Most significant piece of tax legislation in 30 years

Most provisions are effective for tax years beginning after December 31, 2017

Will require IRS guidance on implementation and interpretation of many of the provisions
GENERAL PROVISIONS

• AMT repealed for Corporations
• Changed corporate tax rate to flat 21%
• Tax years beginning after 12/31/17
• Fiscal year taxpayers use alternative calculation for years beginning in 2017

Taxable income of $1,000,000

Fiscal year ended June 30, 2017
Tax = $340,000

Fiscal year ended June 30, 2018 Tax = $275,534
$340,000 x 184/365 = $171,397 [July- Dec. 2017]
$210,000 x 181/365 = $104,137 [Jan- June 2018]

Fiscal year ended June 30, 2019 Tax = $210,000

$210,000 x 181/365 = $104,137 [Jan- June 2018]
NET OPERATING LOSSES

No longer eligible for carryback

Carry forward indefinitely

Limits NOLS created after 2017 to 80% of taxable income
UNRELATED BUSINESS INCOME
UBI - SEPARATELY COMPUTED INCOME

- Losses of one activity can not be used to offset income of another.

- Gain/loss computed separately for each trade or business activity – Silo concept.

- Can use losses in one year to offset income on same activity in the future.
UBI—CONTEXT FOR CHANGE

- Between 350,000 and 400,000 tax-exempt organizations file a 990 in any given year.

- Between 45,000 and 47,500 tax exempt organizations file a Form 990-T:
  - Greater than 50% of all 990-Ts reported no unrelated business income tax liability after subtracting deductions from gross unrelated business income.
IRS GUIDANCE-NOTICE 2018-67

- May rely on good-faith effort in determining separate trade or business
  - Six-digit NAICS code

- Expenses must have a proximate and primary relationships to the activity
  - Continued focus from IRS Priority Guidance Plan

- Partnership Investments
  - Income from “qualifying partnership interests” may be treated as one activity if organization does not control the partnership
    - Less than 20% ownership
  - Transitional rule for investments acquired before August 21, 2018
Amounts included under the fringe benefit rules are not income from a trade or business subject to segregation:

• NOLS can be used to offset this income

Ordering of NOLs:

• Post 2017-NOLs against same activity income
• Pre-2018 NOLs against any income
• Intend to issue regulations on how the 80% limitation applies
UBI KEY CONSIDERATIONS

- Review current methods for tracking and allocating expenses to unrelated activities.
- If the separate computation will significantly increase UBTI, consider restructuring to transfer taxable activities to a taxable subsidiary that would be able to net gains and losses on an aggregate basis.
- Document positions on how separate activities are determined.
- Utilize pre-2018 NOLs to offset post 2017 UBTI.
- Calculate estimated payments for 2018 tax year using new corporate tax rates.
FRINGE BENEFITS
FRINGE BENEFITS

• Tax exempt organizations are required to treat certain fringe benefits provided to employees as unrelated business income:
  • Added §512(a)(7)

• Statutory Language:
  • “deduction is not allowable under Section 274”
  • “which is paid or incurred by such organization for any”:
    • Qualified Transportation fringe132(f)
    • Qualified Parking facility 132(f)(5)(C)

• Does not change the employee’s exclusion of the benefit from income under Section 132:
  • Subject to monthly dollar limits--$265/month (2019)
FRINGE BENEFITS

Qualified transportation fringe

- Commuter transportation in a commuter highway vehicle
- Transit passes
- Qualified parking
- Qualified bicycle commuting reimbursement

Qualified parking

- Parking provided on or near the business premises
- Parking on or near a location from which the employee commutes to work
Interim guidance for determining amount includible in UBI
• Provides “reasonable method” to rely on until regulations are issued

Employer pays third party
• Total annual cost for employee parking
• May be limited if portion is treated as taxable income to employees
  • Over $260/month per employee

Employer owned or leased facility
• Must identify total parking expenses: repairs, maintenance, utilities, insurance, taxes, interest, snow removal, trash removal, cleaning, attendants, security and lease payments (or portion of lease payment)
• Determine employee usage
• Can use “safe harbor”
Safe Harbor Approach

• **Reserved Employee Spots**
  • Calculate as percentage of total spots times the total parking expense = UBI
  • May remove reserved spots by March 31, 2019 and have treated as not reserved retroactively to January 1, 2018

• **Primary Use of Remaining Spots**
  • If more than 50% of spots are for general public use-none of the expense is UBI
  • General public--Students, patients, visitors, customers, clients, vendors
  • Measured during normal business hours
Safe Harbor Approach

If primary use is not for the public

- **Reserved for non-employees**
  - Calculate as a percentage of total spots times total parking expense—Not UBI

- **Typical employee use**
  - Allocate any remaining spots between employee vs. non-employee use
  - Calculate employee use percentage times total parking expense-UBI
  - Based on actual or estimated usage
## Example-Safe Harbor

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Calculation</th>
<th>Expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Parking spaces</td>
<td>500</td>
<td></td>
<td>$5,000</td>
</tr>
<tr>
<td>Reserved Employee</td>
<td>50</td>
<td>UBI = 50 spots/500 spots x 5,000 = $500***</td>
<td></td>
</tr>
<tr>
<td>Reserved Visitor</td>
<td>25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Spots</td>
<td>250</td>
<td></td>
<td>$2,985</td>
</tr>
<tr>
<td>General Public</td>
<td>175</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Step One:** Reserved Employee Spots
UBI = 50 spots/500 spots x 5,000 = $500***

**Step Two:** Primary Use
175 spots/450 spots = 38%
Primary use is for employees

**Step Three:** Reserved for Non-employees
Not UBI: 25 spots/450 spots x 5,000 = $275

**Step Four:** Typical Employee Use
UBI: 250 spots/425 spots x $4,225 = $2,485

***Can eliminate UBI treatment if remove signs by 3/31/19***
Estimated tax penalty relief

• Must not have filed a Form 990-T in 2017
• Must timely file and pay tax related to fringe benefit UBI
FRINGE BENEFIT KEY CONSIDERATIONS

- Determine total parking expenses—if less than $1,000 and no other UBI, no additional effort needed.
- Consider eliminating reserved employee parking spots by March 31, 2019.
- Determine if Primary Use test can be met.
- Properly report and pay tax.
- Continue to monitor challenges to legislation.
EXECUTIVE COMPENSATION
• Added Code Section 4960

• Imposes a 21% excise tax on an employer with respect to:
  • Any remuneration in excess of $1 million paid to a covered employee; and
  • Any excess parachute payment paid to a covered employee

• Effective for tax years beginning after December 31, 2017

• Similar treatment as public companies

• Taxes operate independently
EXCISE TAX ON EXECUTIVE COMPENSATION

Applicable tax exempt organizations

- Exempt from tax under 501(a)
- Farmers cooperatives exempt under 521(b)(1)
- State or local government entity with excludable income under §115(1)
- Political organizations described in Section 527(e)(1)

Covered employee

- One of five highest compensated employees for the tax year (including former employee)
- Was a covered employee in any prior year
- Structure of related organizations could impact identification of covered employees
Excise Tax on Executive Compensation

Remuneration

- All compensation as determined for income tax withholding purposes:
  - Considered paid when no longer subject to a substantial risk of forfeiture based on definition under 457(f)(3)(B)
  - Deferred compensation under 457(f)
- Does not include:
  - Roth contributions
  - Compensation paid to a licensed medical professional attributable to medical services

Includes compensation from a related person or governmental entity

- Considered related if:
  - Entity controls, or is controlled by, the organization;
  - Entity is controlled by one of more persons that control the organization;
  - Entity is a 509(a)(3) supported or supporting organization;
  - In the case of a VEBA:
    - An entity that establishes, maintains, or makes contributions to the VEBA
EXCISE TAX ON EXECUTIVE COMPENSATION

Excess parachute payment:
  • Amount equal to the excess of any parachute payment over the portion of the base amount allocated to the payment

Parachute payment:
  • Payment in the nature of compensation
  • Payment contingent on an employee’s separation from employment
  • Aggregate present value of all payments is at least three times the base amount.

Excludes:
  • Payments under qualified plans
  • Payments under 403(b) or 457(b)
  • Compensation paid to a licensed medical professional attributable to medical services
  • Payment to individual who is not a highly compensated employee.

Base amount:
Average annualized compensation for the five years ending before the date of separation.
Compliance requires “good faith reasonable interpretation of section 4960”
The guidance in Notice 2019-09 is reasonable interpretations
Future guidance will be prospective
Calendar year is used in calculating excise tax
Payment of excise tax does not indicate excess benefit transaction
### Applicable Tax Exempt Organization

- Governmental entities
- May not cover all state colleges and universities
- Subject to legislative change
- Definition of related organization follows Form 990 reporting

### Covered employee

- One of top five employees regardless of amount paid
- Based off remuneration paid during calendar year
- Does not include remuneration for medical services
- Includes compensation paid by related organizations
- Limited services exception
<table>
<thead>
<tr>
<th>Remuneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Does not include director fees or independent contractor payments</td>
</tr>
<tr>
<td>• Amounts are included in remuneration when vested, not paid</td>
</tr>
<tr>
<td>• No longer subject to substantial risk of forfeiture</td>
</tr>
<tr>
<td>• Calculated based on present value of future payments</td>
</tr>
<tr>
<td>• Include additional gains on previously vested amounts</td>
</tr>
<tr>
<td>• Does not include amounts vested in previous years</td>
</tr>
<tr>
<td>• New covered employees</td>
</tr>
<tr>
<td>• Pre-effective date remuneration</td>
</tr>
</tbody>
</table>
# Medical Services

**Performed by a licensed medical professional**
- Licensed under state law to perform medical services

**Services for “diagnosis, cure, mitigation, treatment or prevention of disease”**
- Does not include teaching or research

**Includes documenting care and accompanying another licensed professional when providing care**

**Does not include scheduling, staffing, appraisal or other functions**

**Must use a reasonable basis for allocating salary between functions**
NOTICE 2019-09

Parachute Payment
• Only includes payments in the nature of compensation
• Payment arises out of an employment relationship or refraining from performing services
• Payment would not have been made in the absence of an involuntary separation from employment
• Includes all forms of payments and considered made when included in taxable income or when benefits received

Payment Contingent on Separation from Employment
• Employer would not make the payment in the absence of involuntary separation
  • Provides numerous examples on how various types of payments are considered
• At least 80% reduction in employment
NOTICE 2019-09

Calculation
- Discount rate for determining present value = 120% AFR
- Short years must be annualized for purpose of calculating base amount
- Base amount only includes gross income, not certain benefits

Liability
- Excise tax liability shared by multiple related organizations proportionately
- Tax liability will be reported on Form 4720
- Due on the 15th day of the fifth month
- Not subject to estimated payment requirements
COMMENTS REQUESTED

Must be submitted on or before April 2, 2019

Internal Revenue Service
CC:PA:LPD:PR (Notice 2019-09), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Electronically:
www.regulations.gov
Type IRS-2019-09 in the search field to find this notice and submit comments
FRINGE BENEFIT KEY CONSIDERATIONS

- Determine covered employees
- Consider if any covered employees may receive remuneration in excess of $1 M in the future based on compensation arrangements
- Consider impact of parachute payment provisions in termination situations
- Calculate potential tax and consider the need for accruing for book purposes
- Consider submitting comments regarding application
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THANK YOU!

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