

Tax Matters in Higher Ed

Karen A. Gries, CPA

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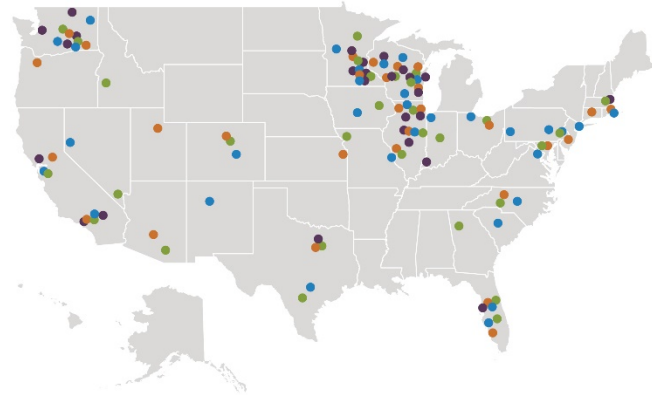
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Learning Objectives

After this webinar, participants will be able to:

- Define the IRS priority guidance plan and how this may impact your institution
- Express knowledge in tax reform and what is needed to implement for the 2018 tax year
- Review the latest in unrelated business income tax guidance



Speaker Introduction



Karen Gries, CPA
Principal

Agenda

1

IRS Priority Guidance Plan

2

2017 Tax Reform Update

3

Unrelated Business Income Reporting

4

**Post-Wayfair Compliance
Considerations**



2018 – 2019 Guidance Plan/2019 Compliance Program

- TCJA remains a priority
 - Unrelated business income reporting
 - Compensation excise tax
 - Excise tax on net investment income
- Forms W-2/1099 matches
- Backup withholding compliance
- Worker classification



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
- Does not include amounts paid to licensed medical professionals for performance of medical services
- Notice 2019-09 provides guidance plus Q&A with examples



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
- Amounts is deemed to be a parachute payment only if the payment is contingent on involuntary separation from service



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
 - ◇ More than 50% use by general public = **NO UBI** inclusion
 - 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

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 that generated the loss produces positive UBI
 - ◇ Silo's NOLs may only offset 80% of future taxable income



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 and capital interest, combining all related interests **or**
 - Control test – EO holds no more than 20% of the capital 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
 - May offset 100% of any taxable income including QTFB
- 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
 - Limited to 80% of the activity's taxable income



Alternative Minimum Tax

- Tax Reform repealed corporation AMT effective for tax years beginning after December 31, 2017
- AMT credit may be used against regular tax before tax 2022
- Refundable for tax years 2018 - 2021



Endowment Excise Tax

- 1.4% excise tax on net investment income of private institutions with:
 - 500+ full-time equivalent students and
 - Net assets of at \$500,000 or more per student
- Net investment income follows computations for private foundations
- Complexities associated with computation of capital gains on sales due to mark to market provisions



Unrelated Business Income

- Computation of UBI and inclusion of activities continues to be focus of examinations
- Activities lacking profit motive should not be included as UBI activity
- Documentation of profit motive is key to supporting loss carryovers
- Carefully review when continued losses occur



Post-Wayfair Compliance Considerations

- Sales tax implications may impact institutions of higher education and collection of sales tax
- Determining physical or economic nexus
 - Individuals/activities in other states
 - Professors conducting online training from their in-home office
 - Editors of a trade publication working from their in-home office outside of the organization's home state
 - Travel outside one's home state to run or participate in charitable functions
 - Speaking engagements
 - Research assignments
 - Development officer's travel to various states
 - Remote sales in states exceeding bright line thresholds may create economic nexus
 - ◇ \$100k of sales or 200 transactions
 - ◇ Depends on state requirements



Wayfair Compliance Risk Determination

- Conduct historical nexus study to establish your overall state nexus profile
- Quantification of potential past exposure, including sales tax taxability analysis
- Risk mitigation of past exposure, including VDAs
- Analyzing how states' economic nexus thresholds may apply
- Sales and use tax refund opportunities



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Questions?

Karen A. Gries, CPA

Principal

karen.gries@CLAconnect.com

612.373.1408

