FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

February 19, 2019

The Honorable David Kautter
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. Michael Desmond
Acting Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Request for Comments, Notice 2018-99, Parking Expenses for Qualified Transportation Fringes (QTF) Under § 274(a)(4) and § 512(a)(7) of the Internal Revenue Code.

On behalf of the nation's 2,700 nonprofit YMCAs, I'm writing to respectfully urge the Department of the Treasury to delay implementation of certain provisions of the Tax Cuts and Jobs Act (Public Law 115-97) and provide additional clarification to the treatment of QTFs under §§ 274 and 512 until clear direction can be established around the effects of new UBIT rules affecting nonprofit, charitable organizations. A delay would also give Congress time to address the unintended consequences of the issue on charitable organizations. There are currently bi-partisan efforts underway to repeal this component of the TCJA, which negatively impacts the YMCA and others in the nonprofit community and their ability to fulfil their respective missions. The efforts to repeal these provisions are also supported by the TCJA's original author.

Even though the Y appreciates the guidance from the IRS issued in December 2017 providing some flexibility and clarification, it is still very confusing for local nonprofits, and, moreover, creates additional expenses through this new tax that nonprofits did not budget for in 2018 or even in 2019, due to lack of clarity and guidance. The Y recommends Treasury completely withhold implementation for tax-exempt organizations until 2020 so these organizations – who have never before had to pay such a tax – have the time to not just plan for this based on further guidance, but to also formally budget for any additional expenses created from this new tax.

For tax-exempt organizations with very little or no unrelated business income, treating transportation fringe benefits as UBIT will result in new, first-time, reporting requirements. Even for tax-exempt organizations accustomed to reporting UBIT, the confusing law and delay in guidance led to inaccurate filings of quarterly estimated taxes, again affecting budget processes and expense liabilities retroactively. For those tax-exempt employers who choose to continue to provide transportation benefits, new operational expenses are incurred, which detracts from the mission of the organization.

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Additionally, tax-exempt organizations of a certain size in some municipalities are required by law to provide transportation benefits to their employees. For example, the District of Columbia requires employers with more than 20 employees to provide either 1) an employee-paid, pre-tax cafeteria plan benefit; 2) an employer-paid direct benefit; or 3) employer-provided transportation. Public Law 115-97 does not take into consideration these legal obligations. We submit that tax-exempt organizations in these localities should be granted an exemption because of their inability to avoid UBIT.

Provisions addressing the tax treatment around meals and travel expenses reimbursed to volunteers and college-aged seasonal camp counselors are also causing great consternation for charity leaders. Without clear and fair guidance, dedicated volunteers and camp counselors remain concerned over the potential of new tax liabilities. These issues can be addressed with clear guidance or by establishing a de minimis threshold.

Since passage of these sweeping tax changes in late December of 2017, tax-exempt employers have been working diligently to understand the law's impact on their sector, and in particular, what should be reported as UBIT at the applicable corporate tax rates. It's clear from the confusion and volume of questions about how the new tax law impacts tax-exempt entities that all of us need more time and more guidance to fully understand the new compliance obligations.

The Y renews its request for a delay in implementation until 2020, the issuance of more detailed guidance, including an expanded and clear de minimis threshold to be set, and a clearly articulated exemption for tax-exempt organizations in localities that mandate that transportation benefits be provided.

Thank you for your careful attention to this matter and we stand ready to meet with you should you have additional questions about these concerns.

Sincerely,

Neal Denton

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Senior Vice President and Chief Government Affairs Officer
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