

	<b>Unrelated Business Income Tax (UBIT) Policy</b>	<b>Responsible Administrative Unit:</b> Finance & Administration
	<b>Issued: December 2009</b>  <b>Revised:</b>	<b>Policy Contact:</b> Controller <a href="mailto:Jinous.Lari@is.mines.edu">Jinous.Lari@is.mines.edu</a>

## 1.0 BACKGROUND AND PURPOSE

The purpose of this policy is to ensure that the Colorado School of Mines ("Mines") complies with all income tax regulations of the United States and State of Colorado. As a public institution of higher education in of the State of Colorado, Mines is considered "tax-exempt" from federal and state income taxes with regard to its non-profit primary purpose. The primary purpose of Mines is its educational mission: instruction; research; and public service in energy, mineral engineering, and mineral and materials science. Most of the activities conducted by Mines are related to its educational mission. However, it also conducts some business activities that are tangential to its core mission. Revenue generating business activities at Mines that are not substantially related to its tax-exempt educational mission subject it to income taxation by the state and federal government.

Recent IRS audits of institutions of higher education have challenged long-standing traditions of business activities previously categorized as related to the primary mission and exempt from unrelated business income taxation (UBIT). The IRS guidelines in this regard are unclear. Nonetheless, Mines will implement broad guidelines and be cognizant of its business activities in relation to this dynamic tax issue to ensure that those activities conform and that proper reporting to taxing agencies is taking place.

## 2.0 POLICY

To ensure adherence to all federal and state regulations for income taxation, the Colorado School of Mines will evaluate all business activities and determine applicability to UBIT regulations. As an exempt higher education institution, Mines will report annually aggregated gross income in excess of \$1,000 from unrelated business income (UBI).

## 3.0 DEFINITIONS:

**3.1 Program manager:** The individual designated as the responsible person for a business activity, program, or project.

**3.2 "Regularly carried on":** Refers to the frequency and continuity of the business activity. Generally, "regularly carried on" means conducting the activity in a manner comparable to commercial activities; however, events that occur annually or seasonally may also constitute a trade or business regularly carried on.

**3.3 "Substantially related to":** Generally refers to whether the activity contributes importantly to the accomplishment of Mines' educational mission as it relates to its exemption from paying income tax. The activity of an exempt organization is related to its exempt purpose if the conduct of the business activity has "causal relationship

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to the achievement of exempt purposes" and the relationship is a "substantial relationship." The intent is to exclude from taxation only income from those activities that further the exempt purposes of the organization. The need to obtain funds for other activities is not sufficient to make the income earning activity related to exempt purposes.

**3.4 Unrelated business income (UBI):** The net income (revenue less expense) from any activity that is not substantially related to the educational mission of CSM: instruction; research; and public service in energy, mineral engineering, and mineral and materials science, which constitutes the basis for Mines' tax-exempt status.

**3.5 Unrelated business income tax (UBIT):** The tax assessed by the Internal Revenue Service for aggregated unrelated business income.

**3.6 Unrelated trade or business:** Any trade or business, the conduct of which is not substantially related to Mines' tax-exempt educational mission.

#### **4.0 PROCEDURES FOR DETERMINING WHETHER BUSINESS ACTIVITY IS SUBJECT TO UBIT**

**4.1 Complete UBIT Questionnaire:** A questionnaire for UBIT determinations has been developed to provide assistance and documentation of campus activities. The questionnaire can be found in Appendix A.

**4.2 Be aware of exceptions:** There are certain activities that are exceptions and are considered UBI. Those exceptions include, but are not limited to, income from rent, and interest or dividends derived from property subject to acquisition indebtedness. Neither of these exceptions are excluded from UBIT. For example, rental income derived from a mortgaged building would be subject to UBIT unless the activity from which the rental income is derived is related to the entity's exempt purposes.

**4.3 Understand incomes not subject to UBIT:** The Internal Revenue Code contains a list of certain types of incomes that are not subject to UBIT. Included, but not limited to, are dividends and interest payments, royalties, rental income from real property, capital gain and certain income received by a college, university or hospital from research activities.

#### **5.0 RESPONSIBILITY**

**5.1 Department responsibilities:**

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Program managers of existing and proposed activities shall review their particular operations for possible exposure to UBIT using this policy and the attached activity questionnaire. The questionnaire should be filled out no less than annually. Questionnaires are to be submitted to The Controller's Office, Accounting Manager.

Operations should not be terminated simply to avoid paying taxes. These programs must have proper pricing structures to allow for the cost of operations and the additional burden of the tax. Individual departments are responsible for both taxes, and interest and penalties incurred for failure to identify and report taxable activity.

**5.2 Controller's office responsibilities:**

The Controller's office will analyze campus revenue generating business activities and determine UBIT reporting status by business activity; aggregate income and expenses to determine taxable net income; and annually file IRS Form 990T.

**6.0 APPENDIX A: UBIT QUESTIONNAIRE (see next page)**

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**Appendix A:**  
**Activity Questionnaire for Unrelated Business Taxable Income Determination**

**Description of the Activity** *(please provide a detailed description)*

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**Is the Activity a "Trade or Business"?**

1. Does the activity generate gross income from the sale of goods or services?  Yes  No  
*(If NO, skip to question 2)*

a. Sales are made or services are provided ...  
*(select one)*

- (1)  Only to CSM students, faculty, or staff.
- (2)  To CSM students, faculty and staff and the general public or private industry.
- (3)  Only to the general public or private industry.
- (4)  Other (describe) \_\_\_\_\_

b. Expressed as a percentage of total sales, what is the estimated volume of sales to:  
*(total should equal 100%)*

- (1) \_\_\_% CSM students, faculty, staff or patients
- (2) \_\_\_% The general public (or private practice patients)
- (3) \_\_\_% Private industry
- (4) \_\_\_% Government
- (5) \_\_\_% Other (describe) \_\_\_\_\_

c. Is the activity profitable?  Yes  No

2. The activity can be characterized as:  
*(select one)*

- a.  Traditionally performed by similar exempt organizations.
- b.  Conducted in a competitive or commercial manner.
- c.  Other (describe) \_\_\_\_\_

3. Is there a contract to provide goods or services?  Yes  No  
*(If YES, please provide a copy of the contract)*

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4. Is there any research-related activity associated with providing the goods or services?

- Yes     No

a. If yes, please explain \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Is the Activity “Regularly Carried On”?**

5. If the activity is also performed by for-profit companies, the activity is carried on by CSM...  
(select one)

- a.  With the same frequency as it is by for-profit companies.
- b.  With greater frequency than by for-profit companies.
- c.  With less frequency than by for-profit companies.

**Is The Activity “Substantially Unrelated” to CSM’s Exempt Purpose?**

CSM’s exempt purpose is equivalent to its mission: instruction, research, and public service in energy, mineral and materials science and mineral engineering., i.e.: Are students earning credit toward a degree by participating in the activity?

6. The activity ...  
(select one)

- a.  Has as its principal purpose to accomplish CSM’s exempt purpose.
- b.  Is related to the exempt purpose only because it generates income that can be used to further CSM’s exempt purpose.
- c.  Is equivalent to the same activity performed commercially by a for-profit company.

**Statutory Exemptions**

7. The activity ...  
(select all that apply)

- a.  Is carried out by unpaid volunteers.
- b.  Is carried on primarily for the convenience of students, faculty, staff or patients.
- c.  Consists of selling merchandise substantially all of which has been received as gifts or donations.

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**Rental of Real Property**

8. The activity generates income from the rental of land or buildings (real property)?  
 Yes  No

*(If the answer to question 8 is NO, skip to question 11)*

9. If the activity does generate income from the rental of real property *(check all that apply)*:

- a.  Personal property (equipment) is rented in conjunction with real property. Percentage of total rent attributable to the personal property \_\_\_\_%.
- b.  The rental of the property is related to CSM's exempt purpose.
- c.  The real property (land or buildings) is debt-financed.
- d.  The rents are determined based in whole or in part on the net income or profits derived from the property under lease.
- e.  Personal services (i.e., catering, or CSM employees setting up and operating equipment, parking, laundry services, etc.) are offered. If so, list personal services here:

**Royalties**

Royalties are payments associated with a valuable right, such as trademarks, trade names, and copyrights.

10. Does the activity generate income from royalties?  Yes  No

**Sponsorship vs. Advertising**

11. Does the activity generate income from advertising?  Yes  No  
*or ...*

Is the activity a sponsorship arrangement?  Yes  No  
*(For sponsorship activities, please provide a copy of the sponsorship contract.)*

**Certification of Responsible Person**

Name \_\_\_\_\_

Telephone \_\_\_\_\_ Office Location \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_