

Withum 2020 Not-For-Profit Tax Update



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ADVISORY TAX AUDIT

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THE GLOBAL ADVISORY AND ACCOUNTING NETWORK

Topics

- Extended dates for filing Forms 990, 990-EZ, 990-PF and 990 and payment of amounts due
- A non-itemizers contribution deduction for 2020 and increased 2020 itemizer and corporate contribution deduction limitations
- A single IRC Section 4940 tax rate for private foundation net investment income
- The rescinding of the IRC Section 512(a)(7) application of the unrelated business income tax to employer provided parking
- Proposed regulations for IRC Section 512(a)(6), the "siloing" rule for unrelated business income generating activities and net operating losses
- Proposed regulations for donor advised funds (DAFs)
 - Event tickets benefiting donors
 - Satisfaction of donor pledges
 - Public support implications for donor advised fund grantee charities
- New proposed regulations on IRC Section 4960, the excise tax on excess tax on compensation over \$1,000,000
- Other

Extended Filing and Payment Dates

- Notice 2020-18
 - Issued March 18, 2020 extended due date for filing individual tax returns and paying tax liability of up to \$1,000,000 to July 15, 2020
 - The original due date of the return to be filed had to be April 15
 - The return had to be for the 2019 tax year
 - The form to be filed had to be a tax return
 - Form 990 is considered to be an information return rather than a tax return under the Internal Revenue Code and Treasury Regulations
 - So, only trusts or organizations or corporations with short tax years ending in November 2019 could delay their 990-T filing or payment and pension trusts filing Form 990-T on April 15th qualified
 - Notice had to be explained in Questions and Answers issued on March 24th

Extended Filing and Payment Dates

- [Notice 2020-23](#)
 - Issued April 9, 2020, the notice amplified and extended the reach of Notices 2020-18 and Notice 2020-20
 - Provides additional relief to affected taxpayers with a federal tax payment obligation or federal tax return or other form filing obligation, which is due to be performed (originally or pursuant to a valid extension that ends) on or after April 1, 2020, and before July 15, 2020, an automatic postponement to file and/or pay to July 15, 2020
 - Also granted relief to a variety of time-sensitive actions, including those listed in Rev. Proc. 2018-58. Section 10 of Rev. Proc. 2018-58 covers certain tax-exempt entities assuming they qualify as an affected taxpayer. Affected taxpayers are defined in the Notice as any person or organization performing a "time-sensitive action" between April 1, 2020, and before July 15, 2020. Time-sensitive actions relevant to nonprofits and foundations include:
 - [The filing of Form 990 series annual returns](#)
 - [The filing of Form 1023, Application for Recognition of Exemption under 501\(c\)\(3\)](#)
 - [Tax-exempt hospital organizations conducting a community health needs assessment](#)

Extended Filing and Payment Dates

- Notice 2020-23
 - Forms 990, 990-T and 990-PF Extension Rules
 - Form 990s with a previous six-month extension to file must file on or before July 15, 2020. If the original due date of Form 990 is May 15, 2020, the organization may either:
 - File an extension of time through November 15, 2020, on or before May 15, 2020
 - File an extension of time to file on or before July 15, 2020, extending the final due date to November 15, 2020
 - The notice provided an expansive list of federal returns and payments applicable to tax-exempt organizations with an original due date of May 15, 2020. Those qualifying under this postponement include:
 - Form 990, Return of Organization Exempt From Income Tax
 - Form 990-T, Exempt Organization Business Income Tax Return
 - Form 990-PF, Return of Private Foundation
 - Form 4720, Return of Certain Excise Taxes under Chapters 41 and 42 of the Internal Revenue Code

Extended Filing and Payment Dates

- Notice 2020-23
 - Relief is automatic; affected taxpayers do not have to call the IRS, file any extension forms or send letters or other documents to receive this relief
 - Affected taxpayers who need additional time to file may choose to file the appropriate extension form by July 15, 2020, to obtain the extension
 - All filings may not go beyond the original statutory or regulatory extension date

Increased AGI Limitation and Non-Itemizer Deduction

- Coronavirus Aid, Relief, and Economic Security Act, (CARES Act)
 - Expands individual donors' Adjusted Gross Income (AGI) limitation from 60% to 100% for 2020 so that individuals may receive tax benefits from making larger charitable gifts, however, does not apply to private foundation, donor advised fund and supporting organization gifts
 - Includes contributions from pass-through entities
 - Non-itemizer deduction for aggregate cash contributions of up to \$300 added for 2020 contributions to public charities other than donor advised funds and or supporting organizations

Polling Question #1

- In order to benefit from the extended July 15, 2020 due date for a Form 990 with a calendar year end it was necessary to phone the toll-free number of the IRS on or before May 15, 2020?
 - A . True
 - B . False

Increased Corporate Taxable Income Limitation

- Coronavirus Aid, Relief, and Economic Security Act, (CARES Act)
 - Corporations may, in 2020, deduct aggregate contributions to public charities up to 25% of their taxable income without the deduction
 - Increase from the 10% limitation for both years before and after 2020

Single IRC Section 4940 Tax Rate

- The Further Consolidated Appropriations Act, 2020 (FCAA)
 - Modification to the current two-tier excise tax structure for private foundations on their investment income under IRC Section 4940 will amend Section 4940 (a) by changing the current 2% rate to 1.39% and by striking out Section 4940 (e) which allowed for a reduced tax rate of 1% for private foundations that meet certain distribution requirements
 - For tax periods beginning after December 20, 2019

Polling Question #2

- The newly enacted tax rate for the private foundation excise tax on net investment income under IRC Section 4940 is?
 - A . 12%
 - B . 139%
 - C . 24%
 - D . None of the above

Repeal of the Nonprofit Tax on Qualified Transportation Fringe Benefits

- The Further Consolidated Appropriations Act, 2020 (FCAA)
 - Rescission of IRC Section 512(a)(7)
 - Provision of parking and transit passes to employees will remain tax free, however, the fair market value over a certain monthly amount (\$265 in 2019 and \$270 in 2020) remains taxable to employees

Repeal of the Nonprofit Tax on Qualified Transportation Fringe Benefits

- The Further Consolidated Appropriations Act, 2020 (FCAA)
 - On January 21, 2020 the IRS issued instructions on how to claim a refund for the now repealed Qualified Transportation Fringe amounts that were subject to Unrelated Business Income Tax (UBIT)
 - Time limits for filing refund claims found in IRC Section 6511 apply to these refunds. Typically, this is three years from the later of the time the original Form 990-T was filed or two years from the time the tax was paid

Repeal of the Nonprofit Tax on Qualified Transportation Fringe Benefits

- IRS Instructions For Obtaining Refunds
 - <https://www.irs.gov/form990/990-instructions-990-2017/990-2017-instructions-990-2017-qualified-transportation-fringe-benefits>

Repeal of the Nonprofit Tax on Qualified Transportation Fringe Benefits

How To Claim a Refund or Credit of Unrelated Business Income Tax (UBIT) or adjust Form 990-T for Qualified Transportation Fringe Amounts

Current Year

Prior Year

Accessible

eBooks

Browser Friendly

Post Release Changes to Forms

Order Forms and Pubs

Help with Forms and Instructions

Comment on Tax Forms and Publications

The Taxpayer Certainty and Disaster Tax Relief Act of 2019 retroactively repealed Internal Revenue Code (IRC) Section 512(a)(7), which increased unrelated business taxable income by amounts paid or incurred for qualified transportation fringes. Congress had previously enacted this provision for amounts paid or incurred after December 31, 2017.

If you wish to claim a refund or credit of the UBIT reported on your Form 990-T for 2017 or 2018 under Section 512(a)(7), you may do so by filing an amended Form 990-T as described in the form's instructions and do the following as well.

1. Write "Amended Return" at the top of Form 990-T. If the amended return is being filed only to claim a refund, credit, or adjust information due to the repeal of Section 512(a)(7), write "Amended Return - Section 512(a)(7) Repeal."
2. Complete the Form 990-T as you originally did, but:
 - **For a 2017 Form 990-T**
 - Reduce the entry on the line on which you originally included the 512(a)(7) amount by that amount. This would have been on line 12 (Other income) if you followed the Recent Developments article originally posted to [IRS.gov](https://www.irs.gov) in filing the 2017 Form 990-T.
 - Complete the rest of the Form 990-T based on that revised entry.
 - Include on the "Other" sub-line of line 45g (Other credits and payments) the amount of tax from line 48 (Tax due) of the original return (if any).
 - If your changes result in your having made an overpayment, you should enter that amount on line 49 (Overpayment) line of the amended return, which you may request as a refund or credit on line 50.
 - **For a 2018 Form 990-T**
 - Enter "0" (zero) on line 34 (Amounts paid for disallowed fringes).
 - Complete the rest of the Form 990-T based on that revised entry.
 - Include on the "Other" sub-line of line 50g (Other credits, adjustments, and payments) the amount of tax from line 53 (Tax due) of the original return (if any).
 - If your changes result in your having made an overpayment, you should enter that amount on line 54 (Overpayment) line of the amended return, which you may request as a refund or credit on line 55.
3. Attach a statement indicating the line numbers on the original return that were changed and the reason for each change (for example, stating "repeal of Section 512(a)(7)").

Please keep in mind that the time limits for filing refund claims found in IRC Section 6511 apply to these refund claims. Typically, these time limits are three years from the time the original Form 990-T was filed or two years from the time the tax was paid, whichever is later.

Proposed Silo Regulations Released

- On April 23, 2020, the Treasury Department and Internal Revenue Service ("IRS") issued Proposed Regulations (REG-106864-18) which provided further guidance on calculating unrelated business taxable income ("UBTI") for separate trades or businesses
 - These proposed Regulations expand upon the interim guidance previously issued within IRS Notice 2018-67
 - The Tax Cuts and Jobs Act of 2017 added Internal Revenue Code ("IRC") §512(a)(6), which requires tax-exempt organizations to compute UBTI separately for each unrelated trade or business ("UTB") activity (referred to as a "silo" or "siloing"). This rule generally prevents tax-exempt organizations from using losses from one UTB to offset income from another UTB
 - Proposed Regulations largely remain consistent with the guidance in IRS Notice 2018-67 however, certain modifications were made in response to comments received in order to reduce the burden imposed by the new silo rules

Proposed Silo Regulations Released

- NAICS Codes

- A doption of two-digit NAICS codes in place of the more specific six-digit codes which will allow tax-exempt organizations to use only the first two digits of the NAICS code to categorize each UTB, allowing for broader classification of activities
- Once an organization uses the two-digit code to classify a UTB, it generally cannot change the code unless there was an unintentional error in the initial classification

Proposed Silo Regulations Released

- Investment Activities

- Proposed Regulations provide that a tax-exempt organization may treat investment activities collectively as a separate UBTB which allows all income, deductible expenses, and losses from the following investment activities to be aggregated in computing a single UBTI amount:
 - Qualifying partnership interests ("QPIs");
 - Qualifying S Corporation interests; and
 - Debt-financed properties

Proposed Silo Regulations Released

- Investment Activities

- Partnership interests have to meet either a de minimis test or a control test to be considered QPIs. The de minimis test is met if the organization holds directly no more than 2% of the profits interest or capital interest of the partnership. A control test is met if the organization holds no more than 20% of the capital interest and does not control the partnership, considering all facts and circumstances. Notice 2018-67 had previously required tax-exempt organizations to aggregate related interests in determining whether it met the de minimis test or the control test. The proposed Regulations loosen these requirements significantly, and no longer require aggregation for the de minimis test and no longer including interests of disqualified persons in the control test.

Proposed Silo Regulations Released

- Investment Activities

- A qualifying S corporation interest must meet the definition of a QP I, considering the percentage of stock owned rather than a profits interest. In addition, the proposed Regulations also provide that each S Corporation interest that is not a "qualifying S Corporation" interest is considered to be its own separate trade or business. However, tax-exempt organizations must aggregate the interests of its supporting organizations and §512 (b) (13) controlled organizations when determining ownership.

Proposed Silo Regulations Released

- Net Operating Losses (NOLs)

- The proposed Regulations provide that tax-exempt organizations with pre-2018 and post-2017 NOLs should first deduct its pre-2018 NOLs from its aggregate UBTI so as to fully utilize its pre-2018 NOLs. Post-2017 NOLs should be deducted thereafter with respect to each UTB activity under §512 (a)(6)(A).
- FAQs issued on NOLs 6/9

Proposed Silo Regulations Released

- Other Provisions

- Controlled organizations – All “specified payments” (including rent, interest, and royalties) from a controlled entity would be treated as gross income from a separate trade or business. If an organization receives specified payments from multiple controlled entities, the payments from each controlled entity are treated as separate trades or businesses;
- Controlled foreign corporations (“CFCs”) – All income from CFC insurance activities under §512(b)(17) is treated collectively as one trade or business, even if received from multiple CFCs;
- Adjusted gross-to-gross method – When allocating indirect expenses to UBI, this method had been deemed unreasonable; and
- Public support tests – The proposed Regulations provide a favorable rule allowing organizations to aggregate all net income and net losses from unrelated business activities for purposes of public support calculations

Polling Question #3

- With respect to an exempt organization's unrelated trade or business activities, NAICS Codes of how many letters will be used for classification of UTB activities?
 - A . 2 digits
 - B . 3 digits
 - C . 6 digits
 - D . None of the above

Donor Advised Funds (DAFs)

- Notice 2017-73, Request for Comments on Application of Excise Taxes With Respect to Donor Advised Funds in Certain Situations ("Notice") released December 12/4/17
 - Proposed that no bifurcation with respect to event participation be allowed
 - DAF donor or advisor could no longer pay nondeductible portion of event participation personally
 - Section 4967 Excise Tax Applies
 - Distribution from DAF to a charity in satisfaction of donor or advisor pledge will would not result in more than an incidental benefit, even, if treated by charity as being in satisfaction of the pledge, provided DAF makes no reference to the pledge in making the distribution
 - Otherwise Section 4967 Excise Tax applies
 - Taxpayers may rely on this portion of the guidance until additional guidance is issued

Donor Advised Funds (DAFs)

- AICPA Comments 7/24/19
 - Distributions from DAF:
 - Should be treated as a grant from the DAF donor rather than the DAF sponsor
 - All anonymous grants should be treated as being made from one person for purposes of determining the donee organization's public support
 - DAF sponsor donation should treat as unlimited public support if the sponsoring organization specifies that the distribution is not from a particular DAF or states that no donor or donor advisor advised the distribution

Section 4960 Proposed Regulations

- Excise tax on excess remuneration over \$1,000,000
 - Applicable tax-exempt organization (A TEO) must pay 21% excise tax on compensation greater than \$1,000,000 plus any excess parachute payment paid to a "covered employee" during a tax year
 - A TEO is any organization that is exempt from taxation under Code Sec. 501 (a), is a farmers' cooperative organization under Code Sec. 521 (b) (1), has income excluded from taxation under Code Sec. 115 (1), or is a political organization described in Code Sec. 527 (e) (1)
 - Covered employee's base amount calculation, generally, includes remuneration from all A TEOs and related organizations, and that a covered employee's parachute payment calculation includes all payments made from all A TEOs and related organizations that are contingent on the employee's involuntary separation from employment
 - A covered employee is any individual who is one of the A TEO's five highest-compensated employees for the tax year or was a covered employee of the A TEO (or any predecessor) for any preceding tax year beginning after December 31, 2016

Section 4960 Proposed Regulations

- Excise tax on excess remuneration over \$1,000,000
 - Whether an employee is one of the five highest-compensated employees of an ATEO is determined separately for each ATEO, thus related ATEOs can have more than 5 highest compensated employees for a year
 - Once a covered employee of an ATEO always a covered employee as long as payments received
 - No minimum threshold to be a covered employee
 - Must pay more than \$1,000,000 or an excess parachute payment in a year for the 4960 tax is paid
 - A grant of a legally binding right to vested remuneration is considered to be remuneration paid, and any grant of a legally binding right to non-vested remuneration by the ATEO (or a related ATEO) – for example, under a deferred compensation plan or arrangement – disqualifies the ATEO from claiming a relevant exception

Section 4960 Proposed Regulations

- Excise tax on excess remuneration over \$1,000,000
 - Exclusions and exceptions
 - Statutory exclusion for remuneration from medical and veterinary services
 - Limited hours exception
 - Must meet all of following requirements
 - No compensation or legally binding non-vested compensation for services performed as employee for ATEO or related ATEO
 - No more than 10% of total time spent performing services for ATEO and all related organizations is spent performing services for ATEO and all related ATEOs
 - Disregard remuneration paid to an individual who is never an employee of the ATEO
 - Safe Harbor-individual not treated as reaching the 10% threshold if no more than 100 of service provided ATEO and all related ATEOs
 - Non-exception funds exception
 - No remuneration paid nor legally binding deferred compensation granted by ATEO, any related ATEO and related controlled organization of the ATEO to employee of ATEO
 - ATEO didn't pay more than 10% or more of employees total remuneration for services performed as employee of ATEO or all related organizations and
 - ATEO had at least one related ATEO and one of the following conditions apply:
 - Ten percent remuneration condition .A related ATEO paid at least 10 percent of the remuneration paid by the ATEO and all related organizations; or
 - Less remuneration condition .No related ATEO paid at least 10 percent of the total remuneration paid by the ATEO and all related organizations and the ATEO paid less remuneration to the employee than at least one related ATEO .



Taxpayer First Act of 2019

- Taxpayer First Act enacted in July of 2019
 - Notice of Im pending Revocation
 - Revocation for failure to file 3 consecutive years
 - Notification of risk of revocation after two consecutive years of non-filing
 - Mandatory E Filing
 - For tax years beginning on or after July 2, 2019
 - Those filing 990-EZ , have been granted a one-year extension on mandatory e-filing

Other

- Group Exemption

- As of January 1, 2019, IRS stopped mailing lists of parent and subsidiary accounts to central organizations (group ruling holders) for verification and return. Central organizations must still comply with the annual reporting requirements in Section 6 of Revenue Procedure 80-27. As noted in the Revenue Procedure, the required information [changes] must be submitted at least 90 days before the close of the central organization's annual accounting period. If there are no changes, the central organization must submit a statement to that effect.
- Notice 2020-36 proposes Revenue Procedure Updating Group Exemption Letter Program which was last addressed in Rev. Proc. 80-27

Other

- **Schedule B**

- Donor names and addresses now required only for 501(c)(3) and 527 political organizations
- Final Regulations published in Federal Register on May 28, 2020 replace Rev. Proc. 2018-38 that on July 30, 2019 was set aside by the United States District Court for the District of Montana, as original procedure had not been subject to notice and comment procedures
 - Effective on May 28, 2020
 - Organizations may choose to apply this change to returns filed after September 6, 2019
- All other 501(c) organizations can use "N/A" in the name/address section
- Review state laws for charitable filings as inclusion of Schedule B, with name and address completed are on the upswing

Polling Question #4

- An organization exempt from tax under IRC Section 501(c)(3) can now file a Schedule B as part of their Form 990 and not include donor names and addresses of donors on Schedule B?
 - A. True
 - B. False

Other

- [Mayo Clinic v. U.S., D. Minn., No. 0:16-cv-03113](#), appeal filed 10/4/19
 - What's a school?
 - Regulatory authority of IRS?
- [College and University Endowment Excise Tax](#)
 - The TCJA imposed a 1.4 percent excise tax on the net investment income (NII) of private institutions with more than 500 full-time equivalent students and assets of at least \$500,000 per student. The proposed rules define terms intended to provide college administrators a roadmap for determining whether the tax applies to their institution and if so, how to calculate the amount of tax
 - Proposed Regulations issued July 2019
 - <https://www.insidehighered.com/news/2020/02/18/wealthiest-universities-are-paying-big-endowment-tax-bills-how-much-are-others-who>

Q uestions?



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