



a Benefit Advisors Network



Smart Partner

## LEGAL ALERT

### **Congress Repeals Unrelated Business Income Tax for Tax-Exempt Entities Offering Qualified Transportation Fringe Benefits**

As part of the Further Consolidated Appropriations Act, 2020 (the “Act”), Congress repealed Section 512(a)(7) of the Internal Revenue Code of 1986 (the “Code”). This Code section was added as part of the Tax Cuts and Jobs Act of 2017 (the “TCJA”) and resulted in an unrelated business income tax (UBIT) liability when a tax-exempt entity provides qualified transportation benefits to employees. The repeal is effective retroactively to December 22, 2017, the date the TCJA was enacted. Tax-exempt entities who paid an UBIT on transportation benefits in the last two years should be able to obtain a refund.

#### ***About UBIT and Qualified Transportation Fringe Benefits***

The UBIT on qualified transportation fringe benefits only affected tax-exempt entities. UBIT generally applies to *income* that is not related to an entity’s exempt purpose, so it was unclear why Congress targeted *expenses* related to providing parking or transportation for employees. Under the TCJA, tax-exempt entities offering qualified transportation fringe benefits to their employees were exposed to a 21% UBIT tax. The tax applied regardless of whether the employer was providing the benefits or whether employees were paying pre-tax.

Qualified transportation benefits include transit passes, parking, and commuter highway vehicle rides. Notably, the amount of the UBIT was based on the qualified transportation benefit expenditures instead of the entity’s income. As a result, tax-exempt entities were experiencing larger UBIT bills, even though employees may have been paying for the benefits themselves via salary reduction.

#### ***What the Repeal Does***

Under the Act, the UBIT for tax-exempt entities who offered qualified transportation fringe benefits is *retroactively* repealed. This means that tax-exempt entities are no longer subject to UBIT on qualified transportation benefits and should also be able seek a refund of taxes paid. The IRS may issue further guidance or establish a separate process for refunds.

With this repeal, tax-exempt entities can continue to provide employees with qualified transportation benefits without incurring a 21% tax. This should be a relief to affected employers, who can continue to offer these transit benefits without exposure to an UBIT.



**About the Authors.** This alert was prepared for Clark & Lavey Benefits Solutions by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on the Affordable Care Act. Contact Peter Marathas or Stacy Barrow at [pmarathas@marbarlaw.com](mailto:pmarathas@marbarlaw.com) or [sbarrow@marbarlaw.com](mailto:sbarrow@marbarlaw.com).

*This email is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.*

*Benefit Advisors Network and its members are not attorneys and are not responsible for any legal advice. To fully understand how this or any legal or compliance information affects your unique situation, you should check with a qualified attorney.*

© Copyright 2020 Benefit Advisors Network. All rights reserved.