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CBO UBIT Checklist and Toolkit

Edward J. Jennings
University of Michigan - Ann Arbor, MI

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I. IRS and Congressional Scrutiny on UBIT

Universities are really part of a rapidly evolving sector, and as sectors evolve and the economy evolves, we're going to periodically take a hard look - Douglas H. Shulman, the I.R.S. Commissioner, January 13, 2009

A. The Internal Revenue Service (IRS) Increased Scrutiny on Unrelated Business Income Tax (UBIT) in Higher Education

1. In the 2011 Annual Report and 2012 Work Plan, the IRS announced that it intended to analyze data from the Form 990-T (Exempt Organization Business Income Tax Return) to develop risk models that will identify organizations that consistently report significant gross receipts but pay no taxes.

2. In 2012, the IRS announced that the Exempt Organization (EO) Division had increased its compliance efficiencies nearly 100% over the past 9 years (2004 to 2012).

   It has more than doubled its examinations (from 5,800 to 10,743) and its compliance checks (from 1,475 to 3,227).

   Over three-fourths of the traditional examinations completed in FY 2012 were field exams.

   Its total FTEs has not increased over the past 3 years.

3. In 2013, the IRS released a final report on its questionnaire and subsequent examinations of the higher education community. In 2008, the Service sent questionnaires to 400 randomly selected colleges and universities asking them to submit information in a number of areas, including UBIT, based on their tax years ending in 2006. As a follow-up to the questionnaire responses, the IRS

examined 34 colleges and universities, focusing on issues of UBIT and executive compensation.

4. This report also summarized the findings of these examinations. There were more than 180 adjustments to the examined institutions' returns, resulting in an aggregate increase to UBIT of approximately $90 million, spread among 90% of the examined institutions. The primary reasons for this increase were as follows:

   a. Improper reporting of certain losses, i.e. lack of profit motive;

   b. Errors in computation or substantiation regarding net operating losses (resulting in the disallowance of nearly $19 million in net operating losses); and

   c. Misclassification of certain activities as exempt or otherwise not reportable that the IRS found to be unrelated activities.

5. In 2014, the Advisory Committee on Tax Exempt and Government Entities (ACT) published a report on UBIT that recommended adopting a new Form 990-T based upon the proposed format included in the report. This return has not been re-designed since 1951.

   The proposed new form would be web-based and have as its centerpiece an activity-by-activity reporting.

6. In November, 2015, the IRS released the Statistics of Information (SOI) Bulletin that reports the number of charitable organizations that have reported UBIT during the FY 2012.

   In comparing the FY 2012 to the FY 2011, it seems that .46% of total gross revenues derived by charitable organizations were reported as unrelated, and that the .86% of charities (approximately 16,000) filed the Form 990-T.[1]

   Further, in total, charities reported losses on UBIT for both years, FY 2012 and FY 2011, despite the fact that they produced gains

[1] Gross revenues derived from unrelated business income was $7,961,514 in comparison to the total revenues of $1,726,300,540 for FY 2012 and $7,496,577 in comparison to $1,640,385,616 for FY 2011 (the figures are estimates in thousands of dollars). The number of tax returns filed by charities was 16,261 and 15,981 for FY 2012 and 2011 respectively compared to the number of information returns filed, 189,433 and 186,417 respectively, by charities for FY 2012 and 2011.

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