

February 22, 2019

Internal Revenue Service
CC:PA-LPD:PR (Notice 2018-99)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submitted Via Internet: www.regulations.gov

Docket Number: IRS-2018-0038

Re: Parking Expenses for Qualified Transportation Fringes under Section 274(a)(4) and Section 512 (a)(7) of the Internal Revenue Code

We are submitting this statement in response to the request by the Internal Revenue Service (Notice 2018-99) for comments on interim guidance for taxpayers to determine the amount of parking expenses for qualified transportation fringes (QTFs) that is nondeductible under § 274(a)(4) of the Internal Revenue Code (Code) and for tax-exempt organizations to determine the corresponding increase in the amount of unrelated business taxable income (UBIT) under § 512(a)(7) attributable to the nondeductible parking expenses.

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 also filed a letter to the Internal Revenue Service similar to this one on June 8, 2018 to request a delay in implementation.

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. Two out of every three orchestras operate with annual expenses under \$300,000, and across the board, orchestras – like many other nonprofit organizations – are still determining how to comply with and absorb the new unexpected costs of the UBIT on parking and transportation benefits.

Under the Tax Cuts and Jobs Act (Public Law 115-97), 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 for both parking and commuting benefits, and it also represents a substantial new expense for the full array of 501(c)(3) nonprofit organizations, including orchestras.

We join with the National Council of Nonprofits and many others in the nonprofit sector in urging the U.S. Department of the Treasury and the Internal Revenue Service to delay implementation of these new requirements until one year after a rulemaking has established the complete array of guidance necessary for tax-exempt organizations to prepare for compliance.

Orchestras provide transportation and parking benefits to their musicians and staff in varying configurations, and in both urban and rural areas. While the Notice 2018-99 provides guidance related to parking valuation, it is very complex, and requires the engagement of professional tax assistance for many nonprofits to gain confidence in accurately applying the guidance. In the weeks since the Notice was released, orchestras continue to grapple with how the guidance relates to their unique parking arrangements, which are provided as an important benefit to the musicians, administrative employees, and volunteers that work to provide public access to extraordinary music performances in concert halls nationwide.

To date, the very many remaining questions about implementation of transportation and commuting benefits have been unanswered by Treasury and the IRS, and there is no clear indication that guidance is forthcoming for nonprofits to meet their full UBIT obligations.

For instance, 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.

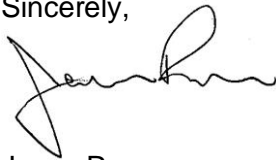
Any new cost that results from UBIT must be factored into each orchestra's capacity to allocate its nonprofit resources to deliver on its mission in service to its community. It is exceedingly difficult and, in most cases, impossible to turn on a dime to absorb new expenses, and many orchestras' compensation arrangements with their musicians are fixed

in multi-year collective bargaining agreements, adding complexity to any consideration of adjustments to employee benefits.

Given the ongoing 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, issuance of comprehensive guidance through formal rulemaking should be a priority action, and implementation should be delayed until one year after rulemaking is completed.

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", with a large, stylized initial "J" and "R".

Jesse Rosen
President & CEO

