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FPI C-3 Sales and Related Taxes

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I. PURPOSE

This Financial Policy and Procedure Instruction explains the University's policies and procedures related to the administration, collection, remission, payment and reporting of taxes.

II. POLICY ON REFERRAL OF TAX MATTERS

The activities of the University often have federal, state and local tax implications. When a tax matter arises that is not directly addressed by university policies and procedures, faculty and staff should refer the matter to the University Tax Accountant in Business and Financial Services. Payroll tax matters should be directed to the Payroll Manager in the department of Human Resource Services.

University faculty and staff members should not communicate directly with taxing authorities when conducting University business. All requests for tax information, tax reporting or other contact with tax authorities should be conducted through the University Tax Accountant or through the Payroll Manager if a payroll matter is at issue.

III. POLICY AGAINST PROVIDING TAX ADVICE

Faculty and staff members of the University should not prepare tax returns or provide tax advice as part of their employment duties. Erroneous tax advice provided to students or employees may create liability for the University and could place the recipient of the advice in an adverse position with the taxing authorities.

Any employee who is approached for tax help must decline to give any assistance or advice, either written or verbal. The individual who is requesting the advice should be advised to consult with a tax advisor or the appropriate taxing authorities.

Employees not representing themselves as University employees who wish to provide tax services as private consultants should refer to the University's policies regarding consulting and conflict of interest.

IV. SALES TAX POLICY AND PROCEDURES

A. Sales Tax Policy

The University is required to collect and remit sales tax on all taxable retail sales. All colleges, departments, agencies and other selling entities should make a good faith effort to comply with the applicable sales tax provisions.

The University's sales tax licenses are posted in the Office of the Director of Business and Financial Services. Business and Financial Services will report all sales tax information and remit taxes collected to the proper taxing authorities.

B. Taxable Transactions

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Sales tax should be collected on all taxable retail sales. A taxable retail sale is any sale of tangible personal property within the state of Colorado except sales specifically exempted from sales tax by law.

The taxability of the following transactions is often questioned. These sales are not exempted from sales tax. Sales tax must be collected on these transactions.

- Auction sales.
- Sales made to faculty, students and employees.
- Retail sales made by student organizations.

C. Sales Exempt from Sales Tax

The following types of sales are specifically exempted from Colorado sales tax. This list is not exhaustive. Contact the University Tax Accountant in the Department of Business and Financial Services if you have a question about the applicability of sales tax to a specific type of sale.

1. **Sales to Government Entities**
All sales to the U.S. government, state of Colorado, and any department, institution, and subdivision of the state or federal government when purchased within governmental capacities. To secure the sales tax exemption, the order must be on a prescribed government form or purchase order and the payment must be made with a government procurement card or directly to the seller by warrant or check drawn directly on government funds.
2. **Sales to Charitable Entities**
All sales made to charitable organizations in the normal conduct of their regular charitable functions and activities. To secure the sales tax exemption, evidence of exemption must be supplied. It should be noted that this sales tax exemption applies only to sales made to a charitable organization and does not apply to sales made to individual members of the organization.
3. **Sales Delivered Outside of Colorado**
Sales located within Colorado at the time of sale and delivered to the purchaser by the University, by mail or by common carrier to a destination outside of Colorado for use outside the state are not subject to sales tax.
4. **Sales for Resale**
Sales of tangible personal property to retail merchants, dealers or wholesalers for resale are exempt from sales tax. The University is required to have proof on file that the purchase was for resale.
5. **Sales of Services**
In general, the sale of services is exempt from sales tax. See Attachment 1 for a discussion on transactions that involve both the provision of a service and a transfer of property.
6. **Rental of Tangible Personal Property**
The right to a continuous possession or use of tangible personal property for three years or less under a lease or contract is exempt from sales tax.
7. **Sales of Food for Domestic Home Consumption**
Sales of food for domestic home consumption are exempt from Colorado state sales tax. "Food" means any food or food product for home

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consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for immediate consumption.

8. Sales of Prescription Drugs

Sales of prescription drugs or materials furnished by a doctor as part of professional services provided to a patient are exempt from sales tax. Sales of veterinary drugs which are required to be dispensed by prescription from a licensed veterinarian are also exempt from sales tax.

9. Contracts for Research and Development

The development of information in a research and development contract that requires only the development of ideas, plans and engineering data constitutes the sale of a service and is exempt from sales tax.

10. Agricultural Exemptions

- Sales of livestock.
- Sales of live fish for stocking purposes.
- Sales of straw and bedding for use in the care of livestock or poultry.
- Sales of feed for livestock.
- Sales of semen and agricultural compounds used for the care of livestock.
- Sales of seeds and orchard trees.
- Sales of fertilizer made to an agricultural producer.
- Sales of farm equipment.

11. Other Exempt Sales:

- Sales of food through vending machines.
- Sales of gasoline and cigarettes.
- Sales of newspapers.
- Sales of gift certificates.
- Accommodations occupied for 30 or more consecutive days.
- Sales and rentals of real property.
- Sales to other University departments paid for by intramural order (IMO).

D. Sales Tax Procedures

University colleges, agencies and departments who make taxable sales are responsible for the collection of sales tax.

0. Determine the Taxing Jurisdiction

The University currently collects sales tax for the State of Colorado, Larimer County and the City of Fort Collins. See Attachment 1 for information on how to determine which jurisdiction's taxes relate to your sale.

1. Determine the Tax Base

The tax base is the purchase price paid on a taxable sale at retail. This amount excludes separately stated delivery and service charges.

2. Calculate the Sales Tax

- If sales tax is collected in addition to the purchase price: Sales tax is calculated by multiplying the tax base by the applicable tax rate. Tax rates may be found at <http://www.colostate.edu/Depts/BusFin/taxalert.html>.
- If sales tax is included in the purchase price:

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Sales tax is calculated from gross taxable receipts using the method provided at
<http://www.colostate.edu/Depts/BusFin/taxrecpt.html>.

3. Deposit the Sales Tax

The University is required to remit sales tax collected on a monthly basis. All sales tax collected should be deposited into the proper accounts promptly. See Attachment 1 for sales tax account information.

4. Perform Reviews and Retain Records

Collecting entities should periodically review sales tax procedures to ensure the proper amount of sales tax is being collected. In addition, adequate records evidencing transactions must be maintained for six years.

V. LODGING TAX POLICY AND PROCEDURES

A. Lodging Tax Policy

The University is required to collect and remit the Fort Collins Lodging Tax on all taxable lodging transactions. Lodging tax is collected in addition to any applicable sales tax. All colleges, departments, agencies and other selling entities should make a good faith effort to comply with the applicable lodging tax provisions.

The University's lodging tax license is posted in the Office of the Director of Business and Financial Services. Business and Financial Services will report all lodging tax information and remit taxes collected to the City of Fort Collins.

B. Taxable Transactions

Lodging tax should be collected on all taxable sales of lodging accommodations provided within the Fort Collins city limits. Lodging accommodations are the leasing, rental or furnishing of any room or other accommodation to any person for a total continuous duration of less than thirty days.

C. Sales Exempt from Lodging Tax

The following types of sales are specifically exempted from the Fort Collins Lodging tax. This list is not exhaustive. Contact the University Tax Accountant in the Department of Business and Financial Services if you have a question about the applicability of lodging tax to a specific type of transaction.

0. Sales to Government Entities

All sales to the United States government, to the State of Colorado, or any department, institution, subdivision of the state or federal government when the purchase is within its governmental capacity. To secure the lodging tax exemption, the order must be on a prescribed government form or purchase order and the payment must be made with a government procurement card or directly to the seller by warrant or check drawn directly on government funds.

1. All lodging accommodations provided to religious or charitable organizations in the conduct of their religious and charitable functions

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and activities only. To secure the lodging tax exemption the purchaser must provide evidence of exemption.

2. **Other Exempt Sales**
 - All lodging accommodation provided for periods of thirty or more consecutive days.
 - Any lodging transaction where the price of such accommodation is paid in advance on a weekly basis and the total sum does not exceed seventy-five dollars per week.
 - Sales to other University departments that are paid for by intramural order (IMO).

D. Lodging Tax Procedures

University colleges, agencies and departments who make taxable sales of lodging accommodations are responsible for the collection of lodging tax.

0. **Determine the Taxing Jurisdiction**

The lodging tax only applies to lodging accommodations provided within the Fort Collins city limits.
1. **Determine the Lodging Tax Base**

The lodging tax base is the price paid for rooms and accommodations.
2. **Calculate the Lodging Tax**
 - If lodging tax is collected in addition to the price paid for accommodations:
Lodging tax is calculated by multiplying the tax base by the applicable tax rate. Tax rates may be found at <http://www.colostate.edu/Depts/BusFin/taxalert.html>
 - If lodging tax is included in the price paid for accommodations:
Lodging tax is calculated from gross taxable receipts using the method provided at <http://www.colostate.edu/Depts/BusFin/taxrecpt.html>.
3. **Deposit the Lodging Tax**

The University is required to remit lodging tax collected on a monthly basis. All lodging tax collected should be deposited into the proper account promptly. See Attachment 1 for lodging tax account information.
4. **Perform Reviews and Retain Records**

Collecting entities should periodically review lodging tax procedures to ensure the proper amount of lodging tax is being collected. In addition, adequate records evidencing transactions must be maintained for six years.

VI. POLICY AND PROCEDURES ON UNRELATED BUSINESS INCOME TAX

A. Unrelated Business Income Tax Policy

Colorado State University is exempt from tax on income earned from activities that are *related* to the University's missions of education, research and public service. However, the University is potentially subject to income tax on the net income earned from business activities that are *unrelated* to the University's exempt purpose.

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The University Tax Accountant is responsible for making quarterly estimated tax payments and for preparing the University's annual federal and state unrelated business income tax returns. Estimated tax payments are based on the University's fiscal year and are due October 15, December 15, March 15 and June 15.

Typically, an unrelated project's ratable share of the University's tax liability will be charged to that project's account. Taxes should have already been recovered as part of the price structure for the activity. In some cases an activity might be deemed retroactively to constitute an unrelated business as a result of a review of the activity or an audit by the Internal Revenue Service. When an activity is retroactively found to be unrelated, the activity's home department or college will be responsible for providing the funds to cover the corresponding tax liability for the current year and past three years.

B. Unrelated Business Activities Defined

Three elements must be present in order for an activity to be treated as an unrelated business that is subject to the unrelated business income tax. The activity must be (1) a trade or business, (2) regularly carried on, (3) *and* not substantially related to the University's exempt purpose. All three elements must be present in order for an activity to be treated as an unrelated business.

0. Trade or Business Requirement

The activity must be carried on for the production of income from the sale of goods or performance of services. An activity does not need to consistently make a net profit to be considered a "trade or business." See Attachment 1 for additional information.

1. "Regularly Carried On" Requirement

For income to be subject to the unrelated business income tax the activity must be "regularly carried on" as opposed to those which are casual, sporadic or infrequent. See Attachment for additional information.

2. "Not Substantially Related" Requirement

The activity must *not* be substantially related to the University's exempt purpose of education, research and public service. The fact that the proceeds from an activity will be used to support an exempt purpose does not mean that the activity itself will be considered to be substantially related to the University's exempt purpose. See Attachment 1 for additional information.

C. Activities Exempt from Unrelated Business Income Tax

Certain types of activities are specifically exempted by statute from the unrelated business income tax. Even if an activity meets all three of the criteria of an unrelated business, it may be excluded from the unrelated business income tax if it is specifically exempted. Below is a list of activities that are specifically exempted by statute.

0. Volunteer Exception

Any unrelated business activity in which substantially all of the work is performed by unpaid volunteers is specifically exempted from the

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unrelated business income tax. See Attachment 1 for additional information.

1. **Convenience Exception**
Sales conducted primarily for the convenience of University members, students, faculty, staff, conference participants, clients, patients, and other invited guests to campus are exempted from the unrelated business income tax. See Attachment 1 for additional information.
2. **Sale of Donated Property**
Any unrelated business activity is exempt from tax if substantially all of the merchandise sold was received as gifts or contributions. A common example is the sale of donated merchandise at a fundraising auction.
3. **Revenues from Passive Activities**
Dividends, interest and royalties are not subject to the unrelated business income tax, provided that no services are performed in connection with the receipt of such payments.
4. **Sale of Unaltered By-Products**
Revenues from the sale of unaltered by-products generated as a result of education, research or public service activities are excluded from the unrelated business income tax. See Attachment 1 for additional information.
5. **Rentals of Real Property**
Rentals of realty such as facilities and athletic playing fields are generally excluded from unrelated business income tax. In order for rental revenue to be exempt from tax, no unusual services should be rendered by the University to the occupant. In addition, rents should not be calculated as a percentage of net profits derived from the occupancy of the real property. See Attachment 1 for additional information.
6. **Certain Rentals of Personal Property**
In general, revenue from the rental of personal property such as laboratory or recreational equipment is taxable if all three criteria of an "unrelated business" are met. However, rents from personal property may be exempt from unrelated business income tax under certain leases that provide for both the rental of real and personal property and the rents from personal property are incidental in amount of the total rents received under the lease. See Attachment 1 for additional information.
7. **Research**
Revenue from certain research grants or contracts is specifically exempted from the unrelated business income tax. See Attachment 1 for additional information.
 - *Government Research:* Income from research conducted for the United States government, its instrumentalities or agencies, or any state or political subdivision is exempt from the unrelated business income tax.
 - *Research Performed For Any Person:* Income derived by the University for research performed for any person is exempt from tax as long as the results of the research are not proprietary.
8. **Sale of Assets**
All revenue from the sale, exchange or other disposition of property, other than inventory and property held primarily for sale to customers, is excluded from the unrelated business income tax.
9. **Certain Sales of Advertising**
In general, income from the sale of advertising is treated as income from an unrelated business and is subject to the unrelated business income tax. However, certain sales of advertising are exempt from tax.
 - *Advertising in programs for sports events, music or drama performances*

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These events are not ordinarily deemed to constitute a business that is "regularly carried on" and, as a result, revenue from this advertising is generally not taxable.

- *Advertising published in a college newspaper*
Consumer advertising published in a college newspaper or other media as part of an instructional program or advertising which serves an "information function" as opposed to serving as a means of stimulating demand for products is considered related to the University's exempt purpose and therefore not taxable. See Attachment 1 for additional information.

D. Procedures for Unrelated Business Activities

The following procedures should be followed to ensure the University is in compliance with applicable unrelated business income tax provisions.

0. Identify Unrelated Business Activities

Department heads, with input from program managers and the University Tax Accountant, are responsible for continuous review of all proposed and ongoing activities in departments to identify unrelated business activities. All new unrelated business activity or significant revenue increases in existing unrelated business activity must be approved by the Executive Budget Committee.

Departments conducting unrelated businesses are responsible for the identification of unrelated business activity, payment of unrelated business income taxes, and payment of penalties and interest assessed by taxing authorities for failure to identify unrelated businesses.

1. Minimize The Number of Unrelated Activities

Whenever possible, activities should be structured in such a way that they constitute related businesses that are exempt from the unrelated business income tax. The following techniques can be utilized to make unrelated activities related to the University's exempt purpose.

- Incorporation of a formal, substantive education component in the activity. See Attachment 1 for additional information.
- Incorporation of a research component in the activity. See Attachment 1 for additional information.
- Identification or establishment of a mandated public service component into the activity. See Attachment 1 for additional information.

Unrelated business activities are not prohibited by the University. Unrelated activities should not be rejected or abandoned simply to avoid paying taxes. However, whenever possible activities should be modified to minimize the tax impact to the University.

2. Establish a Price Structure

Program managers are primarily responsible for establishing unrelated

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business price structures that recover direct costs, including the potential tax liability, full indirect costs and the desired profit margin.

3. **Account for Unrelated Business Activities**

Accounting for unrelated business revenues and allocable direct expenditures is the responsibility of project managers. Adequate records must be maintained for revenues and expenditures of unrelated business activities for six years.

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Evidence of Sales Tax Exemption

In order to grant a sales tax exemption, the selling entity should secure the customer's exemption number or other evidence sufficient to demonstrate the validity of the customer's exemption claim. This documentation should be kept on file by the selling entity as a permanent record of exemption. "Exempt Sale" should be clearly marked on the sales invoice when the purchaser has furnished satisfactory proof that the sale is exempt.

If there is a dispute or if the selling entity is unsure of the purchaser's exempt status, the selling entity should collect the tax. The purchaser can file with the appropriate taxing jurisdiction for a refund of any tax they consider to have been improperly assessed.

Transactions involving both a Service and a Transfer of Property.

In general, sales tax applies to the total amount of gross receipts derived from a retail sale of tangible personal property, and no deduction is permitted to account for the expense of producing the property. However, in some cases a separately stated charge for services can be excluded from the amount that is subject to sales tax. For example, installation charges may be excluded from the taxable purchase price if they are separately stated on the invoice.

If the true object of a transaction is the performance of a service, the transaction is not subject to tax, even though some tangible personal property may be transferred in providing the service. Consider the example where the University enters into a contract to develop a software program for a small business. The software program is delivered on a CD-ROM. The true object of the contract between the University and its client is the performance of services (the software program) and not the furnishing of tangible personal property (the CD). Therefore, the transaction is not subject to sales tax.

Determining the Sales Tax Jurisdiction

The University only collects sales tax for the State of Colorado, Larimer County and the City of Fort Collins. The applicable sales tax should be collected for any sales located within these taxing jurisdictions.

- Sales made within the Fort Collins City limits: Collect sales tax for the city of Fort Collins, Larimer County and the State of Colorado.
- Sales made outside city limits but within Larimer County: Collect sales tax for Larimer County and the State of Colorado.
- Sales made outside city and county limits but within the state of Colorado: Collect sales tax for the state of Colorado.

Sales Tax Accounts

Sales tax should be deposited into the following University liability accounts:

	<u>Description</u>	<u>Account</u>	<u>Account Control</u> (Subcode)
Colorado State Tax:	State Sales Tax	024200	2020
City of Fort Collins Tax:	City Sales Tax	024200	2022
Larimer County Tax	County Sales Tax	024200	2023

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The University is required to remit taxes collected on a monthly basis. Taxes should be deposited into the appropriate accounts promptly.

Evidence of Lodging Tax Exemption

In order to grant a lodging tax exemption, the selling entity should secure the customer's exemption number or other evidence sufficient to demonstrate the validity of the customer's exemption claim. This documentation should be kept on file by the selling entity as a permanent record of exemption. "Exempt Sale" should be clearly marked on the lodging invoice when the purchaser has furnished satisfactory proof that the sale is exempt.

If there is a dispute or if the selling entity is unsure of the purchaser's exempt status, the selling entity should collect the tax. The purchaser can file with the appropriate taxing jurisdiction for a refund of any tax they consider to have been improperly assessed.

Lodging Tax Accounts

Lodging tax should be deposited into the following University liability accounts:

	<u>Description</u>	<u>Account</u>	<u>Account Control</u> (Subcode)
Fort Collins Lodging Tax	State Sales Tax	024200	2030

The University is required to remit taxes collected on a monthly basis. Taxes should be deposited into the appropriate accounts in a promptly.

Trade or Business Requirement

For the purposes of the unrelated business income tax, a "trade or business" is any activity that is carried on for the production of income from the sale of goods or performance of services. An activity need not consistently make a net profit to be considered a "trade or business." However, a strong argument can be made that an activity that has not historically generated profits does not have a "profit motive" and therefore does not constitute a trade or business.

An activity will not lose its identity as a trade or business merely because it is carried on within a larger aggregate of similar activities that may be related to the exempt purpose of the University. One example of this concept would be a university that has a ski facility that it uses in its physical education program and for the recreational use of its students. Members of the general public also use the facility and pay fees comparable to those charged by commercial enterprises. In this example the use of the ski facilities by the general public would be considered to be a separate and distinct trade or business that is potentially subject to the unrelated business income tax even though the student use of the facility is related to the exempt purpose of the University.

"Regularly Carried On" Requirement

For income to be subject to the unrelated business income tax, the activity must be "regularly carried on" as opposed to those which are casual, sporadic or infrequent.

An activity is regularly carried on if it manifests a frequency and continuity and is pursued in a manner generally similar to comparable commercial activities of nonexempt organizations. The time span over which a comparable commercial activity is conducted should be compared with the time span of the activity in question. If they are about the same, the activity is considered to

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be regularly carried on. Also, if a commercial activity is normally conducted on a limited or seasonal basis, an activity conducted on the same basis by the tax-exempt organization will be considered to be regularly carried on.

Similarly, intermittent activities that are conducted only at intervals and not on a continuous basis should be compared to the manner in which similar commercial activities are carried on. As a general rule, if the organization's activity is not conducted with the same marketing and promotional efforts as a commercial business, the activity is not considered to be regularly carried on. Other activities may be conducted so infrequently that they are not treated as regularly carried on regardless of the manner in which they are conducted.

"Substantially Related" Requirement

To be "substantially related" to the University's education, research, and public service exempt purpose, an activity must have a substantial causal relationship to the achievement of those purposes. The activity must contribute importantly to the accomplishment of the exempt purpose, other than just being responsive to the University's need to produce income to accomplish its exempt purpose. The following three sections consider factors important in the "substantially related" test.

1. Education, Research and Public Service

The "substantially related" test requires an analytic comparison of the activity in question to the University's exempt purpose. The University's primary exempt purpose is education. The income tax regulations define "education" as the instruction or training of an individual for the purpose of improving or developing his capabilities. Education is also defined as the instruction of the public on subjects useful to the individual and beneficial to the community.

Research and public service are also part of the University's mission. Public service, however, does not in itself provide the basis for the University's exempt status. Therefore, each activity which is public service oriented must be scrutinized to determine whether a statutory mandate exists that requires the University to provide a particular public service, thus supporting the claim that the service is part of the institution's mission.

2. Size and Extent

For purposes of determining relatedness it is also important to place particular emphasis in analyzing the size and extent of an activity. If an activity is conducted on a scale larger than reasonably necessary to carry out the exempt purpose then revenues derived from the excess portion of the activity are likely to be treated as unrelated.

An example of this concept would be where the University conducts a student training program where students provide faculty-supervised services to the general public in a practicum setting for academic credit while supervising faculty also regularly provide the same service through the University outside of the practicum setting. In this example the total service activity could be considered to be more extensive than necessary to train students and therefore the revenue generated by the faculty acting independently of the practicum could be considered to be taxable as unrelated business revenue.

3. Dual Use of Facilities or Personnel

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Another important factor to consider in determining relatedness of an activity is whether given facilities or personnel of the university are used to support both related and unrelated activities. Such "dual use" will not exempt the income derived from the unrelated, commercial use unless the commercial activity "contributes importantly" to the accomplishment of an organization's exempt purposes or is not conducted regularly.

Consider the example where a university's recreational facility is used by students for classes during the week and is used by the general public on evenings and weekends for a fee. The student use of the facility is related to the University's education purpose. However, the use of the facility by the general public would be considered unrelated to the exempt purpose of the university. Revenues from the public use of the facility would be considered to be a separate unrelated business and would be subject to the unrelated business income tax.

Volunteer Labor

Any unrelated business activity in which substantially all of the work is performed by unpaid volunteers is specifically exempted from the unrelated business income tax. While the tax statutes do not define the term "substantially all," the Internal Revenue Service has noted in other areas of the tax law that the "substantially all" requirement is generally regarded as met if it equals or exceeds 85 percent. In assessing the contribution made by volunteers in relation to the sales effort, such factors as the monetary value of the respective services rendered, the number of hours worked, the intrinsic importance of the volunteer work performed and the degree of reliance placed upon volunteers should be considered.

Convenience Exception

Sales conducted primarily for the convenience of University members, students, faculty, staff, conference participants, clients, patients, and other invited guests to campus are exempted from the unrelated business income tax.

The convenience exception does not serve as a blanket exemption for the sale of goods and services to members. Rather, the goods and services provided under the exception should support the members in their participation in the tax-exempt activities of the institution.

Examples of tax-exempt sales transacted for the convenience of members include the sale of textbooks, supplies, class notes, photocopies, food, drink and sundry items.

Sale of Unaltered By-Products

Revenues from the sale of unaltered by-products generated as a result of education, research or public service activities are excluded from the unrelated business income tax.

Examples include sales of food, animals, plants, software, printed materials, educational videotapes or cassettes that are products of instruction, research or extension/outreach that are not significantly altered prior to sale. Thus, a university dairy's sales of milk as a by-product of dairy education and research activities would be excluded. However, if the dairy processed the milk into cheese or ice cream and then sold these altered products, the revenues from this activity would be potentially subject to the unrelated business income tax.

Rentals of Real Property

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Rentals of realty such as facilities and athletic playing fields are generally excluded from unrelated business income tax. Two exceptions are described below.

1. Unusual Services

In order for rental revenue to be exempt from tax, no unusual services should be rendered by the University to the occupant. Services are considered to be "unusual" if they are other than those usually rendered in connection with the rental of rooms or other space for occupancy only. For example, the supplying of maid or linen services usually constitutes "unusual" services, whereas the furnishing of heat and light and the cleaning of public entrances, exits, stairways and lobbies do not.

2. Rents As a Percentage of Net Profits

Rents calculated as a percentage of net profits (income) derived from occupancy of real property do not qualify for an exclusion of unrelated business income tax. Conversely, if rents are based on (1) a fixed percentage of gross receipts or sales, (2) paid as a flat fee, or (3) based on a combination of a flat fee plus a percent of gross, then the rental revenue is excluded from the unrelated business income tax.

Certain Rentals of Personal Property

Rents from personal property may be exempt from unrelated business income tax under certain leases that provide for both the rental of real and personal property and the rents from personal property are incidental in amount of the total rents received under the lease.

- 10% or less of the total rent revenue is from personal property:

Personal property revenue is considered incidental and no revenue from the lease is subject to the unrelated business income tax.

- 11%-50% of total rent revenue is from personal property:

The total rent revenue is taxable in proportion to the percent of personal property rents to the total rents.

- 51% or more of total rent revenue is from personal property:

The total rent revenue from the lease is subject to the unrelated business income tax.

Research

For unrelated business income tax purposes, "research" is not ordinarily considered to include activities of a type ordinarily carried on as an incident to commercial or industrial operations.

For example, the ordinary testing and inspection of products or materials or the designing or construction of equipment, building or other products is not considered to constitute "research" for tax purposes. "Ordinary" testing and inspection implies generally repetitive work done for the purpose of determining whether the item tested met certain criteria rather than to validate a scientific hypothesis. The fact that such testing must be done by highly qualified professionals does not change its basic nature for tax purposes. If an activity is merely testing, sampling or certifying that items conform to a known standard then the activity is potentially subject to the unrelated business income tax.

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Projects ordinarily carried on as an incident to commercial or industrial operations are not exempt unless they contribute importantly to the education and/or research missions and/or are not "regularly carried on."

Hiring students for an hourly wage to work on a research project is not adequate, by itself, to sustain a claim that the project contributes importantly to the University's education and research mission. In order to sustain such a claim, the student would need to earn academic credit from participating in the project or have the opportunity to author or co-author publications that emanate from the project. Work that provides a significant contribution to the student's thesis or dissertation would also support the contention that the project contributes importantly to the University's education and research mission.

Certain Sales of Advertising

Consumer advertising published in a college newspaper or other media as part of an instructional program or advertising which serves an "information function" as opposed to serving as a means of stimulating demand for products is considered related to the University's exempt purpose.

Consumer advertising may be regarded as related to the university's exempt purpose if students are actively and formally involved in the solicitation, sale and publication of the advertising under the supervision and instruction of the university. For example, active and formal involvement of students exists if a campus newspaper offers internships for students majoring in business, journalism, consumer sciences or similar fields, and if the interns solicit and produce paid advertisements for the newspapers under university faculty and staff supervision while receiving academic credit and perhaps a salary for their efforts.

Incorporating an Education Component into Activities

A formal, substantive education component can sometimes be incorporated into an unrelated activity in order to make the activity related to the educational mission of the University. The following are examples of formal and substantive education components:

- Independent study credit earned by student participants;
- Practicum credit earned by student participants;
- Opportunity for student participants to complete academic course assignments or other course requirements;
- Direct, substantial contribution of participation to thesis or dissertation;
- Formal internship for student participants;
- Important contribution to the accomplishment of goals of a recognized student organization;
- University hosting organized instruction through any means at any location for any audience;
- Any other formal academic requirement or instructional component.

It should be noted that while the hourly employment of students by an activity may provide important informal education and training experiences or the means for the student to continue his education, such informal involvement is not considered to be adequate to support a claim that the activity is "substantially related" to the University's education mission.

Incorporating a Research Component into Activities

A formal, substantive research component can sometimes be incorporated into an unrelated activity in order to make the activity related to the research mission of the University. The following are examples of formal and substantive research components:

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- Sponsorship of investigation by a government entity;
- Basic or applied research conducted for nongovernmental sponsors, results of which are nonproprietary and made available to the public;
- Documented incorporation of research methods/findings into subsequent research efforts;
- Documented incorporation of research methods/findings into formal instruction.

Incorporating a Public Service Component into Activities

A formal, substantive public service component can sometimes be incorporated into an unrelated activity in order to make the activity related to the public service mission of the University. The following are examples of formal and substantive public service components:

Identification or establishment of a mandated public service component evidenced by a law or memorandum of understanding requiring provision of the goods or services by the University;

Determination that the University is the sole source in this geographic region of competence, facilities and/or equipment and that the provision of such unique resources serves the public rather than a private interest.

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Attachment 1

Evidence of Sales Tax Exemption

In order to grant a sales tax exemption, the selling entity should secure the customer's exemption number or other evidence sufficient to demonstrate the validity of the customer's exemption claim. This documentation should be kept on file by the selling entity as a permanent record of exemption. "Exempt Sale" should be clearly marked on the sales invoice when the purchaser has furnished satisfactory proof that the sale is exempt.

If there is a dispute or if the selling entity is unsure of the purchaser's exempt status, the selling entity should collect the tax. The purchaser can file with the appropriate taxing jurisdiction for a refund of any tax they consider to have been improperly assessed.

Transactions involving both a Service and a Transfer of Property.

In general, sales tax applies to the total amount of gross receipts derived from a retail sale of tangible personal property, and no deduction is permitted to account for the expense of producing the property. However, in some cases a separately stated charge for services can be excluded from the amount that is subject to sales tax. For example, installation charges may be excluded from the taxable purchase price if they are separately stated on the invoice.

If the true object of a transaction is the performance of a service, the transaction is not subject to tax, even though some tangible personal property may be transferred in providing the service. Consider the example where the University enters into a contract to develop a software program for a small business. The software program is delivered on a CD-ROM. The true object of the contract between the University and its client is the performance of services (the software program) and not the furnishing of tangible personal property (the CD). Therefore, the transaction is not subject to sales tax.

Determining the Sales Tax Jurisdiction

The University only collects sales tax for the State of Colorado, Larimer County and the City of Fort Collins. The applicable sales tax should be collected for any sales located within these taxing jurisdictions.

- Sales made within the Fort Collins City limits: Collect sales tax for the city of Fort Collins, Larimer County and the State of Colorado.
- Sales made outside city limits but within Larimer County: Collect sales tax for Larimer County and the State of Colorado.
- Sales made outside city and county limits but within the state of Colorado: Collect sales tax for the state of Colorado.

Sales Tax Accounts

Sales tax should be deposited into the following University liability accounts:

	<u>Description</u>	<u>Account</u>	<u>Account Control</u> (Subcode)
Colorado State Tax:	State Sales Tax	024200	2020
City of Fort Collins Tax:	City Sales Tax	024200	2022
Larimer County Tax	County Sales Tax	024200	2023

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The University is required to remit taxes collected on a monthly basis. Taxes should be deposited into the appropriate accounts promptly.

Evidence of Lodging Tax Exemption

In order to grant a lodging tax exemption, the selling entity should secure the customer's exemption number or other evidence sufficient to demonstrate the validity of the customer's exemption claim. This documentation should be kept on file by the selling entity as a permanent record of exemption. "Exempt Sale" should be clearly marked on the lodging invoice when the purchaser has furnished satisfactory proof that the sale is exempt.

If there is a dispute or if the selling entity is unsure of the purchaser's exempt status, the selling entity should collect the tax. The purchaser can file with the appropriate taxing jurisdiction for a refund of any tax they consider to have been improperly assessed.

Lodging Tax Accounts

Lodging tax should be deposited into the following University liability accounts:

	<u>Description</u>	<u>Account</u>	<u>Account Control</u> (Subcode)
Fort Collins Lodging Tax	State Sales Tax	024200	2030

The University is required to remit taxes collected on a monthly basis. Taxes should be deposited into the appropriate accounts in a promptly.

Trade or Business Requirement

For the purposes of the unrelated business income tax, a "trade or business" is any activity that is carried on for the production of income from the sale of goods or performance of services. An activity need not consistently make a net profit to be considered a "trade or business." However, a strong argument can be made that an activity that has not historically generated profits does not have a "profit motive" and therefore does not constitute a trade or business.

An activity will not lose its identity as a trade or business merely because it is carried on within a larger aggregate of similar activities that may be related to the exempt purpose of the University. One example of this concept would be a university that has a ski facility that it uses in its physical education program and for the recreational use of its students. Members of the general public also use the facility and pay fees comparable to those charged by commercial enterprises. In this example the use of the ski facilities by the general public would be considered to be a separate and distinct trade or business that is potentially subject to the unrelated business income tax even though the student use of the facility is related to the exempt purpose of the University.

"Regularly Carried On" Requirement

For income to be subject to the unrelated business income tax, the activity must be "regularly carried on" as opposed to those which are casual, sporadic or infrequent.

An activity is regularly carried on if it manifests a frequency and continuity and is pursued in a manner generally similar to comparable commercial activities of nonexempt organizations. The time span over which a comparable commercial activity is conducted should be compared with the time span of the activity in question. If they are about the same, the activity is considered to

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be regularly carried on. Also, if a commercial activity is normally conducted on a limited or seasonal basis, an activity conducted on the same basis by the tax-exempt organization will be considered to be regularly carried on.

Similarly, intermittent activities that are conducted only at intervals and not on a continuous basis should be compared to the manner in which similar commercial activities are carried on. As a general rule, if the organization's activity is not conducted with the same marketing and promotional efforts as a commercial business, the activity is not considered to be regularly carried on. Other activities may be conducted so infrequently that they are not treated as regularly carried on regardless of the manner in which they are conducted.

"Substantially Related" Requirement

To be "substantially related" to the University's education, research, and public service exempt purpose, an activity must have a substantial causal relationship to the achievement of those purposes. The activity must contribute importantly to the accomplishment of the exempt purpose, other than just being responsive to the University's need to produce income to accomplish its exempt purpose. The following three sections consider factors important in the "substantially related" test.

4. Education, Research and Public Service

The "substantially related" test requires an analytic comparison of the activity in question to the University's exempt purpose. The University's primary exempt purpose is education. The income tax regulations define "education" as the instruction or training of an individual for the purpose of improving or developing his capabilities. Education is also defined as the instruction of the public on subjects useful to the individual and beneficial to the community.

Research and public service are also part of the University's mission. Public service, however, does not in itself provide the basis for the University's exempt status. Therefore, each activity which is public service oriented must be scrutinized to determine whether a statutory mandate exists that requires the University to provide a particular public service, thus supporting the claim that the service is part of the institution's mission.

5. Size and Extent

For purposes of determining relatedness it is also important to place particular emphasis in analyzing the size and extent of an activity. If an activity is conducted on a scale larger than reasonably necessary to carry out the exempt purpose then revenues derived from the excess portion of the activity are likely to be treated as unrelated.

An example of this concept would be where the University conducts a student training program where students provide faculty-supervised services to the general public in a practicum setting for academic credit while supervising faculty also regularly provide the same service through the University outside of the practicum setting. In this example the total service activity could be considered to be more extensive than necessary to train students and therefore the revenue generated by the faculty acting independently of the practicum could be considered to be taxable as unrelated business revenue.

6. Dual Use of Facilities or Personnel

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Another important factor to consider in determining relatedness of an activity is whether given facilities or personnel of the university are used to support both related and unrelated activities. Such "dual use" will not exempt the income derived from the unrelated, commercial use unless the commercial activity "contributes importantly" to the accomplishment of an organization's exempt purposes or is not conducted regularly.

Consider the example where a university's recreational facility is used by students for classes during the week and is used by the general public on evenings and weekends for a fee. The student use of the facility is related to the University's education purpose. However, the use of the facility by the general public would be considered unrelated to the exempt purpose of the university. Revenues from the public use of the facility would be considered to be a separate unrelated business and would be subject to the unrelated business income tax.

Volunteer Labor

Any unrelated business activity in which substantially all of the work is performed by unpaid volunteers is specifically exempted from the unrelated business income tax. While the tax statutes do not define the term "substantially all," the Internal Revenue Service has noted in other areas of the tax law that the "substantially all" requirement is generally regarded as met if it equals or exceeds 85 percent. In assessing the contribution made by volunteers in relation to the sales effort, such factors as the monetary value of the respective services rendered, the number of hours worked, the intrinsic importance of the volunteer work performed and the degree of reliance placed upon volunteers should be considered.

Convenience Exception

Sales conducted primarily for the convenience of University members, students, faculty, staff, conference participants, clients, patients, and other invited guests to campus are exempted from the unrelated business income tax.

The convenience exception does not serve as a blanket exemption for the sale of goods and services to members. Rather, the goods and services provided under the exception should support the members in their participation in the tax-exempt activities of the institution.

Examples of tax-exempt sales transacted for the convenience of members include the sale of textbooks, supplies, class notes, photocopies, food, drink and sundry items.

Sale of Unaltered By-Products

Revenues from the sale of unaltered by-products generated as a result of education, research or public service activities are excluded from the unrelated business income tax.

Examples include sales of food, animals, plants, software, printed materials, educational videotapes or cassettes that are products of instruction, research or extension/outreach that are not significantly altered prior to sale. Thus, a university dairy's sales of milk as a by-product of dairy education and research activities would be excluded. However, if the dairy processed the milk into cheese or ice cream and then sold these altered products, the revenues from this activity would be potentially subject to the unrelated business income tax.

Rentals of Real Property

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Rentals of realty such as facilities and athletic playing fields are generally excluded from unrelated business income tax. Two exceptions are described below.

3. Unusual Services

In order for rental revenue to be exempt from tax, no unusual services should be rendered by the University to the occupant. Services are considered to be "unusual" if they are other than those usually rendered in connection with the rental of rooms or other space for occupancy only. For example, the supplying of maid or linen services usually constitutes "unusual" services, whereas the furnishing of heat and light and the cleaning of public entrances, exits, stairways and lobbies do not.

4. Rents As a Percentage of Net Profits

Rents calculated as a percentage of net profits (income) derived from occupancy of real property do not qualify for an exclusion of unrelated business income tax. Conversely, if rents are based on (1) a fixed percentage of gross receipts or sales, (2) paid as a flat fee, or (3) based on a combination of a flat fee plus a percent of gross, then the rental revenue is excluded from the unrelated business income tax.

Certain Rentals of Personal Property

Rents from personal property may be exempt from unrelated business income tax under certain leases that provide for both the rental of real and personal property and the rents from personal property are incidental in amount of the total rents received under the lease.

- 10% or less of the total rent revenue is from personal property:

Personal property revenue is considered incidental and no revenue from the lease is subject to the unrelated business income tax.

- 11%-50% of total rent revenue is from personal property:

The total rent revenue is taxable in proportion to the percent of personal property rents to the total rents.

- 51% or more of total rent revenue is from personal property:

The total rent revenue from the lease is subject to the unrelated business income tax.

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