Substantial Return Benefit / Unrelated Business Income Tax

Revenue from qualified sponsorships is excluded from unrelated business income (UBI). A qualified sponsorship payment is defined as any payment of money, transfer of property, or performance of services by any person engaged in a trade or business with respect to which there is no arrangement or expectation that the person will receive any substantial return benefit.

Qualified sponsorship payments must be carefully reviewed in order to ensure that sponsors receive no **substantial return benefit** from the University. A substantial return benefit is described as all the benefits provided to a sponsor or persons designated by the sponsor which, when aggregated, exceed 2% of the total amount of the sponsorship payment. Please note that mere use or acknowledgement of the sponsor's name, logo, or product line is not considered a substantial return benefit. However, such use or language must not include messages containing qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell or use the sponsor's products or services.

For purposes of determining whether a benefit is a substantial return benefit, departments must aggregate the fair value of all benefits provided to the sponsor in connection with the payment. If the aggregate amount exceeds 2% of the payment, the entire fair market value of the benefit, not merely the excess amount, is a substantial return benefit and is subject to UBIT. Each benefit must be identified, including items such as:

- Tickets to sporting events or shows
- Exclusive provider arrangements
- Goods, use of facilities, services or other privileges
- Advertising
- Exclusive or nonexclusive right to use intangible assets such as trademarks or logos of the University.

Benefits do NOT include a simple use or acknowledgement of the sponsor's name or logo.

Departments are required to track the value of benefits provided to sponsors. Substantial return benefits must be reported to the CBO by August 24 annually. In the event of an audit, a department must be prepared to prove to the IRS that calculations were completed properly or the entire sponsorship payment becomes taxable income.

Departments may use the forms below to allocate and report substantial return benefits:
- Sponsor Form
- UBI Worksheet

Please see the rules, attached graphic as well as the IRS language which further explain this issue.

Should you have any questions, please contact Melissa Johnson (johnsonm@utk.edu) or Kim Nagel (knagel@utk.edu) prior to agreement being signed/finalized to discuss.

Qualified Sponsorship Rules

Use or Acknowledgement
Mere use or acknowledgement is excluded from ubi.

- Logos and slogans that do not contain qualitative or comparative descriptions of the sponsor's products, services, facilities or company
- A list of the sponsor's locations, telephone numbers or Internet address
- Value-neutral descriptions, including displays and visual depictions, of the sponsor's product lines or services
- The sponsor's brand or trade names and product or service listing.

Advertising
Revenue from advertising activities must be reported as UBI. Messages containing the following are advertising (UBI):

- Qualitative or comparative language
- Price information or other indications of savings or value
- An endorsement
- An inducement to purchase, sell, or use a product, service or facility

Per IRS rules, qualified sponsorships do not include:

1. The sale of advertising in exempt organization periodicals. This is defined as any payment which entitles the payor to the use or acknowledgement of the name, logo, or product lines of the payor's trade or business in regularly scheduled and printed material, published by or on behalf of the payee organization that is not related to and primarily distributed in connection with a specific event conducted by the exempt organization.
2. Payments made in connection with qualified convention and trade show activities.
3. Advertising activities which is defined as any message or other programming material that is broadcast or otherwise transmitted, published, displayed or distributed and which promotes or markets any trade or business, or any service, facility or product.

A single message that contains both advertising and a sponsorship acknowledgement is considered advertising.

Exclusivity Arrangements

- Exclusive provider arrangements limit the sale, distribution, availability or use of competing products, services, or facilities and IS SUBJECT to UBI (substantial return benefit).
- Exclusive sponsor arrangements limit the type of sponsor and IS NOT SUBJECT to UBI (no substantial return benefit).
- Examples:
  - ➢ Agreement requires campus to sell only Coke products in campus vending machines is SRB. The value of the exclusive rights must be aggregated with other substantial return benefits to determine if the total benefits given to the sponsor exceed the 2% safe harbor.
  - ➢ Agreement requires campus to acknowledge Coke as the exclusive sponsor for a basketball game is not SRB

Other Factors – QSP are (do) not

- Contingent upon level of attendance at one or more events, broadcast ratings, or other indicators that express degree of public exposure
- Provision of facilities, services or other privileges to sponsors unless deemed insubstantial

Sponsor Dollars: Substantial Return Benefit / Unrelated Business Income Tax

Departments are required to track the value of benefits provided to sponsors. Substantial return benefits must be reported to the CBO by August 24 annually. In the event of an audit, a department must be prepared to prove to the IRS that calculations were completed properly or the entire sponsorship payment becomes taxable income.

TAXABLE

- Promising the sponsor that it will be the exclusive provider of products or services in return for sponsorship.
- Providing a link from the university's websites to the page of a sponsor's website where products are sold, or listing the phone number where the products or services can be ordered.
- Endorsing the sponsor, or inducing others to buy the sponsor's products or services.
- Giving more than token services or other privileges to the sponsor, such as tickets to sporting or other events including receptions if the value to the sponsor exceeds 2% of the sponsor's payment to the University.
- Making sponsorship payments contingent upon how many people attend the University's events.

NOT TAXABLE

- Featuring the sponsor's name and logo on printed media, on the University's website, or on a banner at an event.
- Exclusive sponsor arrangements limiting the type of sponsor.
- Posting a link that takes the viewer only to the sponsor's home page - not to a page where a product or service is marketed or sold.
- Displaying or distributing free samples of a sponsor's products as a University event, as long as the University does not endorse the product/service.
- Inviting corporate sponsors to special events, such as a dinner or reception, as long as the monetary value of the event and any other benefits received is not more than 2% of the corporate sponsor's payment to the University.

This graphic is not all inclusive, nor does it constitute legal advice. Any questions regarding Substantial Return Benefit should be discussed with Melissa Johnson (johnsonm@utk.edu) or Kim Nagel (knagel@utk.edu).

Examples of Qualified and Non-qualified Sponsorship

In TD 8991, The IRS has illustrated the corporate sponsorship principles with a series of different examples.

Example 1
M, a local charity, organizes a marathon and walkathon at which it serves to participants drinks and other refreshments provided free of charge by a national corporation. The corporation also gives M prizes to be awarded to winners of the event. M recognizes the assistance of the corporation by listing the corporation's name in promotional fliers, in newspaper advertisements of the event and on T-shirts worn by participants. M changes the name of its event to include the name of the corporation. M's activities constitute acknowledgment of the sponsorship. The drinks, refreshments and prizes provided by the corporation are a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 2
N, an art museum, organizes an exhibition and receives a large payment from a corporation to help fund the exhibition. N recognizes the corporation's support by using the corporate name and established logo in materials publicizing the exhibition, which include banners, posters, brochures and public service announcements. N also hosts a dinner for the corporation's executives. The fair market value of the dinner exceeds 2% of the total payment. N's use of the corporate name and logo in connection with the exhibition constitutes acknowledgment of the sponsorship. However, because the fair market value of the dinner exceeds 2% of the total payment, the dinner is a substantial return benefit. Only that portion of the payment, if any, that N can demonstrate exceeds the fair market value of the dinner is a qualified sponsorship payment.

Example 3
O coordinates sports tournaments for local charities. An auto manufacturer agrees to underwrite the expenses of the tournaments. O recognizes the auto manufacturer by including the manufacturer's name and established logo in the title of each tournament as well as on signs, scoreboards and other printed material. The auto manufacturer receives complimentary admission passes and pro-am playing spots for each tournament that have a combined fair market value in excess of 2% of the total payment. Additionally, O displays the latest models of the manufacturer's premier luxury cars at each tournament. O's use of the manufacturer's name and logo and display of cars in the tournament area constitute acknowledgment of the sponsorship. However, the admission passes and pro-am playing spots are a substantial return benefit. Only that portion of the payment, if any, that O can demonstrate exceeds the fair market value of the admission passes and pro-am playing spots is a qualified sponsorship payment.

Example 4
P conducts an annual college football bowl game. P sells to commercial broadcasters the right to broadcast the bowl game on television and radio. A major corporation agrees to be the exclusive sponsor of the bowl game. The detailed contract between P and the corporation provides that in exchange for a $1,000,000 payment, the name of the bowl game will include the name of the corporation. In addition, the contract provides that the corporation's name and established logo will appear on player's helmets and uniforms, on the scoreboard and stadium signs, on the playing field, on cups used to serve drinks at the game, and on all related printed material distributed in connection with the game. P also agrees to give the corporation a block of game passes for its employees and to provide advertising in the bowl game program book. The fair market value of the passes is $6,000, and the fair market value of the program advertising is $10,000. The agreement is contingent upon the game being broadcast on television and radio, but the amount of the payment is not contingent upon the number of people attending the game or the television ratings. The contract provides that television cameras will focus on the corporation's name and logo on the field at certain intervals during the game. P's

use of the corporation's name and logo in connection with the bowl game constitutes acknowledgment of the sponsorship. The exclusive sponsorship arrangement is not a substantial return benefit. Because the fair market value of the game passes and program advertising ($16,000) does not exceed 2% of the total payment (2% of $1,000,000 is $20,000), these benefits are disregarded and the entire payment is a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 5
Q organizes an amateur sports team. A major pizza chain gives uniforms to players on Q's team, and also pays some of the team's operational expenses. The uniforms bear the name and established logo of the pizza chain. During the final tournament series, Q distributes free of charge souvenir flags bearing Q's name to employees of the pizza chain who come out to support the team. The flags are valued at less than 2% of the combined fair market value of the uniforms and operational expenses paid. Q's use of the name and logo of the pizza chain in connection with the tournament constitutes acknowledgment of the sponsorship. Because the fair market value of the flags does not exceed 2% of the total payment, the entire amount of the funding and supplied uniforms are a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 6
R is a liberal arts college. A soft drink manufacturer enters into a binding, written contract with R that provides for a large payment to be made to the college's English department in exchange for R agreeing to name a writing competition after the soft drink manufacturer. The contract also provides that R will allow the soft drink manufacturer to be the exclusive provider of all soft drink sales on campus. The fair market value of the exclusive provider component of the contract exceeds 2% of the total payment. R's use of the manufacturer's name in the writing competition constitutes acknowledgment of the sponsorship. However, the exclusive provider arrangement is a substantial return benefit. Only that portion of the payment, if any, that R can demonstrate exceeds the fair market value of the exclusive provider arrangement is a qualified sponsorship payment.
(Note: the exclusive provider arrangement may be exempt from UBIT as royalty)

Example 7
S is a noncommercial broadcast station that airs a program funded by a local music store. In exchange for the funding, S broadcasts the following message: “This program has been brought to you by the Music Shop, located at 123 Main Street. For your music needs, give them a call today at 555-1234. This station is proud to have the Music Shop as a sponsor.” Because this single broadcast message contains both advertising and an acknowledgment, the entire message is advertising. The fair market value of the advertising exceeds 2% of the total payment. Thus, the advertising is a substantial return benefit. Unless S establishes that the amount of the payment exceeds the fair market value of the advertising, none of the payment is a qualified sponsorship payment.

Example 8
T, a symphony orchestra, performs a series of concerts. A program guide that contains notes on guest conductors and other information concerning the evening's program is distributed by T at each concert. The Music Shop makes a $1,000 payment to T in support of the concert series. As a supporter of the event, the Music Shop receives complimentary concert tickets with a fair market value of $85, and is recognized in the program guide and on a poster in the lobby of the concert hall. The lobby poster states that, “The T concert is sponsored by the Music Shop, located at 123 Main Street, telephone number 555-1234.” The program guide contains the same information and also states, “Visit the Music Shop today for the finest selection of music CDs and cassette tapes.” The fair market value of the advertisement in the program guide is $15. T's use of the Music Shop's name, address and telephone number in the lobby poster constitutes acknowledgment of the sponsorship. However, the combined fair market value of the advertisement in the program guide and

complimentary tickets is $100 ($15 + $85), which exceeds 2% of the total payment (2% of $1,000 is $20). The fair market value of the advertising and complimentary tickets, therefore, constitutes a substantial return benefit and only that portion of the payment, or $900 that exceeds the fair market value of the substantial return benefit is a qualified sponsorship payment.

Example 9

U, a national charity dedicated to promoting health, organizes a campaign to inform the public about potential cures to fight a serious disease. As part of the campaign, U sends representatives to community health fairs around the country to answer questions about the disease and inform the public about recent developments in the search for a cure. A pharmaceutical company makes a payment to U to fund U's booth at a health fair. U places a sign in the booth displaying the pharmaceutical company's name and slogan, “Better Research, Better Health,” which is an established part of the company's identity. In addition, U grants the pharmaceutical company a license to use U's logo in marketing its products to health care providers around the country. The fair market value of the license exceeds 2% of the total payment received from the company. U's display of the pharmaceutical company's name and slogan constitutes acknowledgment of the sponsorship. However, the license granted to the pharmaceutical company to use U's logo is a substantial return benefit. Only that portion of the payment, if any, that U can demonstrate exceeds the fair market value of the license granted to the pharmaceutical company is a qualified sponsorship payment.
(Note: the license granted to the pharmaceutical company to use U's logo may be exempt from UBIT as royalty)

Example 10

V, a trade association, publishes a monthly scientific magazine for its members containing information about current issues and developments in the field. A textbook publisher makes a large payment to V to have its name displayed on the inside cover of the magazine each month. Because the monthly magazine is a periodical within the meaning of paragraph (b) of this section, the section 513(i) safe harbor does not apply. See §1.512(a)-1(f).

Example 11

W, a symphony orchestra, maintains a website containing pertinent information and its performance schedule. The Music Shop makes a payment to W to fund a concert series, and W posts a list of its sponsors on its website, including the Music Shop's name and Internet address. W's website does not promote the Music Shop or advertise its merchandise. The Music Shop's Internet address appears as a hyperlink from W's website to the Music Shop's website. W's posting of the Music Shop's name and Internet address on its website constitutes acknowledgment of the sponsorship. The entire payment is a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 12

X, a health-based charity, sponsors a year-long initiative to educate the public about a particular medical condition. A large pharmaceutical company manufactures a drug that is used in treating the medical condition, and provides funding for the initiative that helps X produce educational materials for distribution and post information on X's website. X's website contains a hyperlink to the pharmaceutical company's website. On the pharmaceutical company's website, the statement appears, “X endorses the use of our drug, and suggests that you ask your doctor for a prescription if you have this medical condition.” X reviewed the endorsement before it was posted on the pharmaceutical company's website and gave permission for the endorsement to appear. The endorsement is advertising. The fair market value of the advertising exceeds 2% of the total payment received from the pharmaceutical company. Therefore, only the portion of the payment, if any, that X can demonstrate exceeds the fair market value of the advertising on the pharmaceutical company's website is a qualified sponsorship payment.