FAHE 2019 ANNUAL MEETING
Breakout Session: Social Enterprise-Tax and legal Navigation
09.09.19

3-Factor Test for Unrelated Trade or Business

Treasury Regulation § 1.513-1(a) establishes a three-part analysis to determine whether an activity constitutes an unrelated trade or business (making the net income of such activity subject to UBIT) as follows:

1. Is the activity a trade or business?

2. Is the activity regularly carried on?

3. Is the activity substantially related to exempt purposes of the non-profit, exempt organization?

Multi-Factor Test for Attribution of Subsidiary to Parent

Factors the Services reviews to evaluate whether a for-profit subsidiary’s activities will be attributed to a tax-exempt parent organization

NOTE: Stock ownership is NOT a factor so a parent entity may own 100% of the stock of a subsidiary.

• Independence (v. Commonality) of Directors

• Maintenance of Arm’s Length Dealings

• No Involvement by Parent in Subsidiary’s Day-to-Day Management

• Financial Independence/Capitalization of Subsidiary

• Observance of Corporate Formalities of Subsidiary

• Independence of Personnel between Two Entities

• Public Perception of Independence