



Diving Deeper into UBIT: How to Engage Sponsors in the Hybrid Virtual World

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Agenda

- **Unrelated Business Income Overview:**
 - **What is it?**
 - **What is excluded?**
- **Spotlight:**
 - **Qualified Sponsorship Exception**
 - **Qualified Convention and Trade Show Exception**

Unrelated Business Income Overview

UBTI Basics

- **General Rule:**



Tax-exempt organizations do not pay income tax on their income

- **Exception*:**



If the income received is unrelated business income (UBI or UBTI), the income is subject to taxation (UBIT).

- ***BUT...**

What if you have UBTI?

- Pay tax on net unrelated business taxable income at corporate rate
- \geq \$1,000 gross UBTI: File Form 990-T
- Under 501(c)(3), UBTI more than “insubstantial” amount: May impact tax-exempt status
- 501(c)(3) public charities: Look at effect on public support test (if applicable)

Unrelated Business Taxable Income: Three-Part Test



Unrelated Business Taxable Income: Three-Part Test

Trade or business

- Profit motive (but actual profit generally doesn't matter)

Regularly carried on

- Compared to how often for-profits carry on business

Not substantially related to exempt purposes

- Facts and circumstances test
- Need for income not enough

Regularly Carried On?



Unrelated Business Taxable Income: Three-Part Test

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- Need for income not enough

Substantially Related?



Common Exceptions and Modifications from UBTI

Volunteers

Convenience
of Members

Investment
Income

Royalties

Bingo

Mailing Lists

Donated
Merchandise

Low-Cost
Items with
Solicitations

Hospital
Services

Rent

Corporate
Sponsorships

Convention
and Trade
Shows

Qualified Sponsorship Exception

Qualified Sponsorship Overview

- Qualified Sponsorship Payments:
 - Payment: money, property, or services
 - No **substantial** return benefits
- Substantial Return Benefit:
 - The fair market value of all return benefits, in the aggregate, exceeds 2% of the sponsorship payment in the taxable year
 - Exclude acknowledgements
- Qualified Sponsorship Payments are a safe harbor from UBIT
 - Failure to qualify does not mean the payment is necessarily taxable

Substantial Return Benefit

A substantial return benefit exists if:

- The aggregate fair market value of all the benefits provided to the sponsor, other than sponsorship acknowledgements, exceeds 2% of the amount of the payment **in the taxable year**.



If the 2% threshold is exceeded, then the entire fair market value of the benefits is a substantial return benefit, not just the excess.



Only the amount of a sponsorship payment that exceeds the fair market value of the substantial return benefits will be recognized as a qualified sponsorship payment.

Substantial Return Benefit

Sponsorship =
\$100,000

2% = \$2,000

Free tickets to event
FMV = \$500

Advertising
FMV = \$500

Substantial Return Benefit

Sponsorship =
\$100,000

2% = \$2,000

Free tickets to
event
FMV = \$1500

Advertising
FMV = \$1500

Substantial Return Benefit

Year 1 Sponsorship =
\$60,000

Year 2 Sponsorship =
\$40,000

2% of Year 1 Payment =
\$1200

2% of Year 2 Payment
= \$800

Year 1 Benefits

FMV = \$1,000

Year 2 Benefits

FMV = \$1,000

Use or Acknowledgment

Permitted

Logos and Slogans

Contact Information

Displays of Products or
Depictions of Services

Product Lists, Brands List

Exclusive Sponsor

Not Permitted

Qualitative or
Comparative Language

Price Information or
Statement of Value

Endorsements

Inducement to Buy

Exclusive Provider

Use or Acknowledgment



202-344-4000

Advertisement

Thank you to our
sponsor, Music Land.
Go there for all your
music needs!

Music Association of
America

Taco Land

Exclusive Sponsor vs. Exclusive Provider



Thank you to Venable
LLP, our exclusive legal
sponsor



Thank you to Coca-
Cola, the exclusive
provider of soft drinks
at our event

Engaging Sponsors Online – Use or Acknowledgment

- Lots of opportunities to engage sponsors online within the “use or acknowledgment” framework
 - Websites
 - Sponsor acknowledgment page
 - Sponsor banners
 - Links to sponsor websites
 - Other creative placements for acknowledgments on website
 - Email communications about event
 - **Social media engagement**

Engaging Sponsors Online – Use or Acknowledgment

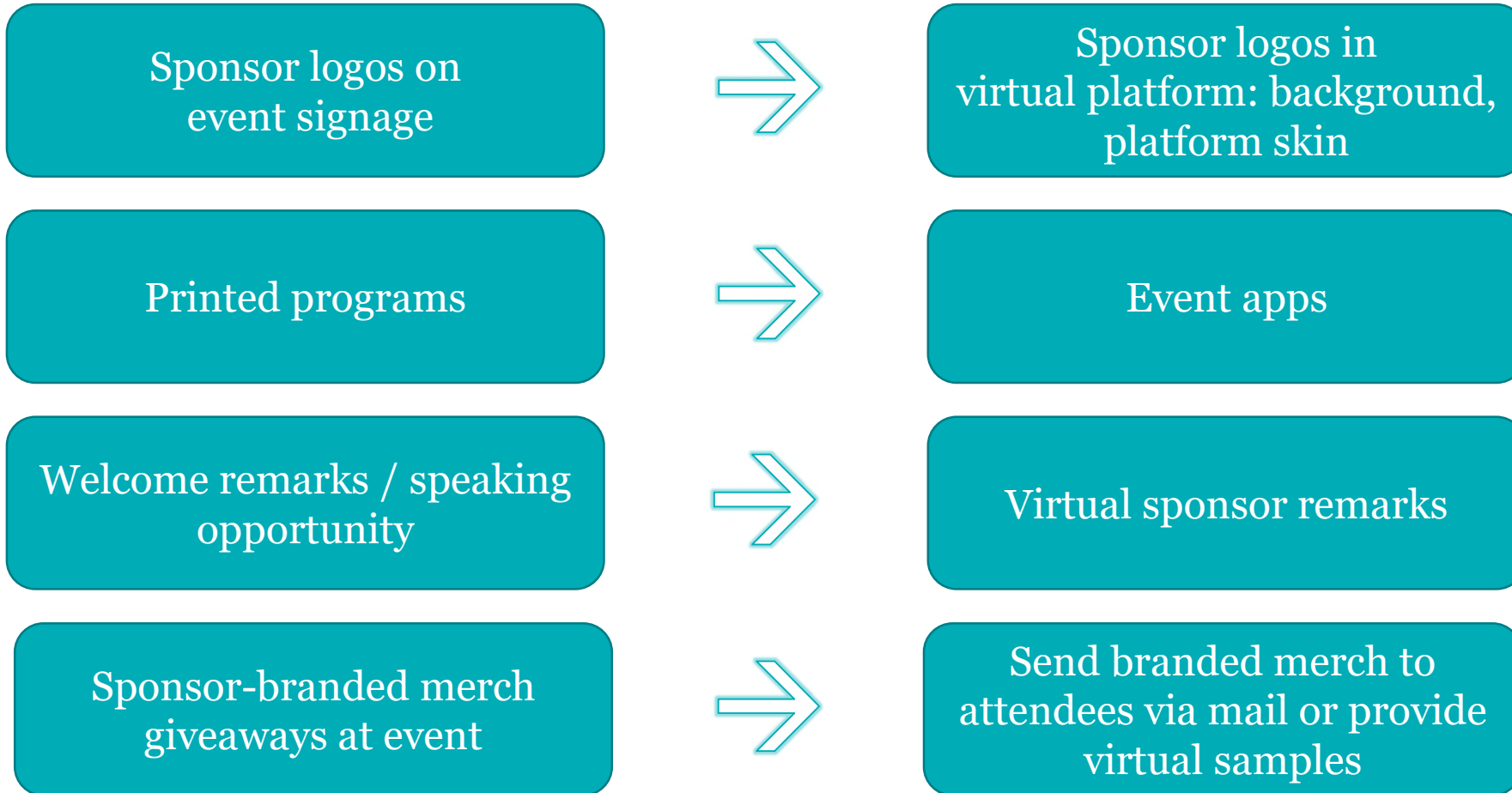


7,170 views

alzassociation Today we celebrate a milestone in our eight-year corporate partnership with @Marshalls. 🎉 To date, the Marshalls fundraising program has raised more than \$10 MILLION for the fight to #ENDALZ! Thank you, Marshalls, and thank you to all who donated to make the campaign a success.

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Adapting In-Person Acknowledgments to the Virtual/Hybrid Space



What if the Return Benefits Exceed 2% of the Fair Market Value of Sponsorship?

- If aggregate of all return benefits exceeds 2% of the sponsorship payment, you can still provide those benefits!
 - Each benefit evaluated separately for purposes of UBIT
- Determine the fair market value of each type of benefit and break it out in the sponsorship agreement
 - Other UBIT exceptions and modifications may apply

What if the Return Benefits Exceed 2% of the Fair Market Value of Sponsorship?

Sponsored organization = Drama Llamas, Inc.
(theatrical performance and education group)

Sponsor = Makeup by Magic (cosmetics company)

Sponsorship Payment = \$10,000

Makeup by Magic to distribute new makeup sampler at Drama Llamas' annual Shakespeare in the Parking Lot production

Three Instagram posts tagging Makeup by Magic's account and thanking them for being the "official makeup sponsor of the Drama Llamas"

Ten free registrations for Drama Llama's improv classes

License to name a new makeup color "Drama Llama Dream"

Makeup by Magic to provide online voucher for free makeup sampler to all registrants of this year's Shakespeare in the Virtual Parking Lot production

Agreement by Drama Llamas to purchase a Makeup by Magic professional kit for each of its five principal performers

What if the Return Benefits Exceed 2% of the Fair Market Value of Sponsorship?

Fair Market Value

Makeup by Magic to distribute new makeup sampler at Drama Llamas' annual Shakespeare in the Parking Lot production

Three Instagram posts tagging Makeup by Magic's account and thanking them for being the "official makeup sponsor of the Drama Llamas"

Ten free registrations for Drama Llama's improv classes

FMV = 10 x \$100 = \$1,000

License to name a new makeup color Drama Llama Dream

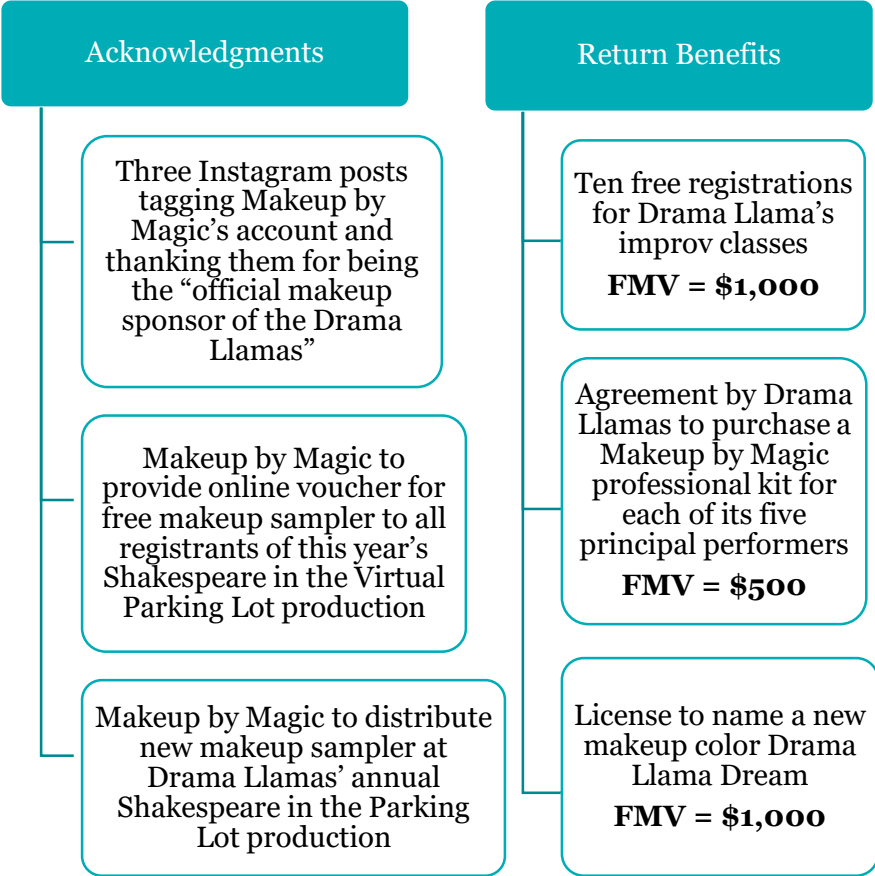
FMV = \$1,000

Makeup by Magic to provide online voucher for free makeup sampler to all registrants of this year's Shakespeare in the Virtual Parking Lot production

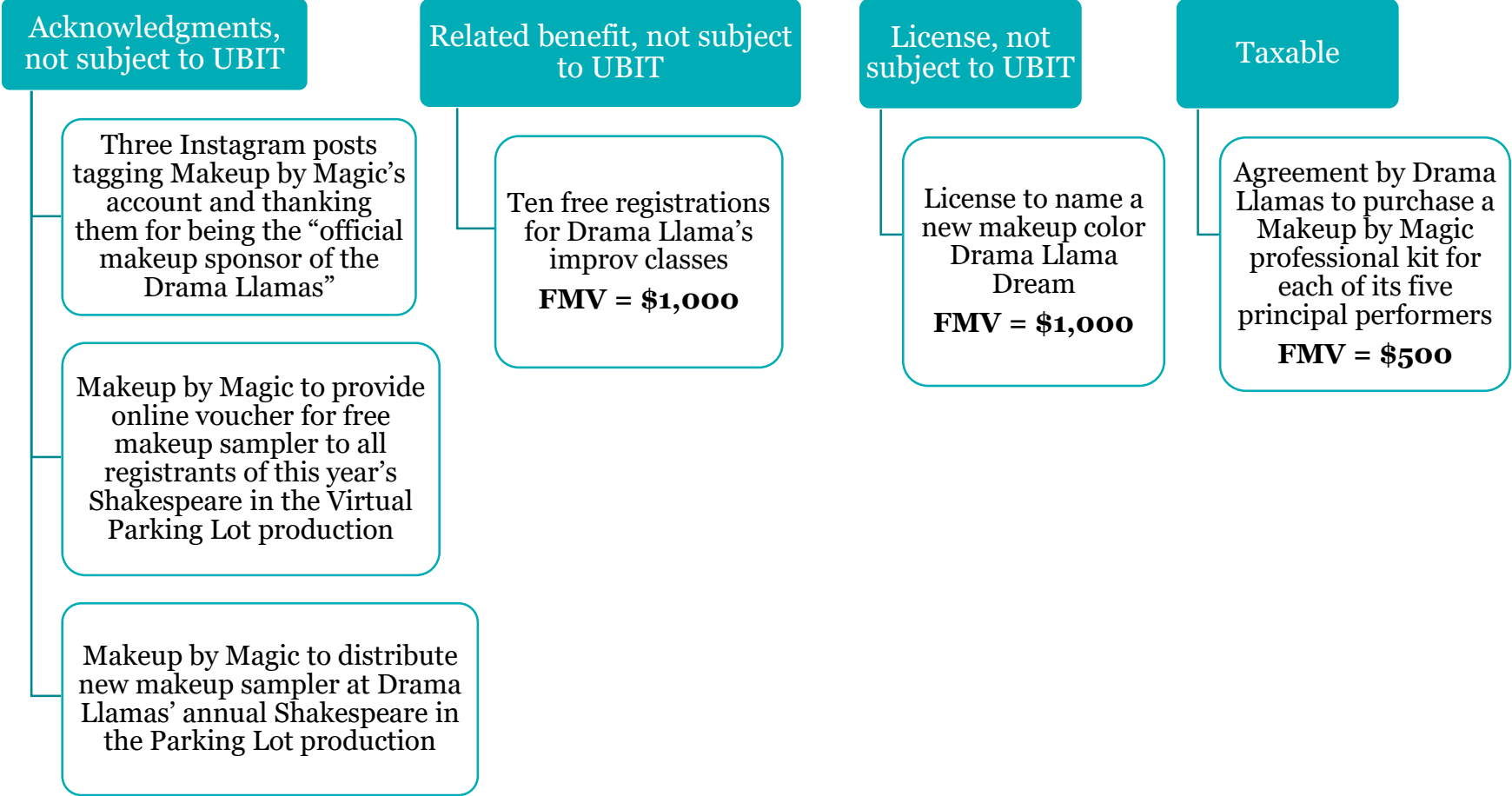
Agreement by Drama Llamas to purchase a Makeup by Magic professional kit for each of its five principal performers

FMV = 5 x \$100 = \$500

What if the Return Benefits Exceed 2% of the Fair Market Value of Sponsorship?



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Qualified Convention and Trade Show Exception

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Convention and trade show activities

Carried on by

Qualifying organization

In connection with

Qualified convention or trade show

- Any activity traditionally carried on at shows

- 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6) that
- Regularly conducts as one of its substantial exempt purposes a “qualified convention or trade show”

- At least one purpose in conducting show is the education of its members or promoting products or services of industry of members

Virtual Trade Shows

IRS guidance (2004)

- Example 1: Hybrid model
 - In-person trade show
 - Online component: Same information offered at in-person show
 - E.g., Exhibitor information, exhibitor displays, product directories, links to exhibitor websites
 - Only available during trade show + 3 days pre/post trade show
 - **Conclusion:** Qualifies for exception
- Example 2: Solely online
 - Same content as online content offered in Example 1
 - Available for 2 weeks
 - No overlap with any in-person trade show
 - **Conclusion:** Doesn't qualify for exception
 - Not a specific event where people gather in person at one physical location and interact face to face

Virtual Trade Shows: Practical Considerations

Hybrid Event

- Limit availability to certain dates
- Market online component as part of in-person event
- Specify portion of fee attributable to virtual component

Online Event

- Limit availability to certain dates
- Feature networking, sales, or education, particularly ways to interact virtually with exhibitors
- Maintain look and feel of in-person event

Questions?



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