Colleges, Commerciality, and the Unrelated Business Income Tax

James R. Hasselback and Rodney L. Clark focus upon the increased IRS scrutiny of corporate sponsorship and advertising arrangements entered into between universities and corporations.

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Introduction

Since the introduction of income taxes in the United States in 1913, those enterprises organized and operated solely for charitable, religious, and educational purposes have been exempt from taxation. Among the reasons this policy was implemented was that the general public benefitted from the "encouragement of charity." As the law has developed since 1913, the number and types of organizations allowed exempt status have grown. Currently, there are 26 separate Internal Revenue Code (the "Code") provisions in Section 501(c) and Section 401(a) that identify exempt organizations. Section 501(c), representing about 60 percent of all exempt organizations, encompasses over 700,000 churches and religious, educational, charitable, and scientific organizations. In addition, IRS Pub. 78, "Cumulative List, Organizations Described in Section 170(c) of the Internal Revenue Code of 1986," provides a cumulative list of qualifying organizations. This is not an all-inclusive list, rather it includes those organizations the IRS has ruled on.

Many nonprofit organizations have limited flexibility. Quite often, grants and donations come with restrictions and specific purposes. For instance, money provided for construction of low-income housing cannot be used for operating expenses; a grant to provide beds for a homeless shelter cannot be used to pay the supervisors. These moneys also come with stringent reporting requirements. Therefore, nonprofit entities long for the flexibility of an unrestricted source of revenue. In search of this flexibility, many nonprofit organizations have sought to exploit some other revenue generating "business" with the organization's facilities and personnel. However, exploiting these "business" opportunities serves only to increase the tension and competition with the private sector. After all, private for-profit businesses pay taxes on their income and property taxes on their buildings and justifiably resent competition from exempt organizations. This conflict of interest has grown immensely since the inception of the income tax as the tax burden on for-profit organizations has increased.

Early Developments

Prior to 1950, the conduct of commercial activities did not threaten the exempt status of these organizations so long as any profits generated from the commercial activity were used to further the organization's charitable or educational purposes. The type of business or activity from which the profits were generated was deemed irrelevant. In other words, a charitable institution was entitled to an exemption if the funds it received were applied exclusively to further its exempt purposes. This approach, known as the "destination-of-funds" test, was annunciated by the Supreme Court in *Trinidad v. Sagrada Orden de Predicadores* [1] in 1924. The organization in *Trinidad* was formed and operated for religious, benevolent, scientific, and educational purposes in the Philippines and therefore, qualified as an exempt organization under Section 170(c)(2)(B). However, funds were raised from large real estate and investment holdings, as well as from the sale of wine, chocolate, and other articles. The Service argued that the organization was not operated exclusively for exempt purposes because funds were raised from commercial businesses and, therefore, some of its income was subject to tax. According to the Service, it was irrelevant that the income was used exclusively for exempt purposes. The Supreme Court disagreed and reversed, holding that the income was exempt based on how it was used rather than on how it was earned.

By 1950, application of the "destination-of-funds" test had led to considerable abuse, culminating in *C.F. Mueller v. Commissioner.*[2] C.F. Mueller Company (Mueller) was a taxable New Jersey corporation engaged in the manufacture and sale of macaroni. New York University (NYU) was, and still is, an educational institution exempt from taxation. On August 21, 1947, NYU formed a Delaware corporation for the purpose of benefiting its law school. One week later, Mueller was merged into the newly formed corporation. All profits earned by the macaroni company were paid directly to NYU. The IRS challenged the macaroni company's exemption, arguing that the company was not organized and operated exclusively for an exempt purpose as required by the Code. However, the court reversed, holding that, because all of the profits generated by the company were paid over to NYU, thus making the purpose of the corporation wholly charitable, Mueller was exempt from taxation.

Origin of UBI & UBIT

As these exempt organizations began to acquire more and more commercial enterprises, owners of taxable businesses complained that the exempt organizations were abusing their status and that taxable entities were facing "unfair competition" from the exempt institutions. By not having to pay taxes, exempt organizations were able to reduce operating costs. These and other similar abuses resulted in the Revenue Act of 1950 [3] that introduced the concept of unrelated business income (UBI) and the unrelated business income tax (UBIT). Congress rejected the notion of the "destination-of-funds" test in favor of an approach that focused on the source of income. Thus, any income that an organization received from the conduct of unrelated activities was taxable regardless of whether the income was applied to further charitable purposes. According to Reg. § 1.513-1(b), Congress's primary objective in imposing this unrelated business income tax was "to eliminate a

[1] *Trinidad v. Sagrada Orden de Predicadores*, 1 USTC ¶ 88, 263 US 578 (1924).

[2] *C.F. Mueller v. Com.*, 51-1 USTC ¶ 9360, 190 F2d 120 (CA-3).

[3] P.L. 814, 81st Cong. 2d Sess.

source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete." Hence, the 1950 legislation did not prevent exempt institutions from entering commercial markets, rather it placed both exempt and nonexempt businesses on the same tax footing in these markets.

Authority

Sections 511-513 govern the taxation of unrelated business income. Most of the controversy focuses on whether the business is related or unrelated and Section 513 provides the respective framework. According to Section 513 and corresponding Reg. § 1.513-1(a), three elements must be established before income received by an organization will be subject to the UBIT: the activity must be a *trade or business*; the trade or business must be *regularly carried on* by the organization; and the conduct of the trade or business *must not be substantially related* to the organization's performance of its *exempt functions.* These definitions are further explained in Reg. §§1.513-1(b), (c)(1), and (d)(2). More specifically, *trade or business* "generally includes any activity carried on for the production of income from the sale of goods or performances of services;" business activities are *regularly carried on* if they show a "frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities of nonexempt organizations;" and a trade or business is *substantially related to exempt purposes* only when the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than producing income) and that causal relationship is a substantial one. Finally, it is important to note that certain activities are by definition not subject to UBIT. Section 513 lists these activities as follows:

- Business in which "substantially all work" is done by volunteers.
- Business conducted by charities primarily for the convenience of members, students, patients, officers, and employees.
- Business that sells donated merchandise.
- Low-cost articles distributed incidentally to the solicitation of the charitable contribution.
- Business involving the exchange or rental of mailing lists between certain charitable and veterans' organizations.

Audit Guidelines For Colleges and Universities

While colleges and universities have always been subject to IRS audit guidelines, it was not until August 1991, when the IRS expanded its coordinated examination program (CEP) to include tax-exempt organizations, that these institutions became the focus of a more serious effort for review by the IRS. As has been widely reported, a major focus of the IRS's CEP audit effort is on colleges and universities. This expansion to include colleges and universities is contained in the December 21, 1992 release by the IRS of proposed examination guidelines for colleges and universities. The final IRS guidelines for agents auditing colleges and universities were issued in 1994 in Announcement 94-112.[4] Almost 14 pages in length, the guidelines reflect the increased sophistication and cognizance of the IRS concerning the corporate structure and operations of colleges and universities. Corporate relationships and unrelated business activities are among the primary targets under the new audit guidelines.[5]

Collegiate Athletics

Debit cards issued to students, universities extending alumni membership to golf courses, tax-exempt bond issues, and for-profit vendors running campus bookstores are all situations rife with unrelated business income taxation potential. Recently, the situation under the most scrutiny and controversy recently has been corporate sponsorship and advertising. These type of arrangements primarily stem from agreements with individual colleges and universities as well as intercollegiate athletic organizations.

Section 501(c)(3) provides for the exemption from federal income tax for organizations organized and operated exclusively for educational purposes. Reg. § 1.501(c)(3) goes on to define the term

[4] Announcement 94-112, I.R.B. 1994-37, 36.

[5] Putting this all in perspective, Bob Louthian, the IRS's national coordinator for CEP audits of colleges and universities and a member of the Exempt Organizations Technical Division's Projects Branch, speaking March 24, 1994, at a workshop sponsored by the Eastern Association of College and University Business Officers, said that "Unrelated business income is now on the IRS's radar screen." See Strechfus, "IRS Continues to Turn Up the Heat on Colleges and Universities." 58-7 *Tax Notes* 957 (Feb., 1993).

"educational" as including the instruction or training of the individual for the purpose of improving or developing his or her capabilities. Thus, by establishing a "solely for educational purposes" basis for conducting business concerning athletics, colleges and universities can claim exemption under Section 501 and avoid UBIT under Section 511. An early IRS ruling clearly indicates this rationale. Rev. Rul. 67-291 [6] describes an organization that subsidized a training table for the coaches and members of a university athletic team. It was held that the athletic program of a university conducted for the development and betterment of the students is considered to be an integral part of its overall educational activities. Since this organization furthered the educational program of the university by providing necessary services to the student athletes and coaches, it qualified for exemption from federal income tax under Section 501(c)(3).

According to Rev. Rul. 80-296,[7] the Service has traditionally taken the position that income from paid admissions to college and university athletic events, regardless of the number of persons in attendance or the amount of paid admissions, is not taxable as income from an unrelated trade or business because the events themselves are related to the educational purposes of the colleges and universities. This position is consistent with the following language contained in the Committee Reports of the Revenue Act of 1950:

> "... athletic activities of schools are substantially related to their educational functions; and income of an educational organization from charges for admissions to football games would not be deemed to be income from an unrelated business, since its athletic activities are substantially related to its athletic program."[8]

Regularly Carried On and *National Collegiate Athletic Association*

Since the conduct of athletic events by themselves do not represent unrelated business income to colleges and universities, corporate sponsorship and advertising relating to these athletic events become the more perplexing and controversial issues. In most instances, the *regularly carried on* requirement of Section 513 is the point in question or the area of uncertainty. The IRS ruled in Rev. Rul. 74-38 [9] and in Rev. Rul. 76-93 [10] that the publication of advertising and other messages in question is regularly carried on, and is not substantially related to the exercise or performance of the organization's exempt functions, and the income derived therefrom constitutes gross income from unrelated trade or business within the meaning of Section 513. Relying on this position, in 1989 the Tax Court held in favor of the IRS in *National Collegiate Athletic Association v. Commissioner of Internal Revenue.*[11] The focus of this case was on the National Collegiate Athletic Association (NCAA) basketball tournament, the winner of which is named the national Division I college basketball champion. At-large selections and automatic berths in the tournament are based on regular season records. Programs are sold during the tournament, both at the sites of the basketball games and to the public at large. The programs are published by an outside company that contractually agreed to pay the NCAA the greater of $50,000 or five percent of net revenues. On this basis, the Tax Court concluded that the advertising was regularly carried on, and thus subject to UBIT. A deficiency of $10,395.14 in unrelated business income tax was assessed. In 1990, the NCAA, the petitioner in this case, appealed the Tax Court's decision and challenged the Tax Court's conclusion that revenue received from program advertising constituted unrelated business taxable income under Section 512. The U.S. Court of Appeals for the Tenth Circuit [12] reversed the decision of the Tax Court and held in favor of the NCAA. The Tenth Circuit essentially determined that income received from advertising in the programs sold in connection with the annual NCAA basketball tournament was not subject to UBIT. The court also concluded that the time spent to solicit advertisements and prepare them for publication was irrelevant to the "regularly carried on" determination. Thus, by considering only the length of the tournament, advertising sales were not a "regularly carried on" activity. In addition, the Tenth Circuit pointed out that the NCAA placed a great deal of reliance on the example in Reg. § 1.513-1(c)(2)(ii) that "publication of advertising in programs for

[6] Rev. Rul. 67-291, 1967-2 CB 184.
[7] Rev. Rul. 80-296, 1980-2 CB 195.
[8] H.R. Rep. No. 2319, 81st Cong., 2d Sess. 37, 109 (1950).
[9] Rev. Rul. 74-38, 1974-1 CB 144.
[10] Rev. Rul. 76-93, 1976-1 CB 170.
[11] *National Collegiate Athletic Association v. Com.*, CCH Dec. 45,512, 92 TC 456 (1989).
[12] *National Collegiate Athletic Association v. Com.*, 90-2 USTC ¶ 50,513, 914 F2d 1417 (CA-10).

sports events or music or drama performances will not ordinarily be deemed to be the regularly carrying on of business." As a result, the NCAA was awarded tax-free treatment, and the IRS was left to ponder what went wrong. In fact, in Technical Advice Memorandum 9147007,[13] the IRS was quick to manifest its displeasure and discontent. In this memorandum, the IRS asserts "we are in disagreement with the Tenth Circuit's *National Collegiate Athletic Association* decision. In our view the court's factual analysis is faulty and its legal conclusions erroneous . . . the Service will not follow this decision."

Corporate Sponsorship and Advertising

Although the IRS had clearly stated that it would not follow the Tenth Circuit's reversal of *National Collegiate Athletic Association*, the Service afforded intercollegiate athletic organizations beneficial tax treatment for about a year. Such organizations are considered to be educational in nature and are, therefore, entitled to a general tax exemption. Essentially, intercollegiate athletic organizations have successfully avoided the unrelated business income tax. However, in November, 1991, the IRS departed from this treatment and reverted to its previous position that corporate sponsorships and advertising were subject to UBIT. Using Technical Advice Memorandum 9147007 that expressed disagreement with the Tenth Circuit's decision, the IRS ruled that the Cotton Bowl Athletic Association must pay unrelated business income tax on the approximate $1.5 million in sponsorship fees it received annually from Mobil Oil Corporation.[14] Basically, the IRS concluded that the Cotton Bowl was selling advertisements and that this sale of advertising constituted the conduct of a business that was regularly carried on and not substantially related to its educational purpose. The Service broke down this corporate sponsorship arrangement into the essential determinants of unrelated business taxable income. First, the IRS charged that the promotion was a business by recognizing a distinction between the promotion of a sponsor and the mere acknowledgment of a corporate contributor. It is well-established that the latter does not constitute advertising.[15] However, the publicity provided to Mobil went beyond mere acknowledgment. Its logo is placed in various locations throughout the Dallas stadium and across the television. Its name is mentioned repeatedly in the television promotion of the game. Even the name of the Cotton Bowl was changed to reflect the sponsorship arrangement; for several years the official name was the Mobil Cotton Bowl. Thus, according to the IRS, the arrangement went beyond mere recognition and constituted the provision of services for money thereby satisfying the first element of the UBIT test. Next, the IRS charged that the now-determined business was carried on regularly. The Service argued that even if the business were determined to be intermittently conducted, it should still be considered "regularly carried on" because of the manner in which it is conducted. The Service refers to Reg. § 1.513-1(c)(2)(ii) which states that business activities that are carried on periodically or discontinuously will be deemed to be "regularly carried on" if they are conducted with the competitive and promotional efforts typical of commercial activities. According to the IRS, this is certainly applicable to the Mobil Cotton Bowl. The magnitude of the event, the amount of money involved, and the significance of the promotional benefits provided to Mobil collectively and more than convincingly indicate that the relationship between Mobil and the Cotton Bowl was commercial in nature. Finally, the IRS took the position that the business was not substantially related. Although the Service conceded that the Cotton Bowl Athletic Association was organized and operated for educational purposes, it essentially took the view that the purpose of the bowl organizations was to conduct football games rather than to further educational purposes. The Service asserted that it is difficult to see how the preparation for and conduct of an annual bowl game furthers educational purposes and also contended that it is even more difficult to comprehend how the promotion of a sponsor could relate to furthering educational purposes. By analyzing the three determinants of UBIT, the IRS successfully ripped apart the corporate sponsorship arrangement between Mobil and the Cotton Bowl, called it commerciality, and charged the $1.5 million, accordingly, as subject to UBIT.

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[13] CCH IRS LETTER RULINGS REPORT No. 769, November 27, 1991, TAM 9147007 (August 16, 1991).

[14] Id.

[15] Reg. § 1.512(a)-1(f)(3).

Effects of Cotton Bowl Ruling

How does this directly affect colleges and universities? Opponents of the IRS's view assert that the real losers in this situation are the participating schools. If the Cotton Bowl and other high profile bowl games have to pay more in taxes, there is less revenue for the universities that are playing in the games. The economics and landscape of the bowl games will also change according to these opponents. Such contentions claim that more than a third of the income from sponsorship will be paid in taxes, meaning a reduced payout to the schools and conferences sharing bowl game revenue. Suddenly, what might have been a multi-million dollar payout may drop by more than one-third. In addition, some of the smaller bowl games may find themselves out of business, creating, ironically enough, a subsequent loss in tax revenue. Finally, Bruce Bernstein, an Arthur Andersen accounting firm executive who has helped represent the Cotton Bowl in its dealings with the IRS, says that "Mobil Corporation and other sponsors, in all likelihood would continue to sponsor the event and reap the marketing benefits they desire out of their bowl game associations. Thus, the participating schools would be the ultimate losers as they would get less money."[16]

Why, then, is the IRS going after the bowl games? One reason may be because the commercialization of intercollegiate athletics has led to a deterioration in the relationship between the educational functions of a university and intercollegiate sports. It is now big business. In 1988 alone, the 104 Division I-A college football teams made over $500 million through gate, television, and licensing receipts and $52 million in bowl game revenues.[17] In 1995, with the so-called "Bowl Alliance" between the Tostitos Fiesta Bowl, the Federal Express Orange Bowl, and the Nokia Sugar Bowl, the average payout per team per bowl game was over $8 million. Six universities participated in those three bowl games, creating approximately $48 million worth of payout alone. Not to mention that there were about 15 other bowl games throughout the holiday season. Granted, these other bowl games do not pay out quite as much, but the implication is clear: this is an enormous business growing at an even more enormous pace.

Likewise, critics argue, the nature of the bowl games has changed. In the earlier days, the bowl games were allegedly designed to promote local tourism, but now the games are designed as a four-hour commercial. Thus, the impact of the UBIT plays a profound role in determining the extent of the potentially massive revenue stream that universities might receive from the bowl associations. This precedent also causes colleges and universities to be concerned whether or not scoreboard advertising or other similar forms of corporate sponsorships are subject to the unrelated business income tax.

Proposed Regulations

In January 1993, in an effort to diffuse criticism by charitable organizations, the IRS issued proposed regulations that would permit most corporate sponsorship arrangements to escape imposition of the UBIT.[18] The Service did this by redefining the word "advertising" to mean "acknowledgment." The proposed regulations distinguish between advertising, which is unrelated, and acknowledgments, which are mere recognition of a sponsor's payment and, therefore, do not result in UBIT.

The proposed regulations amend the regulations under Section 512(a) by adding examples that clarify UBIT. In Ex. 2(i) of the proposed regulations, a major corporation agrees to be the exclusive sponsor of a football bowl game and pays an exempt organization $2,500,000. The exempt organization acknowledges the sponsorship payment by adding the corporation's name to the title of the event. This payment does not constitute advertising with the meaning of Reg. § 1.513-4 because it does not promote the sponsor's service, facility, or product.

These proposed corporate sponsorship regulations are insidiously destroying what little is left of any meaningful taxation of unrelated business activity by exempt organizations. The exempt organizations sector, never happy with having to pay any unrelated business income tax, is now even more assertive to claim that no tax is due on even the most obvious element of unrelated business activities. This, in effect, heightens the element of unfair competition between tax-exempt and taxable enti-

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[16] Schlossberg, "Bowl Game Sponsors Fear Taxing Decisions by IRS." *Marketing News*, Nov. 12, 1990, at 20.

[17] Telander, "Something Must Be Done." *Sports Illustrated*, Oct. 2, 1989, at 95.

[18] Prop. Reg. § § 1.512(a)-1 and 1.513-4.

ties. Thus, it seems that universities are presently winning the battle against the UBIT.

Recent Developments

In 1994, the *Chronicle of Higher Education* [19] reported that at least a dozen colleges have given soft-drink companies the exclusive right to sell their products. Penn State was first by signing a $14 million, 12-year exclusive arrangement with Pepsi, whereby Pepsi would become the only soft drink sold on campus. Oregon State University "will give Coke space" on its scoreboards to advertise. In addition to a percentage of sales, Oregon State will receive $2.3 million for granting Coke exclusive rights until 2006. Likewise, Indiana University contracted with Coke for $15 million over 10 years and the University of Cincinnati signed a 10-year agreement with Pepsi for $3.75 million. From a tax perspective, one might expect these arrangements to be subject to the UBIT. However, it appears most colleges and universities are looking to treat amounts received under these arrangements as corporate sponsorship payments, which, under the proposed regulations, would not be taxable.

It appears that the IRS is apparently accepting one or more of the following arguments for a "no tax" result: that any scoreboard advertising escapes UBIT because such advertising is not regularly carried on (for example, the Service reportedly accepted this argument to exempt scoreboard advertising in a college football stadium because there were only five home games); or that the advertising payment qualify as royalties (royalties are currently excluded from unrelated business income tax). The Service seems to be accepting these arguments because the examiners' interpretation of what is considered "regularly carried on" is becoming more lenient. In *National Collegiate Athletic Association*,[20] the Tenth Circuit criticized the IRS for its strict application of the "regularly carried on" requirement. Also, the Tenth Circuit, citing legislative history, seemed to suggest that the reasons for the unrelated business income tax were less germane in the college or university context. This is certainly good news for colleges and universities.

In addition to the soft-drink sponsorships, McDonald's has jumped on board the college and university advertising express. The *Chronicle of Higher Education* [21] reported a $5.5 million deal between the Georgia Institute of Technology and the McDonald's Corporation. Briefly, the contract includes the following: Georgia Tech will place the McDonald's logo on its basketball floor in Alexander Memorial Coliseum; all tickets and game programs will have the McDonald's logo; all food and drink for sale will be sold from one of the two restaurants McDonald's will have on campus; and a square-block area of the campus, containing the university's athletic facilities will be known as the "McDonald's Center at Alexander Memorial Coliseum. Georgia Tech has indeed taken corporate sponsorship to a new level. In addition, it appears that most corporate advertising and marketing arrangements on college campuses, while remaining deductible for the corporations, will escape UBIT relative to the educational institution.

Future Considerations

At issue, then, is whether these arrangements, which certainly reek of commerciality, are subject to the unrelated business income tax. To date, the IRS has not challenged the conclusion that such arrangements appropriately escape UBIT, which is surprising considering the IRS's position in TAM 9147007. It is not surprising, however, in light of the 1993 proposed corporate sponsorship regulations and the Tenth Circuit's decision in *National Collegiate Athletic Association*.

A continuing concern has been whether there is any limit on how much of its campus a university can "sell off"—part of what many see as a pernicious trend in the commercialization of education. From a tax point of view, one might well ask: "Will universities ever be subject to the unrelated business income tax on the ever growing business presence on their campuses?"

Nevertheless, colleges and universities should be cautious in their negotiations with such corporations. Even though the IRS is not acting on these arrangements presently, they are under increased scrutiny by the Service. In other words, colleges, universities, and intercollegiate athletic organization need look no further than the 1991 Mobil

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[19] Blumenstyk, "Campus Cold Wars," *Chronicle of Higher Education* , Feb. 9, 1994 at A41-A43.

[20] *National Collegiate Athletic Association*, supra, note 12.

[21] Blumenstyk, "Campus Cold Wars," *Chronicle of Higher Education*, Feb. 3, 1995 at A44.

Cotton Bowl as a reminder of what position the IRS firmly accepts. The IRS may be waiting for that one big opportunity to exploit these arrangements and thereby make their statement. Who knows? With the 1995-96 Bowl Alliance completed, the IRS may still decide that the bowl game revenue falls under the unrelated business income provision. Given the massive amounts of money involved with these major bowl games, do not count on the IRS ignoring these arrangments for much longer.

If and when the IRS attacks these arrangements, there will be no way out for the educational institutions as they will be under contract. Of course, the large corporations will be unaffected, because these entities have already paid taxes. In fact, the companies only stand to profit from these arrangments because the arrangments represent an ideal marketing opportunity. A Pepsi representative is quoted as saying, in reference to its agreement with Penn State, "Pepsi sees its campus contracts as a chance to tap into our future core user base while they are still developing brand loyalties."[22] If such arrangements do fall under the UBIT domain, it is certain the entities that will face the most serious of tax consequences will be the universities, colleges, and athletic organizations.

Name Game

Paul Steckfus writes that the day when there is a Pepsi University or a University of Coke may not be too far in the distant.[23] The Bud Bowl may yet go from fantasy to reality. He further states that one day Anheuser-Busch University (formerly Harvard University) may be playing Miller Lite University (formerly Yale University) in a battle of the beers. After all, changing a college's name for the sake of money is not without precedent. In 1992, Glassboro State College in New Jersey changed its name to Rowan College after industrialist Henry Rowan donated $100 million to the school.

Conclusion

For now, it appears that colleges and universities are winning against the UBIT. Yet it is important that the approach taken in negotiating arrangements with corporations be a cautious one because the IRS will certainly face increase pressure from the taxable entity sector claiming unfair competition. Furthermore, the Service generally does not agree with the Tenth Circuit's ruling on the "regularly carried on" criterion. If the IRS ever abandoned its present position, then it could target most, if not all, advertising or marketing arrangements involving colleges, universities, and athletic associations in order to subject these nonprofit entities to the unrelated business income tax. Therefore, it is essential that colleges and universities carefully monitor the current ongoings concerning UBIT as well as plan adequately for any potential and significant changes in the application of UBIT.

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[22] Supra, note 19.

[23] Strechfus, "IRS Continues to Turn Up the Heat on Colleges and Universities." 58-7 *Tax Notes* 957 (Feb., 1993).