

Unrelated Business Activities, FIN 48, and Uncertain Tax Positions

Over the past few years, the IRS has continually stated that they are ramping up compliance in the area of unrelated business income tax reporting for exempt organizations.

In their recent College and University Compliance Project, the IRS shows their hand in the middle of the 33-page questionnaire that was sent to 400 colleges and universities. Part II of the questionnaire, entitled “Activities”, is divided into sections. These sections include Advertising, Corporate Sponsorships, Rental, and Other. The “Other” section alone entails 30 questions. For each question/line item, a box is checked to indicate: All UBI, Part UBI, No UBI, or Debt Financed UBI.

For each line item in the various sections, the respondent is asked whether the activity was managed/operated by a third party, if there was a loss in three of the past five years, and if there were expenditures to non-501(c)(3) affiliates that totaled more than \$50,000.

Then there are columnar responses required for “Explanation Code” (provided in instructions) and “Predominant Reason Code” - designed to explain why the “business activity” might be operating at a loss (i.e. A = business was in start-up phase, E = business was in business cycle downturn). Finally, “Future Profit?” requires a yes/no answer for each line item.

In all, the IRS asks about 47 specific activities (such as Printed Publications, Internet, TV/Radio Broadcasting, Events, Facilities, Athletic Facilities Usage, Telecomm related or Broadcast Tower Rentals, Travel Tours, Logo Usage, Patents, Food Services, Computer Services, Book Store - to name a few). After all of that, there is a final section to Part II - Activities that requires the respondent to expound on “Other Activities not Included Above” (only those that generate more than \$50,000 in annual gross revenue).

Next, the IRS has proposed rulemaking with regard to “Uncertain Tax Positions”. They plan to create a new form which should be attached to any business tax return (always remember that Form 990-T is the “Exempt

Organization Business Income Tax Return”). The Service is currently developing a new tax form to be filed with business tax returns of entities/businesses/organizations that have more than \$10 million in total assets. The new schedule is slated to require such data as which code sections are involved with defending the positions, what years the positions affect, and the scope/amount of tax affected by the position.

The IRS states, “The information developed in the course of complying with FIN 48 or other accounting standards is highly relevant to understanding the taxpayer’s tax positions and assessing how those positions affect the taxpayer’s tax liability. That information also would aid the Service in focusing its examination resources on returns that contain specific uncertain tax positions that are of particular interest or of sufficient magnitude to warrant Service inquiry, as well as allowing examination teams to identify all of the issues underlying the tax returns more quickly and efficiently.” Contemplate the ramifications of what they are looking for here!

With FIN 48 (Topic 740) coming on-line for most of our clients this year, it becomes even more relevant and important that we help you understand whether or not you have unreported federal, state, local, or foreign income tax activities. Note that the IRS is using an organizations reporting requirement under Topic 740 as a basis for their inquiry on the schedule of uncertain tax positions. This tells us that organizations need to step up their understanding, accounting methods, and self-assessment processes regarding potential taxable activities.

It’s important to understand whether or not your organization has unreported federal, state, local, or foreign income tax activities.

At CapinCrouse, we are here to help.

We offer several products to assist exempt organizations with their analysis of unrelated business activities, potential uncertain tax positions, and Topic 740 (the pronouncement formerly known as FIN 48) compliance. Whether you would like for us to come to your offices and spend time with your team completing a comprehensive survey, consult with you in completing a “740-B Checklist”, or engage us to do a quick review of your most-recently filed Form 990 to identify potential UBI issues, we are here to help.

Comprehensive Unrelated Business Activities Survey (on-site):

Our NFP tax consultants spend 4-8 hours interviewing your team, reviewing your Form 990 series returns, and discussing your activities. Together, we will work with your team to ascertain whether your identified activities require Form 990-T reporting, are excluded by particular code sections, or are exempt from unrelated business income reporting. We provide a tax memo that enumerates your potential unrelated business activities and discusses why, based upon the Internal Revenue Code and Regulations, those activities are subject to taxes or not. We consider this memo to be a “living document” - if you contemplate adding new activities, we review those and add them to the tax memo.

Consultation regarding 740-B Checklist (off-site, including Form 990 review):

We begin with a webcast wherein we review your Form 990 series returns with your team. Then we consult via phone at the beginning and end of the process of helping your team to complete our unrelated business activities checklist. With the completed checklist, you can ascertain whether your identified activities require Form 990-T reporting, are excluded by particular code sections, or are exempt from unrelated business income reporting.

Form 990 review for Unrelated Business Activities issues:

We review your Form 990 and provide a summary of activities that are identified from those forms. Then we provide you with a summary of potential tax treatments for the identified activities. This process should help your team with the unrelated business activities self-assessment process.

Alternatively, your team can begin by going through Part II of the College and University Compliance Questionnaire (even if you are not institute of higher ed.) by yourself.

In any event, we commend to you some form of unrelated business activities assessment — before the tide of compliance and regulatory requirements engulf you unaware.

About CapinCrouse

As a national full-service CPA and consulting firm devoted to serving nonprofit organizations, CapinCrouse provides professional solutions to organizations whose outcomes are measured in lives changed. Since 1972, the firm has served domestic and international outreach organizations, universities and seminaries, foundations, media ministries, rescue missions, relief and development organizations, churches and denominations, and many others by providing support in the key areas of financial integrity and security. With a network of offices across the nation, CapinCrouse has the resources of a large firm and the personal touch of a local firm. Learn more at capincrouse.com.

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