Tax Reform Implications for Nonprofits

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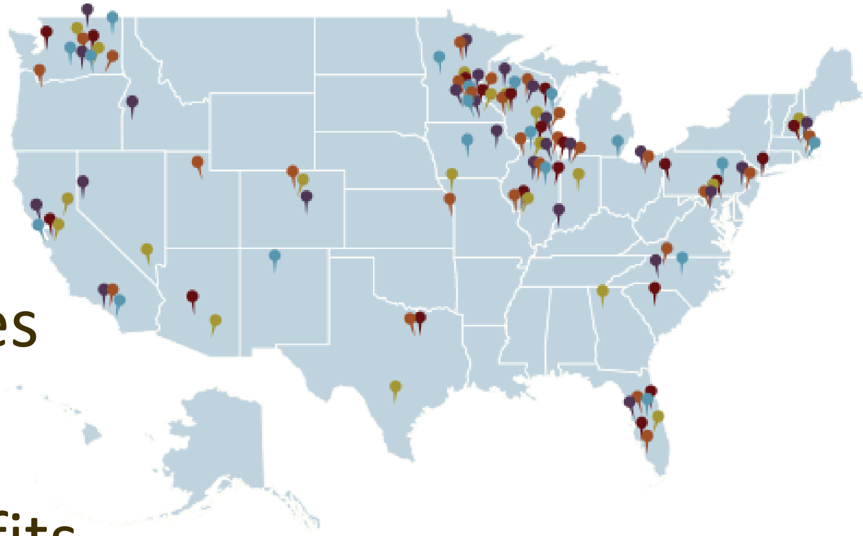
  - Outsourcing
  - Audit, Tax, and Consulting
- More than 5,000 employees
- Offices coast to coast
- Serving over 6,000 nonprofits



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Speaker Introductions

- **Karen Gries**
  Karen is a principal with CliftonLarsonAllen providing tax compliance and consulting services to exempt organizations. Her 28-year public accounting career includes providing services to a variety of tax-exempt organizations, including credit unions, charities, foundations, social welfare, business leagues and associations, colleges and universities, health care providers, religious organizations, and others.

- **Kurt Bennion**
  Kurt is a director with CliftonLarsonAllen. He has over 10 years of experience in serving the tax-related needs of tax-exempt organizations. His clients include hospitals, health systems, assisted living organizations, and senior living organizations.

Learning Objectives

- Recognize the provisions of *2017 Tax Act* that impact nonprofit organizations
- Describe key points related to tax reform
- Discuss related planning strategies

Agenda

- UBIT-Related Provisions
- Payroll-Related Provisions
- Other Provisions
- Next Steps

UBIT-Related Provisions

Tax Rates and Brackets

- Flat 21% rate on all taxable income
- Applies to Form 990-T for entities taxed as a **corporation**
- Corporate alternative minimum tax (AMT) repealed
- Prior corporate tax brackets:

If the amount on line 34 is:

Over—	*But not over—*	*Tax is:*	*Of the amount over—*
$0	$50,000	15%	$0
50,000	75,000	$7,500 + 25%	50,000
75,000	100,000	13,750 + 34%	75,000
100,000	335,000	22,250 + 39%	100,000
335,000	10,000,000	113,900 + 34%	335,000
10,000,000	15,000,000	3,400,000 + 35%	10,000,000
15,000,000	18,333,333	5,150,000 + 38%	15,000,000
18,333,333	- - - - -	35%	0

- 20% qualified business income deduction from a partnership or S corporation would apply to entities taxed as a trust

UBIT-Related Provisions

Reporting Separate Unrelated Activities

- Unrelated business taxable income from multiple unrelated trades or businesses is calculated and reported separately
  - Net losses from one activity do not offset net income from another activity
- The $1,000 standard deduction applies to the combined net taxable income

UBIT-Related Provisions

Reporting Separate Unrelated Activities

- Planning consideration of whether to create a for-profit entity to hold unrelated business activities
  - Activity-by-activity reporting is not required on Form 1120
  - Controlled entity reporting of passive income
  - Creates additional filings and organizational complexity

UBIT-Related Provisions

Net Operating Losses

- Net Operating Losses – Pre-January 1, 2018
  - Apply to the combined net taxable income
  - 2 year carryback and 20 year carryforward provisions apply
- Net Operating Losses – Post – December 31, 2017
  - May not be carried back to prior years
  - May be carried forward indefinitely
  - May only be applied against the same unrelated activity that generated the losses and
  - Limited to 80% of taxable income.
- Care must be exercise when calculating 2018 quarterly estimated tax and extension payments

UBIT-Related Provisions

Certain Employer Deductions

- Certain fringe benefits that were previously tax-deductible by employers are no longer deductible
  - Employer deduction is disallowed under IRC Sec. 274 if the benefit is excluded from the employee's taxable income under IRC Sec. 132
    - ◊ Employee pre-tax salary reductions likely create UBI
    - ◊ Employee post-tax reimbursements should not generate UBI
- A similar provision is included for tax-exempt employers.
  - "Unrelated taxable income of an organization shall be increased by any amount for which a deduction is not allowable under this chapter by reason of section 274 and which is paid or incurred by such organization for any qualified transportation fringe…, any parking facility used in connection with qualified parking…, or any on-premises athletic facility…."
- The fringe benefits are not reportable as UBI if directly connected with an activity that is already reported as UBI on Form 990-T

UBIT-Related Provisions

Certain Employer Deductions

- “Qualified transportation fringe” includes any of the following provided to an employee:
  - Transportation on a commuter highway vehicle between residence and place of employment;
  - Any transit pass;
  - Qualified parking; or
  - Any qualified bicycle commuting reimbursement
    - ◊ ***Remains deductible by the employer, but includible in taxable income of the employees***
- “Qualified parking” includes the following provided to an employee:
  - On or near the business premises of the employer or
  - On or near a location from which the employee commutes to work.
- “On-premises athletic facility” includes any gym or athletic facility (pool, tennis court, or golf course) that:
  - Is located on the premises of the employer;
  - Is operated by the employer; and
  - Substantially all the use of which is by employees, their spouses, and their dependent children.

Excise Tax on Executive Compensation

- 21% excise tax applied to compensation in excess of $1M paid to covered employees
  - Exceptions for licensed medical professionals (including veterinarians)
- “Covered employees” include:
  - One of the five highest compensated employees of the organization for the taxable year Applies to a person who meets the definition of a covered employee for a tax year beginning after December 31, 2016

Excise Tax on Parachute Payments

- 21% excise tax applied to excess parachute payments
  - Highly compensated employee's severance payment when the payment is three times the individual's average salary for the previous five years
- Parachute payments exclude:
  - Amounts paid to 403(b)(3) or 457(b)
  - Licensed medical professionals (including veterinarians) in exchange for medical services

Payroll-Related Provisions

- Temporary family and medical leave
- Employee loans from retirement plans
- Exclusion of awards from taxable income
- Employer entertainment expenses
- Onsite eating facilities
- ACA individual mandate
- Computers and peripherals
- Moving expenses
- K-12 education now eligible for 529 plans

Other Provisions – General

Contemporaneous Written Acknowledgements

- Donors wishing to deduct a charitable contribution deduction greater than $250 must receive contemporaneous written acknowledgement
- Previously, a donor could use the charity's Schedule B – Schedule of Contributors – as contemporaneous written acknowledgement
- A donor that fails to obtain the appropriate acknowledgement by the filing of their personal return is not allowed a tax deduction

Other Provisions – General

Advance Refunding Bond Interest

- Interest on advance refunding bonds is no longer tax-exempt
- Advance refunding bond is issued more than 90 days prior to the redemption of the prior bond
- Applies to advance refunding bonds issued after December 31, 2017
- Authority to issue new tax-credit bonds is repealed after December 31, 2017

Other Provisions – Education

Excise Tax on Large Endowments

- Imposes a 1.4% excise tax on “net investment income” of an “applicable educational institution”
- Applicable educational institution:
  - Has at least 500 tuition-paying students during the preceding tax year;
  - More than 50% of the tuition-paying students are located in the U.S.;
  - Is not described in the first sentence of IRC section 511(a)(2)(B); and
    - ◊ Not a state college or university;
  - The aggregate fair market value of the assets *not directly used in carrying out the institution’s exempt purpose* is at least $500K per student.
- Net investment income is calculated “under rules similar to” section 4940(c).
  - The calculation for private foundations in Form 990-PF
- Related organization assets (509(a)(3) supporting organizations) are attributed to the institution

Other Provisions – Education

Seating Rights and Contributions

- Donations to colleges and universities may give the donor the right to buy a ticket to an athletic event
  - "Seating rights"
- Previously, the donor could claim a charitable contribution deduction for 80% of the payment
- Under the new provision, no charitable contribution deduction is allowed if the donor receives *the right to buy* a ticket to an athletic event regardless of whether:
  - The ticket is actually purchased
  - The ticket would have otherwise been readily available to the donor

Provisions that May Impact Charitable Giving

- Standard Deduction Increase for Individuals
  - $12,200 for individuals
  - $24,400 for married filing jointly
- Other Itemized Deductions Limited or Repealed
  - Home mortgage interest deduction limited to loans of $750,000 vs. $1M
  - Secondary home mortgage interest deduction applies to second homes, but not equity lines of credit
  - State and local tax deduction limited to $10K
  - Miscellaneous itemized deductions subject to 2% floor are repealed
- Estate Tax Exclusion
  - Increased to $11.2M vs. $5.6M
- Increase in Charitable Contribution Deduction Limits
  - Individual limit on cash contributions to qualified charities increased to 60% of AGI

Provisions NOT Included in the Tax Bill

- 1.4% flat tax rate for private foundation net investment income
- Royalty income from licensing of name or logo treated as UBI
- Repeal of exempt status of private activity bonds
- Disclosure and/or payout requirements for donor advised funds (DAFs)

IRS Funding Struggles

"…. *The IRS absolutely needs more funding*. It cannot answer the phone calls it currently receives, much less the phone calls it can expect to receive in light of tax reform, without adequate funding. But within the budget it currently has, there are plenty of opportunities for the IRS to demonstrate that it can do a better job of using creativity and innovation to provide taxpayer service, encourage compliance, and address noncompliance."

- Nina Olson, National Taxpayer Advocate, in her annual report to Congress on 12/31/2017

Next Steps

- Understand the implications of the 2017 Tax Act
- Monitor IRS and Treasury Department for guidance
  - Notices and regulations
- Technical corrections bill
- Continue to be engaged with the legislative process
- Consider tax-planning strategies

Questions?

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