



May 1, 2018

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

David Kautter  
Acting Commissioner  
Internal Revenue Service  
111 Constitution Avenue, NW  
Washington, DC 20224

Re: Urgent Request to Delay Implementation of the New UBIT Provisions in Public Law No. 115-97

Dear Secretary Mnuchin and Commissioner Kautter:

I write on behalf of the nearly 1,700 members of the Nonprofit Coordinating Committee of New York (NPCC), a membership organization for 501(c)(3) nonprofits in and around New York City. NPCC members have expressed grave concerns about the implementation of new subsections 512(a)(6) and (7), including provisions about unrelated business income tax (UBIT) on certain employee fringe benefits, of the Internal Revenue Code. I write to urge you, for legal, policy, and practical reasons, and consistent with established precedent, that **Treasury and the IRS should immediately delay implementing the two new UBIT subsections, retroactive to January 1, 2018, until one year after Final Rules are promulgated** to provide both the necessary official guidance for compliance and a reasonable transition period for nonprofits to develop the necessary record-keeping systems.

We also urge Treasury and the IRS to engage the regulated community in identifying not only how the wording of the new provisions are causing great confusion and operational compliance challenges among nonprofits and their professional tax advisors, but also possible solutions.

Since passage of sweeping tax changes in late December of last year, NPCC has fielded many questions from nonprofits who are confused about the impact of the new law. Many nonprofits do not understand how a fringe benefit can be taxed and/or are confused about which part of the benefit (the employer contribution, the service fee, or the employee contribution) is actually subject to tax. In New York, there is an active conversation amongst nonprofit tax experts (lawyers, accountants, and nonprofit leaders) as to whether and which portion of the benefit is taxed. Confusion reigns as various opinions circulate. Nonprofits need more time and more guidance to fully understand our compliance obligations. Absent urgently needed IRS guidance, charitable nonprofits will not be able to file accurate reports, are likely to make insufficient or inaccurate payments, and suffer other adverse tax consequences that can and will be avoided once Treasury and the IRS provide the nonprofit sector the necessary clarity.

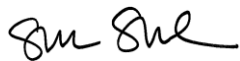
On March 27, 2018, the IRS published 2017 Instructions for Form 990-T, Exempt Organization Business Income Tax Return. Although the document references P.L. 115-97 and the new "flat

21% corporate tax rate ... effective for tax years beginning after December 31, 2017," it provides no guidance for nonprofits on how to comply with either of the two new UBIT subsections of Internal Revenue Code Section 512. This problem of lack of guidance is compounded by the fact that for many nonprofits the due date for first UBIT Form 990-T quarterly estimated tax payments was April 15 or will be May 15. The absence of any official guidance puts nonprofits in the untenable position of having to speculate about how to comply with the unknown, putting them unfairly at risk of filing inaccurate reports, making insufficient or inaccurate payments, and suffering other adverse consequences.

Nonprofits want to comply with relevant federal law. However, compliance cannot happen without clear guidance or sufficient time to transition. Asking nonprofits to comply with a law for which they were given no notice, nor time to incorporate into an annual budget, is an unfair imposition of unanticipated costs and burdens on nonprofits. As well, nonprofits in New York City with 20 employees or more are mandated by City law to provide such benefits, and will not have the option of shifting the fringe benefit to salary to avoid the UBIT.

For these reasons we ask Treasury and the IRS to postpone the effective date of implementation of the unrelated business income taxes (UBIT) enacted as new Internal Revenue Code Sections 512(a)(6) and (a)(7) until one year after Final Rules are promulgated. This delay is required to provide both the necessary official guidance for compliance and a reasonable transition period for nonprofits to develop the necessary record-keeping systems.

Very truly yours,



Sharon Stapel  
President and Executive Director