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IRS Provides Guidance on Unrelated Business Income Tax Refunds

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On Friday, December 20, 2019, President Trump signed into law government funding legislation for the 2020 fiscal year that includes a provision repealing Section 512(a)(7), commonly referred to as the "parking tax," with retroactive effect to the date of its enactment.[1] Section 512(a)(7) was enacted pursuant to the 2017 U.S. tax legislation known as the "Tax Cuts and Jobs Act" and required tax-exempt employers to increase their unrelated business taxable income ("UBTI") by amounts paid or incurred for qualified transportation fringe benefits provided to employees, including the provision of parking and public transportation benefits. In connection with the repeal of this provision, tax-exempt organizations can file an amended Form 990-T (Exempt Organization Business Income Tax Return) to claim a refund for any taxes paid related to such qualified transportation fringe benefits.

In response to the urging of House Ways and Means Committee Chair Richard E. Neal (D-Mass) and Ways and Means Oversight Subcommittee Chair John Lewis (D-Ga) for an expedited refund process and guidance with respect to the repealed tax, the Internal Revenue Service (the "IRS") posted specific instructions on its website on January 21, 2020 describing how to apply for such refund:

- Write "Amended Return" at the top of Form 990-T. If the amended return is being filed only to claim a refund, credit, or adjust information due to the repeal of Section 512(a)(7), the organization should write "Amended Return – Section 512(a)(7) Repeal."
- Complete the Form 990-T as done originally, with certain specific modifications depending on whether the Form 990-T is for the 2017 or 2018 taxable year, as detailed in the IRS instructions.
- Attach a statement indicating the line numbers on the original return that were changed and the reason for each such change (*e.*, stating "repeal of Section 512(a)(7)").

Organizations should be mindful of the time limit for filing these refund claims, which is typically the later of three years from the time the original Form 990-T was filed, or two years from the time the tax was paid.

Organizations are encouraged to consult their own tax advisors as to whether a state tax refund is available as well.[2]

[1] *See* Division Q of H.R. 1865, the “Further Consolidated Appropriations Act, 2020.”

[2] In New York State, amounts paid or incurred by tax-exempt organizations for qualified transportation benefits were not subject to tax, as the New York State tax code was decoupled from the changes made to the federal UBTI rules at the end of 2018. Thus, no New York State tax would have been due with respect to these amounts.

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- **Amanda H. Nussbaum**
  Partner
- **Amy Zelcer**
  Special Tax Counsel