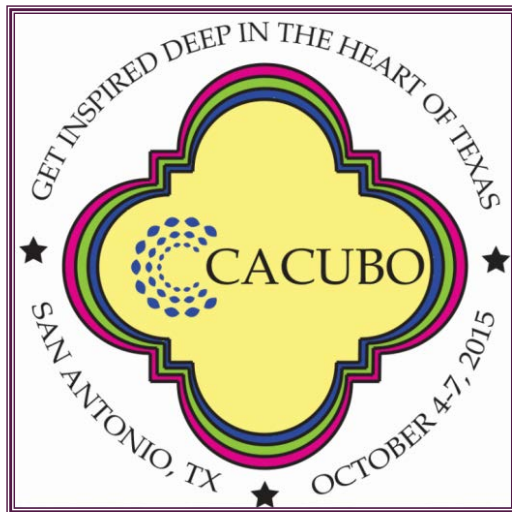


TAX Update for Higher Ed



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Agenda

- Current developments
- Unrelated Business Income
- Fringe Benefits
- Compensation
- Exemption Issues
- Worker Classification
- Tax Exempt Bonds
- International
- Charitable Giving
- New tax legislation
- Property tax developments
- Crowdfunding



Current Developments – 2015-2016 Priority Guidance Plan

- The IRS has released its Priority Guidance Plan for the July 2015 – June 2016 fiscal year. The Plan contains 277 projects that the IRS plans to work on during the year, many of which are carryovers from the prior year. Select projects include:
 1. Proposed regulations under section 501(c) relating to political campaign intervention (carryover).
 2. Final regulations and additional guidance on section 509(a)(3) supporting organizations (carryover).
 3. Guidance under section 512 regarding methods of allocating expenses relating to dual use facilities (carryover).
 4. Guidance under section 6033 relating to the reporting of contributions on Form 990 (carryover).
 5. Regulations under section 457(f) on ineligible plans (carryover).
 6. Guidance relating to *Obergefell v. Hodges*, which struck down state bans on same-sex marriages (new).
 7. Regulations under section 170(f)(8) regarding done substantiation of charitable contributions (carryover).
 8. Guidance under section 170(e)(3) regarding charitable contributions of inventory (new).
 9. Guidance under section 7701 providing criteria for treating an entity as an integral part of a state, local, or tribal government (carryover).
 10. Revenue procedure that will update Revenue Procedure 97-13 relating to the conditions under which a management contract does not result in private business use under section 141 (carryover).

Current Developments - IRS Budget Woes



- IRS Budget Cuts
 - Congress enacted a \$1.01 trillion omnibus spending bill (Consolidated and Further Continuing Appropriations Act, 2015)
 - Pub. L. No. 113-235 on December 16, 2014 which cut the IRS's budget by \$346 million or 3%, to \$10.95 billion
 - IRS must also must pay \$250 million to cover its share of a 1% pay increase for government employees and for increased benefit costs
 - IRS Commissioner Koskinen said that the IRS will implement a hiring freeze, cut travel expenses and cease overtime pay
 - Wait times expected to increase for telephone assistance to taxpayers
 - Senate Finance Committee bipartisan report on exemption applications

Current Developments - America Gives More

- House passed the America Gives More Act (H.R. 644) by a vote of 279 to 137 on February 12, 2015
- 39 Democrats and all but one Republican voted for the bill
- The legislation permanently extends the IRA charitable rollover (H.R. 637)
- Permanently extends and expands the enhanced deduction for donating excess food inventory (H.R. 644)
- Permanently extends the enhanced deduction for land conservation easements (H.R. 641)
- Simplifies the private foundation excise tax on investment income to a rate of 1% (H.R. 640)
 - Lovely but will it really happen?????



Current Developments- Proposed Legislation

- Ways and Means Committee Markup of March 25th
- H.R. 709, Prevent Targeting at the IRS Act, providing for the termination of IRS employees who take official actions for political purposes, introduced by Rep. James B. Renacci (R-Ohio)
- H.R. 1026, the Taxpayer Knowledge of IRS Investigations Act, introduced by Rep. Mike Kelly (R-PA)
- H.R. 1058, the Taxpayer Bill of Rights Act, introduced by Roskam;
- H.R. 1104, the **Fair Treatment for all Donations Act**, introduced by Roskam;
- H.R. 1152, prohibiting IRS personnel from using personal e-mail for official business, introduced Rep. Kenny Marchant (R-Texas)
- H.R. 1295, revamping the process for determining 501(c)(4) eligibility, introduced by Rep. George Holding (R-N.C.)
- H.R. 1314, allowing the right to an administrative appeal after being denied tax-exempt status, introduced by Rep. Patrick Meehan (R-PA)
 - Lots of activity but will it help you????

Current Developments - Senate

- SENATE FINANCE COMMITTEE MARKUP
 - Senate Finance Committee marked up 17 miscellaneous tax bills on February 11, including 3 relating to EOs:
 - Agricultural Research Organizations treated as per se public charities under § 170(b)(1)(A) regardless of source of support
 - Exception to Excess Business Holdings rule for Certain Philanthropic Business Enterprises
 - **Advance notice to nonprofit organizations whose 501(c)(3) status is in jeopardy**
- Senator Orrin Hatch (R-UT) plans more markups on “noncontroversial” bills with “bipartisan support”

Current Developments - President's Proposals

- PRESIDENT'S FY2016 BUDGET PROPOSALS AFFECTING EXEMPT ORGANIZATIONS
 - Permanently extend the New Markets Tax Credit and allow New Market Tax Credit amounts to offset alternative minimum tax liability
 - Reform and expand the Low-Income Housing Tax Credit
 - Require institutions of higher education to report amounts received for qualified tuition and related expenses on Form 1098-T box 1 and eliminate the option to report amounts billed (currently box 2)
 - Require any entity issuing a scholarship or grant in excess of \$500 (indexed for inflation) that is not processed or administered by an institution of higher education to report on Form 1098-T box 5

Current Developments

- PRESIDENT'S FY2016 BUDGET PROPOSALS (cont'd)
 - Limit itemized deductions to 28% for high-income taxpayers
 - Impose a new minimum tax, the Fair Share Tax (FST), on high-income taxpayers. The FST is 30% of adjusted gross income less a charitable credit of up to 28% of itemized charitable contributions
 - Eliminate the two-tiered excise tax on private foundations' investment income by imposing a single tax rate of 1.35%



Current Developments

- PRESIDENT'S FY2016 BUDGET PROPOSALS (cont'd)
 - Modify contribution base limits
 - The limit for contributions of cash only to public charities would remain 50%
 - A 30% limit would apply to all other contributions, regardless of what type of property is donated and whether the organization is a private foundation or public charity
 - Deny charitable deductions for contributions to colleges and universities that give donors the right to purchase tickets to sporting events (Code §170(I) modified)



Current Developments

- PRESIDENT'S FY2016 BUDGET PROPOSALS (cont'd)
 - Make electronic filing mandatory for tax-exempt organizations
 - Require tax-exempt organizations to file Forms 8872 and 990 tax and information returns electronically
 - **Mandate that the IRS make e-filed returns publicly available**
 - Give Secretary authority to require taxpayers who prepare their forms electronically but file them on paper to include on their returns a bar code that the IRS can scan to convert the paper into an electronic format
 - Impose a monetary penalty of \$25,000 for corporations and partnerships and \$5,000 for tax-exempt organizations that fail to comply with electronic filing requirements (this penalty is waived if there is reasonable cause for failure to file electronically)
 - **Increase the standard mileage rate for automobile use by volunteers**

Current Developments

- IRS denying exemption
 - Operation in substantially commercial manner
 - Failure to operate primarily for exempt purpose
 - Failure to provide information
 - Failure to file information returns
 - Operation of a faculty practice plan
 - Watch the word “consulting”!!



Current Developments

- Impacting social clubs
 - Online sorority denied exemption (PLR 201434022)
 - Organization operating website, open to public, promoting company's firearms and other products, held to not constitute exempt social club, in that it is not a club, in that it lacks a membership and thus no mingling (PLR 201451030)



Current Developments

- Private Inurement--key issue in denying exemption
- Trust held ineligible for exemption because its function is to pay family's medical expenses in aftermath of automobile accident (PLR 201428026)
- Organization formed to benefit children with special medical needs failed to qualify for charitable exemption where it is operated for benefit of one individual (PLR 201505039)
- Organization formed for benefit of specific child with autism, with child's parents as sole officers, failed to qualify for exemption (PLR 201511026)



Current Developments

- Other coming developments
 - Governance
 - Higher education compliance report aftermath
 - Supporting organizations regulations
 - F990 revision data mining
 - Gift substantiation
 - Compensation
 - IRS processing of exemption applications
 - Societal return analysis





Unrelated Business Income

- IRS Addresses Tax Issues When Setting Up For-Profit Subsidiary
<http://www.irs.gov/pub/irs-wd/201503018.pdf>
- Final regulations issued under IRC 501r
- Under the law that expired on December 31, 2013, interest, rent and royalties paid to a tax-exempt organization from a controlled entity are treated as unrelated business income of the tax-exempt organization only to the extent that the amount exceeds the fair market value of such a payment. The Act extends this provision to cover the 2014 tax year
- Tax Court Holds That Two Activities Cannot be Combined in Determining Existence of Profit Motive
<http://ustaxcourt.gov/InOpHistoric/PriceMemo.Nega.TCM.WPD.pdf>.

Unrelated Business Income

- IRS approves Research Organization's Agreement with For-Profit Company
<http://www.irs.gov/pub/irs-wd/201440023.pdf>
- Income from Entering into "Short" Positions Not Debt-Financed Income
<http://www.irs.gov/pub/irs-wd/201434024.pdf>.



Select UBI CASES

- Supporting organization with respect to university ruled able to acquire, own and receive revenue in connection with major commercial retail center, without disturbance of its tax-exempt status and without incurrence of unrelated business income (IRC § 514(c)(9)) (PLR 201444043)
- Organization with primary purpose of managing portions of significant investment portfolio of health care system held not qualified organization (IRC § 514(c)(9)(B)(vi)) because its operation of schools represented only 13 percent of functional expenses, involved 20 percent of employees, entailed 6 percent of revenue and generated 7 percent of total gifts (TAM 201407024)

UBIT
UBIT

Fringe Benefits

- IRS Issues Guidance on Use of Smartcards, etc. to Provide Transportation Benefits to Employees <http://www.irs.gov/pub/irs-drop/rr-14-32.pdf>
- IRS Issues Final Regulations Deductibility and Exclusion of Local Lodging Expenses http://www.irs.gov/irb/2014-43_IRB/ar07.html
- IRS Expands Rules for Health Care Coverage under Section 125 Cafeteria Plans <http://www.irs.gov/pub/irs-drop/n-14-55.pdf>



Fringe Benefits

- University's Tuition Benefits for Children of Faculty/Staff Satisfy Section 117(d) Nondiscrimination Test and are Excluded From Income <http://www.irs.gov/pub/irs-wd/201516030.pdf>
- IRS Addresses Relationship Between 501(c)(3) Organization and For-Profit Entity <http://www.irs.gov/pub/irs-wd/201514011.pdf>
- Providing grants to foreign organizations (PLR 201511033)
- Westfield State University – misuse of funds



Compensation

- New IRS Guidance on Application of Quality Stores Holding
<http://www.irs.gov/pub/irs-drop/a-15-08.pdf>
- Tax Court Explains How To Distinguish Between Loans and Compensation
<http://www.ustaxcourt.gov/InOpHistoric/FisherMemo.Kerrigan.TCM.WPD.pdf>



Exemption

- IRS Denies Exemption to Medical School Faculty Practice Plan
<http://www.irs.gov/pub/irs-wd/201433016.pdf>



Worker Classification

- Continued focus of IRS attention
- Documentation is critical
- Annual review suggested
- Written agreement
- IRS explains the procedures that a service provider can follow if he or she disagrees with a service recipient's employee or independent contractor classification. INFO 2015-0005 is at <http://www.irs.gov/pub/irs-wd/15-0005.pdf>





Pension Plans

- The IRS sets forth the rules that apply in determining whether a taxpayer has suffered an “unforeseeable emergency” that would qualify the individual for a distribution from his or her section 457(b) deferred compensation plan. A copy of this letter (INFO 2015-0003) can be found at <http://www.irs.gov/pub/irs-wd/15-0003.pdf>
- IRS Explains “Substantial Risk of Forfeiture” <http://www.irs.gov/pub/irs-wd/14-0026.pdf>

Tax-Exempt Bonds

- Rev. Proc. 97-13 sets forth certain safe harbor rules to ensure that management contracts entered into with respect to bond-financed property will not result in private business use
- In Notice 2014-67, the IRS amplifies on these safe harbor rules by permitting more liberal productivity rewards and creating a new 5-year contract safe harbor rule
- A copy of Notice 2014-67 can be found at <http://www.irs.gov/pub/irs-drop/n-14-67.pdf>

International

- Exposure area for many universities
- Complex and hard to manage
- Technical issues
- Coordination with recruitment
- IRS Appears To Change Position On Successive Use of Tax Treaty Student and Teacher Benefits <http://www.irs.gov/pub/irs-wd/201438020.pdf>
- Form 1042S codes changed for 2014



Charitable Giving

- Continuing problems with claiming donation especially with:
 - Conservation easements
 - Documentation of gifts
 - Strict compliance with Form 8283 filing
 - Appraisal requirements
- Frequently litigated and often not in the taxpayers favor
- Good intentions are not sufficient...



Trade Preferences Extension Act of 2015

- The Trade Preferences Extension Act of 2015 provided colleges and universities some relief on Form 1098-T missing/incorrect TIN penalties, the bill also substantially increased penalties for failure to file correct information returns and provide payee statements. Specifically:
- The general penalty for failure to file a required information return with the IRS will increase from \$100 to \$250 per return
- The cap on the total amount of penalties for such failures during a calendar year will increase from \$1,500,000 to \$3,000,000
- If a failure relates to both an information return and a payee statement, these penalties are doubled
- If a failure is caused by intentional disregard, the new \$250 penalty is doubled to \$500 for each failure, and no cap applies to limit the amount of penalties that can be applied with respect to that calendar year
- These new penalties apply for returns and statements that are required to be filed after 2015
- **Next steps** include reviewing your information return reporting process and procedures to ensure compliance with the reporting requirements

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

- Partnerships and S corporations will have to file their returns by the 15th day of the third month after the end of the tax year. Thus, entities using a calendar year will have to file by Mar. 15 of the following year.
- C corporations will have to file by the 15th day of the fourth month after the end of the tax year.
- Effective generally for returns for tax years beginning after Dec. 31, 2015
- Under a special rule for C corporations with fiscal years ending on June 30, the change is deferred for ten years — it won't apply until tax years beginning after Dec. 31, 2025.
- IRS to modify its regulations to provide for a longer extension to file a number of forms including 1065, 1041 and 5500
- The due date of FinCEN Report 114 will be Apr. 15 with a maximum extension for a 6-month period ending on Oct. 15.

Recent Rulings on Property Tax Exemption

- There is a growing trend involving non-legislative officials reconsidering the longstanding rationale for property tax exemptions
- Recently, the New York Court of Appeals upheld a decision by the New York City tax commission that a parking lot owned by the Greater Jamaica Development Corporation was a commercial enterprise and not sufficiently related to the nonprofit's charitable mission.
- The New York case follows a decision in June by a New Jersey judge who partially revoked the property tax exemption of a major nonprofit hospital chain (Morristown Memorial Hospital)
- Recent reports from Florida, Michigan, New York, and elsewhere suggest that tax assessors in various communities have become more aggressive in challenging the longstanding property tax exemption of nonprofits

CROWDFUNDING - Tax

Considerations

- Crowdfunding is typically defined as the practice of soliciting financial contributions from a large number of people especially from the online community
- Tax issues arise in determining the deductibility of the funds raised through a third party platform
- Clarify tax treatment when soliciting contributions
- Generally report “fees” paid website administrator as fundraising expenses. Donor still receives 100% of the amount contributed, not the net to the charity
- Fiscal sponsorship concept increases complexity
- “All or nothing” fundraising concept can result in donor confusion
- Watch possible exposure to unrelated business income tax and state charitable solicitation registration requirements

DISCLOSURES

- These discussions & conclusions are based on facts as stated & existing authorities as of date of this communication. Our advice could change as result of changes in applicable laws & regulations. We are under no obligation to update this communication if such changes occur. Any advice should be based on your unique facts & circumstances as you communicated them to us & should not be used or relied on by anyone else. This advice is not intended or written to be used for the purpose of avoiding penalties that may be imposed.

QUESTIONS??

