

Selling for Good: Merchandising & Corporate Sponsorship Ideas that Don't Create UBIT

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Unrelated Business Taxable Income

- Trade or business
- Regularly carried on
- Not substantially related to exempt purpose

- Policy: Eliminate unfair competition by nonprofits against commercial enterprises



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Trade or Business Requirement

- Any activity carried on for the production of income from sale of goods or performance of services
- Did the taxpayer engage in the activity to earn a profit?
- IRS takes broad view and courts typically agree
- *Fragmentation Rule*: Allows IRS to divide an organization's activities between related and unrelated even though activities may be intertwined with one another, e.g. patient and non-patient drug sales by exempt hospital



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Regularly Carried On

- Examines frequency and continuity of activities
- Compares to commercial organizations
- Ignores occasional, intermittent or sporadic fundraising activities
- Similarly, excludes business activities that are carried on discontinuously or periodically without typical commercial promotional efforts
- Examples: Umbrella sales at beach are regularly carried on, but annual dance or bake sale is not considered regularly carried on



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Not Substantially Related to Exempt Purpose

- Examines relationship between business activity and exempt purpose
- Determines “related” ONLY where conduct of business has CAUSAL relationship to achievement of exempt purpose
- Requires CAUSAL relationship to be a SUBSTANTIAL one that CONTRIBUTES IMPORTANTLY to exempt purpose
- Applies facts and circumstances test



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Too Much UBTI = Lost Exemption

- No bright line rule as to what is too much UBTI
- Factual question as to whether an organization has too much UBTI
- **Commensurate in Scope:** EO may generate a significant amount of UBTI so long as it performs charitable programs commensurate in scope with its financial resources
- **Primary Purpose Test:** Is EO operating *primarily* for exempt purpose?



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