

February 22, 2019

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

RE: NOTICE 2018-99

As we wrote to you in 2018, we strongly urge Treasury and the IRS to exercise its administrative authority by delaying implementation retroactive to January 1, 2018 with any filing penalties abated of the UBIT taxes promulgated in the 2017 Tax Act for one year after rulemaking is complete. Given the demonstrated bi-partisan support in the current 116<sup>th</sup> Congress to repeal the tax on employee fringe benefits, Treasury and the IRS will face significant and ongoing challenges dealing with demands from nonprofits and their Members of Congress for refunds from those who do pay before the formal repeal.

While Notice 2018-99 seeks to clarify this particular UBIT tax codified as Section 512(2)(7), it raises more questions than answers. For example, there are a number of primary areas of concern.

- Calculating employer expenses is not easily separated from overall operational costs and will require complex analyses to determine if the employer has sufficient unrelated business taxable income.
- Designated and reserved employee parking signs will automatically trigger taxable income to the employer unless the signs are taken down by March 31, 2019.
- The four-step calculation for determining whether parking is truly public and that can vary from month to month will cost more in accounting fees to many nonprofits than they will have to pay in taxes in the first year or two.
- Tax exempt employers have not previously viewed pre-tax compensation reduction agreements as a fringe benefit.
- Volunteers should be explicitly listed in Step 2 of the Notice (on pages 9 and 10) as persons who shall not be deemed employees and who shall be considered members of the general public when calculating parking lot usage.
- One of many unintended consequences is that under the OMB Uniform Guidance rules, it is likely that the federal government will be reimbursing nonprofits for paying taxes to the federal government.

The impact in 2018 of these new taxes on our foundations and the charitable nonprofits they support has confirmed that repeal of Section 512 (a)(7), that imposes a 21 percent unrelated business income tax on employee transportation fringe benefits, is the only reasonable response given the added

administrative burdens and diversion of funds for charitable purposes to pay for this tax that has resulted and continues.

This and the other new UBIT taxes impose significant costs and record-keeping burden on charitable nonprofits making it harder for these organizations to fulfill their charitable missions and more difficult to recruit and retain the needed talented employees. There is a likely outcome that many nonprofits will simply eliminate any employee transportation fringe benefits resulting in a great reduction of the anticipated new tax revenue for the US Treasury.

Thank you for considering these Concerns submitted with the intent of supporting both fairness and tax compliance for our nonprofit charitable community.

Respectfully submitted,



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Council of Michigan Foundations



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President & CEO  
Michigan Nonprofit Association