

INVESTMENT & TAX SERVICES

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Corporate Sponsorships

Qualified sponsorship payments received by tax-exempt organizations and state colleges and universities are exempt from the UBIT. Such payments are properly reported by the recipients as charitable contributions on their IRS Form 990, regardless of whether the corporate sponsor itself claims a charitable contribution deduction or a business expense for the payment.

Qualified Sponsorship Payment

A qualified sponsorship payment is any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgment of the name or logo (or product lines) of such person's trade or business in connection with the activities of the organization that receives such payment.

The regulations further clarify that in determining whether a payment is a qualified sponsorship payment, it is irrelevant whether the sponsored activity is related or unrelated to the recipient organization's exempt purpose. It is also irrelevant whether the sponsored activity is temporary or permanent. For purposes of this section, payment means the payment of money, transfer of property, or performance of services.

Exclusions

There is a distinction between performances and events that are conducted regardless of use, attendance, or participation, and those that calculate payment based on, for example, the attendance level of attendance or participation or broadcast ratings. Any sponsorship payment dependent upon the level, amount, or other factors indicating the degree of public exposure to one or more events is not a qualified sponsorship payment. If, however, payment of the sponsorship is contingent upon holding the event (regardless of how many people attend) or broadcasting (regardless of the number of listeners), this performance contingency does not disqualify the payment from the definition of a qualified sponsorship payment.

Also excluded from the definition of a qualified sponsorship payment are any amounts received in return for the display of the company's name or logo in regularly scheduled publications and at trade shows. Whether these payments will be subject to the UBIT or will qualify for another exclusion depends on the nature of the arrangements.

Substantial Return Benefit

In determining whether a payment falls within the definition of a qualified sponsorship payment, the crux of the issue is whether or not the sponsor receives a “substantial return benefit” for its payment.

The regulations define *substantial return benefit* by what it is not: it is any benefit other than a “use or acknowledgment” or a “disregarded benefit.” The regulations define a *benefit* to include advertising and exclusive provider arrangements, as defined in the regulations;

- goods, facilities, services, or other privileges (except certain “disregarded benefits” discussed below); and
- exclusive or nonexclusive rights to use an intangible asset, such as a trademark, patent or logo.

Other specific examples of substantial return benefits may include complimentary tickets, pro-am playing spots, receptions for donors, and a licensing arrangement for use of the exempt organization’s name and logo. It is important to note that a payment under an arrangement that constitutes a substantial return benefit nevertheless may be exempt from the UBIT on some basis other than as a qualified sponsorship payment. For example, a payment for a right to use an intangible asset may be exempt from the UBIT as a royalty.

Use or Acknowledgment

If an exempt organization merely lists a sponsor’s name or displays its logo, this constitutes a use or acknowledgment that is not treated as a substantial return benefit within the section 513(i) safe harbor.

Use or acknowledgment also may include:

- exclusive sponsorship arrangements;
- logos and slogans that do not contain qualitative or comparative descriptions of the sponsor’s products, services, facilities, or company (logos or slogans that are an established part of a sponsor’s identity are not considered to contain qualitative or comparative descriptions);
- a list of the sponsor’s locations, telephone numbers, or Internet address;
- value-neutral descriptions, including displays or visual depictions, of the sponsor’s product line or services; and
- the sponsor’s brand or trade names and product or service listings.
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Note also that merely displaying or distributing a sponsor’s product at an event is considered to be a use or acknowledgment, not advertising.

Advertising

Advertising is not a *per se* substantial return benefit that would subject the sponsor payment to the UBIT. Like all other benefits, the aggregate fair market value must exceed the two percent threshold in order to constitute a substantial return benefit. For example, where a sponsor receives both advertising and a license to use the organization’s logo, but the combined value of these two benefits does not exceed two percent of the entire payment, the entire amount, “even the portion attributable to the advertising,” may be treated as a qualified sponsorship payment.

Advertising includes “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 products or services.” For example, in return for receiving a sponsorship payment, an exempt organization promises to use the sponsor’s name or logo to acknowledge the sponsor’s support for the organization’s fund-raising event. The organization publishes the sponsor’s name, logo, and a list of products in the fund-raising event program. This degree of recognition is still an acknowledgment, and the payment is protected from UBIT.

However, if, instead, the fund-raising program included a favorable description of the sponsor’s products that would “induce” purchase and price information, the sponsor has received advertising, and the sponsor’s payment would not be a qualified sponsorship payment. Mere distribution or display of a sponsor’s products by the sponsor or the exempt organization to the general public at a sponsored event, whether for free or for remuneration, is considered a use or acknowledgment of the sponsor’s product lines and not advertising. For example, if a sponsor wanted to place a product sample at each person’s plate, this action would not disqualify the sponsorship payment.

Exclusive Arrangements

Exclusive arrangements encompass two types of situations:

- Exclusive sponsorship and
- Exclusive provider of goods and services.

The regulations establish the general rule that an exclusive sponsor of an activity or exclusive representative of a trade, business, or industry does not result in a substantial benefit unless the exclusive sponsorship limits the sale, distribution, availability, or use of products, services, or facilities that compete with the sponsor’s products. If a tax-exempt organization agrees to exclude competition, the sponsor becomes an exclusive provider, and the income is not exempt from UBIT.

Corporate Sponsorship Examples

Example 1

Sponsor’s name listed in promotional materials, T-shirts and in event name.

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

Sponsor's name in promotional material and public service announcements; hosts dinner for corporation's executives.

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

Sponsor's name and logo in promotional material and event title; products displayed; complimentary passes provided.

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

Exclusive sponsorship for bowl game; includes sponsor name in bowl title, display of name and logo on player uniforms and throughout stadium, on stadium cups etc. Broadcast required.

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

Sponsor provides uniforms and operational expenses. Exempt organization (EO) imprints name and logo on uniforms and provides sponsor employees who come to game with flags with EO name.

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 cost \$2 each, and the total cost of the flags is less than 2% of the value of the uniforms and operating expenses paid. The flags are not a substantial return benefit because they have a value that is less than 2% of the total payment amount. Q's use of the name and logo of the pizza chain in connection with the tournament constitutes acknowledgment of the sponsorship.