

Legislative update for tax-exempt organizations

April 23, 2019

In brief

Current legislative developments of interest to tax-exempt organizations relate to the 2017 tax reform legislation -- namely, provisions on Qualified Transportation Fringe (QTF) benefits and the Section 4960 excise tax on 'excess compensation' -- and a recently-passed House bill expanding requirements for mandatory e-filing of Forms 990 and 990-T. House Ways and Means Committee majority chief tax counsel Andrew Grossman recently addressed some of these issues at a DC bar event.

In detail

Tax reform-related issues

QTF

Section 512(a)(7) provides that a tax-exempt organization's unrelated business taxable income (UBTI) is increased by the amount of expenses incurred for providing QTF benefits to employees, including qualified parking benefits, if the expenses would be nondeductible by a taxable employer under Section 274. Section 512(a)(7) has provoked controversy in the tax-exempt sector, and many commentators have called for its repeal.

In the last Congress, then House Ways and Means Committee Chairman, Kevin Brady (R-TX), supported repeal of Section 512(a)(7), but both

chambers did not pass that provision.

When asked about the potential for technical corrections with regard to Section 512(a)(7), Mr. Grossman suggested that his view was that no technical corrections were needed, on the grounds that the current provision reflects what was intended by tax reform. When asked about the likelihood of an outright repeal, Mr. Grossman responded that House Speaker Nancy Pelosi (D-CA) has stated that before any specific changes to tax reform are considered, hearings would have to be held on tax reform as a whole.

Excise tax on 'excess' compensation

Mr. Grossman was asked about Section 4960's application to for-profit companies whose

highly-compensated employees perform minimal services for a related charity, triggering excise tax liability for the for-profit company on the employees' compensation over \$1 million. Mr. Grossman indicated that since he was not involved in drafting Section 4960, he could not speak to the legislative intent. He added that he was not aware of much discussion of the issue, and encouraged those concerned to come forward with comments and potential ways to address their concerns.

New legislation

On April 9, the House passed H.R. 1957, Taxpayer First Act of 2019, which includes provisions that would impact tax-exempt organizations. Senate Finance Committee Chairman Chuck Grassley (R-IA) has stated publicly that he may be open to

expediting this bill or a Senate companion bill through committee.

Mandatory e-filing

H.R. 1957 would amend Section 6033 to mandate electronic filing of every Form 990, Return of Organization Exempt From Income Tax, regardless of the size of the organization. The bill also would require Form 990-T, Exempt Organization Business Income Tax Return, to be filed electronically; that form currently is filed exclusively in paper form. During his recent comments, Mr. Grossman indicated his view that current access to technology is sufficient such that mandatory electronic filing is a reasonable requirement of tax-exempt organizations.

H.R. 1957, as passed by the House, includes transition relief by authorizing a two-year delayed effective date from electronic filing for Form 990-T filers and 'small organizations,' defined as those that have less than \$200,000 in gross receipts for the tax year and less than \$500,000 in gross assets at the end of the tax year (i.e., those that are eligible to file Form 990-EZ). Under the transition relief, Treasury can delay the effective date for the new e-filing requirements, but not for any tax year that begins on or after the date two years after enactment of the bill.

Observation: The move to mandatory electronic filing for all Form 990 and Form 990-T filers would be significant. For large organizations with complex investment portfolios or international operations, voluminous attachments to Form 990-T are required, filed today on paper. How an organization could submit these attachments electronically is unknown. The software platforms used to prepare Form 990-T would have to be updated in order to accomplish electronic filing. For small organizations, the current exemption from mandatory electronic filing of Form 990 would be revoked if H.R. 1957 is enacted, and electronic filing Form 990 in the initial year may require additional time and expense.

IRS reorganization

H.R. 1957 calls for reorganizing the IRS in various respects, including the establishment of the IRS Independent Office of Appeals.

Oversight and Congressional interest

In response to questions regarding potential House Ways and Means Committee oversight, his view of the tax-exempt sector, in light of the recent college admissions controversy, Mr. Grossman indicated that new legislation likely would not be appropriate, as there are existing

mechanisms for enforcement. Mr. Grossman noted interest on the part of some Ways and Means Members on the effect of tax reform on charitable giving, UBTI 'siloing' under Section 512(a)(6), and the potential impact of the Section 4968 excise tax on private college and university student financial aid.

The takeaway

While Congress is aware of issues facing tax-exempt organizations as a result of tax reform, technical corrections or legislative changes do not appear forthcoming in the near term. Among other issues, tax-exempt organizations should monitor the progress of proposed legislation that would expand the scope of mandatory tax return electronic filing.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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