University of Colorado
Anschutz Medical Campus

Campus Administrative Policy

Policy Title:	**Unrelated Business Income Tax**
Policy Number: 2034	Functional Area: Finance

Effective:	August 1, 2008
Date Last Amended/Reviewed:	August 1, 2008
Date Scheduled for Review:	July 1, 2015
Supersedes:	Unrelated Business Income Tax, March 1, 2000
Approved by:	Associate Vice Chancellor for Finance and Administration
Prepared by:	Controller
Reviewing Office:	Provost and Executive Vice Chancellor for Academic and Student Affairs Executive Vice Chancellor for Administration and Finance
Responsible Officer:	Executive Vice Chancellor for Administration and Finance
Applies to:	University of Colorado Anschutz Medical Campus University of Colorado Denver

A. INTRODUCTION

1. Purpose

The purpose of this policy shall be to establish University of Colorado Denver | University of Colorado Anschutz Medical Campus guidelines for the reporting of Unrelated Business Income (UBI) to University System Administration and the subsequent submission of a 990-T Federal Income Tax return to the Internal Revenue Service.

2. Responsibility

It shall be the responsibility of the various program administrators throughout CU Denver | CU Anschutz to both identify and report income according to the criteria included in this policy. It shall be the responsibility of the Finance Office and the Office of University Counsel to make a final determination as to whether the income is to be treated as taxable Unrelated Business Income. It shall be the responsibility of the Finance Office to coordinate reporting of Unrelated Business Income for CU Denver | CU Anschutz.

B. POLICY STATEMENT

1. General

CU Denver and CU Anschutz are tax-exempt not-for-profit organizations under Internal Revenue Code Section 501(c)(3) and as a state governmental entity under Section 115(a). As such, it is not subject to income tax on revenues generated through activities that are functionally tied to the mission of the University. The mission of the University encompasses instruction, research, patient care, and public service.

The Internal Revenue Code imposes a tax under Section 511(a)(2)(B) called the unrelated business income tax (UBIT) on tax-exempt organizations that recognize revenues from activities that are not substantially related to the mission of the organization. Selling goods or services to the general public that are not directly connected to the mission of the university are subject to UBIT, even if the funds ultimately are used for mission-related purposes.

a. In order for income to be taxable as Unrelated Business Income (UBI), a three-part test is normally applied:

(i) Is the activity “substantially unrelated” to the exempt purpose of the institution?

(ii) Is the activity considered to be a “trade or business”?

(iii) Is the activity “regularly carried on”?

(See Definitions Section E of this policy for more information on these three tests.)

b. Exceptions to the above definition of UBI are provided by the Internal Revenue Service:

(i) Convenience - Certain activities carried on for the convenience of students, patients, and employees do not constitute an unrelated trade or business.

(ii) Donated Goods - The sale of merchandise substantially all of which has been received as gifts or donations does not constitute an unrelated trade or business.

(iii) Volunteer Labor - Even if the activity is a trade or business, it does not constitute an unrelated trade or business if substantially all the work is performed by uncompensated volunteers.

(iv) Other Activities - Other passive income sources such as investment income, royalties, and gains on property disposal, are not considered unrelated business income.

The Finance Office shall be responsible for coordinating the process of identifying and reporting UBI. Each activity shall be responsible for identifying revenue that meets criteria outlined in this policy, reporting and maintaining adequate documentation of both gross revenues and related expenditures.

2. Responsibility for Taxes

Each activity shall be responsible for all taxes or penalties assessed by the Internal Revenue Service. Activities should not be terminated to avoid paying taxes.

3. Identification of Activities for Possible UBIT Exposure

The attached questionnaire, "Activity Questionnaire for Unrelated Business Taxable Income Determination" (Exhibit A), will assist the activity administrator in the determination of gross revenues and expenditures that should be reported to the Finance Office for review as possible UBI. The Finance Office will require completion of this questionnaire for any new auxiliary or self-supporting activities.

4. Determination of Taxability

The Finance Office will review each "Activity Questionnaire for Unrelated Business Taxable Income Determination" and make a determination as to taxability. The Finance Office will follow up with program administrators who do not return the questionnaire. The UBI determinations will be submitted to the Controller for approval and reporting to University System Administration.

C. EXAMPLES

1. Advertising versus Sponsorship

The distinction between advertising and sponsorship is a common issue that affects UBIT. Advertising is an exchange transaction in which a commercial enterprise purchases the opportunity to reach a target audience with their message using University media. Advertising is a call to action, for example "Drink XYZ Cola". Since advertising is not part of our mission and it is not an allowed exception, such revenue may create UBIT liability. By contrast, a sponsorship is a non-exchange transaction in which a commercial enterprise makes a gift to the university to support our mission, such as an educational conference, without any expectation of benefit in return. Recognition of such sponsorships should contain no call to action, for example "Sponsored by XYZ Cola Company" is acceptable and does not create UBIT liability.

2. Public Service versus Business-like Sales

Goods or services offered to the public may create UBIT liability if we are selling mostly to the public goods and services that are commercially available. By contrast, if we offer goods or services to the public because of our expertise or specialized equipment needed *and* they are not generally available from commercial sources, such may fall under our mission of public service.

3. Rental of University Facilities

Use of University facilities by external entities for purposes not related to our mission may create UBIT liability because comparable facilities are commercially available. For this reason, restrictions apply to such facilities use. See the "Use of UCD Campus Facilities" policy.

D. DEFINITIONS

1. Program Administrator is the individual designated as the responsible person for a program/project.

2. Regularly Carried On refers to the frequency and continuity with which the activity is carried on. If the activity is carried on only during certain seasons, then conduct of that business during that season is regular. If the business of the organization is carried on only a few weeks, while the normal profit making business is carried on all year, then the activity is not considered regularly carried on. If the activity is intermittent and without competitive or promotional activities that are usually inherent in such commercial businesses, then it is not regularly carried on.

3. Substantially Related to the organization's exemption generally refers to whether the activity contributes importantly to the accomplishment of the purposes for which the organization is granted exemption from paying federal income tax. If the business has a substantial causal relationship to the achievement of exempt purposes, it is related. If the activity serves the exempt function, but is larger than necessary, the excess income could indicate that there is unrelated business income.

4. UBIT is Unrelated Business Income Tax, the tax assessed by the Internal Revenue Service on Unrelated Business Income. It is calculated on net income (revenue less expenditures) for an activity.

5. Unrelated Business Income (UBI) is net income (revenue less expense) from any activity that is not substantially related to instruction, research, patient care, or public service, which constitute the basis for UCD's tax-exempt status.

6. Unrelated Trade or Business is defined as any trade or business, the conduct of which is not substantially related to the organization's tax-exempt purposes.

Notes

1. Dates of official enactment and amendments:
January 14, 2004: Adopted by Associate Vice Chancellor for Finance and Administration.

2. History:

January 18, 2019: Revised to reflect a Campus-wide effort to recast and revitalize various

Campus policy sites into a standardized and more coherent set of chaptered policy statements organized around the several operational divisions of the university.

3. Initial Policy Effective Date: January 14, 2014

4. Cross References/Appendix:
   - Internal Revenue Code §511.
   - Internal Revenue Service Publication 598.