



2022 Summer Not-for-Profit Summit

TAX UPDATE

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Employee Retention Credit

- + Check to see if you may qualify for ERC by talking to your payroll provider or we can assist as well.
- + Qualifying factors – only need one
 - + 2021 –Gross receipts decline by at least 20% compared to same quarter in 2019 or you can use the previous quarter’s receipts compared to the same quarter in 2019.
 - + The Business was fully or partially suspended due to orders from the federal, state, or local government limiting commerce, travel, or group meetings for commercial, social, religious, or other purpose due to Covid 19.
- + 2021 credit is 70% of \$10,000 per quarter per employee (2020 was 50% of \$10,000 per year per employee).
- + For the ERC you must exclude any wages used for the forgiveness of the PPP loan.
- + Once you have received ERC, how do you report it on your tax return?

ERC and PPP Reporting

- + According to the AICPA, ERC should be reported on the 990 as a government grant since this is an information return (different from an income tax return).
- + 990T reporting is different since it is an income tax return. In this case, ERC should reduce expenses.
- + According to the 990 instructions you should report PPP proceeds as a government grant on the Statement of Revenue.
- + Report on Schedule B if over the reporting threshold on the 990.



UBTI Update



Form 990-T	Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))	OMB No. 1545-0047
For calendar year 2021 or other tax year beginning _____, 2021, and ending _____, 20_____		2021
▶ Go to www.irs.gov/Form990T for instructions and the latest information. ▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).		Open to Public Inspection for 501(c)(3) Organizations Only
Department of the Treasury Internal Revenue Service		
A <input type="checkbox"/> Check box if address changed.	Name of organization (<input type="checkbox"/> Check box if name changed and see instructions.)	D Employer identification number
B Exempt under section <input type="checkbox"/> 501() () <input type="checkbox"/> 408(e) <input type="checkbox"/> 220(e) <input type="checkbox"/> 408A <input type="checkbox"/> 530(a) <input type="checkbox"/> 529(a) <input type="checkbox"/> 529A	Print or Type Number, street, and room or suite no. If a P.O. box, see instructions. City or town, state or province, country, and ZIP or foreign postal code	E Group exemption number (see instructions)
C Book value of all assets at end of year _____ ▶		F <input type="checkbox"/> Check box if an amended return.
G Check organization type ▶ <input type="checkbox"/> 501(c) corporation <input type="checkbox"/> 501(c) trust <input type="checkbox"/> 401(a) trust <input type="checkbox"/> Other trust		
H Check if filing only to ▶ <input type="checkbox"/> Claim credit from Form 8941 <input type="checkbox"/> Claim a refund shown on Form 2439		
I Check if a 501(c)(3) organization filing a consolidated return with a 501(c)(2) titleholding corporation ▶ <input type="checkbox"/>		
J Enter the number of attached Schedules A (Form 990-T) ▶		
K During the tax year, was the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? ▶ <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," enter the name and identifying number of the parent corporation ▶		
L The books are in care of ▶		Telephone number ▶
Part I Total Unrelated Business Taxable Income		
1 Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions)	1	
2 Reserved	2	
3 Add lines 1 and 2	3	
4 Charitable contributions (see instructions for limitation rules)	4	
5 Total unrelated business taxable income before net operating losses. Subtract line 4 from line 3	5	
6 Deduction for net operating loss. See instructions	6	
7 Total of unrelated business taxable income before specific deduction and section 199A deduction. Subtract line 6 from line 5	7	
8 Specific deduction (generally \$1,000, but see instructions for exceptions)	8	
9 Trusts. Section 199A deduction. See instructions	9	
10 Total deductions. Add lines 8 and 9	10	
11 Unrelated business taxable income. Subtract line 10 from line 7. If line 10 is greater than line 7, enter zero	11	
Part II Tax Computation		
1 Organizations taxable as corporations. Multiply Part I, line 11 by 21% (0.21) ▶	1	
2 Trusts taxable at trust rates. See instructions for tax computation. Income tax on the amount on Part I, line 11 from: <input type="checkbox"/> Tax rate schedule or <input type="checkbox"/> Schedule D (Form 1041) ▶	2	
3 Proxy tax. See instructions ▶	3	
4 Other tax amounts. See instructions	4	
5 Alternative minimum tax (trusts only)	5	
6 Tax on noncompliant facility income. See instructions	6	
7 Total. Add lines 3 through 6 to line 1 or 2, whichever applies	7	
For Paperwork Reduction Act Notice, see instructions.		
Cat. No. 11291J		Form 990-T (2021)

What is UBTI (Unrelated Business Taxable Income)

- + UBTI is a 3-prong test:
 - + Trade or business
 - + Purpose is to produce income by selling goods or services
 - + Compete with for-profit businesses (which is one of the reasons it was enacted)
 - + Regularly conducted
 - + Not substantially related to tax-exempt purpose (one organization's UBTI will not necessarily be UBTI to another organization)

Examples of Exclusions

- + Interest and Dividends
- + Royalties
- + Real Property Rental Income
- + Gains and losses from the disposition of property
- + (There are exceptions, exclusions and exceptions to the exclusions!)

Examples of Exceptions

- + Use of volunteer labor (ex. Fish fry)
- + Sales of donated Merchandise (ex. Goodwill)
- + Conducted for Member's convenience (ex. Onsite food)
- + Distribution of low-cost articles incidental to soliciting donations (ex. Address labels)
 - + Item not requested
 - + Recipient did not consent
 - + Accompanied by a donation request and a statement that the recipient can keep the article either way



Sponsorship Payments- Qualified or Unqualified?

- + Some organization believe payments are qualified without actually checking
- + Fact patterns that may cause UBTI
 - + Exclusive provider arrangements
 - + Payments contingent on level of attendance
 - + Free advertising
 - + Providing a link to the sponsor's website where the product or service is advertised
 - + Providing a substantial benefit for the contribution



Sponsorship Payments

- + Substantial benefit is considered more than 2% of the sponsorship payment (there is a 2% safe harbor).
- + When benefits exceed 2% of the qualified sponsorship payment all of the benefits need to be run through the three UBTI tests.



Sponsorship payment – Example A

- + Generous Corporation makes a sponsorship payment to the Greatest Zoo in the amount of \$10,000. Generous Corporation received the following benefits
 - + Example A
 - + \$50 (Individual Membership)
 - + \$60 (Food at the zoo)
 - + \$40 advertising on the Greatest Zoo's website
 - + The total benefits equal \$150 which is less than 2% of the payment so this meets the safe harbor and is not UBTI

Sponsorship payment – Example B

- + Generous Corporation makes a sponsorship payment to the Greatest Zoo in the amount of \$10,000. Generous Corporation received the following benefits
 - + Example A
 - + \$100 (Family Membership) (not taxed, related)
 - + \$120 (Food at the zoo) (not taxed, member's convenience exception)
 - + \$80 advertising on the Greatest Zoo's website (taxable)
 - + The total benefits equal \$300 which is more than the safe harbor so you must test for UBTI

990T Silos

- + TCJA required separate computations of UBTI for each trade or business
- + Losses are limited to zero and do not net with other unrelated trades or businesses
- + NOLs carry forward indefinitely
- + NOLs can offset up to 80% of taxable income



990T Silos

- + Partnerships
 - + Certain partnership income can be aggregated - see Regulations section 1.512(a)-6
 - + Partnerships - look through to determine if a partnership activity is UBTI
 - + Organization must inform the partnership that they are tax-exempt
- + S Corporation income is always UBTI



990T Silos

- + If you need to change an NAICS code that was used in a prior year you should attach a statement explaining the change
- + The statement should include (1) the 2-digit NAICS code or business activity code used in the previous tax year, (2) the 2-digit NAICS code or business activity code used this year and, if filing more than one Schedule A, the sequence numbers from Item D of the applicable Schedule A, and (3) a narrative explanation describing the reason for the change.
- + This can be entered on the Supplemental Information page



Schedule A

- + Reporting UBTI on Schedule A – According to the instructions you can report UBTI calculated under section 512(a)(6), which is the silos we just discussed, or UBTI calculated in the aggregate. If a net loss then enter zero.
- + Often missed lines on Schedule A which reduce your public support percentage.
 - + Part II line 5
 - + Part III lines 7a/7b



Amounts contributed that exceed 2% of the total support for the 5 year period other than from a government or publicly supported org



+Part II

Schedule A (Form 990) 2021

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Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)

(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2017	(b) 2018	(c) 2019	(d) 2020	(e) 2021	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")						
2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
3 The value of services or facilities furnished by a governmental unit to the organization without charge						
4 Total. Add lines 1 through 3						
5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f)						
6 Public support. Subtract line 5 from line 4						

Amounts from Line 1 (contributions) from disqualified persons (typically board members and substantial contributors)

or amounts from line 2 or 3 (program revenue) that exceed 1% of total support for the year (track contributions since inception)

Part III Support Schedule for Organizations Described in Section 509(a)(2)

(Complete only if you checked the box on line 10 of Part I or if the organization failed to qualify under Part II. If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ►	(a) 2017	(b) 2018	(c) 2019	(d) 2020	(e) 2021	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")						
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose						
3 Gross receipts from activities that are not an unrelated trade or business under section 513						
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
5 The value of services or facilities furnished by a governmental unit to the organization without charge						
6 Total. Add lines 1 through 5						
7a Amounts included on lines 1, 2, and 3 received from disqualified persons						
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year						
c Add lines 7a and 7b						
8 Public support. (Subtract line 7c from line 6.)						

Electronic Filing

- + If you are filing a 2021 Form 990, you are required to file electronically.
- + This includes the 990T, 990PF, 990N, as well as 1023 and 1024.
- + Payments should be made through EFTPS
- + Failure to file penalty is now \$105 per day (or \$20 per day for smaller organizations).
- + You must file electronically or your return is deemed not to have been filed and the penalties will continue to accrue.
- + The penalty can apply if the return is incomplete as well.



Electronic Filing...continued

- + Penalties can also be levied against the responsible person.
 - + If the organization doesn't file a complete return or doesn't furnish correct information, the IRS will send the organization a letter that includes a fixed time to fulfill these requirements. After that the person will be charged a penalty of \$10 a day, max of \$5,000.
- + If you have reasonable cause you can possibly get the penalty abated. Ask for abatement prior to paying any penalties.



Reporting Compensation

- + Be sure to report compensation in order from highest to lowest. If compensation is equal then follow the ordering rules- individual trustees or directors, institutional trustees, officers, key employees, highest compensated employees, and former such persons.
- + Due to concerns that organizations were avoiding reporting excess compensation by channeling through management companies, the IRS added this language to 990 instructions. "If you pay any other person, such as a management services company, for the services provided by any of your officers, directors, trustees or key employees [or foundation managers for private foundations], report the compensation and other items as if you had paid them directly."

Announcement 2021-18 regarding compensation

- + This announcement revokes Announcement 2001-33- which offered penalty relief for not following the 990 instructions and reporting compensation paid to the management company instead of to the person who provided the services on behalf of that management company.
- + Be sure to report the compensation separately, and also report the details of the arrangement with the management company on Schedule O including the names of the compensated individuals.

IRS TE/GE Workplan FY 2022

- + Strengthen compliance
 - + Collaborate across IRS on existing and emerging issues such as syndicated conservation easements, abusive charitable remainder trusts, ESOPs, COVID-related employer credits
 - + Support examinations of high-income taxpayers with TE/GE issues, especially for private foundations and retirement plans
 - + Partner with IRS Criminal Investigation and Research Applied Analytics & Statistics to identify cases with potentially significant non-compliance

IRS TE/GE Workplan FY 2022

- + Maintain a Taxpayer-Focused Organization
 - + Collaborate with the Taxpayer Experience office to expand outreach
 - + Create positive experience for employees and taxpayers
 - + Help taxpayers understand and meet their responsibilities.
- + Develop our Workforce
 - + Hire and retain employees
 - + Training, coaching and mentoring



Crowdfunding could be taxable

- + Crowdfunding organizers and recipients should keep detailed records.
- + American Rescue Plan clarifies that a 1099-K does not need to be issued unless the contributors receive goods or services for their contributions.
- + Prior to 2022 Form 1099-K was required if payment distributed to a person exceeded \$20K and resulted from 200+ transactions.
- + For calendar years beginning after December 31, 2021, a 1099-K is now required if payments exceed \$600 and any number of trans.
- + A 1099-K does not automatically make the proceeds taxable, but if they are not reported the IRS could request additional information.
- + If contributions are truly a gift (detached and disinterested generosity) then amounts are not taxable.
- + Crowdfunding contributions from an employer to an employee would be taxable compensation.

2021-56 Proposed Rules for LLCs getting determination letters

- + LLCs used to piggyback off of the tax-exempt status of its sole member. The LLC did not receive its own IRS determination letter.
- + The proposed rules would make it so an LLC had to file a 1023 application to receive tax-exempt status.
- + The proposed rules state that all members of the LLC should be a 501(c)(3) or government unit.
- + The IRS is requesting comments on these proposed rules.



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IRS Circular 230 Disclosure.

+ As a result of perceived abuses, the Treasury has recently promulgated Regulations for practice before the IRS. These Circular 230 regulations require all accountants to provide extensive disclosure when providing certain written tax communications to clients. In order to comply with our obligations under these Regulations, we would like to inform you that any advice given in this presentation, including any attachments, cannot be used to avoid penalties which the IRS might impose, because we have not included all of the information required by Circular 230, nor have we performed services that rise to this level of assurance.