



DECEMBER 2019

## Congress Repeals the Nonprofit Parking Tax — and Other Holiday Gifts for the Nonprofit Sector

President Trump signed the Taxpayer Certainty and Disaster Tax Relief Act of 2019 into law on Dec. 20, 2019, as part of the consolidated appropriations bill (Public Law No. 116-94). For many of our exempt organization clients, the best gift of this holiday season is the retroactive repeal of the ill-conceived tax on parking fringe benefits provided by nonprofit employers. The act also temporarily suspends the charitable deduction limits on donations to public charities to support disaster relief, and it simplifies the excise tax on a private foundation's net investment income so that only one flat rate now applies.

### Retroactive Repeal of Parking Fringe Benefits Tax

Section 302 of the statute repeals Section 512(a)(7) of the Internal Revenue Code (the "Code"), which was enacted as part of the 2017 tax reform 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 nonprofit organizations to their employees. This 21% tax on expenditures, not income, was an unwelcome and costly shock to the nonprofit sector. Many organizations had to file IRS Form 990-T for the first time in order to calculate and pay the UBIT amounts due in 2018 and 2019.

The repeal of Code Section 512(a)(7) is retroactive, which means nonprofit organizations may now wish to amend their returns filed for 2018 and 2019 to claim

refunds of the taxes paid under Section 512(a)(7) for those years.

### Modification of the Private Foundation Excise Tax

Section 206 of the statute simplifies the private foundation excise tax on net investment income, imposed by Section 4940(a) of the Code, by replacing the current two-tiered system with a flat rate of 1.39%. Until now, tax-exempt private foundations have been subject to a 2% excise tax on net investment income. This rate could be reduced to 1% in years when a private foundation's qualifying charitable distributions exceeded historical levels, as calculated based on a complicated formula. Calculation and reporting of this excise tax required careful monitoring and, for many private foundations, guidance from outside experts.

This is another welcome change for our exempt organization clients. The Council on Foundations and other advocates for the private foundation sector have long advocated for a single, flat (1%) rate to eliminate the administrative burden. Public charities may benefit from an uptick in grant-making, as foundations may adjust charitable distributions.

The new flat 1.39% tax rate is effective for tax years beginning after the date of enactment of the act. Net investment income includes capital gains from the sale of appreciated assets. In the case of a charitable contribution of appreciated securities to a foundation,

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the foundation's cost basis is carried over from the donor. A private foundation that receives a year-end grant of appreciated securities may want to defer the sale to January if the tax reduction would be meaningful.

### Temporary Suspension of Charitable Deduction Limits for Contributions for Disaster Relief

Section 204 of the statute temporarily suspends the percentage of income limitations for qualified contributions to publicly supported charities to support disaster relief efforts. The new provision applies to cash contributions made by individual and corporate taxpayers. Without this special reprieve, an individual could only claim a charitable deduction for contributions to Section 501(c)(3) public charities of up to 60% of the individual's adjusted gross income during the tax year. For corporate taxpayers, the relevant limit is normally 10% of taxable income.

Notably, the special treatment is not available for donors' contributions to (1) supporting organizations described in Code Section 509(a)(3), or (2) to establish or maintain a donor-advised fund.

To claim deductions under the new provision, donors must obtain contemporaneous written acknowledgment (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.

Under this temporary rule, donations made during the period commencing on Jan. 1, 2018, and ending 60 days after the date of enactment will be eligible for the special treatment.

*We will monitor and keep you apprised of any implementing regulations or IRS guidance. In the meantime, please feel free to call any of the members of our Nonprofit and Tax-Exempt Organizations practice group with questions.*

### Related Professionals

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