



February 21, 2019

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

RE: Notice 2018-99

Dear Madam/Sir:

On behalf of the North Carolina Center for Nonprofits, I am writing to respond to the Request for Comments that the Department of Treasury and the Internal Revenue Service published in Notice 2018-99 on December 10, 2018. The Center is a 501(c)(3) public charity with more than 1,400 nonprofit members serving all 100 counties of North Carolina. We have heard from dozens of these members with questions and concerns about the applicability of the new Section 512(a)(7) to their organizations. The following is a summary of the most significant questions and concerns that our members have communicated, which remain unanswered even after the publication of Notice 2018-99:

1. **Nonprofits remain confused about how (and whether) this tax applies to parking benefits they provide for their employees, particularly when parking areas are shared by employees and members of the public.** A wide variety of nonprofits – including hospitals, private schools, houses of worship, community health centers, YMCAs, arts organizations, senior centers, food banks, and human service providers – have parking lots that are shared by employees, clients, volunteers, and members of the public. While nonprofits generally appreciate that Notice 2018-19 provides a method for calculating and allocating the portion of their parking expenses, the four-step process is cumbersome and will require significant time and expense to apply. Immediate applicability of this new guidance will be particularly burdensome for small nonprofits with limited staff capacity and little or no funding available to hire outside professional assistance in doing these calculations.
2. **The interim guidance does not address the applicability of IRC Section 512(a)(7) to employee parking spaces that are included in leased property.** The methodology and examples described in the interim guidance from Notice 2018-99 mostly apply to parking lots owned by tax-exempt nonprofits. However, many nonprofits lease their property. Some leases provide that a certain portion of the fees paid by the nonprofit tenant cover access to parking spaces for the tenant's employees and visitors. However, many leases do not expressly allocate a portion of the fees paid by the nonprofit tenant toward parking. Without clear guidance on the applicability of Section 512(a)(7) to leased parking spaces, many nonprofits are uncertain whether a portion of their monthly rental fees is taxable as unrelated business income and whether it may be advisable to amend the terms of their leases related to the payment for parking expenses.

3. **The interim guidance lacks clarity on the applicability of IRC Section 512(a)(7) to parking spaces provided for nonprofit volunteers .** The interim guidance offered in Notice 2018-99 fails to address parking provided by nonprofit volunteers. This is a significant issue for North Carolina nonprofits, since more than one-third of North Carolinians volunteer, and these volunteers provide 265 million hours of service every year. Without clear guidance that parking provided to volunteers is treated the same as parking available to members of the public, we are concerned that this interim guidance could have the unintended consequence of converting some nonprofit volunteers into employees for the purpose of tax laws and labor laws.
4. **The IRS has still not issued guidance on the applicability of Section 512(a)(7) to certain types of transportation.** The interim guidance offered in Notice 2018-99 is also silent on questions related to the applicability of Section 512(a)(7) to transit passes. Most of the independent analysis of the applicability of qualified transportation benefits to payment for transit passes relates urban mass transit. However, employees of nonprofits in certain parts of North Carolina must commute to work by ferry. The organizations that employ these workers are uncertain whether they are required to pay unrelated business income tax (UBIT) on the amount they spend on their employees' ferry passes.
5. **This creates a new (and unexpected) filing burden for many nonprofits, since tax-exempt organizations that provide these parking and transportation benefits will now need to file Form 990-T.** Many of these nonprofits may be unaware of this new tax and may have never had to file Form 990-T nor pay UBIT if they do not have income-producing business activities that would otherwise be subject to UBIT. Some houses of worship – particularly those in urban areas – pay for clergy and staff parking but have never previously had to file any version of the Form 990 with the IRS. Without a targeted outreach initiative from the IRS, it is unlikely that these organizations will be aware of the need to File Form 990-T or pay UBIT. As a result, some organizations could become liable for failure to file Form 990-T and pay UBIT on expenses that they should not reasonably have been expected to realize were taxable.
6. **This establishes a bad policy of applying an income tax to nonprofits' expenses.** We recognize that setting tax policy and revising the Internal Revenue Code is the role of Congress rather than Treasury or the IRS. However, we note that the policy of imposing unrelated business income tax on certain expenses of tax-exempt organizations is counterintuitive, confusing, and unprecedented (as far as we are aware). Because Section 512(a)(7) was approved with very little deliberation in Congress and with little or no opportunity for input by tax professionals or the affected taxpayers (i.e. tax-exempt organizations), we would hope that Treasury and the IRS would provide an opportunity for nonprofits to receive clear and full guidance on its applicability to their activities, to have a transition period to implement the necessary record-keeping practices to comply with the new law, and to make the case to members of Congress to make corrective changes to this new provision in tax legislation.

Until the IRS issues more complete and final guidance on the new IRC Section 512(a)(7), many tax-exempt nonprofits will remain unsure whether they are liable for UBIT for certain parking and transit arrangements they provide for their employees and how to determine the amount of qualified transportation expenses that are subject to UBIT. Further, until the IRS undertakes an outreach campaign, a significant number of tax-exempt organizations – particularly houses of worship and other nonprofits that have never previously filed IRS Form 990-T – will be unaware that some of their parking and transportation expenses are considered unrelated business income and that they are required to file IRS Form 990-T and pay UBIT on these expenses.

For these reasons, we urge the IRS to delay implementation of IRC Section 512(a)(7) until one year after it has published more complete and final guidance that addresses these unanswered questions and has undertaken a thorough outreach campaign.

Thank you for your consideration of these concerns. Please do not hesitate to contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "David R. Heinen". The signature is written in a cursive style with a large, prominent initial "D".

David R. Heinen
Vice President for Public Policy and Advocacy