

CLIENT ALERT

Who Says There's No Free Parking in New York?

Dec.12.2018

On December 7, 2018, Governor Cuomo signed into law, effective January 1, 2018, [an amendment to New York Tax Law](#) that negated, for New York State tax purposes, the effect of a 2017 change to the Internal Revenue Code relating to unrelated business income tax (UBIT) that disadvantaged many 501(c)(3) organizations. As part of the federal legislation commonly known as the [Tax Cuts and Jobs Act of 2017 \(TCJA\)](#), certain expenditures related to transportation benefits for employees, including transit and parking, were made nondeductible for federal income tax purposes. Most notably, certain kinds of free parking for employees were made nondeductible. Because section 501(c)(3) organizations do not ordinarily pay income tax, in order to apply the tax cost consistently to tax-exempt organizations as well as taxable businesses, the TCJA made these amounts subject to the UBIT for tax-exempts. See [Internal Revenue Code section 512\(a\)\(7\)](#). This change in the law came as a surprise to the nonprofit community, which has been advocating repeal of this tax increase. Section 501(c)(3) organizations objected both to the tax cost of this change to the law as well as the complexity of computing these amounts and complying with the new law. From the point of view of the nonprofit sector, this expansion of UBIT has diverted funding and put nonprofits at risk.

On December 7, 2018, the Internal Revenue Service published [Notice 2018-99](#), which provided some long-anticipated guidance on how to calculate the nondeductible transportation benefits, including free parking. The initial reviews have been that the Notice is helpful on some fronts. However, the general principle that the federal version of UBIT applies to some kinds of free parking that tax-exempt organizations provide to their employees remains the law. In other words, the federal UBIT law remains in place and the fact based calculations in the interim guidance are quite complex.

Subsequently, on December 10, 2018, the House proposed an amendment to the [Senate amendment](#) of H.R. 88 that would repeal Section 512(a)(7) of the Internal Revenue Code retroactive to the date of enactment. However, in order to become law, the bill must be approved by the House and Senate and signed by the President.

New York State has its own version of UBIT. New York taxes unrelated business income at a 9 percent rate. Because New York Tax Law generally incorporates federal income tax provisions, if the New York legislature had taken no action, the transportation benefits made nondeductible by the TCJA would have been subject to a 9 percent tax (resulting in a total tax of 30 percent taking into account the 21 percent federal UBIT rate). The New York legislature, however, chose to override the TCJA so that the New York version of UBIT does not apply to these disallowed transportation benefits.

Still, all tax-exempt organizations that provide disallowed transportation benefits should review the Notice to determine what the 2017 Federal tax increase means for the 2018 tax year and what actions, if any, can be taken to minimize that tax.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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