



perspective  
**GAINED**

# **UBI & FOREIGN FILINGS**

**Barb McGuan**  
**Joe Byrne**

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# 1 UNRELATED BUSINESS INCOME

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# 2 FOREIGN FILINGS

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FinCEN 114 (FBAR)  
Form 926  
Form 5471  
Form 8621  
Form 8865



# 3 EXAMPLES

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- Eliminate a source of unfair competition by placing the unrelated business activities of an EO on the same tax basis with competing for-profits.
- Form 990-T required if gross income > \$1,000 (gross receipts less cost of goods sold)
- Tax calculated using corporate rates (now 21%)
- NOLs – must file 990T and track separately
- May also trigger state taxation and related registrations



- An organization may be subject to tax if it is carrying on an activity that is:
  - Trade or business
  - Regularly carried on
  - Not Substantially Related to Exempt Purpose
- All three must be met before the activity is subject to tax.



The term "trade or business" includes any activity which is carried on for the production of income from the sale of goods or the performance of services.

Must implicitly attach a profit motive, but profitability is not a prerequisite.

A trade or business ordinarily is deemed regularly carried on if it manifests a frequency and continuity and is pursued in a commercial manner.

There is no set guide as to what constitutes frequent and continuous operation to make an activity regularly carried on. Determination is based on the facts and circumstances of each activity.

- An activity is considered “not substantially related” if it does not contribute importantly to accomplishing the exempt purpose of the EO
- Note: production of funds not considered related
- Depends in each case on the facts involved. The size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function they intend to serve.
- Program Related Investments (PRIs) generally do not create UBI. Discuss with your tax advisor.

There are three General Exclusions from UBI, the third of which only applies to 501(c)(3) organizations and governmental colleges and universities.

- All work performed by volunteers
- Selling donated merchandise
- Convenience of members, students, patients, officers, or employees



In addition, there are several specific exclusions including:

- Qualified convention or trade show activity
- Fairs & Expositions
- Hospital services
- Bingo games
- Qualified sponsorship payments
- Distribution of low cost articles
- Exchange or rental of member lists

- Exclude Dividends, Interest, Annuities and other Investment income
- Exclude Royalty Income, except for royalties received from a controlled corporation
- Exclude rental income
  - From real property
  - Mixed lease: >10% rental from personal property, then taxable
  - Rents based on net profits are taxable
- **If debt-financed property, then possibly taxable**

Require close scrutiny:





**FINCEN  
114  
(FBAR)**

- Foreign bank account (cash or mutual fund)
- Aggregate value exceeds \$10,000



**FORM  
926**

Transfer/invest >  
\$100,000 or more



**FORM  
5471**

10% or more ownership  
in foreign corporation



**FORM  
8621**

Passive Foreign  
Investment Company



**FORM  
8865**

Foreign Partnerships

**Part IV Foreign Forms**

- 1 Was the organization a U.S. transferor of property to a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation (see Instructions for Form 926)* . . . . .  Yes  No
  
- 2 Did the organization have an interest in a foreign trust during the tax year? *If "Yes," the organization may be required to separately file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and/or Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (see Instructions for Forms 3520 and 3520-A; don't file with Form 990)* . . . . .  Yes  No
  
- 3 Did the organization have an ownership interest in a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations (see Instructions for Form 5471)* . . . . .  Yes  No
  
- 4 Was the organization a direct or indirect shareholder of a passive foreign investment company or a qualified electing fund during the tax year? *If "Yes," the organization may be required to file Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (see Instructions for Form 8621)*. . . . .  Yes  No
  
- 5 Did the organization have an ownership interest in a foreign partnership during the tax year? *If "Yes," the organization may be required to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships (see Instructions for Form 8865)* . . . . .  Yes  No
  
- 6 Did the organization have any operations in or related to any boycotting countries during the tax year? *If "Yes," the organization may be required to separately file Form 5713, International Boycott Report (see Instructions for Form 5713; don't file with Form 990)* . . . . .  Yes  No

*In accordance with Internal Revenue Service rules, we hereby advise you that any tax advice contained in these materials or any attachment hereto is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Service.*