

- Male 1:* Let go of the fear. UBTI as any income received by the RF from a trade or business which is regularly carried on and is not substantially related to the RF tax exempt purpose. Before we take a deeper dive into what constitutes UBTI let's take a step all the way back to 1948 where the concept of UBTI originated.
- Male 2:* We are at a meeting with two of the top executives of Aunt Martha's Cookies, Cookie Megabucks in Chip Richmond.
- Male 3:* So Cookie, '48 has been a banner year but we've got to get the profits up in '49. The shareholders are going to revolt on us.
- Female:* Chip, I know. But they are so unrealistic. We can't sell any more cookies. Everyone is trying to cut back on yummy, yummy cookies.
- Male 3:* Well, if we can't sell any more cookies how are we going to make more profits?
- Female:* It's a problem but listen, stop paying taxes.
- Male 3:* Yeah. I'd love to. But how are we going to pull that off?
- Female:* I've got an idea that's been baking for a while. Let's pay the nonprofit and have that run Aunt Martha's.
- Male 3:* Right. Because if they're tax exempt then we don't have to pay the taxes and if we control the nonprofit all of the tax money will go to us. Yes.
- [Laughing]*
- Female:* Yes. Yes.
- Male 2:* And that is what was going on in America. Until 1950 exempt organizations could be used as a way to shelter profits from tax. The best-known example was CF Muller company, at one time the largest pasta company in the US. Muller was owned by the New York University's School of Law as a bequest from Mr. Henry Muller after his death in 1946. NYU Law used its pasta profits to attract higher paid professors and build up its campus.
- The NYU tax exemption for its income from Muller was challenged by the tax court. NYU won that case but in the meantime, congress changed the rules. In 1950 congress enacted the revenue act. This created the concept of unrelated business

income tax or UBIT for tax exempt organizations. NYU Law School was still allowed to own Muller but it had to pay UBIT on the profits until they sold it in 1977. Many nonprofit organizations have some unrelated business income tax. They have to keep track of it and file a tax return for it every year.

Male 1:

Well, it's true that the RF must be careful to not allow generation of UBTI to become a substantial part of its activities. UBTI is not a bad thing per se. UBTI simply needs to be tracked and reported. As we've already mentioned UBTI is any income received by the RF from a trade or business which is regularly carried on and is not substantially related to the RF's tax-exempt purpose. So let's take a look at each of these elements in turn.

Element one requires that the activity in question be a trade or business and that generally includes any activity carried on to make money from selling goods or performing services. Some examples of activities that could qualify as a trade or business include operating a retail store, selling consumer goods, renting out a parking lot and renting out equipment. To get a better idea of how this element works in practice, let's look at a simple example.

Male 2:

In this example, _____ OM doctor Rufus **Admello** strikes an arrangement with local entrepreneur Chester Ashley. Chester Ashley will act as a broker to rent out the RF owner **Fluginator** which is an imaging machine at market rates to clients around the state. Ashley will bring the Fluginator to clients' locations and the RF will get proceeds with a percentage going to the broker. Is this a trade or business? Yes, Rufus is likely engaging in a trade or business because this transaction looks just like a for profit tool rental being carried out at market rate.

Now imagine things have changed somewhat but Admello instead has established a service center in which the RF owned Fluginator imaging machine is being charged out to sponsored programs on an hourly rate set using the breakeven cost to operate and maintain the Fluginator. Is this a trade or business? Unlike in the first scenario, this time Rufus has set up a service center which is making the piece of equipment available to on campus sponsored programs on a reimbursement of cost basis. He is not engaging in a trade or business.

Male 1:

So the second element requires that the activity giving rise to the income would be regularly carried on. What this means is that the activities have to be carried on with such frequency or continuity as to be comparable to other nonexempt organizations engaging in

the same types of activities. In practice, this element would be met if the RF was for instance to run a store or shop continuously, to run a monthly rental business or to engage in a sale that takes place in regular intervals or on a periodic basis. So how do we know if the business is being regularly carried on? Let's take a look at our second scenario to see this element in practice.

Male 2:

In this scenario SUNY Farmville OM Delilah Coates organizes a fundraiser called Hoofbeats for Happy Horses to raise money for the campus. Rides on RF owned horses will be made available to the public for \$50.00 per half hour and are supervised by agricultural students and professors. Refreshments are also sold and the fundraiser brings in \$5,000.00. It was the first and only time this fundraiser was done. Is this regularly carried on? This seems clear. It was the only time it happened so it is not likely to be considered UBTI.

Now let's change this scenario so that SUNY Farmville OM Delilah Coates has worked with the faculty in a local business to raise money for the campus during the fall when tourists flock to the Farmville region to look at the leaves changing color. Every Saturday and Sunday during September and October rides on RF owned horses will be made available to the public for \$50.00 per half hour and rides on old fashioned buggies are also available. Refreshments are sold and the fundraiser brings in about \$3,000.00 per weekend. Is this regularly carried on? Clearly it is. It is happening every weekend.

Male 1:

And finally, there will only be UBTI if the activity in question giving rise to the income is not substantially related to the RF's tax-exempt purpose. This element tends to be the source of the most confusion. In order for an activity to be considered substantially related to the RF's tax-exempt purpose, the activity itself must contribute importantly to the RF's mission. Determining whether or not this element is met requires an analysis of the business activity to determine if it has a substantial causal relationship to achieving the RF's exempt purposes.

Importantly just because the activity will generate income for the RF which can be used to furtherance of its charitable purposes does not mean that the activity itself is substantially related. Some things to consider in trying to determine whether or not a particular activity is in furtherance of the RF's exempt purposes is whether the activity involves SUNY faculty or students and whether the activity supports research to gain knowledge for the benefit of the public at large but that the activity supports education or training in

keeping with SUNY's educational mission. Or whether the activity helps to develop or increase SUNY facilities for the purposes of carrying out its educational mission. If none of these factors exist, there is a risk that the activity is not substantially related to the RF's tax-exempt purpose. Let's check out our third scenario.

Male 2:

Let's imagine SUNY Plattsburg journalism professor Corky Malia makes a deal with the *Plattsburg Weekly News PWN*, a local gossip paper dishing on Plattsburg celebrities. PWN will hire four journalism students as interns for credit. The students will write, edit and secure ads for the paper under the joint direction of Professor Malia and PWN's editor. This will count for four credits in the spring semester. Future semesters would have a similar arrangement to keep PWN going. Does this activity relate to the RF exempt purpose? Think about the role of the students and how this activity clearly and directly achieves SUNY's educational objective. The RF supports those objectives and this activity has a substantial causal relationship as a result.

Now let's imagine that SUNY Plattsburg journalism professor Courtney Malia has instead recommended the talents of some of her journalism students to the editor of PWN. PWN will hire some of the students to operate RF owned equipment when not in use by Professor Malia to produce issues of the PWN. No credit will be provided to the students and Professor Malia has no involvement in the paper. Now is this related to the RF exempt purpose? Note the way the students are used. Their educational programmatic work is not involved in their task assignments. Also, the professor is not involved in the activity. This is not substantially related to the RF.

Male 1:

Let's recap UBTI is any income received by the RF from a trade or business which is regularly carried on and is not substantially related to the RF tax exempt purpose. Whenever the RF is involved in an activity that generates income from an external source remember to ask the following questions. Is the activity similar to a trade or business? Is it going to be carried out on a regular basis? And is the activity substantially related to the purpose of the RF? If you are unsure about what the answer should be please contact the central office finance department for the office of general counsel.

Male 2:

Remember, just because an activity generates unrelated business income it does not mean that there's a problem or that the activity should not be allowed. What's important is that we keep track of activities like this to ensure that the RF is properly following unrelated business income tax law. Before we bring this

presentation to a close, let's check out what Mr. Cornelius Kaplan in our finance department has to say about all of this.

Male 4: Shamus, how are you? Good to see you.

Male 5: Good to see you too. Hey, I've got something to tell you. I'm really sorry.

Male 4: Have a seat. No problem at all. What's going on?

Male 5: We got big trouble, awful stuff. We're going to go to jail or at least lose our editor accreditation. I'm just –

Male 4: What? Ok. Wait, wait. You need to calm down. Ok. Nothing could be that bad. What's the essence of the issue?

Male 5: Ok. This contract.

Male 4: Yes.

Male 5: Ok. We have unrelated business.

Male 4: Ok.

Male 5: Ok. I went to my campus president. She didn't want to do anything about it. I went to the provost. He didn't care enough to do anything about it either.

Male 4: Right.

Male 5: We're going to lose our license in New York State. No more federal grants. Not just our campus, the whole RF.

Male 4: I'm sorry. I need to interrupt you. Ok? Unrelated business does create some reporting issues but it's not the end of the world. Ok? If we don't lose our license, we don't lose accreditation, we just need to know more about it. We need to report on it. What I'd like to do in this case, I see the contract here. Why don't you send it to me? Send it to me as an email. Also give me other correspondence and the financial projections that Jenkins has provided.

Male 5: Well, I can give you more of the facts about what I know in this contract. All right? Dr. Jenkins is in our chemistry department.

Male 4: Right.

- Male 5:* He signed this contract.
- Male 4:* Yeah. No. I see that. Yeah. Right.
- Male 5:* Ok. To do testing on a compound that he's an expert on. He's going to be contracting directly with them.
- Male 4:* Right.
- Male 5:* Using private lab rates.
- Male 4:* Ok.
- Male 5:* However, he's going to be using RF equipment and RF lab space.
- Male 4:* Ok.
- Male 5:* Money is going to flow through the RF.
- Male 4:* That was my next question. Ok.
- Male 5:* And findings are going to stay with the drug company.
- Male 4:* Ok. That's all of those things probably do indicate UBIT, unrelated business income tax would be assessed. However, like I said it's not the end of the world. What I would need to do is just get the information like I just said and I'll try to figure out what the reporting needs are and then if I have any further questions I'll just reach out to you.
- Male 5:* Hold on a second. My predecessor Dr. **Melvo** who trained me to avoid this unrelated business like the plague, was he wrong about that? What's going on?
- Male 4:* There was a time that we were very averse to getting ourselves into unrelated business as an organization and with some reason. It does create some reporting headaches here and there. However, it's unrealistic to expect that the research foundation would have no unrelated business anywhere. Right? So the way that we look at it right now is let's hear what the facts are, try to figure out the reporting and then just report on it, just do what we need to do. So it's not the end of the world. It's not that big of a problem. I do very much appreciate though that you did what you did which was saying something and not keeping that to your campus. So I very much appreciate that.

- Male 5:* I guess we can handle a little bit of unrelated business at our campus. I'll definitely keep my eyes open, my ears out to make sure this doesn't happen and if it does I'm going to come to you again. Ok?
- Male 4:* Absolutely. That's what I'm here for. That's what my team is here for. We're happy to help you and get you whatever guidance we can.
- Male 5:* All right. Thank you very much.
- Male 4:* Thank you.
- Male 2:* If you see any business activity at your campus that is regularly carried on and does not seem to be part of the education, research and training work that is usually supported by the RF staff, let someone in finance or general counsel's office know. You can call or email Keith Caplan or Ryan Williams at central office if you have further questions. Thank you for watching our presentation. We hope it helps you let go of your unrelated business fears.

[Music plays]