

# TAX REFORM AND IT'S IMPACT ON COLLEGES AND UNIVERSITIES

OACUBO

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Zack Fortsch, Partner

# Agenda

- 2018 Tax Update – 15 minutes
- Unrelated Business Taxable Income Separately Computed for Each Trade or Business - 15 minutes
- Unrelated Business Taxable Income Increased by Amount of Certain Fringe Benefit Expenses for which Deduction is Disallowed – 15 minutes
- Excise Tax on Excess Tax-Exempt Organization Executive Compensation – 15 minutes

# TAX CUTS AND JOBS ACT (TCJA)

# Tax Cuts and Jobs Act (TJCA)

- President Trump signed into law H.R. 1, The Tax Cuts and Jobs Act on December 22, 2017.
- There are provisions that are related to:
  - the unrelated business income tax,
  - fringe benefits,
  - excise taxes on high compensatory arrangements,
  - excise taxes applicable on certain private colleges and university endowment accumulations,
  - other provisions

# Tax Cuts and Jobs Act (TJCA)

- Before we start with today's presentation:
  - We have attended IRS public comments meetings and many of the following items were discussed with the participants in that forum and IRS TE GE personnel working on the regulations project for the TCJA provisions
  - In many respects the law is so poorly written that only Congressional "technical corrections" can fix the issues and IRS regulations can not solve some of these issues
  - There are no regulations to date but there has been some guidance in the form of Notices. The IRS has issued interim guidance for certain aspect of the TCJA in the form of Notices. The Notices have covered issues related to separate accounting for each UBI activity, UBI income from pass-through investment entities, the GILTI Tax, excise tax based on investment income of private colleges and universities

# 2018 TAX UPDATE

# 2018 Tax Update

- ***Prior law applicable to 2017 tax years:***
- Corporate taxable income is subject to tax under a four-step graduated rate structure.
- The top corporate tax rate is 35 percent on taxable income in excess of \$10 million.
- The corporate taxable income brackets and tax rates are as set forth in the table below.

<b>Taxable Income</b>	<b>Tax Rate (Percent)</b>
Not over \$50,000	15%
Over \$50,000 but not over \$75,000	25%
Over \$75,000 but not over \$10,000,000	34%
Over \$10,000,000	35%

- An additional five-percent tax is imposed on a corporation's taxable income in excess of \$100,000. The maximum additional tax is \$11,750. Also, a second additional three-percent tax is imposed on a corporation's taxable income in excess of \$15 million. The maximum second additional tax is \$100,000.

# 2018 Tax Update

- Under the new law, the former graduated corporate tax rate structure is discarded and replaced with a flat rate of 21% and it applies to tax years beginning after Dec. 31, 2017.
- This applies to incorporated exempt organizations filing Form 990-T in determining its tax on unrelated business income.
- However, there is an increase in the tax for those entities whose income was less than \$90k due to loss of 15% tax rate of first \$50k of income.
- Notice 2018–38 provides guidance with respect to 2018 Fiscal – Year Blended Tax Rates for Corporations



# 2018 Tax Update

- The new tax law repeals the corporate alternative minimum tax system.
- Effective date.—The provisions are effective for taxable years beginning after December 31, 2017.
- In the case of a corporation, the new law allows the AMT credit to offset the regular tax liability for any taxable year. In addition, the AMT credit is refundable for any taxable year beginning after 2017 and before 2022 in an amount equal to 50 percent (100 percent in the case of taxable years beginning in 2021) of the excess of the minimum tax credit for the taxable year over the amount of the credit allowable for the year against regular tax liability.
- Thus, the full amount of the minimum tax credit will be allowed in taxable years beginning before 2022.

# 2018 Tax Update

- Notice 2018-55 – provides guidance on the Calculation of Net Investment Income for Purposes of the Section 4968 Excise Tax Applicable to Certain Private Colleges and Universities
- Notice 2018-71 – provides guidance on the Employer Credit for Paid Family and Medical Leave
- Notice 2018-75 – provides guidance on the Exclusion from Income of Qualified Moving Expense Reimbursements
- Notice 2018-76 – provides guidance on Expenses for Business Meals under IRC Section 274

# UNRELATED BUSINESS TAXABLE INCOME SEPARATELY COMPUTED FOR EACH TRADE OR BUSINESS

Effective for tax years beginning after Dec.  
31, 2017

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- For an organization with more than one unrelated trade or business, the provision requires that unrelated business taxable income first be computed separately with respect to each trade or business and without regard to the specific deduction generally allowed under section 512(b)(12).
- The organization's unrelated business taxable income for a taxable year is the sum of the amounts (not less than zero) computed for each separate unrelated trade or business, less the specific deduction allowed under section 512(b)(12).
- A net operating loss deduction is allowed only with respect to a trade or business from which the loss arose.

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- The result of the provision is that a deduction from one trade or business for a taxable year may not be used to offset income from a different unrelated trade or business for the same taxable year.
- The provision generally does not, however, prevent an organization from using a deduction from one taxable year to offset income from the same unrelated trade or business activity in another taxable year, where appropriate.

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- Uncertainties under this new law:
  - What constitutes a trade or business?
  - Could it be “all investing activities” so that all alternative investment K-1s may be aggregated for all UBI that pass through to the exempt partner?
  - Could it be all trade or business activity in a specific industry activity, e.g., are you able to combine all real estate activities as one trade or business?
  - What is the standard or analysis? Fragmentation rule?
  - **Some** Guidance has been provided in Notice 2018-67.

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- Notice 2018-67 provides interim guidance for the application of Section 512(a)(6) requirement to calculate the unrelated business taxable income (UBTI) separately with respect to each trade or business
- For determining the trades or businesses that an exempt organization engages in – other than through a partnership – the use of North American Industry Classification System (NAICS) 6-digit codes to determine whether an exempt organization has more than one unrelated trade or business will be considered a reasonable, good-faith interpretation of section 512(a)(6) on which taxpayers may rely.

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- Treasury Department have acknowledged in the notice the administrative burden imposed with respect to the nature of partnership investments and need to report these investments on a separate basis.
- An exempt organization may aggregate its UBTI from its interest in a single partnership with multiple trades or businesses (including trades or businesses conducted by lower-tier partnerships) if the interest in the partnership meet one of two tests.



# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- The first test is a de minimis test, which the exempt organization meets if it holds directly no more than 2 percent of the profits interest and no more than 2 percent of the capital interest of the partnership.
- The second test is a control test. For the control test, the exempt organization satisfies this test if it directly holds no more than 20 percent of the capital interest and does not have control or influence over the partnership.

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- As previously acquired partnership interests may not be able to be modified to meet the de minimis test or the control test, if the partnership interest was acquired prior to August 21, 2018, an exempt organization may treat each partnership interest as comprising a single trade or business for purposes of section 512(a)(6).
- This test is applied regardless of whether it meets the de minimis or control test and regardless of whether or not there is more than one trade or business directly or indirectly conducted by the partnership or lower-tier partnerships.

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- The 2018 990-T was redesigned to accommodate the required individual activity reporting.
- Question H on Page 1 of the Form 990-T asks “Enter the number of the organization’s trades businesses”
- If more than one, the organization will need to completed Schedule M
- Currently Schedule M has not been released in draft or final form
- It remains to be seen how the calculation of income for separate trades or businesses will work

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

Form **990-T**

## Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))

OMB No. 1545-0687

**2018**

Department of the Treasury  
Internal Revenue Service

For calendar year 2018 or other tax year beginning \_\_\_\_\_, 2018, and ending \_\_\_\_\_, 20 \_\_\_\_\_.

▶ Go to [www.irs.gov/Form990T](http://www.irs.gov/Form990T) for instructions and the latest information.

▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

**Open to Public Inspection for  
501(c)(3) Organizations Only**

**A**  Check box if address changed

Name of organization (  Check box if name changed and see instructions.)

**D** Employer identification number  
(Employees' trust, see instructions.)

**B** Exempt under section

- 501( ) ( )  
 408(e)  220(e)  
 408A  530(a)  
 529(a)

**Print  
or  
Type**

Number, street, and room or suite no. If a P.O. box, see instructions.

**E** Unrelated business activity code  
(See instructions.)

City or town, state or province, country, and ZIP or foreign postal code

**C** Book value of all assets at end of year

**F** Group exemption number (See instructions.) ▶

**G** Check organization type ▶  501(c) corporation  501(c) trust  401(a) trust  Other trust

**H** Enter the number of the organization's unrelated trades or businesses. ▶ \_\_\_\_\_ Describe the only (or first) unrelated trade or business here ▶ \_\_\_\_\_. If only one, complete Parts I–V. If more than one, describe the first in the blank space at the end of the previous sentence, complete Parts I and II, complete a Schedule M for each additional trade or business, then complete Parts III–V.

# Unrelated Business Taxable Income Separately Computed for Each Trade or Business

- Pages 1 and 2 were modified with lines relating to post 01/01/2018 NOLs as well as pre 01/01/2018 NOLs

26	Excess exempt expenses (Schedule I)	26		
27	Excess readership costs (Schedule J)	27		
28	Other deductions (attach schedule)	28		
29	<b>Total deductions.</b> Add lines 14 through 28	29		
30	Unrelated business taxable income before net operating loss deduction. Subtract line 29 from line 13	30		
31	Deduction for net operating loss arising in tax years beginning on or after January 1, 2018 (see instructions)	31		
32	Unrelated business taxable income. Subtract line 31 from line 30	32		

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 11291J

Form **990-T** (2018)

Form 990-T (2018)

Page **2**

## Part III Total Unrelated Business Taxable Income

33	Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions)	33		
34	Amounts paid for disallowed fringes	34		
35	Deduction for net operating loss arising in tax years beginning before January 1, 2018 (see instructions)	35		
36	Total of unrelated business taxable income before specific deduction. Subtract line 35 from the sum of lines 33 and 34	36		
37	Specific deduction (Generally \$1,000, but see line 37 instructions for exceptions)	37		
38	<b>Unrelated business taxable income.</b> Subtract line 37 from line 36. If line 37 is greater than line 36, enter the smaller of zero or line 36	38		

UNRELATED BUSINESS  
TAXABLE INCOME  
INCREASED BY AMOUNT  
OF CERTAIN FRINGE  
BENEFIT EXPENSES FOR  
WHICH DEDUCTION IS  
DISALLOWED

Applies to amounts paid or incurred after Dec.  
31, 2017

# Unrelated Business Taxable Income by Amount of Certain Fringe Benefit Expenses for which Deduction is Disallowed

- Unrelated business taxable income of an organization will be increased by any amount for which a deduction is not allowable for income tax purposes by reason of section 274 and which is paid or incurred by such organization for any:
  - qualified transportation fringe (as defined in section 132(f)),
  - any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)), or
  - any on-premises athletic facility (as defined in section 132(j)(4)(B)).

**APPLIES TO SUCH ITEMS PAID OR INCURRED AFTER DECEMBER 31, 2017, SO FISCAL YEAR EXEMPTS MAY FIND THEMSELVES PAYING TAX AT THE HIGHER BLENDED TAX RATES FOR THIS ITEM.**



# Unrelated Business Taxable Income by Amount of Certain Fringe Benefit Expenses for which Deduction is Disallowed

- The UBI taint may be avoided by including the value of the benefits listed in the previous slide into the employee's wage income subject to income tax withholding.
- The benefits referred to by this change include:
  - These benefits mean any of the following fringe benefits provided by an employer to an employee:
  - Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.
  - Any transit pass.
  - Qualified parking.
  - Any qualified bicycle commuting reimbursement (this part of benefits lists in this section have been suspended for amounts paid after December 31, 2017 and until the 2026 tax year).



# Unrelated Business Taxable Income by Amount of Certain Fringe Benefit Expenses for which Deduction is Disallowed

- Qualified parking means parking 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 by transportation, in a commuter highway vehicle, commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes.

# Unrelated Business Taxable Income by Amount of Certain Fringe Benefit Expenses for which Deduction is Disallowed

- It appears UBI will apply to on-premises gyms and other athletic facilities if it is used predominantly by highly compensated employees (an exclusion for facility usage applies to employee use and was not changed as a result of other changes to section 274 via the TCJA).

# Unrelated Business Taxable Income by Amount of Certain Fringe Benefit Expenses for which Deduction is Disallowed

- Per IRS Notice 2018-67, Any amount included in UBTI under new section 512(a)(7) is not subject to section 512(a)(6)
- This means that if a Not For Profit has a single UBI producing activity as well as taxable transportation benefits, the taxable transportation benefits will not be considered to be a separate business activity and any losses generated by the single UBI producing activity will be available to offset taxable transportation benefits.

# Unrelated Business Taxable Income by Amount of Certain Fringe Benefit Expenses for which Deduction is Disallowed

- As stated previously, tax reform made multiple changes that impact the exempt organization community.
- The IRS has previously stated that an organization with a fiscal year that begins in 2017 should report taxable transportation benefits on Line 12 of Form 990-T
- The instructions to the Form 990 now references IRC 274 and IRC 132(f), qualified transportation benefits as taxable as unrelated business taxable income.
- The instructions state that deductions for expenses related to on premises athletic facilities will only be UBI if this benefit discriminates in favor of a highly compensated individual

# Unrelated Business Taxable Income by Amount of Certain Fringe Benefit Expenses for which Deduction is Disallowed

Form 990-T (2018)

Page **2**

## **Part III** Total Unrelated Business Taxable Income

<b>33</b>	Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions) . . . . .	<b>33</b>		
<b>34</b>	Amounts paid for disallowed fringes . . . . .	<b>34</b>		
<b>35</b>	Deduction for net operating loss arising in tax years beginning before January 1, 2018 (see instructions) . . . . .	<b>35</b>		
<b>36</b>	Total of unrelated business taxable income before specific deduction. Subtract line 35 from the sum of lines 33 and 34 . . . . .	<b>36</b>		
<b>37</b>	Specific deduction (Generally \$1,000, but see line 37 instructions for exceptions) . . . . .	<b>37</b>		
<b>38</b>	<b>Unrelated business taxable income.</b> Subtract line 37 from line 36. If line 37 is greater than line 36, enter the smaller of zero or line 36 . . . . .	<b>38</b>		

- Line 34 was added on Page 2 concerning non-deductible transportation benefits

# EXCISE TAX ON EXCESS TAX – EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

# Excise Tax on Excess Tax-Exempt Organization Executive Compensation

- Excise tax of 21% payable by exempt employers for taxable years beginning after December 31, 2017 on:
  - Remuneration to a covered employee over \$1million in a year **and**
  - Excess parachute payments to covered employees

# Excise Tax on Excess Tax-Exempt Organization Executive Compensation

Who are the covered employees?	5 highest compensated employees (or was one of the five highest compensated in any year after 12/31/2016)
What remuneration is counted for the \$1million limit?	Taxable compensation, generally (excluding compensation for qualified medical services)
What is an excess parachute payment?	Payments made on separation from service that exceed 3x average base amount (prior 5 years taxable compensation)
How is it reported?	Draft 2018 Form 990 asks whether the organization is subject to section 4960, and if yes, requires Form 4720, Schedule N



# Excise Tax on Excess Tax-Exempt Organization Executive Compensation

- Track covered employees
- Track compensation on your fiscal year
- Plan ahead, when possible
  - Can you accelerate or delay payments?
  - What factors should new agreements consider?
  - Fact-sensitive planning

# Excise Tax on Excess Tax-Exempt Organization Executive Compensation

- The core Form 990 Part IV was modified by adding the beginning of Part V on Page 4 to make room on Page 5, Part V for questions 15 and 16.
- Question 15 asks if the filing entity was subject to 4960 excise tax on remuneration of \$1,000,000 or more.

# Excise Tax on Excess Tax-Exempt Organization Executive Compensation

- The questions specially reference Form 4720 and the sections that need to be completed

**15** Is the organization subject to the section 4960 tax on payment(s) of more than \$1,000,000 in remuneration or excess parachute payment(s) during the year . . . . .  
If "Yes," see instructions and file Form 4720, Schedule N.

<b>15</b>		

# Excise Tax on Excess Tax-Exempt Organization Executive Compensation

- Schedule N of Form 4720 is used calculate and pay and any taxes owed under Section 4960 excess compensation
- Estimated tax payments do not need to be made during the organizations taxable year
- The organization will need to enter the name of each covered employee, if more than 5 an additional schedule will need to be attached
- Form 4720 is due the 15th day of the 5th month after the organizations taxable year and can be extended

# Excise Tax on Excess Tax-Exempt Organization Executive Compensation

- Page 1 of Form 4720 has been modified to include Schedule N referenced in Part V of the Form 990

<b>Part I</b>		<b>Taxes on Organization</b> (Sections 170(f)(10), 664(c)(2), 4911(a), 4912(a), 4942(a), 4943(a), 4944(a)(1), 4945(a)(1), 4955(a)(1), 4959, 4960(a), 4965(a)(1), 4966(a)(1), and 4968(a))	
1	Tax on undistributed income—Schedule B, line 4 . . . . .	1	
2	Tax on excess business holdings—Schedule C, line 7 . . . . .	2	
3	Tax on investments that jeopardize charitable purpose—Schedule D, Part I, column (e) . . . . .	3	
4	Tax on taxable expenditures—Schedule E, Part I, column (g) . . . . .	4	
5	Tax on political expenditures—Schedule F, Part I, column (e) . . . . .	5	
6	Tax on excess lobbying expenditures—Schedule G, line 4 . . . . .	6	
7	Tax on disqualifying lobbying expenditures—Schedule H, Part I, column (e) . . . . .	7	
8	Tax on premiums paid on personal benefit contracts . . . . .	8	
9	Tax on being a party to prohibited tax shelter transactions—Schedule J, Part I, column (h) . . . . .	9	
10	Tax on taxable distributions—Schedule K, Part I, column (f) . . . . .	10	
11	Tax on a charitable remainder trust’s unrelated business taxable income. Attach statement . . . . .	11	
12	Tax on failure to meet the requirements of section 501(r)(3)—Schedule M, Part II, line 2 . . . . .	12	
13	Tax on excess executive compensation—Schedule N . . . . .	13	
14	Tax on net investment income of private colleges and universities—Schedule O . . . . .	14	
15	<b>Total</b> (add lines 1–14) . . . . .	15	

# Excise Tax on Excess Tax-Exempt Organization Executive Compensation

**SCHEDULE N – Tax on Excess Executive Compensation (Section 4960). (See instructions.)**

(a) Item number	(b) Name of covered employee	(c) Excess remuneration	(d) Excess parachute payment	(e) Total. Add column (c) and (d)
<b>1</b>				
<b>2</b>				
<b>3</b>				
<b>4</b>				
<b>5</b>				
<b>6</b>	Attachment, if necessary. See instructions . . . . .			
<b>Total</b> (add column (e) items 1–6) . . . . .				
<b>Tax.</b> Enter 21% of the amount above here and on Part I, line 13 . . . . .				

DO NOT FILE

# Contact Information

Zack Fortsch

Partner


[Zack.Fortsch@rsmus.com](mailto:Zack.Fortsch@rsmus.com)

312 634 4973

THANK YOU FOR  
YOUR TIME AND  
ATTENTION







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