

UBI and Sponsorship

Michaela Cromar, CliftonLarsonAllen
Caroline Waldner, Morgan Lewis & Bockius

1

Brief UBIT Overview

- ▶ A tax exempt organization is generally required to pay tax on net income from the conduct of any:
 1. trade or business
 2. regularly carried on
 3. that is not substantially related to its exempt purpose
- ▶ Advertising generally meets all three criteria and is subject to UBIT

2

Background



3

The Cotton Bowl Ruling

- ▶ In 1991 the IRS issued the “Cotton Bowl Ruling” concluding that corporate sponsorship income received by the Cotton Bowl constituted a payment for advertising and was therefore subject to UBIT
- ▶ In doing so, the IRS applied a facts and circumstances analysis to determine whether the sponsor expected to receive a “substantial return benefit.”
- ▶ The IRS concluded that the payment was “commensurate in value” with the benefits the sponsor expected to receive and was therefore advertising.

4

Proposed Audit Guidelines

- ▶ Virtually all of the facts were deleted from the Cotton Bowl Ruling released to public, making it impossible for exempt organizations to determine the basis for the IRS's conclusion—this prompted a critical reaction from the sector
- ▶ The Cotton Bowl Ruling was therefore quickly followed by the issuance of proposed audit guidelines providing that arrangements that involved more than mere donor recognition would be treated as advertising and subject to UBIT
- ▶ The reaction was overwhelmingly negative with over 300 organizations submitting comments and 30 organizations testifying at three days of hearings

5

Congressional Response

- ▶ In response, Congress introduced H.R. 11 providing legislative relief for certain corporate sponsorship
- ▶ Created a different variation of the “substantial return benefit” test
- ▶ Only applied to certain types of events and to certain exempt organizations
- ▶ Still left many questions for exempt organizations outside of the bowl game context
- ▶ Was ultimately vetoed

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: UBI and Sponsorship

Also available as part of the eCourse

[2021 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the
38th Annual Nonprofit Organizations Institute session
"UBI and Sponsorship"