

February 22, 2019

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2018-99)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Re: Notice 2018-99 - Parking Expenses for Qualified Transportation Fringes Under § 274(a)(4) and § 512(a)(7) of the Internal Revenue Code

To Whom it May Concern:

Thank you for the chance to comment on the IRS' Notice 2018-99, which provides certain guidance regarding the Unrelated Business Income Tax (UBIT) and qualified transportation benefits under the "Tax Cuts and Jobs Act." appreciate the chance to comment on the above-referenced notice.

The Center for Non-Profits is a charitable umbrella organization providing education and services to, and on behalf of, New Jersey's 501(c)(3) non-profit community. Based on our review and on feedback from non-profits and tax professionals across the state, we have grave concerns not only about the underlying statute but on the guidance provided by the Service in Notice 2018-99. Through this formal submission, we also incorporate and endorse the more detailed statement of the National Council of Nonprofit dated February 20, 2019.<sup>1</sup> We would also like to reference the comments we previously submitted to Secretary Mnuchin and Acting Commissioner Kautter.<sup>2</sup>

As we and many others in the exempt organization community have pointed out, it is inexplicable that an expense such as transportation benefits can be taxed as income. It is even more incomprehensible that a pre-tax expenditure of an employee for which an employer serves only as a conduit, would nonetheless be classified as a(n) income taxable expenditure by the non-profit.

The parking guidance provided in Notice 2018-99 offers a series of complicated and perplexing "if/then" scenarios and formulas that may vary widely depending on the time of year or even the day of the week, and threatens to impose corporate income taxes based on such expenses as maintaining a parking lot. Overall, the new guidance has only added to the already substantial confusion and needlessly compounded the burdens on resource-strapped charities – many of whom have never before had UBIT tax liability and may yet have no inkling that they may face potential tax liability under this framework.

Given the fact that Notice 2018-99 was issued nearly a full year after the Tax Cuts and Jobs Act was enacted, its retroactive application is especially punitive. Allowing organizations who could not have had a chance of accurately calculating their tax burdens the ability to submit their 2018 payments in 2019

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<sup>1</sup> <https://www.councilofnonprofits.org/sites/default/files/documents/Notice-2018-99-Comments-of-National-Council-of%20Nonprofits-2-20-2019.pdf>

<sup>2</sup> [http://www.njnonprofits.org/CenterForNonProfits\\_Comments\\_IRS\\_UBIT\\_05032018.pdf](http://www.njnonprofits.org/CenterForNonProfits_Comments_IRS_UBIT_05032018.pdf)

with their 2018 Form 990-T provides only a small amount of relief, as the framework itself remains unfair and fundamentally flawed.

Another significant question that remains unaddressed pertains to the treatment of volunteers in this framework. As others have pointed out, it is unclear whether an organization might unwittingly subject itself to tax liability if it provides parking to volunteers who are unpaid but who might receive free meals or other de minimis gestures of appreciation for their service. If organizations face potential taxation in these kinds of circumstances, the impact of this already problematic framework will be even more devastating.

In previous communications, we have requested that the IRS delay implementation of subsections 512(a)(6) and (7) of the Internal Revenue Code until one year after formal regulations are adopted. This request remains relevant in light of the fact that Congressional leaders on both sides of the aisle have acknowledged the problems with the new UBIT requirements and repeal is a very real possibility.

We urge you to continue to work constructively with the charitable community to develop solutions to the problems identified, and to delay implementation of these requirements until a final resolution can be reached.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Linda M. Czipo". The signature is written in a cursive, flowing style.

Linda M. Czipo  
President & CEO