



# Unrelated Business Income Tax: Tips, Tricks, and Traps

Visit the NFP [webcast archive](#) to watch the corresponding presentation.

## Today's Presenters



### **Dave Moja, CPA**

- Professional Practice Leader-Tax
- Capin & Crouse LLP



### **Betsy Krisher, CPA**

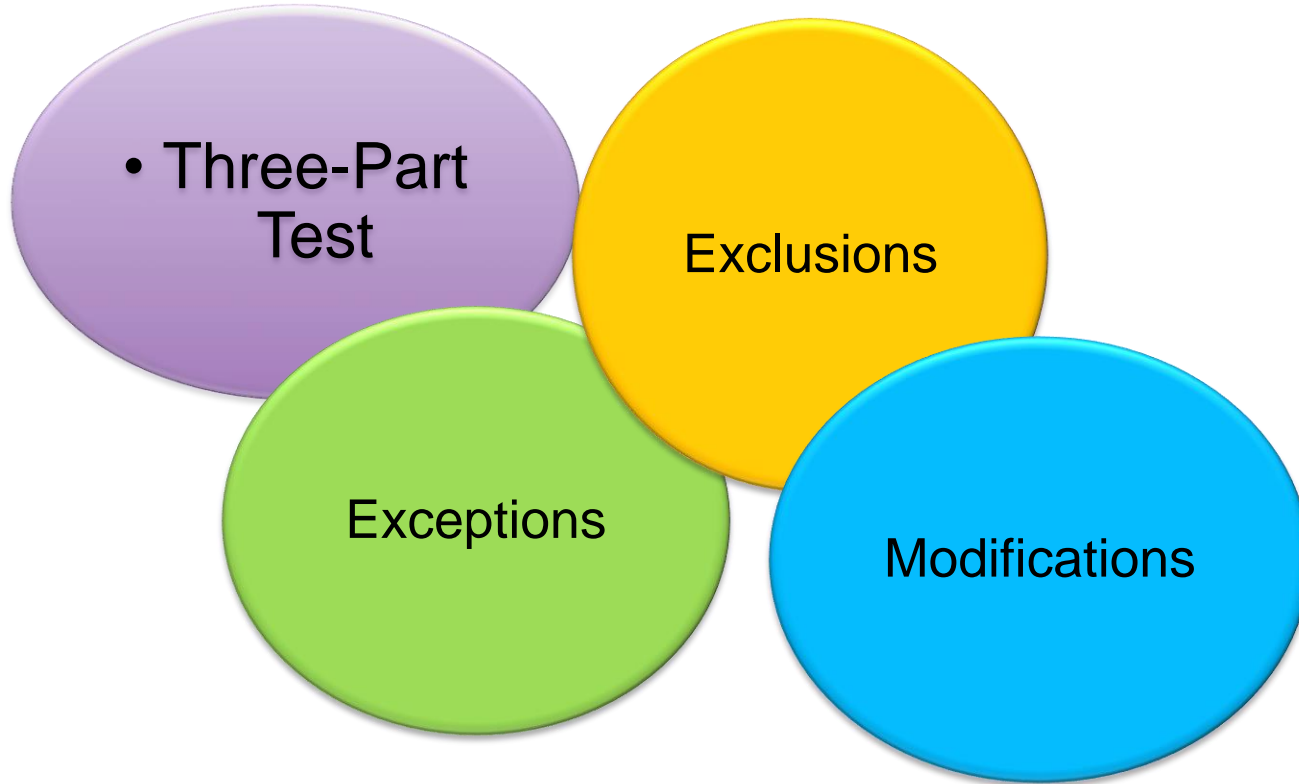
- President, Maher Duessel

# Learning Objectives

- Identify the core concepts, exceptions and modifications found in the Code and Regulations.
- Identify practical steps for avoiding UBIT pitfalls and minimize tax liability.
- Identify the UBIT implications of the 2017 Tax Cuts and Jobs Act.
- Determine strategies for contemporaneously documenting filing positions.

# Unrelated Business Income Tax Basics

# Unrelated Business Income



# Unrelated Business Income Tax

- Why enacted?
  - To prevent tax-exempt organization from unfairly competing with taxable for-profit businesses.
- Came into law in 1950
- Cannot be a “significant” part of activities
- Can cause loss of exemption

# Unrelated Business Income

- UBI to one organization is not UBI to all
- Check stated exempt purpose and activities on application for exemption (Form 1023)
- Focus on how money earned, not how money used
- Watch new activities reported on Form 990, Part III

## Three-Part Test: Is the Income...

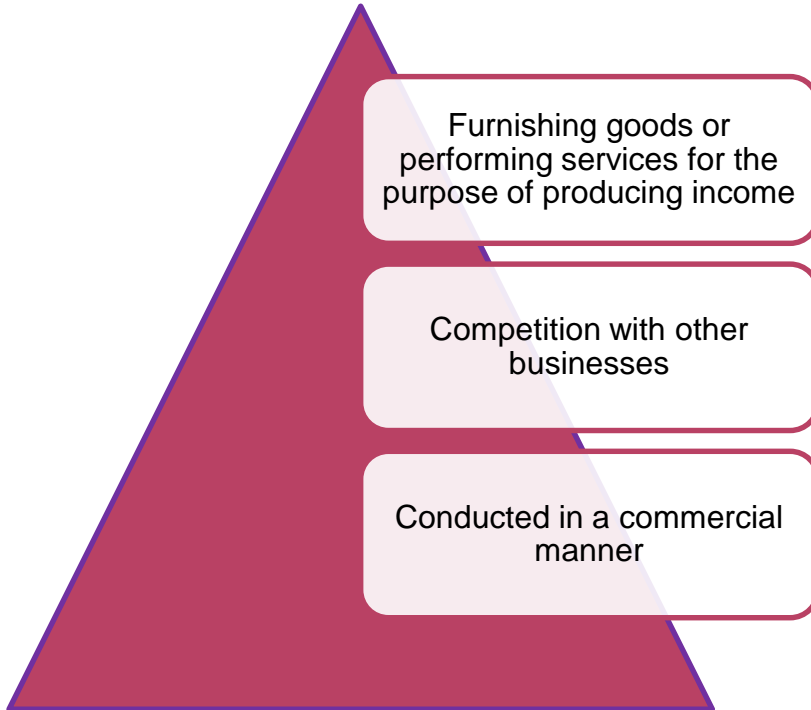
A trade or  
business?

Regularly  
carried on?

Not substantially  
related to the  
exempt  
purpose?



# Trade or Business



## Regularly Carried On

- Frequency and continuity
- Pursued in a manner similar to comparable commercial activities
- Intermittent, sporadic activities are generally not considered to be regularly carried on
  - Seasonal activities could be deemed to be regularly carried on

# Substantially Related

- Contributes importantly to accomplishing the exempt purpose
  - Contribution can't be provision of income only
- Size and extent of activities matter
- Very Fact-Specific Determination
  - No bright-line percentage

# Exceptions, Exclusions & Modifications

# Exclusions

- Certain activities are statutorily excluded from the unrelated business income (UBI) rules
- In addition, case law provides various other exclusions for specific activities

# Most Common Exceptions

- Volunteer Labor
- Member's Convenience
- Donated Merchandise
- Conventions and Trade Shows
- Games of Chance
- Distribution of Low-cost items for Donations
- Qualified Corporate Sponsorship Income

# Most Common Exclusions

- Interest, Dividends and Similar Income
- Royalties
- Real Property Rental Income
- Gains and Losses from Property Disposition
- Neighborhood Land Rule
- Debt-Financed-15% Rule
- “Schools”- IRC Section 514(c)(9)

# Volunteer Labor Exception

- Any activity in which substantially all of the work is performed by unpaid volunteers is not an unrelated trade or business [IRC Sec. 513(a)(1)]
- An organization's paid staff may be directly involved with an activity that is exempt under this exception, provided sufficient volunteer effort is also present
- Substantially generally > 85%



## Member Convenience Exception

- An activity carried on by a Section 501(c)(3) entity or by a governmental college or university primarily for the convenience of its members, students, patients, officers, or employees is not an unrelated trade or business [Rev. Rul. 81-19; IRC Sec. 513(a)(2)]
- Many times difficult to distinguish from “related to exempt purpose”

## Donated Merchandise Exception

- The sale of merchandise, substantially all of which has been received by the organization as a gift or contribution, is not an unrelated trade or business [IRC Sec. 513(a)(3)]
- “Thrift Shop Exception”
- Substantially generally > 85%

# Activity Partially Related & Partially Unrelated

- Fragmentation rule

- Example: Art Museum gift store

- Art print = related



- Souvenir mug of the City the Museum is located in = unrelated



# Qualified Sponsorship versus Advertising

<b>Sponsorship</b>	<b>Advertising</b>
Mentioning sponsor's location, phone, website	Providing qualitative or competitive language
Providing a link on own website to sponsor's site	Endorsing the sponsor
Mentioning slogans & value-neutral descriptions of the sponsor's products/services	Providing pricing information
Displaying sponsor's products	Inducing purchase, sale, use of sponsor products/services
Not required to treat as charitable contribution	Distributing discount codes or coupons

## Four Items That CANNOT be done regarding a qualified sponsorship payment:

- Advertising
- Designating a sponsor as an exclusive provider
- Providing facilities, services, or other privileges to the sponsor unless they are of “insubstantial value”
- Granting of either exclusive or nonexclusive rights to use organization’s intangible asset (e.g. name or logo)

# Advertising

- Advertising is UBI unless income bears a direct relationship to exempt purpose—really rare
- Activity still must be regularly carried on, a trade or business, and unrelated to the exempt purpose to generate UBI
- Total deductions include direct advertising costs and readership costs
- No loss permitted from readership costs—general exploitive activity rules apply limiting the losses
- Examples include advertising in monthly newsletter, annual directory, website

# Real Property Rental Income – Not UBI

- Real property generally excluded
- Except – debt-financed property: more to come on that...
- Personal property (equipment)
- Less than 10% of real property rental = no UBI

If between 10% – 50%, pro rata share of income is UBI

If personal property included in real property is over 50%  
= 100%

## Debt-Financed Property

- Debt-financed property = any property (e.g., rental real estate, tangible personal property, corporate stock), held to produce income (e.g., interest, dividends, royalties, rents, capital gains), and with respect to which there is “acquisition indebtedness” at any time during the taxable year



# Debt-Financed Property

- 85% Exception
  - Administration building of a not-for-profit is 2500 sq. ft.
  - Nonprofit occupies all but one office in the building; it rents the office to another organization
  - If the office constitutes 375 sq. ft. or less, then this property is exempt
  - If the office constitutes more than 375 sq. ft., then only that portion of the property that is used by the nonprofit is exempt
  - If the office is rented to a related exempt organization and the related organization uses it for its exempt purpose, then the income is exempt

## Neighborhood Land Rule Exception

- If land is purchased for future expansion and is rented in the interim period before conversion to organization's exempt purpose, rental income may be excluded from UBIT.
- Limitations:
  - Exemption period is 10 years for NPOs; 15 years for churches
  - Acquired property must be in the neighborhood of other property owned
  - Any existing structure on the property must be demolished or removed before the land can be used for an exempt purpose
  - Lease terms cannot exceed 5 years

# Computation of Debt-Financed Income

$$\begin{array}{l} \text{Unrelated} \\ \text{Debt-Financed} \\ \text{Income} \end{array} = \frac{\text{Avg. Acquisition Indebtedness}}{\text{Avg. Adjusted Basis}} \times \begin{array}{l} \text{Gross Income from} \\ \text{Debt-financed} \\ \text{Property} \end{array}$$

# Computation of Debt-Financed Income (continued)

- Example: A not-for-profit owns an office building which is debt-financed property. The building produces \$10,000 of gross rental income. The average adjusted basis of the building is \$100,000 and the average acquisition indebtedness is \$50,000.

$$\$50,000/\$100,000 \quad \times \quad \$10,000 \quad = \quad \$5,000$$

The ratio is 50%.

## Games of Chance

- Exempt organizations frequently conduct games of chance such as bingo, pull tabs, raffles, video games, poker, and lotteries
- To avoid having the conduct of such games classified as an unrelated trade or business, an organization typically operates the games with *unpaid volunteers* or conducts the games in such a manner as to *qualify them as bingo* [IRC Secs. 513(a)(1) and (2)]

## Treasury Regulation 1.513-5(d)

- As used in this section, the term “bingo game” means any game of bingo of the type described above in which wagers are placed, winners are determined, and prizes or other property is distributed in the presence of all persons placing wagers in that game. The term “bingo game” does not refer to any game of chance (including, but not limited to, keno games, dice games, card games, and lotteries) other than the type of game described in this paragraph.
- *Bingo game defined.* A bingo game is a game of chance played with cards that are generally printed with five rows of five squares each. Participants place markers over randomly called numbers on the cards in an attempt to form a preselected pattern such as a horizontal, vertical, or diagonal line, or all four corners. The first participant to form the preselected pattern wins the game.

# Joint Ventures, Partnerships, LLCs, S Corporations

- All but S corporations look through to activity of business to determine nature of revenue allocated to exempt organization
- Also must look at who controls the activity
- S Corporations: all income is UBI
- Schedule K-1 should provide information on exempt organization's share of UBI

# Tax Cuts and Jobs Act Implications



# Tax Cuts and Jobs Act

- P.L. 115-97 “An Act to provide for the reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018” or 2017 Tax Act
- Passed December 22, 2017

# Tax Cuts and Jobs Act – Key EO Provisions

- Section 512(a)(6) Separate Computation of UBIT
- Section 512(a)(7) UBI by Disallowed Fringe
- Section 4960 Tax on Excess Tax-Exempt Organization Executive Compensation
- Section 4968 Excise Tax based on Investment Income of Private Colleges and Universities

# Section 512(a)(6) Separate Computation of UBIT

Text of Code:

**(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.

<https://www.law.cornell.edu/uscode/text/26/512>

## Section 512(a)(6) Separate Computation of UBIT (continued)

- Effective date: Taxable years beginning after December 31, 2017
- Carryovers of Net Operating Loss- If arose from taxable years beginning before January 1, 2018, Subparagraph (A) of Section 512(a)(6) shall not apply and the UBTI of the organization, after application of Subparagraph (B) of Section 512(a)(6), shall be reduced by the amount of such net operating loss.

# Section 512(a)(6) Separate Computation of UBIT (continued)

- A word about NOLs (IRC Section 172):
  - Effective for NOLs arising in 2018 and thereafter, NOL can no longer be carried back; can only offset up to 80% of taxable income
  - 20 year carryforward period is eliminated; carry forward indefinitely
  - Appears existing NOLs prior to 1/1/18 are NOT subject to 80% limitation

# Section 512(a)(6) Separate Computation of UBIT (continued)

- Matters to consider:
  - How do you define a “separate” trade or business?
  - What about “passive” income?
  - Can there be a safe harbor threshold below which no disaggregation would be required?
  - What about “deemed” UBI (controlled org payments, debt-financed income, fringe benefits (now))?

## Notice 2018-67

- Issued in August 2018 <https://www.irs.gov/pub/irs-drop/n-18-67.pdf>
- Requested comments on calculation of UBTI under Section 512(a)(6)
- Provided some interim and transition rules
- Comments to be submitted on or before December 3, 2018
- Can submit electronically, with “Notice 2018-67” in the subject line, to:
  - [Notice.Comments@irsounsel.treas.gov](mailto:Notice.Comments@irsounsel.treas.gov)

## Notice 2018-67: Requesting Comments On:

- The general interim rule for distinguishing between trades and businesses under IRC 512(a)(6) outlined in Section 3 of the Notice;
- Whether other Code sections may provide a model for identifying separate trades or businesses (section 3.03 of the Notice)
- Whether North American Industry Classification System (NAICS) 6-digit (or less) codes might be the basis of a method for identifying separate trades or businesses (section 3.03 of the Notice)  
[https://www.census.gov/eos/www/naics/2017NAICS/2017\\_NAICS\\_Manual.pdf](https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf)
- The general rules for allocating deductions between trades or businesses (section 3.04 of the Notice)



# Notice 2018-67-Requesting Comments On (continued):

- The treatment of unrelated debt financed income, specified payments received from controlled entities, and certain insurance income (IRC Section 512 (b)4, (13) and (17) discussed in section 4 of the Notice
- The scope of the activities that should be included in the category of “investment activities” (section 5.02)
- The treatment of income derived from activities in the nature of an investment through partnerships (sections 5 and 6)
- Any additional considerations that should be given to how IRC section 512(a)(6) applies within the context of IRC Section 512(a)(3) (section 7)
- The calculation and ordering of pre-2018 and post-2017 net operating losses (NOLs) and the treatment of pre-2018 NOLs that will expire in a given tax year if not taken before post-2017 NOLs (section 9)

## Notice 2018-67: Interim Guidance

- Section 6: interim and transitional rules for partnership investments allowing for aggregation of qualifying partnership interests under de minimis (section 6.02) and control (section 6.03) tests and allowing for the treatment of a partnership interest as comprising of a single trade or business for interests acquired prior to August 21, 2018.
- Section 8: Any amount included in unrelated business taxable income under IRC section 512(a)(7) regarding qualified transportation benefits and parking taxable to the organization is not an unrelated trade or business and is not subject to IRC Section 512(a)(6).
- Section 10: global intangible low-taxed income (GILTI) will be treated as a dividend which is generally excluded from UBTI under IRC Section 512(b)(1).

## Notice 2018-67: Interim Guidance-Partnerships

- Aggregation of “investment activities” only for those in which the exempt organization does not significantly participate  
=qualifying partnership interests
  - Aggregation includes unrelated debt-financed income
- Interim and transition rules *do not*:
  - Apply to exempt organizations described in 501(c)(7) that are subject to 512(a)(3)
  - Impact application of 512(c) and the fragmentation principle under 513(c)

## Notice 2018-67: Interim Guidance-Partnerships

- *De minimis* test : Met if the exempt organization holds directly no more than 2 percent of the profits interest and no more than 2 percent of the capital interest
  - EO may rely on Schedule K-1 for percentage interest
  - Have to take into account the interest in the same partnership of a disqualified person (as defined by Section 4958(f)), a supporting organization (as defined by Section 509(a)(3)), or a controlled entity (as defined by Section 512(b)(13)(D))
  - If fail this test, can still aggregate if meet *control* test

# Notice 2018-67: Interim Guidance-Partnerships (continued)

- *Control* test : Met if the exempt organization:
  - Directly holds no more than 20% of the capital interest
  - Does not have control or influence over the partnership
    - Exempt Organization may rely on Schedule K-1
    - Facts and Circumstances Determine Control or Influence
      - Require/Prevent Operational Performance
      - EO Management Participate In Partnership Management
      - Power to Appoint /Remove Officers/Employees

## Notice 2018-67: Transition Rule-Partnerships

- For a partnership interest acquired prior to August 21, 2018: Exempt Organization may treat such partnership interest as comprising a single trade or business for purposes of Section 512(a)(6) whether or not there is more than one trade or business conducted by the partnership or lower-tiered partnerships
  - Directly or indirectly

## Section 512(a)(7) UBI by Disallowed Fringe

- Text of Code:

### **(7) INCREASE IN UNRELATED BUSINESS TAXABLE INCOME BY DISALLOWED FRINGE**

Unrelated business taxable income of an organization shall be increased by any amount for which a deduction is not allowable under this chapter by reason of section 274 and which is paid or incurred by such organization for any qualified transportation fringe (as defined in section 132(f)), any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)), or any on-premises athletic facility (as defined in section 132(j)(4)(B)). The preceding sentence shall not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business which is regularly carried on by the organization. The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking or for on-premises athletic facilities.

<https://www.law.cornell.edu/uscode/text/26/512>

## Section 512(a)(7) UBI by Disallowed Fringe

- Effective date: Disallowed Fringe Benefits provided from 1/1/18
- Impacted 6/30/18 year end entities
- Applies to direct pay by employer and indirect (pre-tax arrangements)
- Estimated Payments to be considered
- Fiscal Years Beginning Before 1/1/18: Would file on the 2017 Form 990-T, line 12
- Tax Rate: 21% (as a corporation)



## Section 512(a)(7) UBI by Disallowed Fringe

- Matters to consider:
  - Likely will have many new 990-T filers
  - 990-Ts have to be paper filed; not likely to change soon
  - Is it better to pay this tax or make taxable and pay the related employment taxes and any municipal fines for not offering the benefit?
  - Advocacy Efforts

2018 Draft Form 990-T

# A look back in time...

- First Form 990-T from 1951...

**FOR CALENDAR YEAR 1951**

or fiscal year beginning \_\_\_\_\_, 1951, and ending \_\_\_\_\_, 1952

PRINT PLAINLY NAME AND ADDRESS OF ORGANIZATION OR TRUST

(Name)

(Street and number)

(City or town, postal zone number) (State)

Name and address of trust's fiduciary

Name of trade or business activity

Date of Bureau exemption letter and subsection of section 101 under which you are exempt

Serial No. \_\_\_\_\_

Disabled (Subst. B) \_\_\_\_\_

(Subst. B) \_\_\_\_\_

Cash \_\_\_\_\_ Check \_\_\_\_\_ M. O. \_\_\_\_\_  
First Payment \_\_\_\_\_

**SUPPLEMENT U NET INCOME COMPUTATION**

Item and Instruction No.	UNRELATED TRADE OR BUSINESS GROSS INCOME	
1.	Gross sales (where inventories are an income-determining factor) \$	Less: Returns and allowances \$
2.	Less: Cost of goods sold. (From Schedule A)	
3.	Gross profits from sales	
4.	Gross receipts (where inventories are not an income-determining factor) \$	
5.	Less: Cost of operations. (From Schedule B)	
6.	Gross profits where inventories are not an income-determining factor	
7.	(a) Net capital gain from cutting timber. (Attach statement)	
	(b) Net ordinary loss from cutting timber. (Attach statement)	
8.	Income from partnerships. (From Schedule C)	
9.	Supplement U loan rents. (From Schedule D)	
10.	Total unrelated trade or business income in items 3, and 6 to 9, inclusive	\$
<b>DEDUCTIONS</b> (Except contributions, deductions must be directly connected with the unrelated business)		
11.	Compensation of officers or trustees. (From Schedule E)	\$
12.	Salaries and wages (not deducted elsewhere)	
13.	Rent	
14.	Repairs	
15.	Bad debts. (From Schedule F)	
16.	Interest	
17.	Taxes. (From Schedule G)	
18.	Contributions or gifts paid. (From Schedule H)	
19.	Depreciation. (From Schedule I)	
20.	Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)	
21.	Amortization of emergency facilities. (Submit schedule)	
22.	Advertising	
23.	Amount contributed under pension, stock bonus, profit-sharing plan, etc.	
24.	Other deductions authorized by law. (From Schedule J)	
25.	Total deductions in items 11 to 24, inclusive	\$
26.	Unrelated business net income before deduction on account of net operating loss carry-over (Item 10 less Item 25)	\$
27.	Less: Net operating loss deduction on account of net operating loss carry-over from preceding taxable years. (Submit statement)	\$
28.	Unrelated business net income	\$
29.	Less: Specific exemption	\$ 1,000.00
30.	Supplement U net income	\$

**TAX COMPUTATION FOR CALENDAR YEAR 1951. (For other taxable years attach Form 990-T-FY.)**

ORGANIZATIONS TAXABLE AS CORPORATIONS. (See General Instruction A (3))	
31.	Combined normal tax and surtax. If amount in item 30 is: Not over \$25,000; enter 28½ percent of item 30. Over \$25,000. Compute 60½ percent of item 30. Subtract \$5,500. Excess difference
32.	If alternative tax computation is made in separate statement, enter such tax here
33.	Total income tax (item 31 or 32, whichever is applicable)
34.	Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation. (Attach Form 1118)
35.	Balance of income tax
TRUSTS TAXABLE AT INDIVIDUAL RATES. (See General Instruction A (2))	
36.	Tax on item 30 (See tax table in Instruction 30)
37.	If alternative tax computation is made in separate statement, enter such tax here
38.	Total income tax (item 36 or 37, whichever is applicable)
39.	Less: Income taxes paid to a foreign country or United States possession. (Attach Form 1118)
40.	Balance of income tax

**DECLARATION**  
I (we), the undersigned, fiduciary of the trust or president (or vice president) or other principal officer and treasurer (or assistant treasurer, or chief accounting officer) of the organization for or by which this return is made, each for himself declares under the penalty of perjury that this return has been examined by him and is to the best of his knowledge and belief a true, correct, and complete return.

(Fiduciary or officer representing fiduciary) (S) (S) (President or other principal officer) (State title) (S) (S)  
(Assistant, Additional Member or Chief Accounting Officer) (State title) (S) (S)

The following additional declaration shall be executed by the person other than the fiduciary or an officer or employee of the organization actually preparing this return:  
I declare under the penalty of perjury that I prepared this return for the trust or organization named herein and that this return is to the best of my knowledge and belief a true, correct, and complete return.

Schedule A.—COST OF GOODS SOLD. (See Instruction 7)

Table with 2 columns: Description and Amount. Rows include Inventory at beginning of year, Material or merchandise bought for manufacture or sale, Salaries and wages, Other costs per books, Total, Less: Inventory at end of year, Cost of goods sold.

Schedule B.—COST OF OPERATIONS (Other amounts are not an income-deductible loss)

Table with 2 columns: Description and Amount. Rows include Salaries and wages, Other costs (to be detailed), Total.

Schedule C.—INCOME FROM PARTNERSHIPS (See Instruction 8)

Name and Address of Partnership

Table with 2 columns: Description and Amount. Rows include Name and Address of Partnership, Total (enter as item 8, page 1).

Schedule D.—SUPPLEMENT U LEASE RENTS (See Instruction 9)

Table with 5 columns: 1. Description of Leased Property, 2. Total Rent Received, 3. Taxes and Other Expenses, 4. Interest, 5. Depreciation (Explain in Schedule I). Rows include Description of Leased Property, Total (enter as item 9, page 1).

Continuation of Schedule D

Table with 6 columns: 4. Amount of Depreciation Deduction, 5. A Short Item of Leased Property (Attach Statement), 6. Percentage which is a 1st or 2nd, 7. Gross Rental Income (Include in Columns 2), 8. A Rental Deduction (If not a Rental Deduction, Attach Statement), 9. Net Rental Income (Include in Column 5). Rows include Amount of Depreciation Deduction, Total (enter as item 9, page 1).

Schedule E.—COMPENSATION OF OFFICERS

Table with 5 columns: 1. Name and Address of Officer, 2. Official Title, 3. Term, Duration or Expiration, 4. Compensation (a. Continuation, b. Forfeited), 5. Amount of Compensation. Rows include Name and Address of Officer, Total compensation of officers.

Schedule F.—BAD DEBTS. (See Instruction 15)

Table with 8 columns: 1. Taxable Year, 2. Amount of Note and Account Receivable (Including Contract Allowance), 3. Date of Year, 4. Kind of Year, 5. Net Income Reported, 6. Side to Account, 7. Bad Debt of Organ. (Include in Column 6), 8. If Organization Officer or Director (a. Direct Amount Added to Reserve, b. Amount Charged Against Reserve). Rows include Taxable Year, Total.

Schedule G.—TAXES. (See Instruction 17)

Table with 2 columns: Taxes and Amount. Rows include Taxes, Total.

Schedule H.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction 18)

Table with 2 columns: Name and Address of Organization and Amount. Rows include Name and Address of Organization, Total.

Schedule I.—DEPRECIATION. (See Instruction 19)

Table with 8 columns: 1. Kind of Property (If building, state material of which constructed), 2. Date Acquired, 3. Cost or other Basis, 4. Depreciation Allowed (or allowable) in Prior Years, 5. Remaining Cost or Other Basis To Be Recovered, 6. 1 1/2% (or 3%) Cost Recovery Election, 7. Any Prior Year's Allowable Depreciation, 8. Depreciation Allowable This Year. Rows include Kind of Property, Total.

Schedule J.—OTHER DEDUCTIONS. (See Instruction 21)

Table with 2 columns: Description and Amount. Rows include Description, Total.

# Current Draft 2018 Form 990-T

- Issued Originally in October, Revised Draft as of November 1, 2018
- 2018 Instructions for Form 990-T, Issued Draft as of October 22, 2018
- New Schedule M issued draft as of November 6, 2018

# Current Draft 2018 Form 990-T: What's New?

- Flat Corporate Tax of 21%
- Repeal of Corporate Alternative Minimum Tax; prior year AMT credit carryforward can be refundable
- Separate UBTI calculation for each trade or business: New Schedule M
- Increase in UBTI by disallowed fringe benefits-see Part III, line 34
- Use Form 8992 for Global Intangible Low-Taxed Income (GILTI) reporting and attach to Form 990-T
- Use Form 8993 for eligible deduction under Foreign-Derived Intangible Income (FDII) and GILTI under section 250 and attach it to Form 990-T

# Draft 2018 Form 990-T

Form **990-T**

## Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))

OMB No. 1545-0687

**2018**

Department of the Treasury  
Internal Revenue Service

For calendar year 2018 or other tax year beginning \_\_\_\_\_, 2018, and ending \_\_\_\_\_, 20 \_\_\_\_.

▶ Go to [www.irs.gov/Form990T](http://www.irs.gov/Form990T) for instructions and the latest information.

▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

**Open to Public Inspection for  
501(c)(3) Organizations Only**

**A**  Check box if address changed

**Print  
or  
Type**

Name of organization (  Check box if name changed and see instructions.)

**D** Employer identification number  
(Employees' trust, see instructions.)

**B** Exempt under section

501( ) ( )

408(e)  220(e)

408A  530(a)

529(a)

Number, street, and room or suite no. If a P.O. box, see instructions.

**E** Unrelated business activity code  
(See instructions.)

City or town, state or province, country, and ZIP or foreign postal code

**C** Book value of all assets at end of year

**F** Group exemption number (See instructions.) ▶

**G** Check organization type ▶  501(c) corporation  501(c) trust  401(a) trust  Other trust

**H** Enter the number of the organization's unrelated trades or businesses. ▶ Describe the only (or first) unrelated trade or business here ▶ . If only one, complete Parts I–V. If more than one, describe the first in the blank space at the end of the previous sentence, complete Parts I and II, complete a Schedule M for each additional trade or business, then complete Parts III–V.



# Draft 2018 Form 990-T

- New Part III

<b>Part III Total Unrelated Business Taxable Income</b>				
<b>33</b>	Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions) . . . . .	<b>33</b>		
<b>34</b>	Amounts paid for disallowed fringes . . . . .	<b>34</b>		
<b>35</b>	Deduction for net operating loss arising in tax years beginning before January 1, 2018 (see instructions) . . . . .	<b>35</b>		
<b>36</b>	Total of unrelated business taxable income before specific deduction. Subtract line 35 from the sum of lines 33 and 34 . . . . .	<b>36</b>		
<b>37</b>	Specific deduction (Generally \$1,000, but see line 37 instructions for exceptions) . . . . .	<b>37</b>		
<b>38</b>	<b>Unrelated business taxable income.</b> Subtract line 37 from line 36. If line 37 is greater than line 36, enter the smaller of zero or line 36 . . . . .	<b>38</b>		

# Draft 2018 Form 990-T Schedule M

SCHEDULE M (Form 990-T)		Unrelated Business Taxable Income for Unrelated Trade or Business		OMB No. 1545-0047	
For calendar year 2018 or other tax year beginning _____, 2018, and ending _____, 2018		2018			
Department of the Treasury Internal Revenue Service		Go to <a href="http://www.irs.gov/Form990T">www.irs.gov/Form990T</a> for instructions and the latest information.		Close to Public Inspection for Employee Organizations Only	
Name of the organization		Employer identification number			
Unrelated business activity code (see instructions)		Describe the unrelated trade or business			
<b>Part I Unrelated Trade or Business Income</b>		(A) Income	(B) Expenses	(C) Net	
1a	Gross receipts or sales				
b	Use return and allowances				
c	Balance	1c			
2	Cost of goods sold (Schedule A, line 7)	2			
3	Gross profit. Subtract line 2 from line 1c	3			
4a	Capital gain net income (attach Schedule C)	4a			
b	Net gain (loss) (Form 4797, Part II, line 17) (attach Form 4797)	4b			
c	Capital loss deduction for trusts	4c			
5	Income (loss) from a partnership or an S corporation (attach statement)	5			
6	Rent income (Schedule C)	6			
7	Unrelated debt-financed income (Schedule E)	7			
8	Interest, annuities, royalties, and rents from a controlled organization (Schedule F)	8			
9	Investment income of a section 501(c)(7), (F), or (17) organization (Schedule G)	9			
10	Exploited exempt activity income (Schedule I)	10			
11	Advertising income (Schedule J)	11			
12	Other income (See instructions; attach schedule)	12			
13	Total. Combine lines 3 through 12	13			
<b>Part II Deductions Not Taken Elsewhere</b> (See instructions for limitations on deductions.) (Except for contributions, deductions must be directly connected with the unrelated business income.)					
14	Compensation of officers, directors, and trustees (Schedule K)	14			
15	Salaries and wages	15			
16	Repairs and maintenance	16			
17	Bad debts	17			
18	Interest (attach schedule) (see instructions)	18			
19	Taxes and licenses	19			
20	Charitable contributions (See instructions for limitation rules)	20			
21	Depreciation (attach Form 4502)	21			
22	Less depreciation claimed on Schedule A and elsewhere on return	22a		22b	
23	Depletion	23		23	
24	Contributions to deferred compensation plans	24		24	
25	Employee benefit programs	25		25	
26	Excess exempt expenses (Schedule I)	26		26	
27	Excess readership costs (Schedule J)	27		27	
28	Other deductions (attach schedule)	28		28	
29	Total deductions. Add lines 14 through 28	29		29	
30	Unrelated business taxable income before net operating loss deduction. Subtract line 29 from line 13	30		30	
31	Deduction for net operating loss arising in tax years beginning on or after January 1, 2018 (see instructions)	31		31	
32	Unrelated business taxable income. Subtract line 31 from line 30	32		32	

For Paperwork Reduction Act Notice, see instructions. Cat. No. 713297 Schedule M (Form 990-T) 2018

# Expenses, Cost Allocation and Other Considerations

# Deductions

- May Deduct Expenses that are “directly connected with” the conduct of unrelated trade or business
  - Narrower than “ordinary and necessary”
  - Allocation rules for costs related to both related and unrelated activities
  - Maintain clear documentation for all deductions and allocations

# Dual Use Facilities and Cost Allocation

- Dual-Use Facility: Has both exempt and nonexempt purposes
  - Examples:
    - College Athletic Stadium Used for Concerts
    - Charity's Community Fitness Center Used by the Public
    - University Golf Course
- Has been an item on the Treasury Priority Guidance Plan regarding methods of allocating expenses

# Allocating Expenses

- Must be applied on a reasonable basis, be consistent
- Expenses must have “a proximate and primary relationship” to the unrelated business
- Increased Importance with UBI Silo’ing
- Examples to allocate:
  - Dual Use of Facilities
  - Staff
  - Supplies
  - Depreciation

## Notice 2018-67 and Cost Allocation

- Treasury and IRS are considering providing specific standards for allocating expenses relating to dual use facilities and rules under Section 512(a)(6)
- Comments Requested on this topic
- AICPA Exempt Organization Tax Resource Panel has commented on dual use facilities previously (6-27-16 and 2-23-17)
  - [https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadable\\_documents/aicpa-comment-letter-eo-ubi-dual-use-facility-expense-allocation-methodologies-2016-06-27.pdf](https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadable_documents/aicpa-comment-letter-eo-ubi-dual-use-facility-expense-allocation-methodologies-2016-06-27.pdf)
  - [https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadable\\_documents/aicpa-comment-letter-on-eo-ubi-dual-use-facility-expense-allocation-methodologies.pdf](https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadable_documents/aicpa-comment-letter-on-eo-ubi-dual-use-facility-expense-allocation-methodologies.pdf)

# Methods of Allocation

- Reasonable given all facts/circumstances
- Space-based methods
- Time-based methods
- Unit-based methods



## Cost Allocations – Space-based

- University E owns a 10,800 square-foot, four-story office building. Three of the floors are occupied by professors and other employees of E whose work is part of the exempt purpose of E. One of the floors is rented out to a software company, Q, who does not do any work with E.
- E provides significant cleaning services for Q. Each floor is 2,500 square feet with a common-space 800-square-foot entryway on the first floor.

## Cost Allocations – Space-based

- E allocates its dual-use expenses on a “square footage” allocation method as follows:
  - Unrelated = 2,700 sq. ft. (including 200 sq. ft. of common space) = 25%
  - Related = 8,100 sq. ft. (including 600 sq. ft. of common space) = 75%

## Cost Allocations – Time-based

- University P has a computer repair department, W, that employs three people. W provides computer services to W's various campus departments, faculty, and students. On a limited basis, W provides computer repair services to the outside public.
- The three employees of W track their total time spent on repairs and their time spent on outside public repair projects.

## Cost Allocations – Time-based

- University P has a computer repair department, W, that employs three people. W provides computer services to W's various campus departments, faculty, and students. On a limited basis, W provides computer repair services to the outside public.
- The three employees of W track their total time spent on repairs and their time spent on outside public repair projects.

## Cost Allocations – Unit-based

- College Y operates a golf course that is used by students, faculty, their golf teams, alumni, and the general public. Fees charged to alumni are higher than students/faculty/teams, but 10% less than general public fees.
- Y notes that fees paid by alumni and general public are unrelated business income.

## Cost Allocations – Unit Based

- College Y operates a golf course that is used by students, faculty, their golf teams, alumni, and the general public. Fees charged to alumni are higher than students/faculty/teams, but 10% less than general public fees.
- Y notes that fees paid by alumni and general public are unrelated business income.

## Cost Allocations – Unit Based (continued)

= % of expenses allocable to unrelated / business income from golf fees

## Case Study -Golf

- In the Colleges and Universities Compliance Project (Final Report 2013), the IRS found this NOT to be a reasonable allocation method – inherently because it misrepresented the expenses because unrelated golfers paid more per round. Thus, the numerator in the cost allocation equation was skewed upward.
- The IRS EO Examinations team prescribed a “unit-based” allocation method modeled after NUMBER OF ROUNDS as follows:

$$\begin{aligned} & \text{Number of unrelated (alumni and general public) rounds of golf} && \text{(numerator)} \\ & / \text{ Total number of rounds of golf (denominator)} \\ & = \% \text{ of expenses allocable to unrelated business income from golf fees} \end{aligned}$$

This would result in a much lower expense allocation percentage at:

$$500 \text{ rounds} / 1,000 \text{ total rounds} = 50.00\%$$



# Where can UBI Hide?

Property Rentals	Shops/Bookstores
Services Provided	Facilities
Websites & Other Internet Activities	Cell Phone Towers
Parking Lots/Garages	Investments

# NFP Section

# About the AICPA's NFP Section

- Get NFP tools and resources at your fingertips
- Receive exclusive discounts off the AICPA's NFP offerings, including events, publications, and products
- Find us at: [www.aicpa.org/nfp](http://www.aicpa.org/nfp)
- Questions? Email us at [NFPsection@aicpa.org](mailto:NFPsection@aicpa.org).

The screenshot shows the AICPA website's Not-For-Profit Section. At the top, there is a navigation bar with the AICPA logo and the text "American Institute of CPAs". To the right of the logo is a search bar with the text "Enter a search term" and a "Search" button. Below the navigation bar are several menu items: "Membership", "Become a CPA", "CPE & Conferences", "Career", "Interest Areas", "Research", "Publications", "Advocacy", and "AICPA Store".

The main content area is divided into several sections:

- Not-For-Profit**: A list of links including "Community", "CPE & Events", "Membership", "News & Publications", "Resources", and "Store".
- Browse**: A section with two sub-sections:
  - By Topic**: A list of topics with counts: "Not-for-Profit (81)", "Assurance (27)", "Audit and Attest (23)", "Governance (17)", "Tax Compliance (11)", and a link to "Click to view more".
  - By Industry**: A list of industries with counts: "Not-for-Profit (4)".
- By Document Type**: A list of document types with counts: "Tools (50)", "Article (19)", "Overview (9)", "White Paper (2)", and "Form (2)".

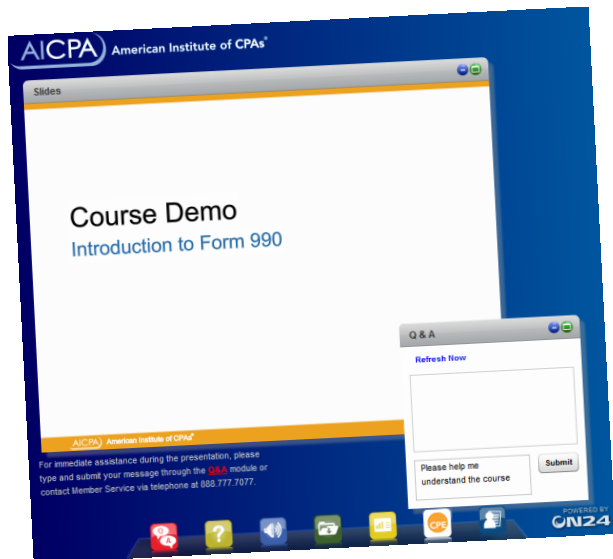
The right side of the page features a large banner for "INTRODUCING THE NOT-FOR-PROFIT SECTION" with a "Join" button. Below the banner is the text "Not-For-Profit Section" and a description: "The AICPA's Not-for-Profit Section is a centralized resource to support not-for-profits (NFPs) and the professionals who serve NFPs." Below this are three columns of content:

- Section Membership**: "Explore the benefits of NFP Section membership."
- Not-for-Profit Resource Library**: "Access the library of tools and resources on NFP financial reporting, assurance, tax compliance and governance."
- Get Connected NFP Community**: "Find out about upcoming events and connect with your peers on social media."

At the bottom, there is a "Spotlight" section with a photo of people and the text: "FASB's Not-for-Profit Proposal Could Shake Things Up. Read this article aimed to demystify the comment letter process in order to make your comments known. Comments are due by August 20." To the right is an "AICPA TV" section with a video player showing the same banner as above.

# NFP Section Benefits

- Subscription to eAlerts to keep you informed
- Four complimentary webcasts



Fri 5/29/2015 10:04 AM

NFP Section <NFPSection@e.aicpa.org>

FASB Financial Statement Project, Upcoming Webcasts and Events

To Matthews, Sandi

Retention Policy 18 Months (w Recovery) (1 year, 6 months)

Expires 11/27/2016



Volume 1 – May 29, 2015

## eNews Alert

### EDITOR'S NOTE

The mission of the AICPA's Not-for-Profit Section is to deliver information, tools, and resources to not-for-profit (NFP) professionals that facilitate timely compliance with standards and regulations, promote the excellence of our members as leaders in this sector, and serve as a connector for peer-to-peer learning and information sharing. Have any questions about your membership benefits? Please contact our [staff](http://staff) or email [NFPSection@aicpa.org](mailto:NFPSection@aicpa.org).

### HEADLINES

#### FASB proposal could significantly change NFP reporting model

On April 22, 2015, the Financial Accounting Standards Board (FASB) issued a proposed Accounting Standards Update (ASU) intended to improve the information provided in NFP financial statements and notes to financial statements. Stakeholders are encouraged to review and comment on the proposed ASU, *Presentation of Financial Statements of Not-for-Profit Entities*, by August 20, 2015. Read this [article](#) to learn more and find links to the full exposure draft and FASB resources.

» [Read more](#)

NFP tools and resources at your fingertips

Visit [aicpa.org/NFP](http://aicpa.org/NFP)

### EVENTS CORNER

#### 2015 AICPA Not-For-Profit Industry Conference

Join us June 15-17 in National Harbor, MD to learn how to deal with new regulatory and existing issues affecting tax, compliance, accounting & auditing, and governance, network with your peers, and earn up to 20 hours of CPE. As a Section member, you receive a \$50 discount. [Register](#) for on-site

# AICPA Staff

Chris Cole, CPA, CFE, CGMA  
Associate Director



Ashley Whitaker CPA  
Lead Manager

Lana Richards, CPA  
Manager

## CPE Certificate

- As a reminder, you may access your CPE certificate by clicking the “Get CPE” icon if you have fulfilled the attendance check requirements.
- If you do not have an opportunity to obtain your CPE certificate during today’s presentation, you may obtain your certificate *after* 24 hours by logging back into the event and clicking the “Get CPE” icon. Please note that you will not be able to respond to the attendance checks in the archive, and you must fulfill the attendance requirements during the actual presentation to receive your CPE certificate.



Thank you