



The  
Benevolent and Protective  
Order of Elks *of the United States of America*

# CHEA Accounting/Bookkeeping

UBI

Unrelated Business Income Tax

RIVERSIDE, CALIFORNIA

September 17, 2016

- Even though an organization is recognized as tax exempt, Net Unrelated Business Income (UBI) is taxable.
- To help identify all “UBI” accounts on the lodges bookkeeping we suggest you add “UBI” on that account
  - 30506 Lodge Rent Non-Members UBI
  - 40902 Sales to Non-Members UBI
- This will help your accountant better identify all UBI to prepare your tax returns.

The following three conditions must be met before an activity may be classified as an unrelated trade or business regularly carried on.

- First, the activity must be considered a trade or business;
- Second, the activity must be regularly carried on; and
- Third, the activity must not be substantially related to the organization's exempt purpose.
  - The fact that the activity generates income for the organization to spend on its charitable programs does not make the activity related to the organization's exempt

- When Annual Reportable Gross equals or exceeds \$1,000, an organization must file Form 990-T, Exempt Organization Business Income Tax Return.
- If an organization filing Form 990-T has estimated tax due of \$500 or more then you must make installment payments quarterly.
- See IRS Pub 990T or your accountant to help you with these rules.

# Protect your lodge

- Federal Tax reporting is the most vital link in identifying issues that may jeopardize our Non-Profit status. “Unrelated Business Income” is the hot button item for IRS attacks on our tax status. IRS Pub 598 is the document that protects all non-profit organizations even if we operate a “Trade or Business”. At the same time this publication can be our worst enemy if we fail to adhere to many of the provisions. All Lodges and Management Bodies should have this document available when considering the implications of sales to Members, Guests, and other parties.
  - This Publication can be obtained on the internet  
[www.irs.gov](http://www.irs.gov)

# General Rules:

- The IRS defines “the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization to which such income is paid”.

# Sales of Goods or Services

- To members are automatically tax-exempt and are not UBI
- To non-members will be presumed by IRS to be taxable UBI, although there are several exceptions see IRS Pub. 3079 to see if you meet those exceptions to be tax-exempt.

# IRS audit procedures :

- **Rule of eights:** where a group of eight or fewer individuals, at least one of whom is a member, uses club facilities, it is assumed for audit purposes that the nonmembers are guests of the member, *if* payment for the use is received by the Lodge directly from the member.



## IRS audit procedures : continued

- Where 75% or more of a group using the club facilities at an occasion are members, it is also assumed for audit purposes that the nonmembers in the group are guests of members, *if* payment for the use is received by the club director from one or more of the members or the member's employer.

# IRS audit procedures : continued

- In all other situations a host-guest relationship is not assumed but must be proven.
- Where payment is made to the club directly by a member, the club is under no duty to investigate possible reimbursement.

- The IRS point of view is that the nature of the sales is determined mainly by who makes payment for the goods or services.
  - If a member pays the bill, it will ordinarily be considered to be income from members and therefore is not UBI.

- IRS does not prohibit non-members from coming to the Lodge as guests of members. IRS defines a “guest” as “an Individual invited to participate in an activity, accompanied by a member, and for whom all expenses are paid by the member”.
- Therefore, it is required that payment for goods or services for guests MUST come from the member and NOT from the non-member or guest, or else the income will be UBI.

# Records:

- The club must maintain adequate records to substantiate the amount of people in the group and the percentage that are members and that payment was received by the club directly from members.

# Your records must contain:

- The date
- Total number in party
- Number of nonmembers in the party
- The total charges
- The charges attributable to nonmembers
- The charges paid by nonmembers. Where a member pays all or part of the charges a statement signed by the member indicating whether he has been or will be reimbursed for the nonmember use and, if so, the amount of the reimbursement.

- **Elks' statutes, Section 14.130, concerning the nature of Membership in the Order.**
- Subject to state and local laws, the use of the Home or Club facilities shall be limited to Members in good standing in the Order, their spouses and guests of Members, and those receiving Identification Cards under Section 14.140, as provided in the House Rules, so as to preserve the privacy of the use of such facilities to the Members of the Order.
- Local Lodges shall take appropriate action to conform to the provisions of this Section.

# Typical Forms of UBI

- Food and beverage paid for by nonmembers.
- Rentals of rooms by nonmembers
- RV Parks- if open to nonmembers
- Visiting Elks- if not signed in
- Revenue from advertising in bulletins
- Gaming

See IRS Pub 598 for more information



# What is NOT “UBI”

## Unrelated Business Income

- Sales of goods and services to Members and their Spouses
- Sales of goods and services to bona fide Guest if PAID for by the MEMBER
- A business where substantially all work is performed by member volunteers

# Rents:

Rents from real property and incidental rents from personal property leased with real property are generally excluded from UBI, except if the property is debt-financed.

Consult with an advisor concerning the taxability of this type of income is recommended.

- If you can comply with 14.130, then you look at IRS requirements. Is this part of a regular “trade or business” carried on by the Lodge? If so, then it is all Unrelated Business Income (UBI).
- **Sale of food or beverages to non-members** results in the whole transaction being UBI
- If you are not sure if a transaction is UBI contact your accountant or tax preparer. You can also get in touch with your Business Practice Chairman or Accountant Consultant Chairman.

- **Can we advertise that we are open for events (room rental) in the local newspaper, chamber of commerce, etc.?**
  - Advertising to the public is strong evidence that you are conducting a “trade or business”.
  - Advertising can also make it all UBI and may make you a “place of public accommodation”.

# Can a lodge serve non-members at a non-rental event?

- That is, can a non-member (or many non-members such as musician groupies) enter an Elks establishment without a member as their escort and dance and/or consume beverages within that establishment
- Again, the key problem is violation of Section 14.130, third paragraph. We are an organization that is fraternal and for the benefit of members and their bona fide guests.

- **3. Can an Elks lodge lease out part (or most) of their facility (e.g., a restaurant) to some other person or organization that serves both members and non-members alike?**
- **If so, what is the minimum space the lodge must have for the lodge to remain in compliance with the IRS (providing approval is granted from Grand Lodge).**

- The part leased out must not be part of the facility that is under the control, management and supervision of the club governing body that is formed pursuant to Section 16.040 because that area is for the exclusive use of members and guests pursuant to Section 14.130.
- A Lodge may, with appropriate approval of its membership, designate a portion of its facility that is closed off from the club as an area designated for rental purposes. It may not provide services other than utilities and common area janitorial.

- Non members may not come into the Lodge unless they are under contract to provide services to the Lodge or are bona fide guests of a member. If a lease (including options to renew) is for a term of more than five years then the Board of Grand Trustees permit under 16.050 must be obtained.



# Volunteer Workforce:

- Any trade or business activity in which “substantially all” test is met when 85% of the work is performed for the organization without compensation is not an unrelated trade or business. (Publication 598).
- The IRS says the percentage is determined by dividing the number of volunteers for the activity by the total number of workers for the activity, both paid and unpaid.

- The volunteer workers can apply to any Lodge fund-raising activity.
- For example: this could include instant bingo and pull tabs, raffles, etc., and also could include catering of food and beverage service, fund-raising events open to the public, etc. If those activities are conducted substantially all by volunteer workers, it will not be UBI, even if non-members are served.

# **Dividends, interest, annuities and other investment income:**

- All dividends, interest, annuities, payments with respect to securities loans, and other income from an exempt organization's ordinary and routine investments that the IRS determines are substantially similar to these types of income are excluded in computing unrelated business taxable income.  
(Publication 598)

# What about bingo (gaming)?

- Section 501(c)(7), 501(c)(8) and 501(c)(10) – Social Clubs and Fraternal Organizations. The exempt function of organizations classified under these sections includes providing social and recreational activities for members and their bona fide guests. Thus, social clubs and fraternal organizations may engage in gaming involving only members without jeopardizing their exempt status. Gaming open to the general public does not further the exempt purposes of social clubs or fraternal organizations.

Certain bingo games are not included in the term “unrelated trade or business.” In order to qualify for this statutory bingo exclusion, a game must:

- Meet the definition of bingo under the Code and Regulations;
- Not violate state or local law where it is played; and
- Be played in a jurisdiction where bingo games are not regularly carried on by for-profit organizations.

- Bingo is defined as a game of chance played with cards that are generally printed with five rows of five squares each. Participants place markers over randomly called numbers on the cards in an attempt to form a pre-selected pattern such as a horizontal, vertical, or diagonal line, or all four corners. The first participant to form the pre-selected pattern wins the game. *In addition, for a game to meet the legal definition of bingo, wagers must be placed, winners must be determined, and prizes or other property must be distributed in the presence of all persons placing wagers in that game.*

- A wagering game that does not meet the definition of bingo under the Code and Regulations does not qualify for the exclusion regardless of its name.
- **Satellite and Internet bingo do not qualify** because these *games are conducted in many different places simultaneously, and those placing wagers are not all present when the wagers are placed, the winners are determined, and the prizes are distributed.*

- **“Instant Bingo,” “Mini Bingos,” and similar pull-tab or scratch-off games** do not qualify. In these games, a player places a wager by purchasing a card containing pre-printed numbers or a pattern covered by tabs or film. By uncovering the numbers or pattern, the player discovers whether the card is a winner.
- Unlike bingo meeting the exclusion, *the winners of these games are pre-determined.*



**The bingo exclusion applies only if the game is legal under the laws of the jurisdiction where it is conducted.**

- The fact that a jurisdiction's law prohibiting bingo is rarely enforced or is widely disregarded does not make the conduct of bingo legal for this purpose.
- The bingo exclusion applies only if for-profit organizations cannot regularly carry on bingo games in any part of the same jurisdiction.
- Jurisdiction is normally the entire state; however, in certain situations, local jurisdiction will control (<http://www.irs.gov/pub/irs-pdf/p3079.pdf>)

- Section 501(c)(7), 501(c)(8) and 501(c)(10) organizations whose primary activity is public gaming jeopardize their exempt status and the gaming income may also be subject to the tax on unrelated business income.

<http://www.irs.gov/pub/irs-pdf/p3079.pdf>

# What must we be doing to prepare for an IRS audit now, what should we examine from the past, what should we be doing in the future?

- Keep accurate and complete records. If an agent takes a certain position against the Lodge then you must be able to rebut that position with records.
- The Lodge should never deal with the IRS Auditor directly.
- *When notice of an IRS examination is received, the Lodge should promptly notify its tax preparer, the PGER Area 7 Sponsor, Grand Secretary and the GL Auditing & Accounting Area 7 Committee Member.*
- *See Charter 10 in the Audit and Accounting Manual*

- For more information on Unrelated Business income,
- see <http://www.irs.gov/pub/irs-pdf/p598.pdf>
- This presentation contains general information only and is not a substitute for such professional advice or services about your specific situation. Before making any decision or taking any action that may affect your Lodge and your taxes, you should consult your tax advisor/preparer.

CHEA Accounting Consultants Committee  
contacts are as follows:

**North**

Debra Mello

Chairman

1327 Elwood St

Woodland, CA 95776  
92646

530-219-0030

[debraLmello@yahoo.com](mailto:debraLmello@yahoo.com)

**South**

Rick Bruce

Vice Chairman

9532 Zetland Drive

Huntington Beach, CA

714-962-8443

[rkave@socal.rr.com](mailto:rkave@socal.rr.com)