POSITION STATEMENT

The Idea That Tax-Exempt Employers Should Be Taxed on Parking They Provide to Employees is Highly Inappropriate and Must Be Stopped

The Tax Cuts and Jobs Act contains a troubling provision that applies federal income tax to parking benefits provided by tax-exempt organizations to their employees.

Newly added Section 512(a)(7) of the Internal Revenue Code states, "Unrelated business taxable income of an organization shall be increased by any amount for which a deduction is not allowable…by reason of section 274 and which is paid or incurred by such organization for any…parking facility used in connection with qualified parking…The Secretary shall issue such…guidance as may be necessary…including regulations or other guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking…"

Tax practitioners who have evaluated Section 512(a)(7) generally believe that the result of this new provision is that tax-exempt organizations that provide parking to their employees will be subject to unrelated business income tax on the cost of the parking provided. A nonprofit organization that simply allows its employees to park in a parking lot or garage that is part of the organization's facilities will be subject to a tax on the cost of the parking provided.

How the parking costs must be measured remains to be addressed in the "regulations or other guidance" to be issued by the IRS. To apply this new requirement, nonprofit employers and their accountants must have guidance addressing exceedingly complex questions of allocations of basis, depreciation, and rent payments among different structures and between employee and non-employee users.

Because of this new tax, many tax-exempt employers, including churches, hospitals, charities, and schools will be required to file federal Form 990-T, and in many cases, state corporate income returns, every year regardless of whether they actually engage in any unrelated business activity.

This new tax was purportedly added to the law to put tax-exempt employers on the same footing as taxable employers with respect to employer-provided parking. (Taxable employers are no longer able to deduct the cost of certain parking benefits provided to their employees.) **This premise is flawed at its core.** The very purpose of tax exemption for nonprofit organizations is not to have their charitable, religious, and educational activities on the same footing as taxable businesses because of their important work and the inherent challenges associated with raising money to support such work. Furthermore, the federal income tax on unrelated business income is intended to apply to income generated from unrelated commercial activities conducted by tax-exempt organizations. Providing parking to employees does not constitute generating income from an unrelated commercial activity and there is no sound policy basis for applying a tax intended for commercial activity to the essential element of parking by employees of tax-exempt organizations.

The idea that tax-exempt organizations should be taxed on parking they provide to their employees is highly inappropriate and must be stopped.

Section 512(a)(7) should be repealed by Congress or rendered practically ineffective by regulation or other authoritative guidance from the Treasury Department.