



06/23/2020

Internal Revenue Service

P.O. Box 7604, Ben Franklin Station, Washington DC, 20004

Re: Unrelated Business Taxable Income Separately Computed for Each Trade or Business (REG-106864-18)

On behalf of Colorado Nonprofit Association and its more than 1,400 members, I appreciate the opportunity to comment on these proposed Unrelated Business Taxable Income (UBTI) rules. Colorado Nonprofit Association's mission is to lead, serve, and strengthen Colorado's nonprofit community to improve the quality of life throughout our state. Colorado's 23,000 nonprofit organizations contribute \$40 billion to the state's economy and account for 9% of Colorado's workforce in direct and indirect jobs.

The proposed rule improves greatly upon the interim guidance issued by the IRS for UBTI and lays out an approach that should be more reasonable for 501(a) tax-exempt organizations to follow. Asking exempt organizations to calculate UBTI for separate trades or businesses according to 20 two-digit NAICS categories is more manageable and less burdensome than making calculations according to hundreds of six-digit categories.

Although this rule simplifies future reporting of UBTI, we expect nonprofits will not find this system to be free of complication. The IRS should issue additional guidance on how to find the appropriate category for a particular activity or trade.

For example, a nonprofit that pays UBTI for selling advertising space in its printed newsletter to a restaurant would most likely select "51- Information" as the appropriate 2-digit code. However, if the nonprofit worked with the restaurant to format the ad and the ad included a coupon, could that activity instead fall under "31-33 Manufacturing" (see 32311 for advertising materials) or "71- Arts Education and Recreation" (see 711510 for writers of advertising copy)? Although this is a specific example, many nonprofits will need guidance on how to use 2-digit NAICS codes appropriately for UBTI calculation given that codes are very detailed at the 6-digit level.

We also continue to ask for repeal of Section 512(a)(6), which Congress added as part of the Tax Cuts and Jobs Act (TCJA). Prior to TCJA, exempt organizations could aggregate revenues and expenses for purposes of calculating UBTI similar to treatment of for-profit businesses' taxable income. Section 512(a)(6) increases UBTI tax liability for exempt organizations substantially and treats them unfairly relative to income taxation of for-profit businesses. Repeal of this section by Congress would render this rule unnecessary and enable the IRS to restore the UBTI regulation in place long before the change made by the TCJA.

Thank you for consideration of our comments,

Mark Turner,  
Senior Director of Public Policy