

With the holidays over and most of us back to work, we want to alert you to a few developments affecting tax-exempt organizations. The Taxpayer Certainty and Disaster Relief Act of 2019 (the Act), which was part of the consolidated appropriations legislation (Public Law No. 116-94) that the President signed in late December, included several provisions directly affecting tax-exempt organizations.

Repeal of Parking Fringe Benefit Tax

The Act repeals section 512(a)(7) of the Internal Revenue Code (Code), retroactive to its enactment in 2017 as part of legislation known as the Tax Cuts and Jobs Act. Section 512(a)(7) imposed the unrelated business income tax (UBIT) on certain transportation fringe benefits, including parking, provided by tax-exempt organizations to their employees. The 21% tax on expenditures was an unpleasant surprise for tax-exempt organizations that provided transportation fringe benefits, including transportation benefits required by local law.

Organizations that paid the tax on fringe benefits should be able to seek refunds for UBIT paid. Unless the IRS announces a special procedure for claiming refunds, tax-exempt organizations will seek refunds by filing amended Forms 990-T for the tax years for which they paid the tax. A tax-exempt organization amends a Form 990-T by filing a new Form 990-T with "Amended Return" written at the top of the return. The amended return should include a statement showing the line number(s) of the return being changed and the reasons for each change. Generally, an amended return must be filed within three years after the date the original return was due or three years after the date the organization filed it, whichever is later. Organizations that made estimated tax payments for a tax year for which they have not yet filed a Form 990-T may have to file a Form 990-T to obtain a refund of the estimated taxes.

Charitable Deduction Limits for Contributions for Disaster Relief

The Act temporarily suspends the percentage-of-income limitation on charitable deductions for qualified contributions to publicly supported charities for disaster relief efforts. The suspension applies to contributions by individuals and corporations. It does not apply to contributions to section 509(a)(3) supporting organizations or to donor advised funds.

The suspension applies to contributions made from January 1, 2018, through February 18, 2020 (60 days after the December 20 enactment of the legislation). To claim deductions eligible for the suspension, donors must obtain contemporaneous written acknowledgement (within the meaning of Code section 170(f)(8)) from the recipient charity that the contribution was used or is to be used for disaster relief efforts as defined in the statute. It is unclear how taxpayers meet the "contemporaneous" requirement for contributions made in tax years for which they previously filed returns and had an acknowledgement that did not specify use for disaster relief.

Without the suspension, individuals' charitable deductions are capped at 60% of their adjusted gross income for the tax year and corporations' charitable deductions are capped at 10% of their taxable income before charitable deductions.

Modification of the Private Foundation

Excise Tax

The Act amends Code section 4940 to provide a uniform 1.39% excise tax on the net investment income of private foundations. The amendment is effective for tax years beginning after December 20, 2019.

Under prior law, the tax was generally 2%, but was reduced to 1% in years in which qualified distributions exceeded historical levels, as calculated under a complicated formula. The structure of the old tax actually discouraged substantial distributions in a particular year of need (such as a year in which there was a major disaster). The private foundation community had been promoting a uniform tax rate for many years.

A private foundation that uses a tax year other than the calendar year and that expects to be subject to the 2% tax for its current year may be able to reduce its tax liability by deferring sales of appreciated securities into its next tax year.

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