

Eclectic Shelf Issues

From time to time questions have arisen regarding the Eclectic Shelf in the Gallery. The Eclectic Shelf is a collection of items brought in by guild members and juried by Frances Perea. These items are not produced by guild members and are sold in Artisans Depot Gallery and Gift Shop usually at a 25% commission.

Questions which have arisen are:

1. Should the Eclectic Shelf be on the floor with original art work by contributing artist?
2. Do items on the Eclectic Shelf compete unfairly with original art work by contribution artists?
3. Should there be guidelines on how someone submits items for the Eclectic Shelf?
4. Do the sales jeopardize Guild 501c3 status by producing Unrelated Business Expenses?

These questions have resulted in frustration, confusion, and disappointment for many members of the Guild. In order to respect the work of those working with the Eclectic Shelf and to resolve these questions, **The Board of Franklin County Arts Guild has recommended that the Eclectic Shelf be removed from the Gallery.** This motion will be voted on at the next meeting on April 24th. In order to get the most input from members of the guild, if you cannot come to the meeting a proxy vote is appropriate for this vote. You may give your vote to a member who will be present who knows your will and can vote on the motion as is or on any amendments to the motion. In order to facilitate this type voting, votes will be by paper ballot.

Mary Ann Morrison and Margie Gallagher have provided information (and opinion) regarding the complex topic of Unrelated Business Income (income unrelated to the mission of the organization for which the 501c3 status was granted)

Compiled and Reported by: Mary Ann Morrison in coordination with Margie Gallagher

A. The Eclectic Shelf is a collection of items brought in by guild members which were not produced by them and are sold in Artisans Depot Gallery and Gift Shop.

B. Please Note: (Except for *** items which render my opinion after studying this material), all of the information reported about Tax Exempt Status is gleaned from this web site: <https://www.stayexempt.irs.gov/home/existing-organizations/existing-organizations> and

C. The FCAG Bylaws, Article II, Mission Statement which follows:

The Franklin County Arts Guild is an organization of local artists and supportive members who are **interested in promoting fine arts and crafts in Franklin County** and the surrounding area in Tennessee. The primary focus is on advancing and providing arts education and awareness for youth and the general public and actively seeking venues for local artists to exhibit, showcase, and sell their works.

D. First, please note that on the IRS web site, The UBI Section is explained like this:

Unrelated Business Income - Reviewed April 27, 2016

Even though your organization is tax exempt, it may generate taxable income. This course discusses how to determine if you have taxable income and how to report it.

E. 3-Part UBI definition:

- 1) A trade or business - which is any activity that produces income.
- 2) The business is regularly carried on – meaning it is conducted the same way that a non-exempt organization would run a similar business, it is regularly carried on.

3) The sale may be UBI if it is NOT substantially related to an organizations purpose. Here's how to determine this: First, it depends upon the size and extent of the activities in comparison to the nature and extent of the exempt function they intend to serve. The principles that help determine this are:

- a. Selling products of exempt functions - Ordinarily, selling products that result from the performance of exempt functions is not UBI except if the manufactured product is altered unless the manufacturing activities themselves contribute importantly to the accomplishment of an exempt purpose of the organization. ***In the case of art, this does not apply. Their example listed an experimental dairy herd for scientific purposes and the production of milk and ice cream. Also, as listed in our mission statement, the Eclectic Shelf does promote fine arts and crafts in Franklin County by making them available for viewing, appreciation and purchase and therefore substantially related to our purpose.
- b. Dual use of assets or facilities – Assets and facilities may be used for exempt and commercial functions. The test is whether the use of an asset or facility relates importantly to the accomplishment of your exempt purposes. ***Again, this does not apply. Their example related to public education in arts and sciences and the use of a theater after hours as a motion picture theater for the public when the museum was closed. In this case, income would be UBI and subject to taxation.
- c. Exploitations of exempt functions – Some examples included selling endorsements of equipment which would be UBI if it did not contribute importantly to the accomplishment of the exempt purpose. ***This does not apply to the Eclectic Shelf.

F. ***So if you do have UBI, what do you do about it? If it equals or exceeds \$1000, an organization must file Form 990-T. If the anticipated tax for the year equals or exceeds \$500, it has to pay a quarterly estimated tax using Form 990-W.

Additional information from the IRS

TAXES (This is information from the IRS about taxes) <https://www.irs.gov/charities-non-profits/>

A nonprofit can engage in a trade or business without coming up against regulations that would cause it to be subject to tax, as long as the activity substantially relates to its exempt purpose. Understanding the relationship between the exempt purpose of the organization and the activities undertaken ultimately determines whether the trade or business activity is “related” and exempt from tax. A key in this identification process is the size and extent of the activities. Those on a scale larger than is “reasonably necessary for performance of such functions,” will likely be considered unrelated trade or business, and thus subject to tax.

Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business income. For most organizations, unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption. An exempt organization that has \$1,000 or more of gross income from an unrelated business must file Form 990-T. An organization must pay estimated tax if it expects its tax for the year to be \$500 or more. I think that this applies to the eclectic shelf, but since most funds go to the donors and not the gallery, so I am not sure.

The obligation to file Form 990-T is in addition to the obligation to file the annual information return, Form 990, 990-EZ or 990-PF. Each organization must file a separate Form 990-T, except title holding corporations and organizations receiving their earnings that file a consolidated return under Internal Revenue Code section 1501.

The Internal Revenue Code contains a number of modifications, exclusions, and exceptions to unrelated business income. For example, dividends, interest, certain other investment income, royalties, certain rental income, certain income from research activities, and gains or losses from the disposition of property are excluded when computing unrelated business income. In addition, the following activities are specifically excluded from the definition of unrelated trade or business: