

COLORADO STATE UNIVERSITY
Financial Procedure Statements
FPI 2-3

1. **Procedure Title:** Unrelated Business Income Tax (UBIT)
2. **Procedure Purpose and Effect:** This procedure will clearly define the application of the Unrelated Business Income Tax Rules (UBIT) in connection with University activities.
3. **Application of Procedure:** These procedures apply to all University activities involving sales of goods and services to the external community that may potentially subject the University to Unrelated Business Income Tax (UBIT).
4. **Definitions:** None.
5. **Exemptions:** There are no exemptions from these procedures.
6. **Procedure Statement:**
The activities of the University often have federal, state and local tax implications. When a tax matter arises that is not directly addressed by University procedures, faculty and staff should refer the matter to the University Tax Manager in Business and Financial Services. Payroll tax matters should be directed to the Payroll Manager in the department of Human Resource Services.

University faculty and staff members should not communicate directly with taxing authorities when conducting University business. All requests for tax information, tax reporting or other contact with tax authorities should be conducted through the University Tax Manager or through the Payroll Manager if a payroll matter is at issue.

Faculty and staff members of the University should not prepare tax returns or provide tax advice as part of their employment duties. Erroneous tax advice provided to students or employees may create liability for the University and could place the recipient of the advice in an adverse position with the taxing authorities.

Any employee who is approached for tax help must decline to give any assistance or advice, either written or verbal. The individual who is requesting the advice should be advised to consult with a personal tax advisor or the appropriate taxing authorities.

Employees not representing themselves as University employees who wish to provide tax services as private consultants should refer to the University's policies regarding consulting and conflict of interest.

A. UNRELATED BUSINESS INCOME TAX (UBIT)

Colorado State University is exempt from tax on income earned from activities that are *substantially related* to the University's missions of education, research, and public service. However, the University is potentially subject to corporate income tax on the net income earned from business activities that are *unrelated* to the University's exempt purpose.

The University Tax Manager is responsible for making quarterly estimated tax payments and for preparing the University's annual federal and state unrelated business income tax returns. Estimated tax payments are based on the University's fiscal year and are due October 15th, December 15th, March 15th and June 15th.

Typically, an unrelated business activity's ratable share of the University's tax liability will be charged to that project's account. Taxes should already have been recovered as part of the price structure for the activity. In some cases, an activity might be deemed retroactively to constitute an unrelated business because of a review of the activity or an audit by the Internal Revenue Service. When an activity is retroactively found to be unrelated, the activity's home department or college will be responsible for providing the funds to cover the corresponding tax liability for the current year and past three years, plus interest and penalties.

Three elements must be present for an activity to be treated as an unrelated business that is subject to the unrelated business income tax, hereinafter referred to as UBIT. The activity must be (1) a trade or business, (2) regularly carried on, *and* (3) not substantially related to the University's exempt purpose. All three elements must be present for an activity to be treated as an unrelated business.

1. Trade or Business Requirement

The activity must be carried on to produce income from the sale of goods or performance of services. An activity does not need to consistently make a net profit to be considered a "trade or business."

For the purpose of UBIT, a "trade or business" is any activity that is carried on to produce income from the sale of goods or performance of services. However, a strong argument can be made that an activity that has not historically generated profits does not have a "profit motive" and therefore does not constitute a trade or business.

An activity will not lose its identity as a trade or business merely because it is carried on within a larger aggregate of similar activities that may be related to the exempt purpose of the University. This concept is called the "fragmentation rule." One example of the fragmentation rule would be a university that has a ski facility that it uses in its physical education program and for the recreational use of its students. Members of the public also use the facility and pay fees comparable to those charged by commercial enterprises. In this example, the use of the ski facility by the general public is considered a separate and distinct trade or business that is potentially subject to UBIT even though the student use of the facility is related to the exempt purpose of the University.

2. "Regularly Carried On" Requirement

For income to be subject to UBIT, the activity must be "regularly carried on" as opposed to activities which are casual, sporadic or infrequent.

An activity is regularly carried on if it manifests a frequency and continuity and is pursued in a manner generally comparable to commercial activities of for-profit organizations. The time span over which a comparable commercial activity is conducted should be compared with the time span of the activity in question. If they are similar, the activity is considered to be regularly carried on. Also, if a commercial activity is normally conducted on a limited or seasonal basis, an activity conducted on the same basis by the tax-exempt organization is considered to be regularly carried on.

Similarly, intermittent activities that are conducted only at intervals and not on a continuous basis should be compared to the way similar commercial activities are carried on. In general, if the organization's activity is not conducted with the same marketing and promotional efforts as a commercial business, the activity is not considered to be regularly carried on. Other activities may be conducted so infrequently that they are not

treated as regularly carried on regardless of the way they are conducted.

3. "Not Substantially Related" Requirement

The activity must *not* be substantially related to the University's exempt purpose of education, research, and public service. The fact that the proceeds from an activity will be used to support an exempt purpose does not mean that the activity itself is substantially related to the University's exempt purpose.

To be "substantially related" to the University's education, research, and public service exempt purpose, an activity must have a substantial causal relationship to the achievement of those purposes. The activity must contribute importantly to the accomplishment of the exempt purpose, other than just being responsive to the University's need to produce income to accomplish its exempt purpose. The following three sections consider factors important in the "substantially related" test.

a) Education, Research and Public Service

The "substantially related" test requires an analytic comparison of the activity in question to the University's exempt purpose. The University's primary exempt purpose is education. The income tax regulations define "education" as the instruction or training of an individual for the purpose of improving or developing their capabilities. Education is also defined as the instruction of the public on subjects useful to the individual and beneficial to the community.

Research and public service are also part of the University's mission. Public service, also known as "relief of government burden", does not in itself provide the basis for the University's exempt status.

Each activity which is public service-oriented must be scrutinized to determine whether a statutory mandate exists that requires the University to provide a particular service to the public, thus supporting the claim that the service is part of the institution's mission. An example of an exempt public service activity is forest fire mitigation; a service that the government would otherwise have to provide in absence of the University providing this service.

b) Size and Extent

For purposes of determining relatedness, it is also important to place emphasis on analyzing 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, then revenues derived from the excess portion of the activity are likely to be treated as unrelated.

An example of this concept would be where the University conducts a student training program providing faculty-supervised services to the public in a practicum setting for academic credit while supervising faculty also regularly provide the same service through the University outside of the practicum setting. In this example the total service activity may be considered more extensive than necessary to train students and therefore the revenue generated by the faculty acting independently of the practicum could be considered taxable as unrelated business income.

c) Dual Use of Facilities or Personnel

Another important factor to consider in determining relatedness of an activity is whether given University facilities or personnel are used to support both related and unrelated activities. Such "dual use" will not exempt the income derived from the

unrelated commercial use unless the commercial activity "contributes importantly" to the accomplishment of an organization's exempt purposes or is not conducted regularly.

Consider the example where a university's recreational facility is used by students for classes during the week and is used by the public on evenings and weekends for a fee. The student use of the facility is related to the University's education purpose. However, the use of the facility by the public is considered unrelated to the exempt purpose of the university. Revenues from the public use of the facility are a separate unrelated business and subject to UBIT.

4. Activities Exempt from UBIT

Certain types of activities are specifically exempted by statute from UBIT. Even if an activity meets all three of the criteria of an unrelated business, it may be excluded from UBIT if it is specifically exempted. Below is a list of activities that are specifically exempted by statute.

a) Volunteer Exception

Any unrelated business activity in which substantially all the work is performed by unpaid volunteers is specifically exempted from UBIT.

While the tax statutes do not define the term "substantially all," the Internal Revenue Service has noted in other areas of the tax law that the "substantially all" requirement is generally regarded as met if it equals or exceeds 85 percent. In assessing the contribution made by volunteers in relation to the sales effort, such factors as the monetary value of the respective 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.

b) Convenience Exception

Sales conducted primarily for the convenience of University members, students, faculty, staff, conference participants and other invited guests to campus are exempted from UBIT.

The convenience exception does not serve as a blanket exemption for the sale of goods and services to members. Rather, the goods and services provided under this exception should support the members in their participation in the tax-exempt activities of the institution.

Examples of tax-exempt sales transacted for the convenience of members include the sale of textbooks, supplies, class notes, photocopies, food, drink and sundry items.

c) Sale of Donated Property

Any unrelated business activity is exempt from tax if substantially all the merchandise sold was received as gifts or contributions. A common example is the sale of donated merchandise at a fundraising auction.

d) Qualified Sponsorship Payments

Any payment made by a person engaged in a trade or business for which the person will receive no substantial benefit other than the use or acknowledgement of the business name, logo, or product lines in connection with the University's activities is

considered a qualified sponsorship payment. "Use or acknowledgment" does not include advertising the sponsor's products or services.

e) Revenues from Passive Activities

Dividends, interest and royalties are not subject to UBIT, provided that no services are performed in connection with the receipt of such payments.

f) Sale of Unaltered By-Products

Revenues from the sale of unaltered by-products generated as a result of education, research or public service activities are excluded from UBIT.

Examples include sales of food, animals, plants, software, printed materials, educational videotapes or cassettes that are products of instruction, research or extension/outreach that are not significantly altered prior to sale. Thus, a university dairy's sales of milk as a by-product of dairy education and research activities would be excluded. However, if the dairy processed the milk into cheese or ice cream and then sold these altered products, the revenues from this activity would be potentially subject to UBIT.

g) Rentals of Real Property

Rentals of real property such as facilities and athletic playing fields are generally excluded from UBIT. Two exceptions are described below.

i. Unusual Services

For rental revenue to be exempt from tax, no unusual services should be rendered by the University to the occupant. Services are "unusual" if they are other than those usually rendered in connection with the rental of rooms or other space for occupancy. For example, the supplying of housekeeping or linen services usually constitutes "unusual" services, whereas the furnishing of heat and lighting and the cleaning of public entrances, exits, stairways and lobbies does not.

ii. Rents as a Percentage of Net Profits

Rents calculated as a percentage of net profits (income) derived from occupancy of real property do not qualify for an exclusion of UBIT.

Conversely, if rents are based on (1) a fixed percentage of gross receipts or sales, (2) paid as a flat fee, or (3) based on a combination of a flat fee plus a percent of gross receipts, then the rental revenue is excluded from UBIT.

h) Certain Rentals of Personal Property

In general, revenue from the rental of personal property such as laboratory or recreational equipment is taxable if all three criteria of an "unrelated business" are met. However, rents from personal property may be exempt from UBIT under certain leases that provide for both the rental of real and personal property and the rents from personal property are incidental in amount of the total rents received under the lease.

i. 10% or less of the total rent revenue is from personal property: Personal property revenue is considered incidental and no revenue from the lease is subject to UBIT.

ii. 11%-50% of total rent revenue is from personal property: The total rent revenue is taxable in proportion to the percent of personal property rents to the total rents.

iii. 51% or more of total rent revenue is from personal property: The total rent revenue from the lease is subject to UBIT.

i) Research

Revenue from certain research grants or contracts is specifically exempted from UBIT.

For UBIT purposes, "research" is not ordinarily considered to include activities of a type carried on as an incident to commercial or industrial operations.

For example, the ordinary testing and inspection of products or materials or the designing or construction of equipment, building or other products is not considered to constitute "research" for tax purposes. "Ordinary" testing and inspection implies generally repetitive work done to determine whether the item tested meets certain criteria rather than to validate a scientific hypothesis. The fact that such testing must be done by highly qualified professionals does not change its basic nature for tax purposes. If an activity is merely testing (sampling or certifying that items conform to a known standard) the activity is potentially subject to UBIT.

Projects ordinarily carried on as incidental to commercial or industrial operations are not exempt unless they contribute importantly to the education and/or research missions and/or are not "regularly carried on."

Hiring students for an hourly wage to work on a research project is not adequate, by itself, to sustain a claim that the project contributes importantly to the University's education and research mission. To sustain such a claim, the student would need to earn academic credit from participating in the project or have the opportunity to author or co-author publications that emanate from the project. Work that provides a significant contribution to the student's thesis or dissertation would also support the contention that the project contributes importantly to the University's education and research mission.

j) Government Research

Income from research conducted for the United States government, its instrumentalities, or agencies, or any state or political subdivision is exempt from UBIT.

k) Research Performed for Any Person

Income derived by the University for research performed for any person is exempt from tax if the results of the research are not proprietary.

l) Sale of Assets

All revenue from the sale, exchange or other disposition of property (other than inventory) is excluded from UBIT.

m) Certain Sales of Advertising

In general, income from the sale of advertising (including click through links to sponsor websites) is treated as income from an unrelated business and is subject to UBIT.

However, certain sales of advertising are generally exempt from tax.

i. Advertising in Programs for Sports Events, Music or Drama Performances

These events are not ordinarily deemed to constitute a business that is

"regularly carried on" and, as a result, revenue from this advertising is generally not taxable.

ii. Advertising Published in a College Newspaper

Consumer advertising published in a college newspaper or other media as part of an instructional program or advertising which serves an "information function", as opposed to serving as a means of stimulating demand for products, is considered related to the University's exempt purpose and therefore not taxable.

5. Procedures for Unrelated Business Activities

The following procedures should be followed to ensure the University follows applicable UBIT provisions.

a) Identify Unrelated Business Activities

Department heads, with input from program managers and the University Tax Manager, are responsible for continuous review of all proposed and ongoing activities in departments to identify unrelated business activities. All new unrelated business activity or significant revenue changes in existing unrelated business activity must be approved.

Departments conducting unrelated businesses are responsible for the identification of unrelated business activity, payment of UBIT, and payment of penalties and interest assessed by taxing authorities for failure to identify unrelated businesses.

b) Minimize the Number of Unrelated Activities

Sales to the external community should be limited to goods and services that are directly and substantially related to the University's exempt mission, or to those goods and services that are not commonly available or otherwise easily accessible to the public. Failure to meet either of these requirements may result in unrelated business taxable income.

The following techniques may be utilized to modify activities to become related to the University's exempt purpose and, therefore, exempt from UBIT.

- i. Incorporation of a formal, substantive education component in the activity.
- ii. Incorporation of a research component in the activity.
- iii. Identification or establishment of a mandated public service component into the activity.

c) Establish a Price Structure

Program managers are primarily responsible for establishing unrelated business price structures that recover direct costs, including the potential tax liability, full indirect costs and the desired profit margin.

d) Account for Unrelated Business Activities

Accounting for unrelated business revenues and allocable direct expenditures is the responsibility of project managers. Adequate records must be maintained for revenues and expenditures of unrelated business activities, in accordance with the University's records retention policy.

7. Reference and Cross-References: [Tax Services website](#); [FPI 10-1 Financial Document Record Retention](#); [FPI 2-2 Sales of Goods and Services](#)