December 17, 2018

The Honorable Paul Ryan
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Democratic Leader
United States House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Democratic Leader
United States Senate
Washington, DC 20510

RE: Repeal of Tax on Nonprofit Transportation Benefits
Internal Revenue Code Section 512(a)(7)

Dear Speaker Ryan and Leaders McConnell, Pelosi, and Schumer:

Because time is of the essence, the undersigned organizations take the unusual move of writing you collectively this late in the 115th Congress to request immediate action by Congress to stop injustice against charitable, religious, and philanthropic organizations across our country. On behalf of charitable nonprofits in your states and throughout the country, we ask that you take action to ensure that a repeal of the new tax on nonprofit transportation benefits is included in any piece of legislation that Congress enacts and sends to the President before year end.

A provision of the Tax Cuts and Jobs Act, now codified as Internal Revenue Code Section 512(a)(7), imposes a 21-percent unrelated business income tax on the expenses that tax-exempt nonprofits incur for providing transportation fringe benefits to their employees, such as parking and transit passes. Charitable organizations, houses of worship, foundations, and other nonprofits became liable for the tax on January 1, 2018 and have had to submit three quarterly estimated payments. Until Monday, Treasury and the IRS had provided no guidance on how to calculate this new tax, putting nonprofits in the untenable position of having to guess about how to comply with the unknown, putting them unfairly at risk of filing inaccurate reports, making insufficient or inaccurate payments, and suffering other adverse consequences. The notices they issued on December 10 provide complex instructions for determining some tax liabilities, including a four-step calculus that will vary for each organization, and can vary from month to month. Further, the guidance relieves some organizations of penalties that are the result of the IRS’s own delay, while completely ignoring the imposition of the new taxes on transit benefits, benefits that are mandated for some employers in various cities. Repeal of the section is the only reasonable response.

Section 512(a)(7) is terrible tax policy and there is no support in the House or the Senate for retaining it. House Ways and Means Committee Chairman Brady, the person responsible for including the provision in the tax law, now recognizes that it should be repealed. See Manager’s Amendment and Section 405 of the latest version of the House year-end tax bill. Representatives and Senators from both sides of the aisle support immediate repeal of the provision, as demonstrated by the introduction of the LIFT for Charities Act (H.R. 6460/S. 3332), the Nonprofits Support Act (H.R. 6037/S. 3317), and the Stop the Tax Hike on Charities and Places of Worship Act (H.R. 6504). See also this recent letter from Senators James Lankford (R-OK) and Chris Coons (D-DE) to Treasury Secretary Mnuchin calling out the unfairness of the tax and urging the government to delay its implementation.

This request to repeal the nonprofit transportation tax is both timely and appropriate. Charitable and faith-based organizations in all areas of the country devastated by natural disasters this year have
stepped forward to provide relief and support to their fellow residents. Many of these same nonprofits have also suffered devastating losses due to the hurricanes, tornadoes, fires, and earthquakes and are likewise working to rebuild their organizations while they simultaneously focus on their communities. The expenses of that rebuilding will subject them in some instances to the new 21-percent unrelated business income tax on these expenses they pay, essentially diverting money away from community, mission, and local support, and instead to paying a tax bill that no one believes is just. Indeed, every dollar paid by a nonprofit to this unfair and unjustifiable tax is a dollar that is not going back into the communities served.

We – on behalf of the charitable nonprofits in your states and throughout the country – ask you to put aside the frustrations of 2018 and the ambitions for 2019, and do this one thing: repeal Internal Revenue Code Section 512(a)(7) for the sake of our communities, your constituents, and the well-being of the country.

In making this request, we are mindful of the many policies and legislative proposals in play at the end of the session. We want to be abundantly clear that we as a network – the nation’s largest network of charitable nonprofits – and speaking in unison with virtually all charitable nonprofits, houses of worship, and foundations (see www.GiveVoice.org), are unalterably opposed to any and all changes to the Johnson Amendment, the longstanding law that for decades has protected 501(c)(3) organizations from demands for endorsements for candidates for public office and prevented efforts to divert charitable assets to fund partisan campaigns. Considering the Johnson Amendment essential to the wellbeing and effectiveness of charitable organizations, we do and will oppose any legislation that undermines this vital protection, regardless of what bill it may be attached to.

Like all of the charitable organizations assisting their fellow Americans every day, the undersigned organizations stand ready to assist in this vital effort.

Sincerely,

National Council of Nonprofits

Alaska
  Foraker Group

Arizona
  Alliance of Arizona Nonprofits

California
  California Association of Nonprofits

Colorado
  Colorado Nonprofit Association

Connecticut
  CT Community Nonprofit Alliance
Delaware
   Delaware Alliance for Nonprofit Advancement

District of Columbia
   Center for Nonprofit Advancement

Florida
   Florida Nonprofit Alliance

Hawai`i
   Hawai`i Alliance of Nonprofit Organizations

Idaho
   Idaho Nonprofit Center

Illinois
   Forefront

Iowa
   Nonprofit Association of the Midlands

Kentucky
   Kentucky Nonprofit Network

Louisiana
   Louisiana Association of Nonprofit Organizations

Maine
   Maine Association of Nonprofits

Maryland
   Maryland Nonprofits

Massachusetts
   Massachusetts Nonprofit Network
   Providers’ Council

Michigan
   Michigan Nonprofit Association
Minnesota
    Minnesota Council of Nonprofits

Mississippi
    Mississippi Center for Nonprofits

Missouri
    Nonprofit Missouri

Montana
    Montana Nonprofit Association

Nebraska
    Nonprofit Association of the Midlands

Nevada
    Alliance for Nevada Nonprofits

New Hampshire
    New Hampshire Center for Nonprofits

New Jersey
    Center for Non-Profits

New Mexico
    New Mexico Thrives

New York
    New York Council of Nonprofits
    Nonprofit Coordinating Committee of New York

North Carolina
    North Carolina Center for Nonprofits

North Dakota
    North Dakota Association of Nonprofit Organizations
Oklahoma
   Oklahoma Center for Nonprofits

Oregon
   Nonprofit Association of Oregon

Pennsylvania
   Pennsylvania Association of Nonprofit Organizations

South Carolina
   Together SC

Tennessee
   Momentum Nonprofit Partners

Utah
   Utah Nonprofits Association

Vermont
   Common Good Vermont

Virginia
   Center for Nonprofit Advancement

Washington
   Washington Nonprofits

West Virginia
   West Virginia Nonprofit Association

Wyoming
   Wyoming Nonprofit Network