

UNINTENDED CONSEQUENCES

Legal issues that accompany creative use of property to increase revenue



Even before the pandemic, camps and conference centers have explored new and creative revenue streams. As nonprofit, 501(c)(3) tax-exempt organizations, there are several legal issues and risks to be aware of if you are considering new ways to bring money into your ministry. We will look at several sample scenarios and examine the potential legal and tax issues. ▶

SCENARIO: Vacation Rentals

We have heard from camps and conference centers who have explored various vacation rental concepts on their properties. We narrowed it down to two types of scenarios:

- Our camp has a great hospitality cabin that we offer to pastors as a personal retreat. This beautiful spot sits empty a good portion of the year, so we recently listed it on VRBO and have had a lot of success with bookings.
- Our conference center has several hotel-style accommodations. Because we are not often at capacity during the school year, we decided to list those open rooms on Airbnb. This has helped generate some income, especially during slower seasons.

By pursuing either of these scenarios, what you are doing is unlikely to be considered in furtherance of IRS 501(c)(3) tax-exempt purposes, which is required for nonprofit charitable ministries. Airbnb and VRBO rental activity are regular business activities. Because of that, there are four risks that a camp or conference center needs to consider:

1. **Property tax exemption** — You may put your property tax exemption at risk because it is normally based on the fact that you are a 501(c)(3), you own the property, and use it for those 501(c)(3) purposes. If you begin to rent it out like an Airbnb or hotel accommodations and not use it for 501(c)(3) purposes, the property tax exemption may be compromised. The county may review any grant of tax-exemption for property and limit or remove an exemption if you are using your tax-exempt property for something other than your tax-exempt purposes.
2. **Taxable revenue** — You may be subject to unrelated business income tax (UBIT). This is a tax imposed on tax-exempt organizations for activity that is 1) a trade or business; 2) is regularly carried on (not just a one-time event); 3) unrelated to your tax-exempt purposes. For that reason, the net income from those rentals may be subject to UBIT. Any year in which the gross amount of unrelated business income is \$1,000 or more, the organization must file a Form 990T and pay any tax due. The Form 990T filing is required, even if the organization is a church-type or church-related entity and is exempt from filing a Form 990.

In addition, to maintain tax-exempt status, any unrelated activity must be “insubstantial.” Under a UBIT analysis, the income needs to be insubstantial. If your UBIT income gets close to 15% of your total gross revenue, you may be at risk of impacting your tax-exempt status since you are now engaging in more than an insubstantial unrelated activity.

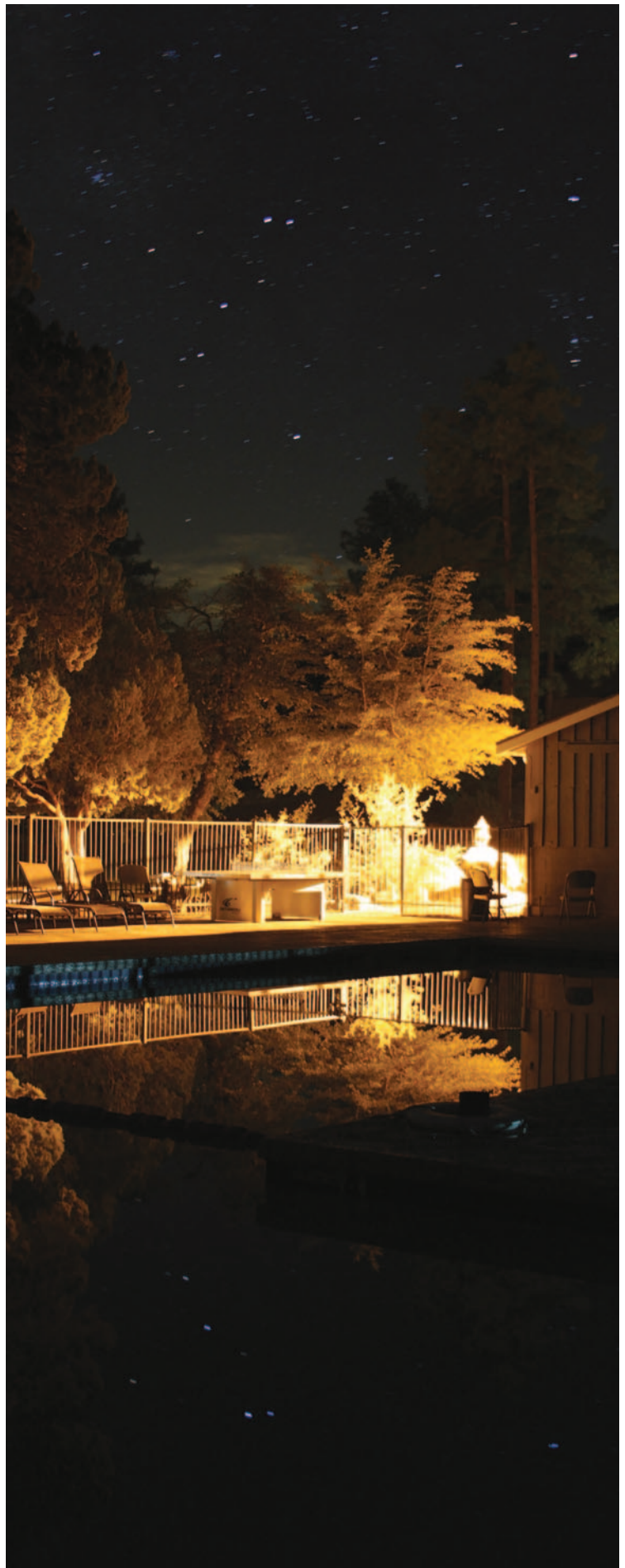


Photo courtesy of UCYC

When engaging in business-type activity, UBIT is not the only tax related concern. There have been circumstances where the IRS has applied what it and some courts have called the “commerciality test.” If the IRS determines you are engaging in commercial activity, it is substantial, and becomes part of the identity of who you are, you are seen as operating like any other commercial business. This can jeopardize your tax-exempt status. Your identity is becoming more like that of a for-profit business and not a tax-exempt charity. The application of the commerciality test can result in an organization losing its tax-exempt status.

In addition to potential UBIT, Airbnb or similar type of rentals may also expose the camp or conference center to local hotel or lodging taxes. This is another area that would need to be considered.

3. **Public accommodation laws** — These are laws originally put in place to prevent racial discrimination in hotel rooms or the renting or purchasing of homes. These laws now cover all the protected classes of Title 7, and many state laws also have protections for sexual orientation/gender identity. If you begin to operate like a hotel or Airbnb, you may be considered a public accommodation. The camp or conference center would not be able to select or limit who can use its facilities based on any of the protected classes, including religion. In addition, you cannot require that a guest agree to a statement of faith or conduct like you would with a church rental group, etc.

If you are using your property for vacation rentals or Airbnb and you become subject to public accommodation laws, it becomes hard to argue that those laws should not apply to everything else you do. A key principle in this is that you should always treat your accommodations/food as a necessary part of the programming you are offering. Unlike with Airbnb rentals, in your typical ministry business, you are not providing food/lodging — you are providing a faith-based program opportunity at your facility, which also includes lodging and meals. This is a way to avoid falling under public accommodation laws.

4. **Personal injuries** — There may be an increased risk of personal injuries when you allow guests on your property that you are not supervising to ensure they follow guidelines typically laid out in your programming. This is a different kind of business activity for the camp or conference center and different kinds of activity can create different risks and potential coverages. You should discuss with your insurance company the additional business activity to ensure you are covered for any kind of risk that could occur.

Possible Approaches:

One of the exceptions to rental income falling under UBIT is if the property is not debt-financed (you have a note on your property or a construction loan) then the rental income is not subject to UBIT. Rental income from non-debt-financed property is one approach to address the rental income being subject to tax.

If a vacation rental model is something that you feel could benefit your organization and you want to explore it further, you will want to have projections as to the anticipated amount of revenue it will generate. If it is 10% or less of total revenue, you may want to consider keeping it in the organization and subject to UBIT. Another consideration is creating a separate for-profit LLC or corporation owned by the camp or conference center, particularly if the revenue approaches 15%. Operate the rentals as part of that separate legal entity. If the amount of rental income is substantial (15% or more), this allows you to take advantage of rentals that exist outside of your exempt purposes while minimizing the potential impact on the ministry’s tax-exempt status.

The potential risk to property tax-exemption still needs to be considered. Some county or township tax assessors may not want to assign a percentage of use to the Airbnb rental income and make that subject to property tax. Rather than losing the entire tax-exempt property status, perhaps there is a part of your property that you could physically designate for this purpose. You could carve that out as a separate taxable parcel and treat it as a separate business by forming an LLC or corporation of which the camp is sole shareholder. Any activity that occurs as that separate entity that is not tax-exempt would help protect the status of the camp from risk. ▶

Rentals may also expose the camp or conference center to local hotel or lodging taxes.

SCENARIO: Weddings and Family Reunions

Camp and conference center properties are some of the most beautiful places on earth! That beauty can attract different kinds of opportunities for a camp or conference center. Here are two scenarios:

- We know our property is beautiful and unique to the area. Who would not want to get married here? We plan to participate in a local bridal fair to promote our property as a wedding venue.
- Once people have visited our property with a retreat group or ministry, they often show interest in returning for a special event, so we are considering renting our property for family reunions and parties.

Opening up the camp facilities to “outsiders” and charging for a wedding chapel or services would likely cause the conduct of these activities by your organization to be considered a trade or business. That brings you back to the UBIT analysis as well as the commerciality test (as mentioned in the vacation rentals scenario).

The most significant issue in our current cultural and legal climate is the potential of being subject to public accommodation laws. If a camp or conference center is going to open itself up for wedding rental to the general public, it is anticipated that you would lose the right to choose who gets married on your camp or conference property.

There is a case involving a camp in New Jersey that got challenged when it opened its facilities to be used as a wedding venue but wanted to say no to a same-sex wedding. They were challenged under public accommodation laws and the state’s division of civil rights found the church-owned camp facility had discriminated in violation of the state’s public accommodation laws. Their solution was to ultimately decide not to do any weddings.

Some of the same challenges with UBIT and public accommodations can be present when engaging in family reunion or retreat rentals. Efforts have been made to work with several camps and conference centers to think through how family reunions are related to their tax-exempt purposes. I think that because family is something God designed, camps should be part of promoting it. But, just hosting family reunions could be seen as an unrelated activity and a public, not a tax-exempt activity, so you must think through how you can make sure those sorts of rentals are related to your purposes. It is also helpful if the camp or conference center requires there to be some connection between the ministry and the family group (e.g., former campers, regularly attend camp programs, former staff).



Photo courtesy of Carson Springs Baptist Conference Center

Here are the risks to consider:

1. **Property tax exemption** — Much like the vacation rentals scenario, if you begin to offer weddings and other events that are not related to the purposes of your exempt status, you can jeopardize your property tax exemption.
2. **Taxable revenue** — If these kinds of events fall outside the purposes of your exempt status, you can be subject to an unrelated business income tax (UBIT).
3. **Public accommodation laws** — If you are advertising to the general public to use your property for weddings or special events, your organization may appear as a public accommodation to most local agencies, and some may challenge whether you are subject to those laws.

Possible Approaches:

When it comes to weddings, determine if they can somehow be related to your tax-exempt purposes. If your tax-exempt purposes are broad enough and say that you support family and the marriage of one man/one woman before God, then having those kinds of weddings are pursuant to your purposes. However, the simplest way to protect your ministry from public accommodation laws is if you say, “We will only marry people who were on staff at camp or met at camp or attend our camp.”

For family reunions, you may consider offering a program, devotionals, or chapel time for worship together as a family as part of the rental fee. In that case, you would want to limit this offer to people who are committed to a shared faith and not open to groups outside of that. The family is signing up for a “program” of the camp, not just renting facilities. If you are using the event to further your tax-exempt purposes, you are less likely to be subject to UBIT or public accommodation laws. ▶

If you begin to operate like a hotel or Airbnb, you may be considered a public accommodation. The camp or conference center would not be able to select or limit who can use its facilities based on any of the protected classes, including religion.

If you are offering the activities without incorporating any kind of teaching about Jesus that could further your tax-exempt purposes, you may be putting your camp or conference center at risk in several areas.



Photo courtesy of Word of Life Fellowship

SCENARIO: Community Festivals

Offering festivals or events that appeal to your community are a great tool for outreach and relationship-building in your area. Depending on what you are offering and how you structure it, there are inherent risks. Here are two different scenarios:

- Our camp holds a Christmas festival every year with lights, refreshments, and caroling. We draw a lot of members of the community and charge an entrance fee.
- We have a large lake at our camp and love inviting the community in for a Fourth of July fireworks celebration. We do not charge admission, but we ask for donations and have concessions available for purchase.

Hosting a Christmas festival or other holiday event can be a fun experience for people in your area, but there are several risks to keep in mind.

1. **Property tax exemption** — A Christmas festival or other community holiday event is normally seen as a charitable, religious, or educational activity. However, that may not always be the case. If you charge for an event that occurs regularly (for example, annually), and it is not related to exempt purposes, there may be an impact on property tax exemption, but not likely if it is recreational or community oriented. However, it is important to be cautious if you are offering something that may have a competing event in the community, and they feel you are harming their business. It may be a motivation for that business or the county to assert that your camp or conference center has an unfair competitive advance since you are tax-exempt, and they may take up the issue of your property tax exemption with the county.

2. **Taxable revenue** — If these events fall outside the purposes of your exempt status, you can be subject to an unrelated business income tax (UBIT). Even if your event does not have an entrance fee, but you ask for a “suggested donation” amount, that can be viewed as a “ticket price” and could subject you to UBIT.
3. **Assess New Potential for Injury** — When you invite people onto your property for activities that are different from your normal programs, you have additional and sometimes different risk. You have kids and adults who are not used to being at camp or around the activities you offer. You may have a group of volunteers who are not used to supervising people at camp. You should check with your insurance carrier, review your policy, and potentially explore the idea of special-event insurance, and you need to have a waiver, hold harmless, participation agreement, release of liability for each participant to sign or an enrollment that includes such provisions that everybody is signing when they enter the property for the event.

Possible Approaches:

The most straightforward way to avoid the risks to your property tax exemption and being subject to UBIT is to offer events that help to further your nonprofit purposes. Christmas offers several ways to do this, since the holiday is about the birth of Christ. In addition, perhaps you share the story of His birth or share a brochure that explains why you are hosting the event and why the camp exists. This can be repeated for other holidays and special events.

There is also a need to consider a way to avoid UBIT on otherwise “unrelated” activity — have the event carried out by mostly volunteers. There is an exemption to UBIT for an activity carried out by substantially all volunteers. If the work is done by 85% or more of volunteers, revenue from the event is not subject to UBIT.

In addition, your event or activity will not be subject to UBIT if it is unique or not done on a regular basis. The second prong of the UBIT test is “regularly carried on.” If it is not regularly carried on, then it is not subject to UBIT. ▶



SCENARIO: Government Programs

Whether it is a milk-for-kids program or something like grants or the PPP relief funds offered during COVID, there can be benefits and risks to taking part in government programs. Here is a look at one possible scenario:

- Our camp provides food for kids after school, and we take advantage of government-funded programs to provide food and milk to kids who need it. It is so great to be able to serve kids in need like this. We even get to present the gospel to them through an after-school program while also receiving government funds for the food.

While it is always necessary to carefully review any requirements or terms to which you are agreeing to with a government program (federal, state, county, city, town, etc.), most milk, food, or other resources for kids have limited risks to your tax-exempt status or faith-based activity. These opportunities will only increase.

In a recent Supreme Court case of *Trinity Lutheran Church of Columbia v. Comer* (Supreme Ct. 2017), it was determined that the government could not exclude an organization from a government program based on the organization's religious nature, speech, or activity. The case was specifically about a Missouri program that denied a grant to a religious school for playground resurfacing, while providing grants to similarly situated non-religious groups. The court ruled that this was a violation of the Christian school's free speech. The legal argument and results would also apply to Christian camps and conference centers. This ruling was reaffirmed in a school choice tax credit program by the US Supreme Court in 2020 (*Espinoza v. Montana Dept of Revenue*) and most recently in a Maine tuition assistance voucher program that can go to religious schools (*Carson v. Makin, 2022*). This should continue to open up government programs for Christian camps and conference centers that must be offered in a way that does not infringe on the free exercise of religious and freedom of speech.

The Paycheck Protection Plan ("PPP") loans were a first toe dipped in the water of government program funding for a number of CCCA members. Ultimately, the PPP relief funds did not have any religious-based restrictions in how the money could be used. However, it is important to understand that many government grants do. Normally, when taking a government grant, there are terms you agree to and documents that you sign that may reference statutory language or restrictions, including time limits, use of funds, or hiring guidelines. It has been necessary to go through the process of studying these types of situations for ministries, camps, and conference centers to make sure they were not being unduly restricted.

Some camps have said no to receiving some funding because they would have restricted who the organization could hire and would be forced to hire people who were not aligned with the faith position, statement of faith, and mission as well as employee behavior set out by the camp or conference center. I think camps and conference centers should consider government grants, while moving cautiously to determine what, if any, risks would be incurred. ▶



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Photo courtesy of Camp Tekoa

Scenario: Selling Amenities to the Public

Camps and conference centers have special outdoor, recreational, and desirable experiences on their properties for campers and other participants. Some have considered offering those experiences and amenities to the public during slower seasons. Here is a scenario and risks for us to consider:

- During the school year we have opened our amenities to the community and even had good success selling our horse lessons on Groupon. We are looking at opening our paintball course, high ropes, climbing wall, pool, and other amenities for community members to pay for as a recreational activity or for amusement. It is a shame to let these great activities go unused for so much of the year and our good weather extends quite a bit in the fall and spring.

Some of these activities at your camp or conference center may exist outside your property as someone else's trade or business. If you are offering the activities without incorporating any kind of teaching about Jesus that could further your tax-exempt purposes, you may be putting your camp or conference center at risk in several areas:

1. **Property-tax exemption** — In this scenario, you are potentially operating like any other business that offers these activities, which means you may risk your property tax exemption. Even if you are paying tax on that income (see the next bullet point), you may be competing with someone else locally, and you have an advantage when it comes to real property tax. A business owner may raise these concerns with local representatives and suggest that the county revoke your property tax exemption, in part or in whole.
2. **Taxable revenue** — If these activities are not furthering your tax-exempt purposes, you are at risk of being subject to UBIT.
3. **Public accommodation laws** — Opening up your property and inviting the general public to pay to use your facilities may open up the camp or conference center to being subject to public accommodation laws. While you may argue that there is a distinction between a weekend retreat program you are conducting and a public rental of a climbing wall, the public activity may put the more private programs at risk of losing that non-public accommodation status and treatment. Being forced to comply with public accommodation laws would limit your ability to make faith-based selections in hiring and in limiting use of the property to uses in accordance with a statement of faith or religious purposes.

4. **Injury and property damage** — When welcoming new people onto your property who are not under the same direction and supervision as your campers or retreat guests, there is increased risk for injury and property damage. Waivers are obviously necessary for these kinds of activities, and you may also want to consider how you can limit the parts of your property people have access to. You do not want people to be wandering your property before or after their activity and potentially cause damage or get injured.

5. **Relational issues** — If there are businesses in your community offering the same types of experiences, you run the risk of creating relational issues because you are able to run the same activities without the same taxation.

Possible Approaches:

Similar to the vacation rentals scenario, if you believe this could be a significant benefit to your ministry's bottom line, you should consider creating a for-profit LLC or corporation for these sorts of activities. However, keep in mind that you may still run the risk of losing your property tax exemption if you are operating a for-profit business on your 501(c)(3) property.

Another way this scenario could benefit you with little to no risk is to partner with another nonprofit organization or program. For example, someone else runs an after-school program or has a club that is a charitable entity. You could contract with that organization to provide your facilities for their group to use. They could charge the families based on what you tell them the fee is, or you could charge the organization directly. Since they are another 501(c)(3), if your tax-exempt purposes are broad enough to include what they are doing from a recreational, charitable, and/or educational standpoint, you would not risk your property tax exemption. It also would not be income that is subject to UBIT because you are helping another nonprofit organization carry out its activities. You also are not subject to public accommodations laws because you are just contracting with the other organization to help them run a program on your property.

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Camps flourish with creative ideas, whether you're generating new revenue or adding additional programs to your camp or conference center, and there may be legal and tax issues involved that could unintentionally harm your ministry. As always, it is advisable to check with legal counsel as these ideas are formulated, while structuring your approach, and prior to initiating activity. ■



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