



## IRS Issues Final Regulations Regarding Unrelated Business Income “Silo” Rules

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On November 19, 2020, the IRS issued final Regulations related to Section 512(a)(6) of the Internal Revenue Code.<sup>1</sup> These final Regulations provide guidance regarding the unrelated business income “silo” rules that were created by the Tax Cuts and Jobs Act (“TCJA”) in December of 2017.

*These rules apply to the calculation of unrelated business income on an exempt organization’s federal income tax return, Form 990-T.*

The new rules disallow the offsetting of net losses from one unrelated trade or business activity against net income from one or more separate unrelated trade or business activities. The IRS issued proposed Regulations in April 2020, which described how organizations should implement this “silo” requirement. After receiving commentary on the proposed Regulations, the IRS has now issued final Regulations.

While the final Regulations clarify a number of the technical topics presented in the proposed Regulations and also introduce several additional provisions, the guidance in the final Regulations is largely consistent with the guidance previously provided in the proposed Regulations. Importantly, as in the proposed Regulations, the final Regulations require that separate unrelated trade or business activities be identified based on the first two digits

of the North American Industry Classification System (“NAICS”) Codes.<sup>2</sup> Additionally, the final Regulations allow most investment-type activities (including small ownership interests in pass-through entities and debt-financed income) to be treated as a single unrelated trade or business activity – an approach generally followed in the proposed Regulations.

*We recommend that organizations that file an annual Form 990-T and that may have multiple unrelated trade or business activities consider the potential impact of the final Regulations with the organization’s tax counsel.*

For clients of BMWL that have engaged us to prepare your organization’s Form 990-T, we will be addressing the application of these Regulations as part of our service to you.

<sup>1</sup> Source: <https://www.irs.gov/pub/irs-drop/td-9933.pdf>

<sup>2</sup> Source: <https://www.naics.com/search/>

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