FIU | FLORIDA INTERNATIONAL UNIVERSITY

OFFICIAL UNIVERSITY PROCEDURE

University Community (faculty, staff and students)

SUBJECT (R*)	EFFECTIVE DATE (R)	PROCEDURE NUMBER
PROCEDURES FOR IDENTIFYING AND REPORTING UNRELATED BUSINESS INCOME TAX (UBIT)	January 10, 2005	1110.050a

PROCEDURE STATEMENT (R)

Overview

The University is exempt from Federal income tax because of its exempt purposes, *i.e.*, its education, research, and public service activities. However, in instances where the University receives revenue from activities unrelated to its exempt purposes, the revenue (referred to as Unrelated Business Income (UBI)), may be subject to Federal income tax.

These procedures are set forth to give guidance to the University community on how to identify when an activity gives rise to UBI and how to report such transactions, as set forth by the University's policies on Tax on Unrelated Business Income.

Procedures

1. Once a department has determined that they will be conducting a revenue generating activity, they must answer the following questions:

   a. Will the activity be carried on for the production of income from selling goods or performing services (*i.e*., profit motive)?

   b. Is the activity conducted with a frequency and continuity comparable to the conduct of a similar activity by a private business (*i.e.*, regularly carried on)?

   c. Is the activity **not** substantially related to the University's exempt purposes - education, research, public service?

If the answer is yes to all of these questions, then the activity will give rise to UBI.

The following are examples of activities that are **not related** to the mission of the University and subject to unrelated business income tax:

- Computer time sold to an outside company.
- Income from advertising placed by a company during a baseball game (banners, radio, *etc.*).
- Sale of pop records by the bookstore.
- Gift shop sales.
- Sales of art objects at exhibits.
- Meetings, conferences, and seminars that are non-educational.
- On-line stores linked to the FIU web site.
- A hyperlink from the FIU web site to a sponsor's web site where an endorsement appears by FIU for the sponsor's product.
- Commercially sponsored scientific research if the results are not made available to the public.
- Rental of apartments to the general public financed by tax exempt bonds.
- A travel tour program operated by the alumni association.
- Rental payments for the lease of space on antenna towers and transmission facilities.
- Summer Sports Camps that are not part of educational programs offered by the University.
- Exclusive Provider Arrangements where FIU gives a substantial return benefit that has a fair market value of more than 2 percent of the entire payment.
- Income from concessions sales at non-university events (*e.g.*, high school football, baseball games).

- Income from computer repair and/or consulting services sold to non-university individuals.
- Income from advertising[1] in "game programs" for athletic events or performance programs for cultural events; as well as income from advertising spots on radio or television programs.
- Income from the sale of medications to the general public.
- Income from catering services to non-university users in connection with a non-university event (*e.g.*, wedding reception, birthday party).

The following are examples of activities that are **related** to the mission of the University:

- Computer time sold to university departments.
- Income from advertising placed on the University newspaper when the newspaper is run by the students as part of an educational program.
- Sale of books and class material by the bookstore.
- Meetings, conferences and seminars where education or training is provided by FIU. However, tangible personal property provided as part of the meeting packages can be unrelated (*i.e.*, audio/visual equipment).
- Income from sale of admission tickets to University athletic events.
- Income from sale of admission to University plays, concerts, or other cultural/entertainment events where the students or faculty are the performers.
- Income from concession sales at University athletic events or cultural/entertainment events where the students or faculty are the performers.

2. If it is determined that the activity gives rise to UBI, then the next step is to determine whether the activity qualifies for one of the exceptions in the tax law.

The tax law contains numerous exemptions that exclude from the UBI calculation, income from activities that clearly are an unrelated trade or business. The most common exemptions relevant to the University are the following:

- Convenience: income from an unrelated trade or business that is carried on primarily for the convenience of students, employees, officers, patients, or members is excluded.

  Example: The University operates a hair cutting salon on its premises for students and employees.

  Analysis: Revenue from this activity is excluded from UBI under the convenience exception.

- Royalties: payments received by the University for the use of its intangible property (*e.g.*, trademarks, logos, mailing lists, copyrights, patents) provided that the royalty income is passive, *i.e.*, the University is not performing any services for the payments.

  Example: The University enters into a licensing agreement for a t-shirt vendor to sell shirts bearing the FIU Panther logo. The vendor will pay the University 5% of the gross receipts from the sale of the t-shirts.

  Analysis: The payment is a royalty and is excluded from UBI.

- Research Income: income from research activities, provided that the research is not carried on for the primary purpose of commercial or industrial application.

  Example: The University is hired to conduct clinical testing of a drug for a commercial pharmaceutical company that will enable it to obtain FDA approval for the drug.

  Analysis: Revenue from this activity is not exempt under the "research" exemption and is considered UBI because the research is for commercial application (*i.e.*, FDA approval).

  However, if the University had been hired to perform clinical drug testing for the benefit of patients who suffered from a disease and drugs were administered with the hope that the drugs would cure, or at least stop the progression of the disease, then the testing would not be considered an unrelated business activity because the research in this case would be for public benefit (*i.e.*, patient care and addition to scientific knowledge).

[1] "Advertising" is a legal term under IRS rules and is mutually exclusive of "acknowledgement." The IRS defines advertising as follows: any message which contains a comparative or qualitative description of Sponsor's product, price information or any other indications of savings or value about Sponsor's product, or any message that otherwise endorses Sponsor's product or induces one to purchase or use Sponsor's product.

- Rent from real property: rent from real property (*e.g.*, apartments, conference rooms, tennis facilities) provided that the rental income is passive, *i.e.*, the University is not performing any additional services for the benefit of the tenant. Personal property is excluded only if it is leased together with the real property and the amount of total rent attributable to the personal property is 10% or less of the total rent. If the rent attributable to personal property is between 10% to 50%, then that amount is subject to taxation. If such rent exceeds 50%, none of the rent is eligible for the exception.

  Example: The University rents apartments to cheerleaders attending a camp at the University. The University provides maid services in the apartments. The cheerleader group pays the University a weekly rent.

  Analysis: The rental income is NOT excluded from UBI because the income is not passive due to the maid services provided by the University. If the maid services are eliminated, the rental income would qualify for the UBI exclusion.

- "Qualified Sponsorship Payments": payment from a corporate sponsor, provided that the sponsor does not receive any "substantial return benefit" other than the use or acknowledgement of the sponsor's name, logo, or products.

  A substantial return benefit is any benefit to the sponsor that exceeds 2% of the total payment. Advertising --- which the IRS distinguishes from a mere acknowledgement because it contains comparative or qualitative language, price information, indications of savings, or otherwise endorses a product --- is always a substantial return benefit.

  If there is no substantial return benefit to the sponsor, then the entire payment is excluded from UBI. If there is a "substantial return benefit," then only the amount of the payment that exceeds the fair market value of all the benefits provided to the sponsor will be excluded from UBI.

  Example: ABC Restaurant makes a sponsorship payment of $100 to University athletic program for the benefit of University football team. In return for the sponsorship payment, University makes a public address announcement at one (1) home game as follows: "ABC is an Official Sponsor of FIU Football. All fans presenting an FIU football ticket at ABC Restaurant locations after the game shall receive a free drink with their meal." ABC Restaurant also receives four (4) sideline tickets (valued at $10 each) to one home football game.

  Analysis: The announcement is a substantial return benefit because the second sentence, "All fans presenting an FIU football ticket at ABC Restaurant locations after the game shall receive a free drink with their meal" constitutes advertising since it is an indication of savings. The tickets are worth $40, exceeding 2% of the total payment and thus are also a substantial return benefit. If the fair market value of the advertising statement is $80, then no part of the payment can be excluded from UBI under the sponsorship rules. (Substantial return benefits equal $120, exceeding the payment). Unless there is some other basis for determining that the payment is not UBI, the entire payment will have to be reported as UBI.

  If the advertising sentence is not included in the announcement, then the value of tickets is the only substantial return benefit, and therefore the amount of the payment that is excluded from UBI under the sponsorship rules is $60.

- Volunteer Activity: income from a trade or business where substantially all (approximately 85% or more) of the work is provided by volunteers without compensation.

- Donated Merchandise: income from a trade our business where substantially all (approximately 85% or more) of the merchandise is donated (*e.g.*, thrift shop).

PLEASE NOTE: the IRS applies a "fragmentation rule" to activities that may fall within one of the exclusions listed above. This rule states that an activity that is a trade or business within a larger activity will be separated out and examined for UBI consequences. For instance, in the convenience example provided above, revenue from the sale of hair salon services to the general public is UBI.

Similarly, although bookstore items usually will fall within the convenience exception mentioned above, the IRS fragmentation rule requires an item-by-item analysis so that revenue from certain items (*e.g.*, radios, tape recorders. watches) will not fall within the convenience exception while revenue from other items (*e.g.*, pencils) will fall within the convenience exception.

3. If the activity is an unrelated trade or business and does not fit within a UBI exclusion, then the UBI may be reduced by allowable deductions.

- Directly connected expenses: the University can deduct "directly connected expenses" defined as expenses which have a proximate and primary relationship to carrying on the unrelated trade or business.

- Dual Use Rule: Since it is often the case that University resources (*e.g.*, personnel, facilities) are used for both exempt activities and unrelated business activities, the University must allocate expenses between the two types of uses. Allocation between the two uses must be done on a reasonable basis.

Example: The University operates a gymnasium used by its basketball team, as well as faculty, staff, and students. This use is an activity related to the exempt purpose of the University. In addition, the University allows the general public to use the gym for a fee, which constitutes an unrelated trade or business. Consequently, University personnel and facilities are being used for dual purposes. The "directly connected expenses" incurred in operating the gym (*e.g.*, personnel salaries, fringe benefits, equipment depreciation, supplies, utilities) must be allocated on a reasonable basis between the related and unrelated activities.

4. After it has been determined that an activity gives rise to UBI, the department is responsible for reporting the UBI along with the allowable deductions to the Tax Compliance Section of the Controller's office. The UBI should be reported to the Tax Compliance Section within 30 days of the conclusion of the activity that gave rise to the UBI or in the case of an ongoing activity, within 60 days of the University's fiscal year-end. Each department is also responsible for completing a UBIT questionnaire for each activity with the potential for generating unrelated business income.

5. The Tax Compliance Section will compute the aggregate UBI of the entire university on an annual fiscal year basis to determine the UBIT for the University. Each department will be responsible for paying their pro rata share of the tax based on the percentage that their department's activities contributed to the total amount of the University's Net UBI. It is the responsibility of the department to set aside a reserve for taxes if an activity that they conducted gave rise to UBI. The amount of taxes attributable to the department will be paid by the Office of the Controller and submitted to the Internal Revenue Service with the University's annual UBIT return. Those departments that generated taxable income will be sent an email and memo with the amount of tax due and advised to include the tax as an expense in their budget for the following fiscal year. During the 1st quarter of the following fiscal year, the Office of the Controller will prepare a journal entry to transfer the income tax expense from the Controller's activity number to the departmental activity number which generated the tax.

Should you have any questions regarding these procedures you should contact the Tax Compliance Section of the Controller's office at (305) 348-2655.

HISTORY (R*)

Effective Date: January 10, 2005; Revision Date: September 18, 2015.

RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT (R*) Office of Finance and Administration Florida International University **RESPONSIBLE ADMINISTRATIVE OVERSIGHT (R*)** Controller's Office Florida International University 11200 S.W. 8th Street, CSC 310 Miami, Florida 33199 Telephone Number (305) 348-2131	The University Policies and Procedures Library is updated regularly. In order to ensure a printed copy of this document is current, please access it online at http://policies.fiu.edu/. For any questions or comments, the "Document Details" view for this procedure online provides complete contact information.

R*=Required **O*=Optional**