

Advanced UBIT in the Wake of Tax Reform

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Today's Topics

- Non EO statutes impacting UBTI calculation
- UBTI Baskets/ Slos
- UBTI increased by Certain Fringe Benefit Expenses
 - On-Premise Athletic Facility
 - Parking Facility used for Qualified Parking
 - Qualified Transportation Fringe

Non-EO Provisions Impacting UBTI

- ▶ Tax rates lowered beginning in 2018
 - Corporate rate is 21%
 - Top Trust rate is 37%-Trusts are allowed the Section 199A deduction on business income
- ▶ Notice 2018-38- fiscal year filers have blended rate
- ▶ Corporate AMT repealed
- ▶ 100%expensing temporarily allowed for certain business assets
- ▶ Business interest expense deduction limited
- ▶ Use of net operating losses limited to 80%of taxable income
 - Unlimited carryover to future years of post-2017 losses

UBTI SILOS



UBTI Baskets/Silos

SEC. 13702. UNRELATED BUSINESS TAXABLE INCOME SEPARATELY COMPUTED FOR EACH TRADE OR BUSINESS ACTIVITY.

(a) **IN GENERAL.**—Subsection (a) of section 512 is amended by adding at the end the following new paragraph:

“(6) **SPECIAL RULE FOR ORGANIZATION WITH MORE THAN 1 UNRELATED TRADE OR BUSINESS.**—In the case of any organization with more than 1 unrelated trade or business—

“(A) unrelated business taxable income, including for purposes of determining any net operating loss deduction, shall be computed separately with respect to each such trade or business and without regard to subsection (b)(12),

“(B) the unrelated business taxable income of such organization shall be the sum of the unrelated business taxable income so computed with respect to each such trade or business, less a specific deduction under subsection (b)(12), and

“(C) for purposes of subparagraph (B), unrelated business taxable income with respect to any such trade or business shall not be less than zero.”.

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except to the extent provided in paragraph (2), the amendment made by this section shall apply to taxable years beginning after December 31, 2017.

(2) **CARRYOVERS OF NET OPERATING LOSSES.**—If any net operating loss arising in a taxable year beginning before January 1, 2018, is carried over to a taxable year beginning on or after such date—

(A) subparagraph (A) of section 512(a)(6) of the Internal Revenue Code of 1986, as added by this Act, shall not apply to such net operating loss, and

(B) the unrelated business taxable income of the organization, after the application of subparagraph (B) of such section, shall be reduced by the amount of such net operating loss.

UBTI Baskets/Silos

- ▶ The Act disallows tax-exempt organizations from taking the business losses from one unrelated trade or business and deducting them from the income of another unrelated trade or business.
- ▶ Organizations could, however, carryforward losses from an unrelated business to reduce income from another year's operation of the same unrelated business.
- ▶ Unanswered questions:
 - What constitutes “one unrelated trade or business”?
 - Are passive activities that generate unrelated business income one trade or business (e.g., are alternative investments considered one unrelated trade or business or is each investment a separate unrelated trade or business)?
 - Is trade or business grouped by geography, activity, or management?

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