

May 24, 2018

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

Mr. William M. Paul
Acting Chief Counsel
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,

John H. Graham IV, FASAE, CAE
President and CEO



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 Association 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
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
Certified Financial Planner Board of Standards
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 (Seattle) 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 Coalition Against Censorship (NCAC)
National Council of Agricultural Employers
National Electrical Manufacturers Association
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
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