Survey Instructions

I. Introduction

The amount of tax is determined by preparing the IRS form 990-T, which begins with the amount of income earned by the unrelated business, and deducting all related expenses. The net income is subject to be taxed at a rate up to a maximum of 35%. The resultant tax on such activities is known as Unrelated Business Income Tax (UBIT). The purpose of this document is to provide guidance in determining which activities should be reported.

Determination of the tax-exempt status of the activities is the starting point in the process. As a general principle, any activity operated as a business on a regular basis that is not substantially related to the accomplishment of the University's tax-exempt mission will be considered subject to Unrelated Business Income Tax unless the revenue is specifically exempted by law.

Please complete the UBI Survey & Questionnaire, which presents a series of questions you should consider when analyzing any activity for unrelated business possibilities. This is only a guide and should be used in conjunction with this document. As with most IRS regulations, there are numerous exceptions and interpretations. Please call the Budget Office if you have any questions.

Understanding the terminology as used by the IRS is critical in determining whether the activity is unrelated and how to correctly prepare the schedules. The IRS usually will take a more restrictive view of terminology than the University does.

Business: This is an activity, which is conducted with the intent of making money or a profit. If the University has an entity, which is operating similarly to a commercial venture, that is, it advertises, has sales, runs promotions, it will be considered to be a business for tax purposes. Consideration of an activity as a business does not mean necessarily that its income is taxable.

Regularly Conducted: This is viewed in context of frequency and continuity of the business activity when compared to commercial ventures. If the University's activity occurs only a few times a year or functions for a very short period of time when a normal for-profit business in the same type of activity will be "in-business" for the entire season or year, it may not be considered "regularly conducted". If the University conducts the activity infrequently but consistently over time, it will be viewed as "regularly conducted". The time associated with planning the activity should be included along with the time the activity is actually performed in determining if the activity is "regularly conducted".

Substantially Related: This term means the business is an integral part of the University's efforts to meet its exempt objective of the "furtherance of education". The desire for additional resources does not make a University business tax exempt.

There are certain expectations, which make even an unrelated business activity not taxable. Any business, which is conducted for the convenience of the faculty, staff, or students of the University, may be exempt from UBIT. This exemption generally pertains only to unendurable merchandise that will last less than a year. If the merchandise to be sold has been donated or virtually all of the labor has been performed by volunteers, then the activity is tax exempt.

A departmental business officer needs to view the activity both as a whole as well as in segments or fragments. The IRS will examine each business activity in this manner to determine if some fragment qualifies as an unrelated business. This is referred to as the "fragmentation rule". An example is the Bookstore where the sale of small appliances such as radios, fans, etc. would be classified as taxable while the sale of textbooks would be tax exempt.

Additionally, there are statutory exclusions for some types of passive income. Those types include royalties, rents, dividends, and interest. In the case of rent, the tax exclusion may not be lost if the nature of the services provided exceed the level considered to be standard. Standard services include provision of utilities, security, and janitorial. Services which are not normally provided in the rental of space, such as secretarial services, will cause the rental income to be taxable.

Income earned from conducting basic research is not considered taxable because it is substantially related to the tax-exempt mission of the University. Generally, the IRS takes a very narrow view of what is basic research. If the function of the research is one of the following, then the "substantially related" portion of the IRS requirement is fulfilled:

- training of students or the public
- testing for public safety
- scientific including research performed in the public interest

Research will be viewed as scientific if it verifies facts or natural laws either by experimentation or collects and presents scientific information or applies scientific or mathematical logic or can only be performed by a scientifically or technically trained person.

Research activities are considered to be in the public interest if the results are available to the public or the research is Government-sponsored or seeks a cure for a disease or attracts new business. If the public is the beneficiary from the research, then the ownership of patents or copyrights is not an issue in determining tax treatment.

If the research entails quality control testing, market certification or other similar activities normally conducted in the commercial sector it will be viewed as applied research and subject to Unrelated Business Income Tax. Testing for the public safety is an exception. If the product testing if performed to ensure safe products for the general public, then the income is not taxable.

II. Survey and Questionnaire

Complete the enclosed survey and attached questionnaire, which will document the analysis and determination of taxable status. Be sure to obtain the required signatures and please return it to the Budget Office on or before January 12, 2016.