

Challenging UBIT: A Brief History

The UBIT Steering Committee, comprised of NASCUS, the Credit Union National Association (CUNA), CUNA Mutual Group and the American Association of Credit Union Leagues (AACUL) has addressed UBIT issues for many years.

The Committee disagrees with IRS' application of UBIT on state-chartered credit unions and has challenged IRS' interpretation of UBIT for years. After various administrative actions to resolve UBIT, litigation developments continue to resolve the UBIT issue.

In May 2009, an eight-person jury in the Eastern District Court of Wisconsin favored Community First Credit Union, Appleton, WI, ruling that taxes paid on income from the sale of credit life and credit disability insurance and guaranteed auto protection (GAP) are not subject to UBIT. Another litigation by Bellco CU (CO) on securities and investment products is still pending.

Please be aware of the importance of UBIT on the dual chartering system. This brochure is updated periodically due to the evolving nature of UBIT.



QUICK GUIDE TO UNRELATED BUSINESS INCOME TAX (UBIT)

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This guide is a product of the National
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UBIT: Frequently Asked Questions

What is UBIT?

UBIT is short for “Unrelated Business Income Tax.” The tax is based on net income derived from any “unrelated trade or business.” The trade or business in question must be one “regularly carried on” before UBIT applies.

Does UBIT apply to my credit union?

UBIT applies to state-chartered credit unions. Federally chartered credit unions are instrumentalities of the federal government and are exempt from federal income taxes. Consult with your tax experts, auditors and counsel to determine your credit union’s UBIT liability.

What IRS forms are required?

The Internal Revenue Service (IRS) Form 990 is required for all state-chartered credit unions. An IRS Form 990T must be filed if a state credit union has more than \$1,000 of gross income from an unrelated activity.

What has IRS said in the past about UBIT?

There is no national guidance from IRS on UBIT and IRS’ opinions have varied over the years. In the 1970s, IRS private letters to credit unions said income from credit insurance was not taxable. In 1995, a Technical Advice Memorandum (TAM) said income from credit insurance was not substantially related and is taxable.

What UBIT guidance exists, if any?

The IRS issued more than 25 TAMs in late 2006 and 2007 on UBIT from the audits of unidentified credit unions in Alabama, Connecticut and Colorado. A TAM was also released in August 2009.

*IRS asserted that the following SCU services are **not** subject to UBIT:*

- Check printing
- Collateral protection insurance
- Interchange income from debit and credit cards
- ATM fees from members

*Conversely, the IRS asserted that these services are **subject** to UBIT:*

- Accidental death and dismemberment (AD&D) insurance
- Group life, dental, health and cancer insurance
- Car buying service and sale of car warranties
- Guaranteed auto protection (GAP) insurance
- Credit life and disability insurance
- MEMBERS financial management services
- Fees from nonmember ATM usage
- Financial management services for other credit unions via a CUSO
- Financial services to nonmembers
- Interest income
- Income received from shared branching services to nonmembers

How did the IRS decide what services are subject to UBIT?

The IRS has a narrow view that as tax exempt financial institutions, any bank-like service or power granted by a regulator is not related to the credit union’s purpose to promote thrift and savings. NASCUS disagrees with the IRS and believes the agency is misguided about the purpose of a credit union. NASCUS believes that state law should dictate the purpose of a state-chartered credit union and not the IRS.

How is UBIT netted?

UBIT is netted by deducting expenses “directly connected” with engaging in an unrelated business activity from the gross income of such activity. With two or more unrelated activities the net unrelated business income of each activity is aggregated to produce a combined net total.

Income	Tax Rate
\$0 to \$50,000	15 percent
\$50,001 to \$75,000	25 percent
\$75,001 to \$100,000	34 percent
\$100,001 to \$335,000	39 percent
\$335,001 to \$10,000,000	34 percent
\$10,000,001 to \$15,000,000	35 percent
\$15,000,001 to \$18,333,333	38 percent
\$18,333,334 and up	35 percent

What are some common direct expenses?

Common direct expenses include salaries and benefits, payroll taxes, licenses and registrations, non-member ATM terminal fees and transaction fees.

Also, don't forget indirect expenses like occupancy, IT and advertising costs, postage, insurance, professional fees, ATM costs and others.

Where can I find more information and resources on UBIT ?

NASCUS encourages credit unions to consult with their tax experts, auditors and counsel on UBIT. Links to the IRS TAMs and recent memos, news and presentations are available on at www.nascus.org.