

# Form 5500 Update



ASPPA

Making Retirement Plans Work

*Part of the American Retirement Association*

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# Disclaimer

*The information and opinions presented today are those of the presenter and do not necessarily represent the opinions or positions of ASPPA.*

# Where Things Stand

- On March 1, 2016 the DOL submitted its proposed regulation revisions with regard to the 2019 Form 5500 (*aka* Form 5500 for the 21<sup>st</sup> Century project, or EFAST3).
- On March 10, 2016 the OMB approved the IRS request to collect compliance information on the Form 5500-SUP.

# IRS Compliance Questions on the 2015 Form 5500-Series Returns

Since the proposed 2015 IRS compliance questions on the Forms 5500 and 5500-SF, and Schedules H, I, and R were **not approved by the Office of Management and Budget** when the 2015 Form 5500 and Form 5500-SF were published on December 7, 2015, the IRS has decided that plan sponsors should not complete these questions for the 2015 plan year.

*IRS Page Last Reviewed or Updated: 17-Feb-2016*

# Optional Items

- Trust name, trustee, EIN, and phone number
- Unrelated Business Taxable Income (UBTI)
- §401(k) testing questions
- §410(b) coverage testing items
- Plan amendment date, pre-approved adopter information, etc.
- US territory sponsor
- In-service distributions
- Paid preparer information

# Polling #1

- Was your firm planning on completing the **optional** items on the 2015 Form 5500?
  - a. Yes
  - b. No
  - c. We are answering some, but not all, **optional** items

# Polling #2

- Did your firm intend to identify a paid preparer on the 2015 Form 5500?
  - a. Yes
  - b. No
  - c. Undecided

# Form 5500 Data Mining

- Has become a niche industry
- Can download data for all 1999-2015 Form 5500 filings (not EZ) at  
<http://www.dol.gov/ebsa/foia/foia-5500.html>



# Are You an Unenrolled Preparer?

- From the August 5, 2015 update to the Internal Revenue Manual 10 at section 4.71.1.9

An unenrolled return preparer (URP) may only represent the taxpayer for the return that he/she prepared and signed.

A. For that reason a URP may not represent a taxpayer for a Form 5500 examination for years in which the Form 5500 doesn't provide either a line for the return preparer to sign or an area for information identifying the return preparer.

B/ A URP may still represent a taxpayer for other types of tax returns (e.g., Forms 1040, 1120, 990-T or 1041) that he or she prepared and can sign or provide the necessary information, but Section 5 of the Revenue Procedure 81-38 does limit this authority.

Note:

See also Pub 470, *Limited Practice without Enrollment* and *Circular 230*.

C. Beginning with the 2012 plan year, the Form 5500 will again provide an area in which the URP can enter the necessary information. For that reason, beginning with the 2012 plan year, an URP can begin to represent a plan sponsor during an EP examination subject to the above mentioned limitations for plans years 2012 and later.

# New IRS Proposal - SUP

- Eliminates certain items on the previously proposed SUP
- Simplifies a number of items
- IRS intends these questions be mandatory for 2016 Form 5500 series filers

# Trust Name/EIN

Question on the 2015 Form 5500s	Form	Proposed 2016 Changes	Compliance and Use for
a. Name of trust	Form 5500 Sch. H/I, 5500-SF, 5500-EZ, and 5500-SUP	a. Name of trust	<ul style="list-style-type: none"> <li>This question was approved by OMB for the 2015 Form 5500 Series.</li> <li>Requiring trust identifying information will assist the IRS in discharging its basic tax compliance and enforcement responsibilities with respect to tax-favored trusts.</li> <li>This question was on former Schedule P up to 2006 where it had been approved in an information collection.</li> </ul>
b. Trust's EIN		b. Trust's EIN	
c. Name of trustee or custodian		c. Name of trustee or custodian	
d. Trustee's or custodian's telephone number		d. Trustee's or custodian's telephone number	

- Basically no change from the proposed 2015 Form 5500-SUP.

# Polling #3

- Does your firm regularly have new trusts secure an EIN in the course of plan set up?
  - a. Yes
  - b. No
  - c. Not sure

# Polling #4

- In anticipation of the proposed 2015 Form 5500-SUP, did your firm seek EINs for trusts with no apparent number?
  - a. Yes
  - b. No
  - c. Not sure

# Polling #5

- If your firm applied for new EINs, did those clients receive any letters from IRS asking for prior year Forms 945?
  - a. Yes
  - b. No
  - c. N/A – we did not request new EINs

# Polling #6

- IRS wants the preparer's name, phone number, and address to be a mandatory disclosure item for 2016 filing years. Would you prefer that only the firm's name and phone number be required?
  - a. Yes
  - b. No
  - c. Prefer no disclosure of preparer in any form
  - d. Prefer full disclosure of preparer data

# 401(k) Question

Proposed 2016 Changes	
a.	Is the plan a 401(k) plan? <input type="checkbox"/> Yes <input type="checkbox"/> No
If "No," skip b.	
b.	How did the plan satisfy the nondiscrimination requirements for employee deferrals under sections 401(k)(3) for the plan year? Check all that apply:
<input type="checkbox"/>	Design-based safe harbor
<input type="checkbox"/>	"Prior year" ADP test
<input type="checkbox"/>	"Current year" ADP test
<input type="checkbox"/>	N/A

- Question is simplified to cover only employee deferrals, and allows for more than one box to be checked



# Polling #7

- Is this question on 401(k) fairly easy to answer for the majority of your 401(k) clients?
  - a. Yes
  - b. No
  - c. Not sure

# Coverage Question

a. What testing method was used to satisfy the coverage requirements under section 410(b) for the plan year? Check all that apply:

Ratio percentage test  
 Average benefit test  
 N/A

b. Did the plan satisfy the coverage and nondiscrimination requirements of sections 410(b) and 401(a)(4) for the plan year by combining this plan with any other plan under the permissive aggregation rules?

Yes  No

- Revised question allows you to “check all that apply” which makes the item more correctly reflect a plan’s situation.
- Akin to coverage item that appeared on Schedule R pre-2009.

# In-Service Distributions

Question on the 2015 Form 5500s	Form	Proposed 2016 Changes
<p>Were in-service distributions made during the plan year?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If "Yes," enter amount _____</p>	<p>Form 5500 Sch H/I, 5500-SF, 5500-EZ, and 5500-SUP</p>	<p>Defined Benefit Plan or Money Purchase Pension Plan only:</p> <p>Were any distributions made during the plan year to an employee who attained age 62 and had not separated from service?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

- Feels like a complete re-work of the information being sought.
- Question applies to a much smaller universe of plans.

# Polling #8

- Does the revision to the in-service distribution question make completion of the item:
  - a. Simpler
  - b. About the same
  - c. Negligible since we have few money purchase or defined benefit plans
  - d. Not sure

# UBTI

- Unrelated Business Taxable Income (UBTI) would no longer be a direct question on the filing, but remember that it is an issue which plans must consider every year.
- We will discuss later in the program.

# Plan Amendments

a. Has the Plan been timely amended for all required law changes?

b. Date the last Plan amendment/restatement for the required law changes was adopted \_\_\_/\_\_\_/\_\_\_\_. Enter the applicable code \_\_\_\_ (See instructions for tax law changes and codes).

c. If the plan sponsor is an adopter of a pre-approved master, prototype (M&P), or volume submitter plan that is subject to a favorable opinion or advisory letter from IRS, please enter the date of plan's last opinion or advisory letter \_\_\_/\_\_\_/\_\_\_\_ and a letter serial number \_\_\_\_\_.

d. If the plan is an individually-designed plan and received a favorable determination letter from IRS, please enter the date of plan's last favorable determination letter \_\_\_/\_\_\_/\_\_\_\_.

Proposed 2016 Changes	
a.	If the plan is a master and prototype plan (M&P) or volume submitter plan that received a favorable IRS opinion letter or advisory letter, enter the date of the letter ___/___/____ and the serial number _____.
b.	If the plan is an individually-designed plan that received a favorable determination letter from the IRS, enter the date of the most recent determination letter ___/___/____.

# Polling #9

- Does your firm have any individually designed plans (i.e., not prototypes, volume submitters, other pre-approved) that have **not** applied for their own IRS letter of determination:
  - a. Yes
  - b. No
  - c. Not sure

# 2015 Form 5500 Changes

- Form 5500-SF
  - Line 10f: Has the plan failed to provide any benefit when due under the plan?
  - Line 20 (Optional): Were required minimum distributions made to 5% owners who have attained age 70½ as required under section 401(a)(9)?
- Treat line 10f instruction as including the optional question; line 20 is a subset of line 10f.



# Most FAQ: Form 5500-SF

- Reporting direct and indirect compensation
  - Direct payments from the plan flow through the financial section at lines 8f-8g
  - Indirect payments associated with insurance contracts only are reported at line 10e
    - These are items that would be reported in line 3 of Schedule A
- Is not the same level of fee disclosure as that reported by large plan filers on Schedule C

# Other 2015 Changes

- Form 5500
  - Schedules H/I, Line 4l instruction – expanded to include reference to minimum required distributions.
  - Schedule R – *Who Must File* – eliminated exception for certain defined contribution plans that made no distributions during the year
    - IRS did not clean up instructions when it was forced to make SUP items **optional**
    - Did not clean up in revised instructions either
  - Items and instructions on Schedule MB
  - Instructions to Schedule SB

# EFAST2 Processing Changes

- Year to year consistency: **entity control testing**
  - Even before the Form 5500 series reports were filed electronically, the IRS used *entity control* checks to determine whether certain identifying data was being reported consistently each year for a particular filer in order to maintain accurate year-to-year records for each filer.
  - Such data as the employer identification number (EIN), plan number (PN), plan name, sponsor name, effective date of the plan, total assets (beginning and end of plan year) are items commonly targeted for matching a current year filing to the prior year's report for the same entity.
- All entity control edit tests applied to 2015 Form 5500 filings that fail result in **Warning**

# Most FAQs: Form 5500

- What is proper way to file for open-MEPs?
- How to clean up EIN / PN errors, especially once IRS issues letter?
- Issues with plan mergers, usually related to timing
- Assets that appear after plan termination and final Form 5500 filing.

# Polling #10

- Does your firm prepare Form 5500 filings for any open-MEPs?
  - A. Yes
  - B. No
  - C. Not sure

# EFAST2 Changes

- 2011 Form year is obsolete effective January 1, 2016
  - May no longer file 2011 Form 5500 even to amend a previously filed 2011 Form 5500 report
  - Will use the 2015 Form 5500 (or current year form) to submit 2011 (or earlier) plan year information
  - When using the 2015 form to submit 2011 (or earlier) data, information will not appear on the DOL's Public Disclosure website

# EPCU [continued]

## Employee Plans Compliance Unit (EPCU) – Current Projects – Failure to Provide a Benefit

### **Why did I receive an EPCU compliance check letter?**

Our Form 5500-series return records show you didn't provide a plan benefit when it was due.

See line 10f of Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, or line 4l of Form 5500, *Annual Return/Report of Employee Benefit Plan*, Schedule H (Financial Information) or I (Financial Information-Small Plan).

### **What is EPCU attempting to determine?**

The Employee Plans Compliance Unit ([EPCU](#)) wants to understand:

- Why you didn't provide the plan benefit when it was due,
- Whether you've corrected the situation, and
- If our records reflect accurate information.

*Page Last Reviewed or Updated: 23-Mar-2015*

# Polling #11

- Were any of your firm's clients contacted about the EPCU failure to provide item?
  - A. Yes
  - B. No
  - C. Not sure



# EPCU [continued]

## Employee Plans Compliance Unit (EPCU) - Current Projects - Final Return with Assets

### **Why did I receive an EPCU Compliance Check Letter?**

You filed a Form 5500 series return indicating the return was a *Final Return*, yet the return reflected assets at the end of the plan year. The *Final Return* box should not be marked if you are reporting plan assets at the end of the plan year. A Form 5500 series return is required to be filed until all assets are distributed and/or transferred to another plan.

### **What is the EPCU attempting to determine?**

We want to clarify why the return was marked as a *Final Return* when there were still plan assets at the end of the plan year.

*Page Last Reviewed or Updated: 14-Jan-2016*

# EPCU [continued]

## Employee Plans Compliance Unit (EPCU) - Current Projects - Form 5500-EZ First Return Filer

### Why did I receive an EPCU compliance check letter?

Our records show:

- you filed a Form 5500-EZ or a Form 5500-SF (one participant plan box checked),
- your plan is effective prior to January 1, 2013,
- you checked this is 'the first return filed for the plan',
- your plan had over \$250,000 in assets at the beginning of the plan year, and
- you did not file a Form 5500-series return for the prior plan year.

### What is EPCU attempting to determine?

The Form 5500-EZ (or Form 5500-SF), which you marked as 'the first return filed for the plan', showed plan assets on the first day of the plan year greater than \$250,000. The Employee Plans Compliance Unit ([EPCU](#)) wants to understand:

- why you did not file a Form 5500-series return for the prior plan year,
- whether you have corrected the situation, and
- if our records reflect accurate information.

If you did not file a required annual return, you should talk with your benefits professional. You may be eligible for administrative relief from penalties for failure to timely comply with the annual reporting requirements. See [Penalty Relief Program for Form 5500-EZ Late Filers](#).

# EPCU [continued]

## Employee Plans Compliance Unit (EPCU) - Current Projects - Improper Deductions Project

### **Why did I receive an EPCU Compliance Check Letter?**

Our records show the Form 1120 deduction amount exceeds the Form 5500 series return contribution amount by at least \$1,000.

### **What is EPCU attempting to determine?**

We want to determine whether certain plan sponsors who maintain one defined contribution plan may have taken an improper deduction. An improper deduction occurs when the Form 1120 deduction amount exceeds the Form 5500 contribution amount. Only employers with a tax year ending identical to that of the plan year ending will be reviewed. Item 2(a)(1) on Schedule I or Item 2(a)(1) on Schedule H filed with the Form 5500 and Item 8(a)(1) on the Form 5500-SF provide the total dollar amount of employer contributions for the plan year. This amount will be compared with the dollar amount listed on Item 23 of the Form 1120.

*Page Last Reviewed or Updated: 06-Jul-2015*

# Polling #12

- Were any of your firm's clients contacted about the EPCU deduction project?
  - A. Yes
  - B. No
  - C. Not sure

# EPCU [continued]

## Employee Plans Compliance Unit (EPCU) - Current Projects - IRC 401(k) Plans Reporting 4971(a) Tax

### **Why did I receive an EPCU Compliance Check Letter?**

You filed a Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, indicating excise tax was owed under Internal Revenue Code (IRC) section 4971(a). The IRC Section 4971(a) excise tax is owed by plan sponsors whose plans are subject to the minimum funding requirement under IRC Section 412 but who also did not timely deposit the required minimum contributions. It appears you maintain a 401(k) plan, which is not subject to IRC Section 412, and accordingly, this excise tax may not be applicable.

### **What is the EPCU attempting to determine?**

We want to determine whether the Form 5330 reporting excise tax under IRC section 4971(a) was appropriately filed (if the plan was not subject to the minimum funding requirements). We want to confirm the correct type and amount of excise tax that should have been reported on this return (Form 5330). If a different type of excise tax was owed, we want to determine if there is a discrepancy between the amount owed and the amount originally reported on the Form 5330.

# FASB Updates

- ASU = Accounting Standards Update
- ASU 2015-12 affects audited financial statements
  - Fully benefit-responsive investment contracts
  - Plan investment disclosures (identifying 5% holding separately)
  - Measurement date practical expedient
  - Effective for years beginning after December 15, 2015 but may be adopted earlier
- ASU 2015-07 simplifies fair value disclosures

# ASU Impact

- Affects disclosures in financial statements
  - Either simplifying or removing current Notes completely
  - Eliminates both fair value and book value presentation on Statement of Net Assets Available
  - Plans with fully benefit responsive contracts will require Note reconciling to Form 5500
- Does not change fair value presentation of information on Schedule H

# DOL Activity

- November 2015 – emails to plan administrators with Tips for Selecting and Monitoring a Plan Auditor
- May 2015 – report issued - Assessing the Quality of Employee Benefit Plan Audits
- April 2015 – report issued about Small Pension Plans Receiving Audit Waivers Need More Frequent Review



# What Do You Think?

# Schedule of Assets Held

- Why do we keep duplicating information that is in the audit report as supplemental schedules?
- Would the Agency benefit from a standardized format?
  - How would EBSA use that information?
  - Why would EBSA need that detail?
  - Can the Agency just not accept scanned PDFs?

# Polling #13

- Do you think it should be necessary to duplicate the Schedule of Assets Held that is already part of the auditor's report attached to the filing?
  - a. Yes
  - b. No
  - c. No opinion

# Polling #14

- Would you prefer a standardized format requiring more specific detail for the Schedule of Assets Held?
  - a. Yes
  - b. No
  - c. No opinion

# Polling #15

- With regard to the Schedules of Assets Held and 5% Reportable Transactions, does your firm:
  - a. Create it for the auditors
  - b. Use what auditors develop

# Polling #16

- Assume you had to include ticker symbol / CUSIP for each investment held, would creating the Schedule of Assets Held be:
  - a. More difficult
  - b. Easier
  - c. Neutral

# Polling #17

- **Proposal:** Eliminate Schedule I and have small plan filers ineligible to file Form 5500-SF instead complete Schedule H, except Part III.
  - a. Agree with proposal
  - b. Disagree with proposal
  - c. No opinion

# Schedule H Ideas

- Suggestions:
  - Expand asset categories
  - Further refine distribution categories (on Form 5500-SF, too!) to cover SUP need
  - Request more specific data about late deposits
  - Modify requirement to include report of independent accountant based on active participant count



# Polling #18

- Do you think there should be more investment categories on Schedule H?
  - a. Yes
  - b. No
  - c. No opinion

# Late Deposits

- Is this more useful information to collect?
  - Were the late deposits corrected by the date the Form 5500 was filed?
  - Did the corrective deposits include lost earnings?
  - Were lost earnings calculated using the DOL's online calculator?
  - What was the longest time (days) elapsed from date of withholding to date of deposit?

# Polling #19

- **Proposal:** Were the late deposits corrected by the date the Form 5500 was filed?
  - a. Yes
  - b. No
  - c. No opinion

# Polling #20

- **Proposal:** Did the corrective deposits include lost earnings?
  - a. Yes
  - b. No
  - c. No opinion

# Polling #21

- **Proposal:** Were lost earnings calculated using the DOL's online calculator?
  - a. Yes
  - b. No
  - c. No opinion

# Polling #22

- **Proposal:** What was the longest time (days) elapsed from date of withholding to date of deposit?
  - a. Yes
  - b. No
  - c. No opinion

# Audit Requirement

- **Proposal:** Modify requirement to include report of independent accountant based on active participant count
  - What about frozen plans?
  - Perhaps has some validity for low participation 401(k) / 403(b) plans?
  - Limit scope of audit instead?

# UBTI and Form 990-T



<input type="checkbox"/> Did the plan trust incur unrelated business taxable income? .....	40				
--	----	--	--	--	--

line 40 of Schedules H/I  
 line 10j of Form 5500-SF  
 line 15 of Form 5500-EZ

**SKIP** these lines on 2015 Form 5500 series filings

# Polling #23

- Has your firm routinely monitored plan assets for UBTI?
  - a. Yes
  - b. No

# Polling #24

- Have you ever prepared Form 990-T to report UBTI?
  - a. Yes
  - b. No

# Under the Radar

- May not be well monitored in any size plan
- Not easy to monitor, especially in self directed brokerage
- Form 990-T due by April 15 for calendar year plans
- ASPPA webcast – Unrelated Business Taxable Income  
(available through August 25, 2016)  
[www.asppa.org/Education/Webcasts/Recorded-Webcasts](http://www.asppa.org/Education/Webcasts/Recorded-Webcasts)

# Tax on a Tax-Exempt Trust?

- Generally income earned by a retirement plan is exempt from federal and state income tax
  - But some situations are considered “unfair competition” for tax-exempt organizations
  - The Unrelated Business Taxable Income (UBTI) rules were created to level this playing field.
- *“The primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete.”*

Treas. Reg. §1.513-1(b)

# Can Be Confusing

- These sources of income generally do not result in UBTI (so long as the purchase of the investment was non-leveraged):
  - Interest income
  - Dividends
  - Annuities
  - Mutual fund distributions
  - Rents from real property
  - Royalties
  - Investment income
  - Investment gains

# Overview

- UBTI = unrelated business taxable income
  - Income generated that is not related to the [typically, tax exempt] purpose of the entity. Debt-financing may also result in UBTI.
  - Example: for a fee, commuters use the parking facilities of a church during the week. That income to the church is unrelated to its tax-exempt purpose.
- UBIT = unrelated business income tax - the tax that may be due on account of UBTI
  - There is a \$1,000 exemption on Form 990-T

# Technically Correct

- UBTI is the gross income derived by an organization from any
  - Unrelated
  - Trade or business that is
  - Regularly carried on by the organization
  - Less expenses and certain adjustments
- UBTI includes Unrelated Debt Financed Income (UDFI)



# Debt-Financed Income

- Generally, debt-financing will generate UBTI
  - Example: Plan buys stock on margin
    - Borrows 50% of purchase price
    - 50% of income from stock is UDFI/UBTI
  - Watch for this type of activity in self directed brokerage

# Look for Pass-Through Entity Holdings

- Pass-through entities may include:
  - Partnerships
  - MLPs
  - LLCs
  - Hedge Funds (if partnership or LLC)
  - S-Corps
  - Common Trust Funds
- Generally, REITs do not generate UBTI

# Participant Direction

- Check plan document – may have specific provisions prohibiting certain types of investments
- Plans may limit participant-direction to investments that do not incur UBTI
  - Fiduciary may reject investments that result in UBTI
  - Minimizes compliance risks and/or administrative costs incurred by plan

# Where to Focus Communication

- Trustee / investment committee
- Awareness of tax exposure
- This issue exists without regard to whether the line appears on Form 5500!

# So You Have UBTI....

## Who Must File

The following entities must file Form 990-T.

- Any domestic or foreign organization exempt under section 501(a) or section 529(a) if it has gross income of \$1,000 or more from a regularly conducted unrelated trade or business (see Regulations section 1.6012-2(e)). Gross income is gross receipts minus the cost of goods sold (see Regulations section 1.61-3). For a discussion of cost of goods sold see Schedule A. Cost of Goods Sold later.

## When To File

An employees' trust defined in section 401(a), an IRA (including SEPs and SIMPLEs), a Roth IRA, a Coverdell ESA, or an Archer MSA must file Form 990-T by the 15th day of the 4th month after the end of its tax year. All other organizations must file Form 990-T by the 15th day of the 5th month after the end of their tax years. If the regular due date falls on a Saturday, Sunday, or legal holiday, file no later than the next business day. If the return is filed late, see *Interest and Penalties* on this page.

**Extension.** Corporations may request an automatic 6-month extension of time to file Form 990-T by using Form 8868, Application for Extension of Time To File an Exempt Organization Return.

Trusts may request an automatic 3-month extension of time to file by using Form 8868. Also, if more than the initial automatic 3 months is needed, trusts may file a second Form 8868 to request that an additional, but not automatic, 3-month extension be granted by the IRS.

## Estimated Tax Payments

Generally, an organization filing Form 990-T must make installment payments of estimated tax if its estimated tax (tax minus allowable credits) is expected to be \$500 or more. Both corporate and trust organizations use Form 990-W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations, to figure their estimated tax liability. Do not include the proxy tax when computing your estimated tax liability for 2014.

**Timeliness of deposits.** Beginning January 1, 2011, the IRS will use business days to determine the timeliness of deposits. Business days are any day that is not a Saturday, Sunday or legal holiday in the District of Columbia. To provide transitional relief for 2012, the IRS will not assert penalties for federal tax deposits that are untimely solely because the depositor used a statewide legal holiday instead of a District of Columbia legal holiday. See Notice 2010-87, 2010-52 I.R.B. 908, available at [www.irs.gov/irb/2010-52\\_IRB/ar12.html](http://www.irs.gov/irb/2010-52_IRB/ar12.html).

# Draft Form 990-T

- Trust (not the plan) files the Form 990-T based on trust year (i.e., not based on a single investment's tax period)
- Must be signed by trustee
- Tax is paid by trust
  - Who is charged if UBTI results from participant direction?
  - Is that issue sufficiently communicated to participants?

**Trusts.** The return must be signed and dated by the individual fiduciary, or by the authorized officer of the trust receiving or having custody or control and management of the income of the trust. If two or more individuals act jointly as fiduciaries, any one of them may sign.

# Tax Computation

## Line 36. Trusts

Trusts exempt under section 501(a), which otherwise would be subject to subchapter J (estates, trusts, etc.), are taxed at trust rates. This rule also applies to employees' trusts that qualify under section 401(a). Most trusts figure the tax on the unrelated business taxable income amount on line 34 using the *Tax Rate Schedule for Trusts*, later. If the tax rate schedule is used, enter the tax on line 36 and check the "tax rate schedule" box on line 36. If the trust is eligible for the rates on net capital gains and qualified dividends, complete Schedule D (Form 1041) and enter on line 36 the tax from Schedule D (Form 1041). Check the "Schedule D" box on line 36 and attach Schedule D (Form 1041) to Form 990-T.

### Tax Rate Schedule for Trusts

If the amount on line 34, is:

Over—	But not over—	Tax is:	Of the amount over—
\$0.00	\$2,500	15%	\$0.00
2,500	5,800	\$375 + 25%	2,500
5,800	8,900	1,200 + 28%	5,800
8,900	12,150	2,068 + 33%	8,900
12,150	-----	3,140.50 + 39.6%	12,150

# Paying the Tax; Penalties and Interest for Late Filing/Payment



*If the organization owes tax when it files Form 990-T, do not include the payment with the tax return.*

*Instead, use EFTPS.*

## Interest and Penalties

Your organization may be subject to interest and penalty charges if it files a late return or fails to pay tax when due.

Generally, the organization is not required to include interest and penalty charges on Form 990-T because the IRS can figure the amount and bill the organization for it.

**Interest.** Interest is charged on taxes not paid by the due date even if an extension of time to file is granted. Interest is also

charged on penalties imposed for failure to file, negligence, fraud, substantial valuation misstatements, and substantial understatements of tax from the due date (including extensions) to the date of payment. The interest charge is figured at the underpayment rate determined under section 6621.

**Late filing of return.** An organization that fails to file its return when due (including extensions of time for filing) is subject to a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$135. If you receive a notice about a penalty after you file this return, reply to the notice with an explanation and we will determine if you meet reasonable-cause criteria. Do **not** include an explanation when you file your return.

**Late payment of tax.** The penalty for late payment of taxes is usually  $\frac{1}{2}$  of 1% of the unpaid tax for each month or part of a month the tax is unpaid. The penalty cannot exceed 25% of the unpaid tax. If you receive a notice about a penalty after you file this return, reply to the notice with an explanation and we will determine if you meet reasonable-cause criteria. Do **not** include an explanation when you file your return.

**Estimated tax penalty.** An organization that does not make estimated tax payments when due may be subject to an underpayment penalty for the period of underpayment. Generally, an organization is subject to this penalty if its tax liability for the tax year is \$500 or more and it did not make estimated tax payments of at least the smaller of its tax liability for the tax year or 100% of the prior year's tax. See section 6655 for details and exceptions.



# Important!

*The examples that follows are intended to present an overview of identifying UBTI from a Schedule K-1 and drafting the related Form 990-T. This is not accounting advice and there may be disagreement among professionals about how and what to classify as net UBTI given the facts and circumstances presented herein.*

**Schedule K-1  
(Form 1065)**

**2014**

Department of the Treasury  
Internal Revenue Service

For calendar year 2014, or tax  
year beginning \_\_\_\_\_, 2014  
ending \_\_\_\_\_, 20\_\_\_\_

**Partner's Share of Income, Deductions,  
Credits, etc.**

▶ See back of form and separate instructions.

<b>20</b>	Other information	
<b>A</b>		1,283,031
<b>B</b>		73,261
<b>* Z</b>		STMT

<b>Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items</b>			
<b>1</b>	Ordinary business income (loss)	<b>15</b>	Credits
<b>2</b>	Net rental real estate income (loss)		
<b>3</b>	Other net rental income (loss)	<b>16</b>	Foreign transactions
<b>4</b>	Guaranteed payments	<b>A</b>	OC
<b>5</b>	Interest income	<b>B</b>	1,382,733
	1,282,048	<b>C</b>	99,702
<b>6a</b>	Ordinary dividends	<b>D</b>	93,615
<b>6b</b>	Qualified dividends	<b>H</b>	147,148
<b>7</b>	Royalties	<b>I</b>	4,143
<b>8</b>	Net short-term capital gain (loss)		
	3,255	<b>17</b>	Alternative minimum tax (AMT) items
<b>9a</b>	Net long-term capital gain (loss)		
	27,464		
<b>9b</b>	Collectibles (28%) gain (loss)		
<b>9c</b>	Unrecaptured section 1250 gain		
<b>10</b>	Net section 1231 gain (loss)	<b>18</b>	Tax-exempt income and nondeductible expenses
<b>11</b>	Other income (loss)		
<b>C</b>	-78,165		
		<b>19</b>	Distributions
<b>12</b>	Section 179 deduction		
<b>13</b>	Other deductions	<b>20</b>	Other information
<b>* K</b>	73,261	<b>A</b>	1,283,031
		<b>B</b>	73,261
<b>14</b>	Self-employment earnings (loss)	<b>* Z</b>	STMT

\*See attached statement for additional information.

**SCH K-1 SUPPORTING SCHEDULES**

**PARTNER FOOTNOTES**

FOR CORPORATE AND PASS-THROUGH ENTITY PARTNERS: \$0 OF THE AMOUNT OF DIVIDEND INCOME REPORTED IN BOX 6A OF SCHEDULE K-1 QUALIFIES FOR THE DIVIDENDS RECEIVED DEDUCTION UNDER IRC SECTION 243.

INFORMATION REGARDING UNRELATED BUSINESS TAXABLE INCOME FOR TAX-EXEMPT ENTITIES:

ABSENT YOUR OWN ACQUISITION INDEBTEDNESS TO THE FUND, NONE OF THE SCHEDULE K-1 BOX ITEMS REPRESENT UNRELATED BUSINESS TAXABLE INCOME.

THE AMOUNTS REPORTED IN BOXES 8, 9A AND 11C AND OF YOUR SCHEDULE K-1 HAVE NOT BEEN INCLUDED IN BOXES 20A AND 20B OF YOUR SCHEDULE K-1. THESE AMOUNTS SHOULD BE CONSIDERED WHEN PREPARING

# My Real-Life Example!

**Schedule K-1**  
**(Form 1065)** **2013**

Department of the Treasury  
Internal Revenue Service

For calendar year 2013, or tax  
year beginning 07/01, 2013  
ending 06/30, 2014

**Partner's Share of Income, Deductions,  
Credits, etc.** ▶ See back of form and separate instructions.

**Part I** Information About the Partnership

<b>Part III</b> Partner's Share of Current Year Income, Deductions, Credits, and Other Items	
1	Ordinary business income (loss) 592
2	Net rental real estate income (loss) 603
3	Other net rental income (loss)
4	Guaranteed payments
5	Interest income 59,105
6a	Ordinary dividends 2,025,644
6b	Qualified dividends 1,757,267
7	Royalties 428
8	Net short-term capital gain (loss) 5,552,990
9a	Net long-term capital gain (loss) 11,392,550
9b	Collectibles (28%) gain (loss)
9c	Unrecaptured section 1250 gain 717
10	Net section 1231 gain (loss) 7,905
11	Other income (loss) -32,670
*A	
C	754
	STMT
12	Section 179 deduction
13	Other deductions 408
H	
I	74
	STMT
14	Self-employment earnings (loss)
15	Credits
16	Foreign transactions
A	VARIOUS
B	22,898,862
C	20,804,811
D	564,692
G	408
H	4,962,120
	STMT
17	Alternative minimum tax (AMT) items
A	2
B	-4
18	Tax-exempt income and nondeductible expenses
C	11
19	Distributions
A	2,069,002
B	1,171,983
20	Other information
A	
B	

20	Other information
A	2,069,002
B	1,171,983

\*See attached statement for additional information.

**SPPA**

making Retirement Plans Work

Part of the American Retirement Association

# Line 20 Explanation

20	Other information
V	NONE

<b>20. Other information</b>	
<b>A</b>	Investment income Form 4952, line 4a
<b>B</b>	Investment expenses Form 4952, line 5
<b>C</b>	Fuel tax credit information Form 4136
<b>D</b>	Qualified rehabilitation expenditures (other than rental real estate) See the Partner's Instructions
<b>E</b>	Basis of energy property See the Partner's Instructions
<b>F</b>	Recapture of low-income housing credit (section 42(j)(5)) Form 8611, line 8
<b>G</b>	Recapture of low-income housing credit (other) Form 8611, line 8
<b>H</b>	Recapture of investment credit See Form 4255
<b>I</b>	Recapture of other credits See the Partner's Instructions
<b>J</b>	Look-back interest—completed long-term contracts See Form 8697
<b>K</b>	Look-back interest—income forecast method See Form 8866
<b>L</b>	Dispositions of property with section 179 deductions
<b>M</b>	Recapture of section 179 deduction
<b>N</b>	Interest expense for corporate partners
<b>O</b>	Section 453(l)(3) information
<b>P</b>	Section 453A(c) information
<b>Q</b>	Section 1260(b) information
<b>R</b>	Interest allocable to production expenditures
<b>S</b>	CCF nonqualified withdrawals
<b>T</b>	Depletion information—oil and gas
<b>U</b>	Amortization of reforestation costs
<b>V</b>	Unrelated business taxable income
<b>W</b>	Precontribution gain (loss)
<b>X</b>	Section 108(j) information
<b>Y</b>	Net investment income
<b>Z</b>	Other information

} See the Partner's Instructions

# Read the Entire Schedule K-1!

## SCH K-1 SUPPORTING SCHEDULES

INFORMATION FOR TAX-EXEMPT PARTNERS  
PURSUANT TO IRC SECTION 6031(D):

=====

ABSENT YOUR OWN ACQUISITION INDEBTEDNESS TO THE FUND, THE PERCENTAGES OF THE INCOME, GAINS, LOSSES AND DEDUCTIONS, AS REPORTED ON YOUR SCHEDULE K-1 THAT REPRESENT UNRELATED BUSINESS TAXABLE INCOME ("UBTI") UNDER IRC SECTION 512(A) ARE LISTED BELOW. TO CALCULATE YOUR UBTI, MULTIPLY THE AMOUNTS REPORTED ON YOUR SCHEDULE K-1 BY THE APPROPRIATE PERCENTAGE INDICATED BELOW.

BOX 1	ORDINARY BUSINESS INCOME/(LOSS)	25.86%
BOX 2	NET RENTAL REAL ESTATE INCOME/(LOSS)	54.69%
BOX 5	INTEREST INCOME	0.30%
BOX 10	NET IRC SECTION 1231 GAIN/(LOSS)	92.06%
BOX 11E	CANCELLATION OF DEBT	100.00%
BOX 11F	OTHER INCOME/(LOSS)	27.66%
BOX 13J	SECTION 59(E) (2) EXPENDITURES	100.00%
BOX 16M	FOREIGN TAXES ACCRUED	58.97%

100.00% OF YOUR DISTRIBUTIVE SHARE OF ALLOWABLE DEPLETION (SEE SEPARATE OIL & GAS FOOTNOTE) IS UBTI RELATED TO INCOME DERIVED FROM OIL & GAS WORKING INTERESTS.

# Calculate Trust UBTI

Partnership	Allocable % of Total	UBTI for Retirement Master
EG Fund, LLC EIN: 32-9998887		
Box 1 - Ordinary income/loss	25.86%	153.09
Box 2 - Net rental real estate income/loss	54.69%	329.78
Box 5 - Interest income	0.30%	177.32
Box 10 - Net IRC Section 1231 gain/loss	92.06%	7,277.34
Box 11E - Cancellation of debt	100.00%	171.00
Box 11F - Other income/loss	27.66%	1,881.16
		9,989.69
Box 13J - Section 59(E)(2) expenditures (deductions)	100.00%	(464.00)
		<u>9,525.69</u>

# Some Instructions

## Is Gross Income More Than \$10,000?

If the amount in Part I, line 13, column (A), is more than \$10,000, complete all lines and schedules that apply.

## Is Gross Income \$10,000 or Less?

If Part I, line 13, column (A) is \$10,000 or less, complete the following.

- The heading (above Part I);
- Part I, lines 1–13, column (A);
- Part I, line 13, for columns (B) and (C);
- Part II, lines 29–34;
- Parts III–V, and
- Signature area.

Filers with \$10,000 or less on line 13, column (A) do not have to complete Schedules A through K (however, refer to applicable schedules when completing column (A) and in determining the deductible expenses to include on line 13 of column (B)).

## Part I. Unrelated Trade or Business Income

Complete lines 1 through 13, column (A). If the amount on line 13 is \$10,000 or less, you may complete only line 13 for columns (B) and (C). These filers do not have to complete Schedules A through K (however, refer to applicable schedules when completing column (A)). If the amount on line 13, column (A), is more than \$10,000, complete all lines and schedules that apply. Refer to the corresponding schedules to determine the amount to be reported on each line.

## Line 33. Specific Deduction

A specific deduction of \$1,000 is allowed except for computing the net operating loss and the net operating loss deduction under section 172.

# More Instructions

## Line 5. Income or (Loss) From Partnerships and S Corporations

In general, combine all partnership income or loss (determined below) with all S corporation income or loss and enter it on line 5. Also, for trusts and certain corporations, there are limitations on income and losses (including from partnerships and S corporations) under section 469 (the passive activity loss and credit limitation rules) and section 465 (at-risk limitations). For more information on these rules, see the discussion of the application of the passive loss and at-risk limitations to affected tax-exempt organizations in the introductory instructions to *Part I. Unrelated Trade or Business Income*.

**Qualified tax exempts.** A qualified tax exempt is an organization that is described in section 401(a) (qualified stock bonus, pension, and profit-sharing plans) or 501(c)(3) and exempt from tax under section 501(a).

**Exception.** Employee stock ownership plans (ESOPs) do not follow these S corporation rules if the S corporation stock is an employer security as defined in section 409(l).

**Attachment.** Attach a statement to this return showing the qualified tax exempt's share of all items of income, loss, or deduction. Combine the income, loss, and deductions (except for the capital gains and losses) on the statement. If you hold stock in more than one S corporation, total the combined amounts. Show capital gains and losses separately and include them on line 4a. Also, see *Attachments* for other information you must include, earlier.



# Part I, Line 5

<b>E Unrelated business activity codes</b> (See instructions.)
900001

<b>Part I Unrelated Trade or Business Income</b>		(A) Income	(B) Expenses	(C) Net
<b>1a</b> Gross receipts or sales				
<b>b</b> Less returns and allowances	<b>c Balance ▶</b>			
<b>2</b> Cost of goods sold (Schedule A, line 7)	<b>1c</b>			
<b>3</b> Gross profit. Subtract line 2 from line 1c	<b>2</b>			
<b>4a</b> Capital gain net income (attach Schedule D)	<b>3</b>			
<b>b</b> Net gain (loss) (Form 4797, Part II, line 17) (attach Form 4797)	<b>4a</b>			
<b>c</b> Capital loss deduction for trusts	<b>4b</b>			
<b>5</b> Income (loss) from partnerships and S corporations (attach statement)	<b>4c</b>			
<b>6</b> Rent income (Schedule C)	<b>5</b>	9526.00		9526.00
<b>7</b> Unrelated debt-financed income (Schedule E)	<b>6</b>			
<b>8</b> Interest, annuities, royalties, and rents from controlled organizations (Schedule F)	<b>7</b>			
<b>9</b> Investment income of a section 501(c)(7), (9), or (17) organization (Schedule G)	<b>8</b>			
<b>10</b> Exploited exempt activity income (Schedule I)	<b>9</b>			
<b>11</b> Advertising income (Schedule J)	<b>10</b>			
<b>12</b> Other income (See instructions; attach schedule)	<b>11</b>			
<b>13 Total.</b> Combine lines 3 through 12	<b>12</b>			
	<b>13</b>	9526.00		9526.00

- Deduction item rolled up into income reported at line 5 in this example.

# Attachment to Form 990-T

Partnership	Allocable % of Total	UBTI for Retirement Master
EG Fund, LLC EIN: 32-9998887		
Box 1 - Ordinary income/loss	25.86%	153.09
Box 2 - Net rental real estate income/loss	54.69%	329.78
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		9,989.69
Box 13J - Section 59(E)(2) expenditures (deductions)	100.00%	(464.00)
		9,525.69

# Completing Part II

## Part II. Deductions Not Taken Elsewhere

If the amount on Part I, line 13, column (A), is \$10,000 or less, you do not have to complete lines 14 through 28 of Part II. However, you must complete Part II, lines 29 through 34.

<b>Part II Deductions Not Taken Elsewhere</b> (See instructions for limitations on deductions.) (Except for contributions, deductions must be directly connected with the unrelated business income.)			
14	Compensation of officers, directors, and trustees (Schedule K)		14
15	Salaries and wages		15
16	Repairs and maintenance		16
17	Bad debts		17
18	Interest (attach schedule)		18
19	Taxes and licenses		19
20	Charitable contributions (See instructions for limitation rules)		20
21	Depreciation (attach Form 4562)	21	
22	Less depreciation claimed on Schedule A and elsewhere on return	22a	22b
23	Depletion		23
24	Contributions to deferred compensation plans		24
25	Employee benefit programs		25
26	Excess exempt expenses (Schedule I)		26
27	Excess readership costs (Schedule J)		27
28	Other deductions (attach schedule)		28
29	<b>Total deductions.</b> Add lines 14 through 28		29 0.00
30	Unrelated business taxable income before net operating loss deduction. Subtract line 29 from line 13		30 9526.00
31	Net operating loss deduction (limited to the amount on line 30)		31
32	Unrelated business taxable income before specific deduction. Subtract line 31 from line 30		32 9526.00
33	Specific deduction (Generally \$1,000, but see line 33 instructions for exceptions)		33 1000.00
34	<b>Unrelated business taxable income.</b> Subtract line 33 from line 32. If line 33 is greater than line 32, enter the smaller of zero or line 32		34 8526.00

- Note that lines 14-28 could be left blank if UBTI < \$10,000; just insert deduction total on line 29. Software may drive how you complete deduction section.

# Compute Tax

- Use trust rates.
- $\$8,526 - \$5,800 =$   
 $\$2,726 \times 28\% = \$763$  (rounded)
- $\$763 + \$1,200 =$   
 $\$1,963$

## Line 36. Trusts

Trusts exempt under section 501(a), which otherwise would be subject to subchapter J (estates, trusts, etc.), are taxed at trust rates. This rule also applies to employees' trusts that qualify under section 401(a). Most trusts figure the tax on the unrelated business taxable income amount on line 34 using the *Tax Rate Schedule for Trusts*, later. If the tax rate schedule is used, enter the tax on line 36 and check the "tax rate schedule" box on line 36. If the trust is eligible for the rates on net capital gains and qualified dividends, complete Schedule D (Form 1041) and enter on line 36 the tax from Schedule D (Form 1041). Check the "Schedule D" box on line 36 and attach Schedule D (Form 1041) to Form 990-T.

## Tax Rate Schedule for Trusts

If the amount on line 34, is:

Over—	But not over—	Tax is:	Of the amount over—
\$0.00	\$2,500	15%	\$0.00
2,500	5,800	\$375 + 25%	2,500
5,800	8,900	1,200 + 28%	5,800
8,900	12,150	2,068 + 33%	8,900
12,150	-----	3,140.50 + 39.6%	12,150

# Complete Part III

<b>Part III Tax Computation</b>		
<b>35 Organizations Taxable as Corporations.</b> See instructions for tax computation. Controlled group members (sections 1561 and 1563) check here <input type="checkbox"/> <b>See instructions</b> and:		
<b>a</b> Enter your share of the \$50,000, \$25,000, and \$9,925,000 taxable income brackets (in that order): (1) \$ <input type="text"/> (2) \$ <input type="text"/> (3) \$ <input type="text"/>		
<b>b</b> Enter organization's share of: (1) Additional 5% tax (not more than \$11,750) \$ <input type="text"/> (2) Additional 3% tax (not more than \$100,000) \$ <input type="text"/>		
<b>c</b> Income tax on the amount on line 34 . . . . . ▶	<b>35c</b>	
<b>36 Trusts Taxable at Trust Rates.</b> See instructions for tax computation. Income tax on the amount on line 34 from: <input checked="" type="checkbox"/> Tax rate schedule or <input type="checkbox"/> Schedule D (Form 1041) . . . . . ▶	<b>36</b>	1963.00
<b>37 Proxy tax.</b> See instructions . . . . . ▶	<b>37</b>	
<b>38 Alternative minimum tax</b> . . . . . ▶	<b>38</b>	
<b>39 Total.</b> Add lines 37 and 38 to line 35c or 36, whichever applies . . . . . ▶	<b>39</b>	1963.00

- Recommendation: Let IRS determine penalties and interest when filing late / not making required quarterly tax deposits.

# Paying the Tax; Penalties and Interest for Late Filing/Payment



CAUTION

*If the organization owes tax when it files Form 990-T, do not include the payment with the tax return.*

*Instead, use EFTPS.*

## Interest and Penalties

Your organization may be subject to interest and penalty charges if it files a late return or fails to pay tax when due.

Generally, the organization is not required to include interest and penalty charges on Form 990-T because the IRS can figure the amount and bill the organization for it.

**Interest.** Interest is charged on taxes not paid by the due date even if an extension of time to file is granted. Interest is also

charged on penalties imposed for failure to file, negligence, fraud, substantial valuation misstatements, and substantial understatements of tax from the due date (including extensions) to the date of payment. The interest charge is figured at the underpayment rate determined under section 6621.

**Late filing of return.** An organization that fails to file its return when due (including extensions of time for filing) is subject to a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$135. If you receive a notice about a penalty after you file this return, reply to the notice with an explanation and we will determine if you meet reasonable-cause criteria. Do **not** include an explanation when you file your return.

**Late payment of tax.** The penalty for late payment of taxes is usually  $\frac{1}{2}$  of 1% of the unpaid tax for each month or part of a month the tax is unpaid. The penalty cannot exceed 25% of the unpaid tax. If you receive a notice about a penalty after you file this return, reply to the notice with an explanation and we will determine if you meet reasonable-cause criteria. Do **not** include an explanation when you file your return.

**Estimated tax penalty.** An organization that does not make estimated tax payments when due may be subject to an underpayment penalty for the period of underpayment. Generally, an organization is subject to this penalty if its tax liability for the tax year is \$500 or more and it did not make estimated tax payments of at least the smaller of its tax liability for the tax year or 100% of the prior year's tax. See section 6655 for details and exceptions.

# You are a Paid Preparer!

- Not posted automatically on any public website, but is publicly disclosable when filed by a §501(c)(3) organization

- PTIN needed

May the IRS discuss this return with the preparer shown below (see instructions)? <input type="checkbox"/> Yes <input type="checkbox"/> No
--

<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶			Firm's EIN ▶	
	Firm's address ▶			Phone no.	

# Caution

- This was just an example
- Apply instructions to your facts and circumstances, using your understanding of computations and form
- Expect a learning curve



# Thank you!

*questions@form5500help.com*