

June 8, 2018

The Honorable David Kautter  
Acting Assistant Secretary for Tax Policy  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Mr. William M. Paul  
Acting Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

**RE: Request for Immediate Guidance and Implementation Delay Regarding UBIT Provisions in Public Law 115-97**

Under the Tax Cuts and Jobs Act (Public Law 115-97), a new section 512(a)(7) applies a new unrelated business income tax (UBIT) on certain employee fringe benefits. The Act makes expenditures by tax-exempt organizations on transportation fringe benefits and parking facilities subject to a new tax of 21 percent. This is a significant departure from the prior UBIT statute, which previously applied only to revenue. The change creates considerable uncertainty regarding valuation and application of the new requirements, and will also represent a substantial new expense for the full array of 501(c)(3) nonprofit organizations, including orchestras. We join with many others in the nonprofit sector urging the U.S. Department of the Treasury and the Internal Revenue Service (IRS) to delay implementation of these new requirements and provide the guidance necessary for tax-exempt organizations to prepare for compliance.

The League of American Orchestras leads, supports, and champions America's orchestras and the vitality of the music they perform. Its diverse membership across the United States runs the gamut from world-renowned symphonies to community orchestras, from summer festivals to student and youth ensembles. Founded in 1942 and chartered by Congress in 1962, the League links a national network of thousands of instrumentalists, conductors, managers and administrators employed by nearly 1,600 orchestras serving their communities as 501(c)(3) nonprofit organizations. These organizations must now assess how to comply with and absorb the new unexpected costs of the UBIT on parking and transportation benefits.

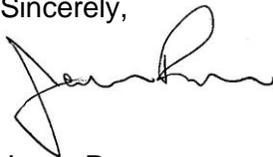
We urge the Treasury and the IRS to delay implementation of the new requirements and undertake a formal rulemaking process that will result in the issuance of clear and comprehensive guidance on how the new rules will be administered. Orchestras provide transportation and parking benefits to their musicians and staff in varying configurations, and in both urban and rural areas. Very many questions about implementation have been unanswered by Treasury and the IRS, and there is no clear indication that guidance will be forthcoming in time for nonprofits to meet their UBIT obligations.

It is uncertain whether the UBIT applies to compensation reduction agreements for parking and transportation. It is unclear how nonprofits will be required to value the benefit of parking spaces in lots that may be owned by the nonprofit, folded into a broader office lease agreement, or part of a commercial parking area. For organizations like orchestras, for which the work being completed takes place at multiple rehearsal and performance venues, it is unclear whether transportation compensation provided to musicians and other employees will be considered commuting fringe benefits subject to the new UBIT, or business travel expenses that are exempt from the tax.

Any new cost that results from UBIT must be factored into each orchestra's capacity to allocate its nonprofit resources to deliver on its mission in service to its community. It is exceedingly difficult and, in most cases, impossible to turn on a dime to absorb new expenses, and many orchestras' compensation arrangements with their musicians are fixed in multi-year collective bargaining agreements, adding complexity to any consideration of adjustments to employee benefits. Given the uncertainty of what the IRS and Treasury will require of nonprofits, and the considerable disruption these new policies will create for 501(c)(3) organizations, an implementation delay and issuance of comprehensive guidance through formal rulemaking should be a priority action for the agencies.

The League of American Orchestras joined a meeting with officials at the U.S. Treasury Department on Wednesday, April 25 to express concerns about this topic, and request a delay in implementation. We stand ready to be of help should you have additional questions about these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Rosen", written over a light blue circular stamp.

Jesse Rosen  
President & CEO