

CORPORATE SPONSORSHIP: FREQUENTLY ASKED QUESTIONS

This “plain English” guide to corporate sponsorship of charitable activities addresses some common questions and is intended to provide general guidance. The topic is complicated, and we would be happy to discuss your further questions at your convenience. Please note, however, that the advice contained in this memo was not intended to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. Under IRS rules, a taxpayer may rely on our advice to avoid penalties only if the advice is reflected in a more formal tax opinion that conforms to new IRS standards. Please contact us if you would like to discuss the preparation of a legal opinion that conforms to these rules.

What is “corporate sponsorship”?

Corporate sponsorship is an exception to the federal income tax, known as unrelated business income tax (“UBIT”), that charities must pay on their income-producing activities that are unrelated to their exempt purposes. It’s a narrow safe harbor of activities, defined by regulations, on which no tax will be due.

What are we allowed to do under the corporate sponsorship exception?

A charity can, without being taxed, accept any payment - which may be money or in-kind payment of property or services - as long as there is no arrangement or expectation that the sponsor will receive a “substantial return benefit”, as defined by IRS regulations. However, the exception doesn’t extend to income from convention and trade show activities or to advertising in periodicals.

What would be a “substantial return benefit” that would result in the income being taxed?

Any benefit back to the sponsor will be a substantial return benefit, except 1) the charity’s “use or acknowledgment” of the sponsor’s name, logo, or product lines; or 2) any goods or services that qualify as “disregarded benefits” because they have insubstantial value.

What acknowledgment can we give our sponsor without providing a substantial return benefit?

You can acknowledge the sponsor by publishing its name; product lines; logos and slogans, as long as they don't contain qualitative or comparative descriptions of its products, services, facility or company; locations; telephone numbers; Internet URLs; and value-neutral descriptions, including displays or visual depictions, of its product lines or services. You can also acknowledge the sponsor as your exclusive sponsor, or as your exclusive sponsor for a particular trade, business or industry.

What goods or services can we provide to our sponsor that qualify as "disregarded benefits"?

The regulations list four kinds of benefits, all subject to a maximum value that you can provide: 1) goods, facilities, services, or other privileges; 2) rights to use an intangible asset (for example, a logo or trademark); 3) advertising; and 4) exclusive provider rights.

The total value of these benefits provided to your sponsor or its designated recipients (not including acknowledgements discussed above) can't be more than 2% of your sponsor's payment to you for the corporate sponsorship. If it's higher than that, you may be taxed for UBIT on the entire value of the benefits. If there's any question about this total value, your organization will have the burden of proving it to the IRS.

What is "advertising," as compared to corporate sponsorship?

The regulations define advertising as any message or material, regardless of how it's published or disseminated, that promotes or markets the sponsor's trade or business or any of its services, facilities, or products. It includes any message that contains qualitative or comparative language, price information or indications of savings or value, an endorsement, or an inducement to buy, sell, or use any company, service, facility or product. A single message that contains both advertising and a corporate sponsorship acknowledgment will be treated as advertising. However, just displaying or distributing the sponsor's product at your event, without more, will not be considered advertising.

Can we have an agreement that includes both corporate sponsorship and advertising?

Yes, you can. The IRS will treat the advertising portion of the payment as a separate payment, but you will need to establish that your sponsor's payment exceeds the fair market value of the advertising. The amount deemed to be payment for corporate sponsorship will be limited to the amount in excess of the fair market value of the advertising.

Can we give our sponsor the right to be the exclusive provider of its kind - for instance, the only soda supplier - at our event?

If you do so in the agreement, income from this arrangement won't qualify as "corporate sponsorship" income. Unlike the right to be an exclusive *sponsor*, the right to be an exclusive *provider* is deemed to be a "substantial return benefit". However, that doesn't necessarily mean that that income will be subject to UBIT, as charities often don't hold events frequently enough

for the events to be considered “regularly carried on” as a trade or business. Also, the income will not be taxable under UBIT if outside circumstances, such as limited space or a competitive bid requirement that only the lowest bid be accepted, rather than the agreement, functionally require you to use only the sponsor.

Can we base income to be paid to us on, for instance, the number of responses our sponsor gets to our communications about the sponsor under our agreement?

Not if you want to keep your charity’s sponsorship income within the corporate sponsorship safe harbor. Income to your charity that is contingent on audience exposure levels does not fall within the corporate sponsorship exception from UBIT.

Can we give our sponsor special accommodations at our event, for example luxury boxes, alcoves or rooms for corporate events, or transportation services?

Unless the total fair market value of special accommodations, together with other benefits you provide to the sponsor or its designated recipient, is 2% or less of the sponsor’s payment to you, they would be return benefits that are not within the corporate sponsorship exception. However, unless your events are “regularly carried on”, you may not be subject to UBIT on the income related to their value. In that case, you should consult an accountant with expertise in nonprofit accounting for advice on reporting and acknowledging such payments.

Can our sponsor act as our agent in raising or accepting donations?

Yes, but your corporate sponsorship agreement must require the sponsor to comply with all federal, state and local laws and regulations, including providing disclosure information and acknowledgments to donors as required and meeting other charitable solicitation and fundraising requirements. Many of these requirements are governed by state law, which varies, and in some cases local laws will also apply. Finally, any Internet activity in this area may need to comply with the laws of multiple jurisdictions, both on a state basis and internationally.

What limitations should we put on volunteers and services provided by our sponsor?

In your sponsorship agreement, you need to maintain the right to control volunteers and services provided by others, because their activities may be attributed to you and affect your tax-exempt status or liability. You should also provide all volunteers with guidelines that clearly state what they cannot do, and require them to sign and date an acknowledgment (with their name on it!) that they received, understand, and agree to comply with the guidelines. Please consult us for more comprehensive information about working with and guidelines for volunteers.

If somebody other than our charity prepares promotional materials about our sponsor for our sponsorship agreement, what review rights should we require?

You need the right to review and approve the text of any communications that will be published in connection with your sponsorship, with enough advance time to fully consider the text. This includes but isn’t limited to press releases and press kit materials, brochures and website

statements, display materials such as banners and T-shirts to be worn at sponsored events, customer information materials, programs, and information scripts for volunteers. You should also review and approve any training materials for volunteers.

What else should we put in our corporate sponsorship agreement?

This depends on your risk tolerance. Many corporate sponsorship agreements are short and informal. However, we recommend including language that accomplishes the following goals:

- ❑ Limiting return benefits either to qualified corporate sponsorship benefits or to a list of specific benefits;
- ❑ Requiring the sponsor to comply with all legal requirements, including intellectual property laws, in order to limit your exposure to liability or tax exemption issues because of attribution;
- ❑ Indemnification for any loss arising from the acts of the sponsor or its employees or agents. This is important to ensure your charitable assets aren't put at risk by the sponsor's action;
- ❑ No disclosure of confidential information and trade secrets unless required by law or to perform your sponsorship agreement, and then only as necessary and with the requirement that recipients also maintain confidentiality;
- ❑ Conditions for termination; and
- ❑ Specifying certain terms that will survive termination of the sponsorship agreement, including requirements that the sponsor comply with law, nondisclosure of confidential information, no marketing or disclosure of donor information, and indemnification.

Our website has a hyperlink to our sponsor's URL. What special issues should we be aware of?

If your charity's website contains a hyperlink to another URL, content on the connecting web page may be attributed to you. The IRS has provided examples in the regulations that indicate that advertising on a sponsor's connecting webpage probably won't be attributed as long as your webpage does not contain an endorsement, promote the sponsor or otherwise advertise for the sponsor. However, because the IRS has not issued guidance on the effect of hyperlinks in areas other than corporate sponsorships, your hyperlink can still result in attribution having other effects under the tax laws. For example, if the sponsor's connecting page contains legislative lobbying, the IRS may attribute this content to you, which could result in your accruing lobbying expenditures. If there's any chance that your sponsor may post candidate-election related content on that site the result of attribution could be even more serious, as electioneering is absolutely prohibited to charities and may result in revocation of your tax exemption. Not only should your agreement prohibit lobbying and electioneering on the connecting web page, but you should monitor that page periodically for the duration of the sponsorship. A statement on your page disclaiming any content on external websites might assist in limiting attribution.