



## Tax Updates **2024 Annual Nonprofit Seminar**



# Agenda

1. Unrelated Business Income
2. Organizational Structure
3. General Fundraising
4. Legislative Update



# Unrelated Business Income Tax



# Unrelated Business Income Tax (UBIT)

- Net income from an activity unrelated to the exempt purposes
- Three-part test
  - Is the activity a trade or business?
    - Activity carried on for the production of income from sale of goods or services
  - Is the activity regularly carried on?
    - Questions the frequency and continuity of the activity comparable to for-profit taxable entities
- Is the activity substantially related to the exempt purposes?
  - Must have a substantial relationship to achieve the entity's exempt purpose
  - A source of funding for other exempt activities is not enough
- Examples of common UBIT our clients see:
  - Advertising income
  - Debt-financed rental income
  - Investment in pass-through entities (Box 20V on K-1)
  - Rental activities when organizations provide services
- Silo'ing Rules

# Unrelated Business Income Tax (UBIT)

## Exceptions and Modifications to UBI

- Passive royalty exception
- Qualified Sponsorship rules
  - Acknowledgment vs. advertising
- Volunteer exception
- Convenience exception
- Leasing
- Sale of merchandise
- Debt-financed income
- Bingo



# Exception to UBIT

## Activities Conducted by Volunteers

- Revenue from events for which substantially all work is conducted by uncompensated volunteers is specifically excluded from UBIT, even when regularly carried on
  - “Substantially all” is not defined; however, 85% is a common rule of thumb
  - Track hours
  - Compensation broadly interpreted

# Organization Structure



# Why Exempt Organizations Form a Related Entity

- Segregate assets
  - Assets held in a related entity may be protected from the risks/liabilities of the “parent” entity
- Develop a new line of business
- Facilitate affiliations with other organizations
  - Address investment /control issues
  - Branding/licensing/operational considerations
- Facilitate fundraising activity, e.g. through a related foundation
  - But avoid private foundation classification
    - Supporting organization
    - Private operating foundation



# Find the Why

## Nonprofit subsidiary/related organization

- Offer distinction between activities
- What is your current purpose? Is there a different purpose needed?
- Donors may want to give to a Foundation rather than a CHC, or they want a different naming to attract other donors
- Have separate boards to carry out activities, such as a new board to focus on fundraising
- Ability to invite others to be board members such as local community leaders

## For-profit entities

- House taxable activities separate from the TEO
- Reduce conflict of interest, increase appearance of independence
- Legal Liability Protection

## Is It Worth It?

- Multiple boards means multiple board meetings, board notes, tracking, etc.
- Do you need increased staff to run another organization?
  - Who will run day-to-day?
- Separate asset ownership
  - Bank accounts, Investment accounts, fixed assets, etc.
- Be careful when comingling
- Additional compliance costs for annual tax return filing
- Public education of new entities
- Initial organization costs

# Common Types of Related Entities





# For Profit (“C”) Corporation

## Key Features

- Owners not liable for debts/obligations of corporation
- May distribute net income (“profits”) to owners
  - But not taxable to tax-exempt owner(s)
- Liable for corporate income tax
- Unlimited lobbying, but limited federal political campaign activity

## Governance

- By shareholders through Articles of Incorporation, bylaws, shareholder agreements
- State law where formed applies

# Nonprofit Corporation

## Key Features

- There are no “owners” of a nonprofit corporation
- Income is distributed for societal benefit
- Liable for corporate income tax unless qualifies for income tax exemption
- Can be a member or nonmember nonprofit

## Governance

- Governed by members and/or board of directors
- State law where formed applies

# LLC

## Key Features

- May have one or more owners (“members”)
- Member(s) not liable for debts/obligations of the LLC
- May distribute profits to members
- May elect to be taxed as a corporation or elect to have profits/losses “pass through” to member(s) for federal tax purposes

## Governance

- By members through an “operating agreement”
- State law where formed applies



# Tax Filings

- LLC can be taxed as a partnership, S corp, C corp, or disregarded entity
- Pass-through entity: 1065 or 1120S, typically a state filing as well
- C Corporation: 1120, typically a state filing as well
- Tax-exempt organization:
  - Form 1023 application for exemption
  - Annual 990 series filing

# Related Organization

- Supported/Supporting organizations
- Parent/Subsidiary organizations where the parent controls the subsidiary
- Brother/Sister organizations where organizations are controlled by the same person or persons
- Control
  - Nonprofit organization: power to select the Board or a majority overlap of board members
  - Stock corporation (C or S corp): own more than 50% of the stock
  - Partnership:
    - Own more than 50% of profits or capital interests
    - Serve as managing partner or managing member
    - Serve as general partner
- Make sure the legal documents match how you operate!

# Fundraising

Donor Planning  
IRA Rollovers (QCD's)  
Form 990 Fundraising Activities  
Special Events





# Donor Planning

- Deduction limits
- Types of Property Donated
- Planning Strategies

# Deductions Limits & Property Type

Type of Organization	Type of Property Contributed	AGI Limitation	Adjusted Gross Income (AGI) Limit Calculation
First Category of Qualified Organizations  (50% Limit Organizations)  <i>Example: Churches, Educational Organizations, Hospitals, etc.</i>	Cash	60%	AGI * 60%
	Noncash – Capital Gain Property	30%	AGI * 30% – (60% + 50% contributions)
	Noncash – Other Property	50%	AGI * 50% – 60% contributions
Second Category of Qualified Organizations  (30% Limit Organizations)  <i>Example: Private Nonoperating Foundations</i>	Cash	30%	AGI * 30% – (60% + 50% contributions)
	Noncash – Capital Gain Property	20%	Least of: <ul style="list-style-type: none"> <li>• AGI * 20% or</li> <li>• AGI * 30% – 30% contributions, or</li> <li>• AGI * 30% – 30% contributions of capital gain property, or</li> <li>• AGI * 50% – (60% + 50% + 30% contributions)</li> </ul>
	Noncash – Other Property	30%	(AGI * 30%) – (60% + 50% contributions)

- Cash
- Non-Cash
  - Appreciated Property
    - Securities
    - Real Estate
  - Vehicles
  - Auction Items
  - Cryptocurrency
- Organization should have a gift acceptance policy in place

# Appreciated Assets

- Taxpayer avoids taxes on gains and receives a charitable deduction
- Deduction based on FMV of appreciated asset
- Charitable organization recognizes income of non-cash donation. Does not pay tax on sale of asset.
- Donated property over \$5,000 that is not a security has to be appraised by a qualified appraiser.



# Planning Strategies

## Bunching

- If using standard deduction taxpayer can save donations until they are above standard deduction and then donate.
- Example:\$15,000 in 2024 and \$20,000 in 2025. Give \$35,000 in 2025 and itemize.
- Donor Advised Fund (DAF) typically used
  - Donor gives total to a DAF and distributes annually to organizations.

## Planning Strategies (Cont.)

### Qualified Charitable Distribution (QCD's)

- Can give to charity without going through taxpayer
- Individuals over 70.5 can contribute \$100,000 (\$200,000 for married couples)
  - Satisfies required minimum distributions
  - Reduces RMDs in future years
  - Not taxable to donor
- Receiving organization must be qualified to accept
- Not deductible on individual return still requires a charitable receipt

# Fundraising Activities

Part I Fundraising Activities. Complete if the organization answered "Yes" on Form 990, Part IV, line 17. Form 990-EZ filers are not required to complete this part.

1

Indicate whether the organization raised funds through any of the following activities. Check all that apply.

a☐ Mail solicitations

b☐ Internet and email solicitations

c☐ Phone solicitations

d☐ In-person solicitations

e☐ Solicitation of non-government grants

f☐ Solicitation of government grants

g☐ Special fundraising events

2a

Did the organization have a written or oral agreement with any individual (including officers, directors, trustees, or key employees listed in Form 990, Part VII) or entity in connection with professional fundraising services? ☐ Yes ☐ No

b

If "Yes," list the 10 highest paid individuals or entities (fundraisers) pursuant to agreements under which the fundraiser is to be compensated at least \$5,000 by the organization.

(i) Name and address of individual or entity (fundraiser)	(ii) Activity	(iii) Did fundraiser have custody or control of contributions?		(iv) Gross receipts from activity	(v) Amount paid to (or retained by) fundraiser listed in col. (i)	(vi) Amount paid to (or retained by) organization
		Yes	No			
1		<input type="checkbox"/>	<input type="checkbox"/>			
2		<input type="checkbox"/>	<input type="checkbox"/>			
3		<input type="checkbox"/>	<input type="checkbox"/>			
4		<input type="checkbox"/>	<input type="checkbox"/>			
5		<input type="checkbox"/>	<input type="checkbox"/>			
6		<input type="checkbox"/>	<input type="checkbox"/>			
7		<input type="checkbox"/>	<input type="checkbox"/>			
8		<input type="checkbox"/>	<input type="checkbox"/>			
9		<input type="checkbox"/>	<input type="checkbox"/>			
10		<input type="checkbox"/>	<input type="checkbox"/>			
Total						

3

List all states in which the organization is registered or licensed to solicit contributions or has been notified it is exempt from registration or licensing.

## Fundraising Activities (Cont.)

- Use of a professional fundraiser is disclosed on 990
- Report method for asking of funds
  - Mail, phone, e-mail, events
- Report Gross receipts, amount to fundraiser, amount to organization
- Report states registered to solicit contribution or has been notified they are exempt from registering

# Special Fundraising Events

- Whose event is this?
- If a separate organization holds a special event to benefit the nonprofit, the net proceeds from the event are reported by the nonprofit as contribution revenue.
- If the nonprofit participates in the planning and execution of the event, then it is reported as a normal special event.



# Fundraising Events

Schedule G (Form 990) 2022

Page 2

Part II

**Fundraising Events.** Complete if the organization answered "Yes" on Form 990, Part IV, line 18, or reported more than \$15,000 of fundraising event contributions and gross income on Form 990-EZ, lines 1 and 6b. List events with gross receipts greater than \$5,000.

		(a) Event #1 <div>(event type)</div>	(b) Event #2 <div>(event type)</div>	(c) Other events <div>(total number)</div>	(d) Total events (add col. (a) through col. (c))
Revenue	1 Gross receipts . . . . .				
	2 Less: Contributions . . . . .				
	3 Gross income (line 1 minus line 2) . . . . .				
Direct Expenses	4 Cash prizes . . . . .				
	5 Noncash prizes . . . . .				
	6 Rent/facility costs . . . . .				
	7 Food and beverages . . . . .				
	8 Entertainment . . . . .				
	9 Other direct expenses . . . . .				
	10 Direct expense summary. Add lines 4 through 9 in column (d) . . . . .				
11 Net income summary. Subtract line 10 from line 3, column (d) . . . . .					

# IRS Definition of Fundraising Events

- Activities undertaken to induce potential donors to contribute money, securities, services, materials, facilities, other assets, or time
- They include publicizing & conducting fundraising campaigns; maintaining donor mailing lists; conducting fundraising events; preparing & distributing fundraising manuals, instructions, & other materials; professional fundraising services; & conducting other activities involved with soliciting contributions from individuals, foundations, governments, & others
- Fundraising activities do not include gaming

# Examples of Fundraising Events per Form 990

Fundraising Events Include	Fundraising Events Do Not Include*
Dinners / Dances	Sales or Gifts of Goods or Services of Only Nominal Value
Door-to-Door Sales of Merchandise	Raffles or Lotteries in Which Prizes Have Only Nominal Value
Concerts	Solicitation Campaigns That Generate Only Contributions
Carnivals	
Sports Events	
Auctions	

\*Proceeds from these activities are considered contributions and should be reported on line 1f.

# Tax Reporting

The organization must calculate contributions associated with fundraising events

- Contributions are considered to be the portion of the payment that exceeds the FMV of the goods or services received by the donor
- To the IRS, cost to the organization is irrelevant in this determination
- When return value is received by the donor, there is a burden of proof to establish the contribution portion of the payment

# Non-Cash Donations

Gift Acceptance Policy  
Forms  
Schedule M  
Donated Services





# Gift Acceptance Policy

- Gift Acceptance Policies manage expectations of donors and serves as guidance for board and staff members
- Reasons to adopt a Gift Acceptance Policy
  - Some non-cash gifts run counter to nonprofits values.
  - Some non-cash gifts can lead to legal obligations i.e. real property
  - Organization may not be equipped to use or dispose (sell) gifts or maintain.
  - The IRS Form 990 asks whether a nonprofit has a gift acceptance policy and requires nonprofits that respond “Yes” to complete Schedule M, as well as report any non-cash contributions/in-kind gifts.
  - Establish policy to sell or use upon acceptance

# Forms

- Form 8283 Donor Attaches when donation is over \$500
- Form 8283 is filed by individuals, partnerships, and corporations and attached to return.
- Form 8282 Donee Information Return (Sale, Exchange, or Other Disposition of Donated Property)
- Original and successor donee must file Form 8282 if they sell, exchange, consume, or otherwise dispose of charitable deduction property within 3 years after the date the original donee received the property

## Forms (Cont.)

- Copy of 8282 given to original donor.
- File 125 days after disposition
- Form 1098-C Contribution of Motor Vehicles, Boats and Airplanes
- Donee organization files separate 1098-C for each qualified vehicle valued at \$500 or more.
- Must furnish a contemporaneous written acknowledgement of the contribution to donor containing the same information as the 1098-C. (Copy B can be used for this purpose)

# Schedule M (Form 990)

- Include with 990 if non-cash donations in total are over \$25,000 or art is donated
- Purpose to report the different types of non-cash items donated during the year
- Report items even if sold immediately i.e. securities
- Total non-cash on Schedule M is reported on Form 990, Part VIII, Line 1g

SCHEDULE M

(Form 990)

Department of the Treasury

Internal Revenue Service

Noncash Contributions

Complete if the organizations answered "Yes" on Form 990, Part IV, lines 29 or 30.  
Attach to Form 990.  
Go to [www.irs.gov/Form990](https://www.irs.gov/Form990) for instructions and the latest information.

OMB No. 1545-0047

2023

Open to Public Inspection

Name of the organization

Employer identification number

Part I

Types of Property

	(a) Check if applicable	(b) Number of contributions or items contributed	(c) Noncash contribution amounts reported on Form 990, Part VIII, line 1g	(d) Method of determining noncash contribution amounts
1 Art—Works of art . . . . .				
2 Art—Historical treasures . . . . .				
3 Art—Fractional interests . . . . .				
4 Books and publications . . . . .				
5 Clothing and household goods . . . . .				
6 Cars and other vehicles . . . . .				
7 Boats and planes . . . . .				
8 Intellectual property . . . . .				
9 Securities—Publicly traded . . . . .				
10 Securities—Closely held stock . . . . .				
11 Securities—Partnership, LLC, or trust interests . . . . .				
12 Securities—Miscellaneous . . . . .				
13 Qualified conservation contribution—Historic structures . . . . .				
14 Qualified conservation contribution—Other . . . . .				
15 Real estate—Residential . . . . .				
16 Real estate—Commercial . . . . .				
17 Real estate—Other . . . . .				
18 Collectibles . . . . .				
19 Food inventory . . . . .				
20 Drugs and medical supplies . . . . .				
21 Taxidermy . . . . .				
22 Historical artifacts . . . . .				
23 Scientific specimens . . . . .				
24 Archeological artifacts . . . . .				
25 Other ( ) . . . . .				
26 Other ( ) . . . . .				
27 Other ( ) . . . . .				
28 Other ( ) . . . . .				
29 Number of Forms 8283 received by the organization during the tax year for contributions for which the organization completed Form 8283, Part V, Donee Acknowledgement . . . . .				
30a During the year, did the organization receive by contribution any property reported in Part I, lines 1 through 28, that it must hold for at least 3 years from the date of the initial contribution, and which isn't required to be used for exempt purposes for the entire holding period? . . . . .				
b If "Yes," describe the arrangement in Part II.				
31 Does the organization have a gift acceptance policy that requires the review of any nonstandard contributions? . . . . .				
32a Does the organization hire or use third parties or related organizations to solicit, process, or sell noncash contributions? . . . . .				
b If "Yes," describe in Part II.				
33 If the organization didn't report an amount in column (c) for a type of property for which column (a) is checked, describe in Part II.				

29

Yes No

30a

31

32a

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Cat. No. 51227J

Schedule M (Form 990) 2023

34 Tax Updates

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# Donated Services

- Donated Services are not reportable income for 990.
- Reportable for GAAP
- Schedule D reconciling item
- Do not report Donated Services, Donated Facilities or Equipment on Schedule M
- Donated Services include:
  - Volunteer Time
  - Radio/TV Time
  - Professionals donating skilled services



# Legislative Update



# Legislative Update

## One Big Beautiful Bill Act (OBBBA) Passed

- Excise Tax on Excess Renumeration
  - Modifies the definition of “covered employee”
- Excise Tax on Investment Income of Private Colleges & Universities
  - Changes the 1.4% tax to range of 1.4% to 8% based on size of the student adjusted endowment
- 1% Floor on Corporate Charitable Deductions
  - Affects Form 990-T, keeps the ceiling at 10%

# Charitable Giving Affects

OBBBA affects on charitable giving

- TCJA tax rates now permanent
- Standard deduction permanently increased
- Charitable deduction for individuals
  - Non-itemizers: increased deduction available from \$300 (MFJ) to \$2,000 (MFJ)
  - Itemizers: 0.5% floor added; upper limitations still apply

# Contact

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