

ATTACHMENT A
UNRELATED BUSINESS INCOME TAX INSTRUCTIONS
FISCAL YEAR 2019

BACKGROUND

The Texas A&M University System is tax exempt as an instrumentality of the State of Texas pursuant to section 115 of the Internal Revenue Code. Section 115 provides an exclusion from gross income for "...any income derived from the exercise of any essential government function and accruing to any State or any political subdivision thereof." Activities that are essential to government function may include those which are educational, charitable, scientific, testing for public safety, literary, fostering national or international amateur sports competition or preventing cruelty to children or animals. Universities/agencies are not however, exempt from tax imposed by sections 511, 512, and 513 on activities which are unrelated to the exempt purposes of the organization. Therefore, each activity at your organization should be carefully reviewed for unrelated business income tax implications.

Three elements must exist for an activity to qualify as unrelated business income to the organization: (a) the activity qualifies as a "trade or business," (b) the activity is "regularly carried on," and (c) the activity is not substantially related to the exempt purpose of the university or agency.

PURPOSE

These instructions are intended to assist members of the Texas A&M University System in collecting and submitting information regarding activities that may have unrelated business income. Activities that are determined to produce unrelated business income (or loss) will be included in the Systems consolidated Exempt Organization Business Income Tax Return (Form 990-T), which is prepared each year by the System Office of Budgets and Accounting for submission to the Internal Revenue Service. Any income taxes paid will be allocated on the basis of an account's contributing income, including any available loss carry-overs.

REPORTING CRITERIA

Completion of the attached questionnaire is the first step in identifying activities that should be reported on Form 990-T. It provides the basis for establishing the tax implications of an activity. Each Tax Coordinator, with assistance from any member of a department who has relevant knowledge concerning departmental activities, should complete a questionnaire for:

1. Each **new** activity engaged in during the fiscal year which had a potential for generating unrelated business income.
2. Any **previously** reviewed activity (related or unrelated) which has changed its mode or scope of operations during the fiscal year.
3. All highly visible activities (e.g., advertising, activity center usage, long distance telephone commissions, joint ventures, etc.) which are similar to activities that have been determined to be unrelated at other university/agencies.

It is important to complete questionnaires for any activities that are potential sources of unrelated business income, whether or not the department nets a profit from a particular source of revenue. Losses from a given unrelated activity may be used to offset income elsewhere.

The questionnaire should not be completed for any unrelated business activities reported previously unless there is a change in the law. These activities will automatically be considered unrelated business income unless the mode or scope of operation has changed in the reporting year to the extent that the activity should be considered related to the exempt purpose of the university or agency. Conversely, a questionnaire does need to be completed for activities previously determined to be related to the exempt purpose if the activity has changed its mode and scope of operations.

The UBIT Questionnaire should be returned to TEES Fiscal Office (MS 3124).

Please provide as much detailed information as possible in response to each question, in order to assist in the determination of whether an activity is reportable or exempt. Attach additional sheets if necessary.

**ATTACHMENT B
UNRELATED BUSINESS INCOME TAX QUESTIONNAIRE
FISCAL YEAR 2019**

A questionnaire should be completed for all activities with a potential for generating unrelated business income. The completed questionnaire will be used to determine whether or not the activity should be included in The System's Consolidated Exempt Organization Business Income Tax Return (Form 990-T).

SYSTEM MEMBER _____

DEPARTMENT _____

ACTIVITY _____

ACCOUNT NUMBER _____

CONTACT PERSON _____

PHONE () _____

DATE PREPARED _____

FOR SYSTEM REVIEW USE ONLY

REVIEWED BY _____

DATE _____

OVERALL DETERMINATION: REPORT _____ EXEMPT _____

GENERAL

A. Trade or Business

1. Does the activity generate revenue from the sale of goods or the performance of services?

Yes No

- a. If yes, approximately how much revenue was generated by the activity during the fiscal year? (Unrelated sales only)\$_____

2. Is the activity conducted with the primary purpose of generating a profit?

Yes No

- a. If yes, please describe how the activity generates a profit for the organization:

3. Who are the purchasers of the goods or services? Please be specific and include all groups of purchases (i.e. students, faculty/staff, alumni, general public, specialized groups).

4. Fully describe the activity performed by the institution. Please include a description of the goods or services and the reason(s) for offering these goods or services for sale.

B. Regularly Carried On

1. Is the activity conducted on a "regular" (i.e., year-round, periodic, seasonal, etc.) basis?

Yes No

- a. If yes, indicate the timeframe and the frequency with which the activity is performed.

- b. If no, explain why the activity is not conducted on a regular basis.

- c. If no, when and for what reason(s) is the activity conducted?

C. Substantially Related to the Exempt Purpose

1. Does the activity have a substantial "causal relationship" to the exempt purpose of the organization?

Yes No

- a. If yes, explain how the activity enhances, furthers, or in any way relates to the exempt purpose of the university/agency.

2. Are students participating in the activity as part of a required learning experience?

Yes No

- a. If yes, does this experience earn the students credit toward a degree?

Yes No

- b. If yes, explain the instructional nature of the duties and tasks assigned to the students.

3. Does faculty or staff participation assist in the overall accomplishment of the exempt purpose of the university/agency?

Yes No

- a. If yes, please explain.

STATUTORY EXCEPTIONS

A. Volunteer Labor

1. Are unpaid volunteers (students or non-students) participating in the revenue generating activity?

Yes No

- a. If yes, describe the duties or tasks assigned to the volunteers and indicate the percentage of total effort attributable to the volunteer activity.

Duties:

Volunteer Time _____% _____
Paid Staff Time _____% _____
100 %

B. Convenience of University/Agency Members

1. Is the activity performed for the convenience of students, faculty, or staff?

Yes No

2. Indicate the percentage of total revenues attributable to each group users:

| <u>Users</u> | <u>Percentage</u> |
|-------------------------|-------------------|
| Students | _____ |
| Faculty/Staff Employees | _____ |
| Alumni | _____ |
| General Public | _____ |
| Other (specify) | _____ |
| TOTAL | 100% |

3. Is the activity conducted in a remote location which is relatively inaccessible to the general public?

Yes No

- a. If yes, please explain.

C. Donated Merchandise

1. Does the activity involve the sale of donated goods?

Yes No

a. If yes, indicate the percentage of total revenue attributable to the sale of donated articles. _____%

MODIFICATIONS TO INCOME

A. Royalties and Commissions

1. Does the activity generate revenue from royalties, i.e. does the activity generate income from licensing a non-university/non-agency person or entity to market property belonging to the university/agency?

Yes No

a. If yes, describe the property being sold, the basis for determining the royalty payment (e.g., production, gross income, net profits, etc.), and the non-university/non-agency person or entity licensed to sell the property.

2. Is the royalty income derived in part from the performance of services?

Yes No

a. If yes, please explain.

3. Does the activity generate income to the university/agency in the form of commissions or a percentage of income from the sale of a non-university/non-agency entity's goods or services (e.g. a percentage of sales of outside company's pizza, magazine subscriptions, etc.)?

Yes No

a. If yes, describe the goods or services being sold, the payment arrangements, the non-university/non-agency person or entity involved, and who markets the goods or services.

B. Rents

1. Real Property Rents

- a. Does the activity generate revenue from real property (i.e. land and/or buildings)?
 Yes No

- b. Is the amount of rent based on income or profits derived from the property?
 Yes No

- c. If yes, describe the rental arrangement or attach contract.

2. Real and Personal Property Rents

- a. Does the activity generate revenue from a combination of real and personal property (i.e. equipment/furnishings)?
 Yes No

- b. If yes, indicate the percentage of total rents received attributable to the real and personal property:

Property Percentage

| | |
|-------------------|-------|
| Real Property | _____ |
| Personal Property | _____ |
| Total | 100% |

- c. Describe the type of real and personal property rented, the person or group to whom the property is rented, and the purpose for which the property is rented.

3. Rendering of Services

- a. Does the activity provide for tenant services in connection with the rental of real property?
 Yes No

- b. If yes, describe the name and extent of the services (e.g., maid, food, janitorial, security, etc.) rendered to the tenants.

4. Debt-Financed Property

- a. If the answer to 1a or b is yes, is the rent or lease received for the use of debt financed property (e.g., property acquired through the use of a mortgage or other indebtedness, with a current balance outstanding)?

Yes No

- b. If yes, describe the:

Debt instrument _____

Date of acquisition _____

Original amount of debt _____

Current balance _____

Expected date of retirement _____

- c. Indicate the percentage make up of individuals who occupy the debt-financing property on an annualized basis.

| <u>Tenants</u> | <u>Percentage</u> |
|-------------------------|-------------------|
| Students | _____ |
| Faculty/Staff Employees | _____ |
| Alumni | _____ |
| General Public | _____ |
| Other (Specify) | _____ |
| TOTAL | 100% |

C. Sponsored Research

1. Describe the person or entity for which research is performed for a fee, and whether a governmental or other agency is involved.

2. Is the research an investigative activity done to validate a scientific hypothesis in which the university/agency is interested, the results of which are made freely available to the general public?

Yes No

- a. If yes, briefly describe the intellectual questions posed, how these are being explored, and how the results are publicized.

3. Does the activity involve the performance of research under a clinical trial or product testing agreement incident to commercial or industrial operations? For example, ordinary testing or inspection of materials or products or designing or construction of equipment, buildings, etc...

Yes No

- a. If yes, please describe the nature of the research activity.

- b. If yes, does the activity involve pre-FDA certification testing?

Yes No

4. Is the research activity directly related to actual patient care or to the education of students?

Yes No

- a. If yes, please describe.

SPECIAL CIRCUMSTANCES

1. Are the goods or services offered technically advanced, unique, or unavailable within a reasonable distance?

Yes No

2. If yes, please describe the nature of the goods or services and why it is necessary or desirable for the university/agency to offer these goods or services for sale.

HOSPITAL SERVICES

A. Services Provided to Non-Patients

1. Does the activity generate revenue from hospital services (i.e. pharmaceutical sales, lab testing, etc.) provided to non-patients? (A former patient refilling a prescription, a person receiving medical services as part of a hospital administered home care program, or receiving medical care and services in a hospital affiliated extended care facility would be classified as a patient for this purpose.)

Yes No

- a. If yes, describe the nature and extent of the hospital services, as well as the relationship, if any, between the physician(s) and patient(s) and hospital.

2. Does the activity generate revenue from hospital services provided as a convenience to office patients of physicians who are not full-time faculty members of the university/agency?

Yes No

- a. If yes, please describe the nature and extent of these services.

B. Services to Other Institutions

1. Are hospital services (i.e., data processing, purchasing, warehousing, billing and collection, food, personnel, security, etc.) provided to another tax-exempt hospital?

Yes No

- a. If yes, provide the following information:

- (1) Are the services provided at a fee that does not exceed actual costs?

Yes No

- (2) What is the maximum capacity of inpatients served by the other hospital? _____

- (3) Are the services related to the recipient hospital's exempt purpose if performed by the recipient hospital on its own behalf?

Yes No

2. Are services provided to a hospital or other institution which is not tax-exempt?

Yes No

- a. If yes please identify the recipient institution (s) and the services provided.

ADVERTISING

1. Is revenue generated from the sale of commercial advertisements (or underwriting) in a university/agency publication or at university/agency events?

Yes No

2. Are students participating in the activity as part of a learning experience?

- a. If yes, does this experience earn the students credit toward a degree?

Yes No

- b. If yes, explain the instructional nature of the duties and tasks assigned to the students.

3. Do the advertisements contribute importantly to the exempt purposes of the publication or of the university/agency?

Yes No

- a. If yes, please explain.

4. Indicate by whom the advertisements are sold:

| | <u>Percentage</u> |
|--------------------------|-------------------|
| Students | _____ |
| Paid employees | _____ |
| An outside company | _____ |
| Uncompensated volunteers | |
| Total | 100% |

5. Describe the duties of those involved in soliciting advertisements.

JOINT VENTURES

1. Does the activity involve a joint venture or partnership with a taxable organization?

Yes No

a. If yes, please attach a copy of the partnership agreement.

RELIEF OF GOVERNMENT BURDEN

1. Does the activity involve the performance of an essential governmental service?

Yes No

a. If yes, please answer the following:

1. Was the activity previously undertaken by the governmental unit?

Yes No

2. Will the governmental unit be exercising any on-going supervision of the activity?

Yes No

3. Have there been formal legislative or other official actions of the governmental unit recognizing the university/agency as acting on behalf of the government?

Yes No

4. Is the activity an integral part of a larger governmental program?

Yes No

2. Please provide an explanation for any question you answered yes to in this section.

OVERALL RECOMMENDATION

Briefly explain the reason(s) why the activity should be reported or exempted.

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