



April 17, 2018

The Honorable Orrin G. Hatch  
Chairman  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Kevin Brady  
Chairman  
House Committee on Ways and Means  
1139E Longworth House Office Building  
Washington, DC 20515

The Honorable Ron Wyden  
Ranking Member  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Neal  
Ranking Member  
House Committee on Ways and Means  
1139E Longworth House Office Building  
Washington, DC 20515

**RE: Request for Delay in Effective Date of IRC Section 512(a)(6), *Unrelated Business Taxable Income Separately Computed for Each Trade or Business Activity*, ([Pub. L. No. 115-97, Sec. 13702](#))**

Dear Chairmen and Ranking Members:

Public Law No. 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA), established new Internal Revenue Code (IRC or “Code”) section 512(a)(6),<sup>1</sup> which requires the separate computation of unrelated business taxable income (UBTI) for each trade or business of a tax-exempt organization. The TCJA established the effective date for this change as generally tax years beginning after December 31, 2017.

The American Institute of CPAs (AICPA) respectfully requests that Congress enact legislation to delay the effective date of section 512(a)(6) for one year until December 31, 2018. The new computation requirement of section 512(a)(6) represents a significant departure from previous law and although the effective date of December 31, 2017 has passed, additional guidance is necessary for taxpayers and practitioners to make informed decisions and comply with the new requirement for the 2018 tax year.

### **Reasons Supporting a Delay in Effective Date**

#### 1) Regulations Not Issued

The passage of the TCJA by Congress has required the IRS and Treasury to redirect resources to develop urgent guidance on the substantial changes to the tax Code, including new section 512(a)(6).

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<sup>1</sup> All references herein to “section” or “§” are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

The Honorable Orrin G. Hatch  
The Honorable Kevin Brady  
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The Honorable Richard Neal  
April 17, 2018  
Page 2 of 3

Due to the substantial changes made by section 512(a)(6) on how tax-exempt organizations record and compute UBTI, we expect the IRS and Treasury to issue guidance in this area in the form of proposed regulations. However, section 512(a)(6) has been effective since December 31, 2017 and guidance has not yet been issued, which creates challenges for taxpayers, tax practitioners, and the IRS.

Typically, the IRS and Treasury allow a 90-day comment period on proposed regulations, followed by a public hearing. If proposed regulations are issued as early as this summer, the IRS and Treasury are not likely to release temporary regulations until at least late fall of 2018, which is well beyond the December 31, 2017 effective date of section 512(a)(6). Accordingly, taxpayers will bear the burden of back-tracking to comply with the required recordkeeping for the months in tax year 2018 affected by the guidance when it is issued. Delaying the effective date of section 512(a)(6) by one year, to December 31, 2018, is needed to allow adequate time for the IRS and Treasury to provide taxpayer guidance and for taxpayers to prepare to comply with the new requirements.

## 2) Burdensome Impact on Tax-Exempt Organizations

The 2018 tax year is underway for calendar year and some fiscal year taxpayers. New section 512(a)(6) is a significant departure from the previous UBTI computation rules and absent guidance, it is difficult for taxpayers to determine what new recordkeeping and allocation requirements are necessary. The most critical unknown variable is the definition of a trade or business and guidance to determine whether an activity is one or more trades or businesses. While a discrete trade or business, such as a pharmacy or laboratory, is somewhat identifiable, there is uncertainty over specific identification of other activities that may constitute separate trades or businesses, such as investments in partnerships and tiered partnerships.

Absent specific guidance, it is not possible to determine whether a tax-exempt organization that receives, for example, one hundred Schedules K-1, *Partner's Share of Income, Deductions, Credits, etc.*, is required to track and report each Schedule K-1, or each line of income on each Schedule K-1, as a separate trade or business. A narrow definition of a trade or business for purposes of the computation of UBTI could potentially lead to hundreds or thousands of trades or businesses, which is burdensome to taxpayers, tax practitioners and the IRS to record, report, and audit. Tax-exempt organizations would need, at a minimum, upgraded general ledger software to track each trade or business, to maintain the appropriate records for tax preparation at the end of the tax year. Guidance is necessary for the development of such software.

Also, tax-exempt organizations are required to keep appropriate records to make the correct estimated tax payments during the 2018 tax year. The lack of guidance affects tax practitioners, who are currently unable to accurately and consistently advise taxpayers on reasonable recordkeeping and the calculation of estimated tax payments for 2018. By the time guidance is issued, it is possible that three quarterly estimated tax payment deadlines for tax year 2018 will have passed, causing concern among taxpayers about potential underpayment penalties.

The Honorable Orrin G. Hatch  
The Honorable Kevin Brady  
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April 17, 2018  
Page 3 of 3

## Conclusion

The burden of new section 512(a)(6) on tax-exempt organizations is substantial and nearly all tax-exempt organizations are affected. A delay in the effective date to December 31, 2018 will allow time for the issuance of guidance and time for taxpayers to comply with the new reporting requirements.

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We appreciate your consideration of these comments and welcome the opportunity to discuss them further. If you have any questions, please contact me at (408) 924-3508 or [annette.nellen@sjsu.edu](mailto:annette.nellen@sjsu.edu); Ogochukwu Eke-Okoro, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9231, or [ogo.eke-okoro@aicpa-cima.com](mailto:ogo.eke-okoro@aicpa-cima.com); or Lakecia Foster, AICPA Director – Congressional & Political Affairs, at (202) 434-9208, or [lakecia.foster@aicpa-cima.com](mailto:lakecia.foster@aicpa-cima.com).

Sincerely,



Annette Nellen, CPA, CGMA, Esq.  
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance  
Members of the House Committee on Ways and Means  
The Honorable David Kautter, Assistant Secretary (Tax Policy), Department of the Treasury  
The Honorable David Kautter, Acting Commissioner, Internal Revenue Service  
Thomas Barthold, Chief of Staff, Joint Committee on Taxation