

A woman with dark hair and glasses, wearing a blue button-down shirt and black pants, is riding a bicycle. She is smiling and waving her right hand. The background shows a stone building.

2019

# Association CONFERENCE

## Tax Update

Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC,  
an SEC-registered investment advisor. | ©2019 CliftonLarsonAllen LLP

# Agenda

1. Compensation excise tax

2. Transportation fringe benefits treated as unrelated business income

3. UBTI calculated separately for multiple business activities

4. Miscellaneous Provisions

# Tax Reform Interim Guidance for Exempt Organizations

Notice 2018-67  
Unrelated Business  
Income Separate Line  
of Business Reporting

Notice 2018-99 &  
2018-100 Qualified  
Transportation Fringe  
Benefits (QTFB)

Notice 2019-09 Excise  
Tax on Compensation

*Treasury and IRS to issue proposed regulations for each provision*





# Excise Tax on Compensation

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor

# Excise Tax on Compensation

- Effective for tax years beginning after December 31, 2017, an “applicable tax-exempt organization” is subject to a 21% excise tax on
  - Remuneration over \$1 million paid to a covered employee
  - Excess parachute payments paid to a covered employee
- Provision applies to tax exempt employers including 501(c)(6) organizations



# Covered Employees and Compensation

- Covered employee
  - Five highest-compensated employees in the current year or a covered employee in any preceding tax year beginning after December 31, 2016
  - Limited service exception excludes employees if the ATEO paid less than 10% of the employee's total remuneration for services to the ATEO and all related organizations
    - ◇ Once a covered employee, always a covered employee
- Remuneration
  - Wages generally means Form W-2 Box 1
  - Includes amounts paid by related organization that is the employer of the covered employee



# Excess Parachute Payments

- Compensatory payment to a covered employee if:
  - The payment is contingent on an employee separation from employment with the employer and
  - Aggregate present value of the payment exceeds three times the base amount, which is the average annual compensation over the preceding 5-years
- Notice 2019-09 Amount is a parachute payment
  - Amounts is deemed to be a parachute payment only if the payment is contingent on involuntary separation from service



# Excess Compensation Complexities

- Avoid fluctuations in compensation
- Consider modification to vesting of deferred compensation, severance, or bonus provisions
- Review separation from service payments to avoid excess parachute payments
- Review shared employment agreements
- Unintended consequences may occur if payments made through related organizations







# Qualified Transportation Fringe Benefits

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor

# Qualified Transportation Fringe Benefits as UBI

- As of January 1, 2018, organizations subject to UBI must increase UBTI by their expenses of providing certain fringe benefits
  - Taxable organizations cannot deduct the amount of the expense
- Fringe benefits include:
  - Expenses for commuter highway vehicles, transportation transit passes, and qualified parking
- Income inclusion includes both employer-paid direct expenses and employee pre-tax payments



# Qualified Transportation Fringe Benefits as UBI

- QTFB includes
  - Employer payments for a specific employee to have a specific reserved parking space or guaranteed access
  - Employer owns/leases a parking lot that includes spaces reserved for employees
  - Employer owns/leases a parking lot and more than 50% of that lot is used by employees during normal business hours on a normal business day
  - Employer pays for bus/train/rail passes



## Notice 2018-99 - Payments to Third Parties

- Employer paid amounts up to \$265 per employee per month is treated as UBI
- Amounts paid in excess of \$265 per employee per month is taxable compensation to the employee and is not UBI
- Consider both employer direct payments and employee pre-tax payments
  - NOTE: Employee is allowed a pre-tax deferral of \$265/month for parking plus \$265/month for transit



# Notice 2018-99 Qualified Transportation Fringe Benefit Expenses

## Expenses to *include*:

- Lease/rent
- Utilities
- Insurance
- Property taxes
- Interest on debts
- Repairs and maintenance
- Snow/ice/leaf/trash removal
- Cleaning
- Landscaping
- Parking lot attendants
- Security

## Expenses to *exclude*:

- Any capitalized expenses
- Depreciation
- Expenses attributable to sidewalks and grass around the parking lot

## Notice 2018-99 – Miscellaneous Issues

- What is unreasonable?
  - Using the fair market value of employee parking to determine allocable expense
  - Allocating no expense to reserved parking
- Parking use must be determined separately for each geographic location.
  - Multiple parking lots in one geographic location *may* be aggregated
- If employee use fluctuates significantly, a reasonable method can be used to determine average use





# Unrelated Business Income: Separate Line of Business Reporting

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor

## UBI Separate Line of Business

- Effective for tax years beginning after December 31, 2017, UBTI is computed separately for each business activity
- Organizations may no longer aggregate activities to arrive at taxable income
  - A net operating loss (NOL) from one activity may not offset net income from another activity
  - NOLs which are unable to be used in current year are carried forward until the activity produces positive UBI





## Notice 2018-67

- Reasonable, good faith interpretation must be used until additional guidance is issued
- Use of NAICS is considered good faith interpretation
- Qualified transportation fringe benefits is not treated as a separate unrelated trade or business

---

### Arts, Entertainment, and Recreation

#### code

711110	Theater companies and dinner theaters
711120	Dance companies
711130	Musical groups and artists
711190	Other performing art companies
711210	Spectator sports (including sports clubs and racetracks)
711300	Promoters of performing arts, sports and similar events
713110	Amusement and theme parks
713200	Gambling industries
713910	Golf courses and country clubs
713940	Fitness and recreational sports centers
713990	All other amusement and recreation industries (including skiing facilities, marinas, and bowling centers)

---

## Notice 2018-67 – Partnership Investments

- Interim guidance for aggregating UBTI from partnerships
  - De minimis test – EO holds no more than 2% of partnership profits interest and capital interest, combining all related interests **or**
  - Control test – EO holds no more than 20% of the partnership interest and does not have control or influence over the partnership, combining all related interests
    - ◇ Related interests includes: interests held by disqualified persons, supporting organization, or controlled entity
  - Transition rule applies for partnership interests acquired prior to August 21, 2018, EO permitted to treat each partnership interest as a single trade of business, even though more than one activity is conducted by the partnership



# Net Operating Losses

- Pre-January 1, 2018 NOLs
  - Apply to the combined net taxable income
  - Carryback and carryover provisions apply
- Post-December 31, 2017 NOLs
  - Cannot be carried back to prior years
  - May be carried forward indefinitely
- May only be applied against the same unrelated activity that generated the losses



## Separate Lines of Business Complexities

- What constitutes a separate line of business?
- How are expenses allocated to each activity?
- With investments, does the institution have resources for the tracking of the partnership investment including related parties?
  - Does the organization's conflict of interest disclosure accumulate the appropriate information?





# Miscellaneous Employer Provisions

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor

# Taxation of Other Employee Benefits

- Moving expenses
  - Between 1/1/18 and 12/31/25, employer payment/reimbursement of moving expenses is taxable compensation
- Employee achievement awards
  - Achievement = length of service, quality, safety, etc.
  - Excluded from employee compensation if below threshold and not a cash equivalent
  - Cash equivalents expanded to include vacations, meals, lodging, event tickets, and securities
- Temporary Family and Medical Leave
  - Between 1/1/18 and 12/31/19, there's a tax credit to claim on Form 990-T
  - For providing FML to lower-paid employees (taxable comp < \$72K)





# Proxy Tax and Lobbying Activities

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor

# Proxy Tax & Lobbying Activities

- Association members are not allowed to deduct as a business expense amounts paid to:
  - Influence legislative bodies or the public
  - Participate in a political campaign
  - Influence the public with respect to elections
  - Communication with an executive branch official in an attempt to influence
- Association must pay proxy tax or notify member on the portion of dues not deductible because of these activities





# Proxy Tax & Lobbying Activities – Tax Reform

- Local lobbying is now deemed to be disallowed (IRC 162(e))
- Pre-Tax Reform – deduction was allowed for “ordinary and necessary expenses incurred in connection with any legislation of any local council or similar governing body”
  - Includes lobbying for local councils and similar governing bodies including Indian tribal governments
- Proxy tax is now paid at 21% tax rate





# 501(c)(6) Fundraising Activities

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor

## Fundraising Activities

- With less individuals being able to itemize deductions and claim charitable contributions, associations may wish to consider non-dues fundraising efforts
  - Amounts may not be deductible as a charitable contribution to the various payers
  - Amounts may be deductible as a business expense
- Activities may be governed by state charitable solicitation laws even if not deductible as a charitable contribution





# Contributor Disclosures

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor

## Rev. Proc. 2018-38 – Schedule B Disclosure

- Provided that 501(c)(4) and (c)(6) organizations were no longer required to complete Schedule B of the Form 990
  - Applicability of Schedule B only applied to 501(c)(3) and 527 organizations
- U.S. District Court of Montana on July 30, 2019 set aside the new rules allowing for the non-disclosure
- Unknown whether IRS will appeal the ruling
- Current state – how to address the disclosure requirements?



# Questions?

**Karen A. Gries, CPA**

**Principal**

**karen.gries@CLAconnect.com**

**612-373-1408**

**CLAconnect.com**



[linkedin.com/company/  
cliftonlarsonallen](https://linkedin.com/company/cliftonlarsonallen)



[facebook.com/  
cliftonlarsonallen](https://facebook.com/cliftonlarsonallen)



[twitter.com/CLAconnect](https://twitter.com/CLAconnect)