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Recent Developments in College and
University Tax Law

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RECENT DEVELOPMENTS IN COLLEGE AND UNIVERSITY TAX LAW

I. Key Provisions of 2017 Tax Cuts and Jobs Act Affecting Colleges and Universities

A. Excise tax on excess executive compensation

Section 4960 imposes an excise tax equal to 21% of the “remuneration” paid by an “applicable tax-exempt organization” for a taxable year with respect to employment of any “covered employee” in excess of \$1 million. This tax is imposed on the institution, not the individual. “Remuneration” means wages as defined for income tax withholding purposes. All public and private colleges and universities are generally treated as “applicable tax-exempt organizations” except for those state universities that are treated as an “integral part” of their state government. A “covered employee” generally means any employee who is one of the five highest compensated employees of the institution for the taxable year. The tax is not imposed on remuneration paid to licensed medical professionals in connection with the performance of medical services. More details on this provision can be found in Notice 2019-9 (<https://www.irs.gov/pub/irs-drop/n-19-09.pdf>).

B. Unrelated trade or business income computed separately for each trade or business activity

Under section 512(b)(6), organizations with more than one unrelated trade or business are required to compute the profit or loss of each unrelated trade or business separately. Therefore, if an individual business activity computation results in a net loss for a year, that loss cannot be used to offset profits earned in that year from any other unrelated trade or business. Issues exist as to how to identify a “separate” trade or business activity. More details regarding this provision can be found in Notice 2018-67. Link: <https://www.irs.gov/pub/irs-drop/n-18-67.pdf>.

In addition, the ABA Section of Taxation submitted comments on new section 512(a)(6), which contain an excellent analysis of different issues arising under section 512(a)(6), including how to distinguish between different trades or businesses conducted by the exempt organization. Link: <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/062118comments.authcheckdam.pdf>.

C. Unrelated business taxable income increased by cost of providing parking and other qualified transportation fringe benefits

The new tax law modifies section 274 of the Code to disallow business expense deductions claimed by for-profit enterprises for expenses paid or incurred in providing parking or other qualified transportation fringe benefits (e.g., transit passes) to their employees. In an effort to create parity between the for-profit and nonprofit sectors, the law also added section 512(a)(7), which requires organizations to increase their unrelated business taxable income by the amount for which a deduction would be disallowed under section 274 for providing these parking or other qualified transportation fringe benefits. More details regarding this provision can be found in Notice 2018-99. Link: <https://www.irs.gov/pub/irs-drop/n-18-99.pdf>.

D. Excise tax based on investment income of private colleges and universities

Under section 4968, certain private colleges and universities are subject to a 1.4% excise tax on net investment income. The provision only applies to those institutions that have at least 500 students and have assets (other than those used to directly carry out their educational mission) valued at the close of the preceding tax year of at least \$500,000 per full-time student. State colleges and universities are not subject to this excise tax. More details on this provision can be found in Notice 2018-55. Link: <https://www.irs.gov/pub/irs-drop/n-18-55.pdf>.

E. Repeal of 80% deduction for amounts paid in exchange for college athletic seating rights

Under prior law, if an individual made a contribution to an educational institution and the donation would otherwise be deductible as a charitable contribution but for the fact that the donor received the right to purchase tickets for seating at an athletic event in the stadium of the institution, the individual was allowed to deduct 80% of the amount paid for the right to purchase the tickets. But as part of the 2017 tax bill, Congress eliminated the special 80% deduction and provided instead that any payments made for the right to purchase seating at a university's athletic event are nondeductible.

F. Suspension of income exclusion for qualified moving expense reimbursements

For 2018 through 2025, the new tax law suspends the exclusion for qualified moving expense reimbursements, and employers must include moving expense reimbursements in employees' wages.

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