions, of a sponsor's product-line or services; or
 - e. Sponsor brand or trade names and product or service listings.

Incidental recognition of a contributor as a benefactor is also not considered taxable advertising. Examples of such acknowledgements include:

- a. Naming a university professorship, scholarship, or building after a benefactor;
- b. Acknowledging the underwriting of a public radio or television program or museum exhibition; and
- c. Listing a contributor to a fund-raising event or to a performing arts organization in an accompanying program.

2. Taxable Advertising. Messages or other program materials broadcast or otherwise transmitted, published, displayed, or distributed in connection with a specific sponsored event to promote a company, service, facility, or product in exchange for a corporate sponsorship payment are considered taxable advertising. For example, the presence of the following factors would indicate that an exempt organization is engaged in advertising for a corporate sponsor:
 - a. Qualitative or comparative language;
 - b. Price information or other indications of savings or value associated with a product or service;
 - c. A call to action;
 - d. An endorsement; or
 - e. An inducement to buy, sell, rent, or lease the sponsor's product or service. (Distribution of a sponsor's products at a sponsored event whether for a fee or free is not considered an inducement to buy.)

In addition, if the amount of a sponsorship payment is contingent, by contract or otherwise, upon such factors as broadcast ratings or attendance at an event, the payment is considered advertising.

JOINT VENTURES

Generally, income from a joint venture will not be taxable if the undertaking contributes importantly to the University's exempt purpose or if it is carried on for the convenience of University members. However, joint venture relationships have been scrutinized by the IRS to ensure that a tax-exempt organization is not serving the private purposes of the for-profit entity.

RELIEF OF GOVERNMENT BURDEN

The Treasury Regulations include the term "lessening the burdens of government" as one of several charitable purposes under which an organization may qualify for tax-exempt status (Reg. Sec. 1.501(c)(3)-1(d)(2)).

To determine whether an activity qualifies for this exemption, it is first necessary to identify the functions that the governmental unit considers to be its burdens and, second, to establish under what conditions an organization's activities are to be recognized as actually "lessening" such burdens (GCM 37401).

- A. **Identification of Government Burden** - In order for an activity to be considered a government burden, there must be an "objective manifestation" on the part of the government that it

considers a particular activity to be one of its burdens. For example, the governmental unit may invite an organization to take part in an activity actually being performed by the government, or act jointly with the organization in the conduct of an activity. However, the fact that an organization is engaged in an activity that is sometimes undertaken by a government or that the government (or one of its officials) expresses approval of the organization and its activities is insufficient to establish that the organization is lessening the burdens of government.

B. Lessening the Government Burden - In determining that an organization actually lessens a government burden, it is necessary to consider such factors as whether the governmental unit:

1. Has previously undertaken the activity;
2. Will be exercising ongoing supervision of the activity;
3. Has formally recognized by legislative or other official actions that the University is acting on behalf of the government.

A favorable working relationship between the organization and the governmental unit it purports to serve is a strong indication that the activity lessens the burdens of government.

For additional information regarding the tax status of an activity, please refer to the IRC sections, Treasury Regulations, and IRS rulings cited above.