

# League of American Orchestras

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**League of American Orchestras**

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## **Statement to House Ways and Means Oversight Subcommittee Unrelated Business Income Tax on Parking and Commuting Benefits**

The League of American Orchestras urges Congress to repeal the Unrelated Business Income Tax (UBIT) on parking and commuting fringe benefits for tax-exempt organizations. Under the Tax Cuts and Jobs Act (Public Law 115-97), section 512(a)(7) applies a new UBIT on certain employee fringe benefits. The Act makes expenditures by tax-exempt organizations on commuting and parking fringe benefits subject to a new tax of 21 percent. The new UBIT creates considerable uncertainty regarding valuation and application of the 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. This unprecedented income tax on nonprofit expenses diverts essential nonprofit resources away from serving community needs.

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. While the IRS Notice 2018-99 provided 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. Guidance has not been issued related to commuting benefits.

In the months since the Notice was released, orchestras continue to grapple with how the new policies relate to their unique parking and transportation arrangements, which are provided as an important benefit to the musicians and administrative employees that work to provide public access to extraordinary music performances in concert halls and community venues nationwide. Orchestras provide transportation and parking benefits to their musicians and staff in varying configurations, and in both urban and rural areas. While musicians engaged by orchestras typically number 70 to 100 musicians per ensemble, each orchestra is as unique as the community it serves and may experience the effect of the new UBIT policy differently. 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.

In the Richmond Symphony's case, the urban setting of its primary concert activity requires substantial parking benefits. The Richmond Symphony provides weekly parking for 80 musicians and 30 staff members each season and calculates that the new UBIT fringe benefits

provision could expose the organization to \$25,000 to \$35,000 per year in additional expenses. This year alone, the potential expense could replace resources that could fund any one of the following:

- The building of a “Big Tent” community engagement initiative that offers free concerts for communities throughout Richmond and has helped raise resources to help fund music education programs in Richmond Public Schools
- The cost of a Music Together Instructor for 1 year at Summer Hill Preschool, a Title 1 School that reaches 120 pre-k Richmond Public School students every week
- Delivering the orchestra’s Musical Ambassadors Program performances, which places musicians in the schools, serving roughly 500 public school students living in nearby rural counties in Virginia.

Many other orchestras are located in settings that lead their musicians to come from a broad geographic area, requiring significant commuting benefits. In these cases, it is not uncommon for the majority of the musicians to commute from out of state. For a mid-sized orchestra, this can easily result in more than \$20,000 in new taxes to the U.S. Treasury over the course of a single year, with an additional nearly \$10,000 in state taxes due in cases where state law automatically follows UBIT. Such a substantial new expense can have a severely adverse impact on any orchestra’s capacity to use its resources in service to communities.

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. It is also exceedingly difficult and, in most cases, impossible to turn on a dime to absorb new expenses, as many orchestras’ compensation arrangements with their musicians are fixed in multi-year collective bargaining agreements, adding complexity to any consideration of employee benefits.

We join with the National Council of Nonprofits, Independent Sector, and many others in the nonprofit community in urging the U.S. Congress to immediately repeal this new tax on nonprofits. The League of American Orchestras stands ready to be of help should you have additional questions about these concerns.

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