UBTI Therapy Session

Practical approaches to Tax Reform UBTI compliance

Presenters

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Agenda

- Section 512(a)(7) – Unrelated business taxable income (UBTI) increased by certain fringe benefit expenses
  - The good – retroactive repeal
  - The bad – underlying rules for nondeductibility under 274 are not repealed
  - The ugly – how to fix previously filed returns
- Section 512(a)(6) – "Siloing" of expenses
  - What does the statute require?
  - What has the IRS proposed?
  - What do we do?
- Other considerations for trusts

Section 512(a)(7)

- Summary of the provisions:
  - Section 274(a)(4) disallows business deductions of the expense of providing a qualified transportation fringe benefit (QTF).
  - Additionally, Section 274(l) disallows deduction of any expense of transporting an employee from home to work, even if included in income.
  - Section 512(a)(7) did require organizations subject to the UBIT rules to increase their unrelated business taxable income (UBTI) by their expenses of providing a QTF that would be nondeductible for a taxable entity under Section 274, but that was retroactively repealed by the Taxpayer Certainty and Disaster Tax Relief Act of 2019.
    - This did not repeal sections 274(a)(4) or 274(l). These types of expenses are still not deductible against UBTI.
- In December 2018, the IRS released Notice 2018-99, which provides guidance to help taxpayers determine their parking disallowance:
  - Until proposed regulations are published, taxpayers are permitted to use any reasonable method for allocation of costs
  - Taxpayers may rely on Notice 2018-99, which sets forth a deemed reasonable method for allocation of certain expenses
  - Depreciation is disregarded as an expense
  - Parking allocation must be based on cost and not value
  - No guidance on segregation of lease costs

Deduction disallowance for UBTI-generating activities: identification of parking costs

In-scope costs	Out-of-scope costs
• Repairs • Maintenance • Utility costs • Insurance • Property taxes • Interest • Snow and ice removal • Leaf removal • Trash removal • Cleaning • Landscape costs • Parking lot attendant expenses • Security • Rent or lease payments or a portion of a rent or lease payment	• Depreciation • Items not located on or in the parking facility, including items related to property next to the parking facility, such as landscaping or lighting

Deduction disallowance for UBTI-generating activities: third-party payments vs. owned or leased

Parking provided by a third party	Parking owned or leased by taxpayer

• Amount paid to third party is disallowed as a deduction except to extent that the amount is imputed in income because it exceeds the monthly exclusion limitation	• Use any reasonable method to allocate the expenses of facility
	• Expenses: repairs, maintenance, utility costs, insurance, property taxes, interest, snow/ice/leaf/trash removal, cleaning, landscape costs, parking lot attendant expenses, security, lease payments
	• Not an expense:
	  • Depreciation
	  • Items not located on or in the parking facility (e.g., landscaping or lighting)
	• Four-step deemed reasonable method

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Also available as part of the eCourse
Collaborations and UBIT

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