

May 21, 2018

The Honorable David Kautter  
Acting Assistant Secretary for Tax Policy  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

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Internal Revenue Service  
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Washington, DC 20224

RE: Request for Immediate Guidance Regarding IRC Section 132(f) (Public Law 115-97, Section 274(a)(4))

Under the Tax Cuts and Jobs Act (Public Law 115-97), section 274(a)(4) disallows the deduction of expenses associated with the section 132(f) qualified transportation exclusion. In addition, the Act makes expenditures by tax-exempt organizations on transportation fringe benefits subject to an unrelated business income tax (UBIT) of 21 percent. This is a marked departure in the UBIT statute, where tax-exempt organizations are now subject to tax on an expense as opposed to income.

As a result of this new provision, we are requesting a delay in implementation, the issuance of detailed guidance, a clear de minimis threshold, and an exemption for tax-exempts situated in localities that mandate such transportation benefits be provided.

On behalf of ASAE and the undersigned organizations, we respectfully urge Treasury to delay implementation of this provision for one year to assist tax-exempt organizations struggling to determine their UBTI liability for qualified transportation fringe benefits and costs associated with any parking facility used to provide employee parking.

Given that the new tax rules are in effect for the current year and tax-exempt employers still don't fully understand how to determine the added tax costs now associated with providing certain fringe benefits, ASAE also recommends Treasury issue detailed guidance specific to tax-exempt entities and their liability under this new rule. For tax-exempt organizations with very little or no unrelated business income, treating transportation fringe benefits as UBTI will result in new reporting requirements for the first time. Even for tax-exempt organizations accustomed to reporting UBTI, they are already filing quarterly estimated taxes absent critically-needed guidance on this new tax.

For those tax-exempt employers who choose to continue to provide transportation benefits, valuation of these benefits becomes extremely difficult in certain areas, particularly rural areas. For example, an organization in a rural or suburban location that owns or leases a building and parcel of land may not charge its employees for the "free" parking. But how should that tax-exempt organization calculate its UBTI owed for the parking lot or

parking spaces assigned to employees? What if the parking lot is open to both employees and customers/visitors? Due to this ambiguity, ASAE requests a clearly defined de minimis threshold to alleviate some of the administrative burden associated with this new tax obligation and ensure tax-exempts are in compliance.

Additionally, tax-exempt organizations of a certain size in some municipalities are required by law to provide transportation benefits to their employees. For example, the District of Columbia requires employers with more than 20 employees to provide either 1) an employee-paid, pre-tax cafeteria plan benefit; 2) an employer-paid direct benefit; or 3) employer-provided transportation. Public Law 115-97 does not take into consideration these legal obligations, so tax-exempts in these localities should be granted an exemption because of their inability to avoid UBIT.

Since passage of these sweeping tax changes in late December of last year, tax-exempt employers have been working diligently to understand the law's impact on their sector and, in particular, what should be reported as UBI at the applicable corporate tax rates. It's clear from the confusion and volume of questions about how the new tax law impacts tax-exempt entities that we need more time and more guidance to fully understand our compliance obligations.

Thank you for your careful attention to this matter and we stand ready to meet should you have additional questions about these concerns.

Sincerely,

ASAE

ABET

Advanced Medical Technology Association  
Aerospace Medical Association  
Agricultural Retailers Association  
Airports Council International - North America  
Alliance for Aging Research  
Ambulatory Surgery Center Association  
American Academy of Neurology  
American Academy of Orthopaedic Surgeons  
American Alliance of Museums  
American Association for Clinical Chemistry  
American Association For Physician Leadership  
American Association for the Study of Liver Diseases  
American Association of Colleges of Pharmacy  
American Association of State Colleges and Universities  
American Association on Intellectual and Developmental Disabilities  
American Beverage Association  
American Coatings Association  
American College of Osteopathic Surgeons  
American College of Phlebology

American College of Radiology  
American Composites Manufacturers Association  
American Council of Engineering Companies  
American Council of Engineering Companies of Georgia  
American Council on Education  
American Dental Association  
American Dental Hygienists' Association  
American Gas Association  
American Group Psychotherapy Association  
American Heart Association  
American Horse Council Inc  
American Inns of Court Foundation  
American Institute for Cancer Research  
American Institute of Architects, Iowa Chapter  
American Malting Barley Association  
American Network of Community Options and Resources  
American Payroll Association  
American Podiatric Medical Students' Association  
American Road & Transportation Builders Association  
American Society of Addiction Medicine  
American Society of Anesthesiologists  
American Society of Clinical Oncology  
American Society of Hematology  
American Speech-Language-Hearing Association  
American Veterinary Medical Association  
Americans for the Arts  
AMPED  
Anne Arundel County Association of REALTORS, Inc.  
ASHP (American Society of Health-System Pharmacists)  
ASIS International  
Association Activision, LLC  
Association for Behavioral and Cognitive Therapies  
Association Management Services, Inc.  
Association of American Universities  
Association of Art Museum Directors  
Association of Boards of Certification  
Association of Christian Schools International - Mid-America Region  
Association of Direct Response Fundraising Counsel  
Association of Equipment Manufacturers Headquarters  
Association of Maternal and Child Health Programs  
Association of Nutrition & Foodservice Professionals  
Association of Public and Land-Grant Universities  
Association of Schools and Colleges of Optometry  
Association of Women's Health, Obstetric and Neonatal Nurses  
Biotechnology Innovation Organization  
Boys & Girls Clubs of America

California Beer and Beverage Distributors Assn.  
CCIM Institute  
CFP Board of Standards, Inc.  
Child Care Aware of America  
Construction Specifications Institute  
Consumer Healthcare Products Association  
Consumer Technology Association  
Cook Witter Inc  
Council for Advancement and Support of Education  
Council for Christian Colleges & Universities  
Council for Responsible Nutrition  
Council on Foundations  
Credit Union National Association  
Dance/USA  
Diving Equipment and Marketing Association  
DMA Nonprofit Federation  
Down Syndrome Affiliates in Action Trade Association  
Edison Electric Institute  
Electronic Retailing Association  
Endocrine Society  
Entomological Society of America  
Evangelical Council for Financial Accountability  
Eye Bank Association of America  
Faith & Giving Coalition  
Federal Managers Association  
Federation of State Humanities Councils  
Financial Services Institute Inc  
Food Marketing Institute  
Georgia Society of Association Executives, Inc.  
Georgia/Carolinas PCI - A Chapter of the Precast/Prestressed Concrete Institute  
Girl Scouts of the USA  
Goodwill Industries International Inc  
Healthcare Distribution Alliance  
Heart Rhythm Society  
Hearth, Patio & Barbecue Association  
Heating, Air-conditioning, & Refrigeration Distributors International  
Illinois Council of Health-System Pharmacists  
Independent Insurance Agents and Brokers of America  
Independent Sector  
Institute of Food Technologists  
Institute of Makers of Explosives  
International Association of Exhibitions and Events  
International Association of Lighting Designers  
International Dairy Foods Association  
International Municipal Lawyers Association Inc  
International Public Management Association for Human Resources

Jewish Federation of North America  
King County Bar Association  
KY Society of Association Executives  
LeadingAge  
League of American Orchestras  
Licensed Professional Counselors Association of Georgia  
Mechanical Contractors Association of Maryland  
Mentor Discover Inspire  
Miami Association of REALTORS  
Military Officers Association of America  
NAFSA: Association of International Educators  
NAMA - National Automatic Merchandising Association  
NASPA - Student Affairs Administrators in Higher Education  
National Active and Retired Federal Employees Association (NARFE)  
National Affordable Housing Management Association  
National Apartment Association  
National Association for Biomedical Research  
National Association of Area Agencies on Aging  
National Association of Chain Drug Stores  
National Association of Chemical Distributors  
National Association of Church Business Administration - The Church Network  
National Association of County and City Health Officials  
National Association of Home Builders  
National Association of Independent Schools  
National Association of REALTORS®  
National Association of Theatre Owners  
National Association of Veterans' Research and Education Foundations  
National Board for Certified Counselors  
National Business Officers Association  
National Council of Agricultural Employers  
National Health Care Anti-Fraud Association  
National Investor Relations Institute  
National League of Cities  
National Restaurant Association  
National Shooting Sports Foundation  
National Truck Equipment Association  
NEMA  
New England Camping Association, Inc.  
New York State Council of School Superintendents  
Northeastern Retail Lumber Association  
NTCA - The Rural Broadband Association  
Ohio Society of Professional Engineers  
Ohio Trucking Association  
OPERA America  
Parenteral Drug Association  
Pet Industry Distributors Association

Plumbing Manufacturers International  
Rail Passengers Association  
Regulatory Affairs Professionals Society  
Renal Physicians Association  
Salon & Spa Professional Association, Inc.  
School Nutrition Association  
Security Traders Association of New York (STANY)  
Senior Executives Association  
Society of American Florists  
Society of Diagnostic Medical Sonography  
Society of Government Service Urologists  
Society of St. Vincent de Paul  
Society of Teachers of Family Medicine  
Sports & Fitness Industry Association  
Textile Care Allied Trades Association  
The American Occupational Therapy Association, Inc.  
The Council of Insurance Agents and Brokers  
The ESOP Association  
The Fertilizer Institute  
The Institute of Electrical and Electronics Engineers Inc  
The Ohio Society of Association Executives  
The Realty Alliance  
Theatre Communications Group  
Transportation Intermediaries Association  
U.S. Travel Association  
VisionServe Alliance  
Volunteers of America  
Western Section American Urological Association  
Wisconsin Restaurant Association  
YMCA of the USA