



April 17, 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 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 Messrs. Kautter, and Paul:

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),¹ 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 the United States Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) follow precedent and delay the implementation of new section 512(a)(6) for one year until December 31, 2018. Alternatively, if it is determined that the IRS and Treasury do not have the authority to delay the effective date, we request that they collaborate with Congress to enact legislation to delay the effective date 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.

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

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).

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.

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

3) Treasury and IRS Authority

We suggest that the IRS and Treasury follow precedent to delay the implementation date of new section 512(a)(6). In January 2018, the IRS and Treasury, in response to public comments, issued Notice 2018-08 suspending indefinitely the effective date for withholding, under the TCJA, new section 1446(f) with respect to dispositions of certain publicly traded partnerships until guidance is provided.²

In 2013, Treasury delayed the effective date for the Patient Protection and Affordable Care Act (PPACA) mandatory employer and insurer reporting, under Pub. L. No. 111-148, by one year to allow for additional time to consider ways to simplify the new reporting requirements, as well as additional time to adapt health coverage and reporting systems.³

In 2015 and 2016, the IRS and Treasury issued Notices 2015-57, 2016-19 and 2016-27, delaying the implementation date of the consistent basis reporting requirement, under Pub. L. 114-41, three times to provide transition relief and time to issue regulatory guidance for taxpayers and practitioners.⁴

There is sufficient authority to implement a delay, and we therefore request that the IRS and Treasury delay the effective date for new section 512(a)(6) until December 31, 2018. Alternatively, if it is determined that the IRS and Treasury do not have the authority, we request that the IRS and Treasury collaborate with Congress to delay the implementation date.

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² See [Notice 2018-08](#).

³ See Treasury Notes - [Continuing to Implement the ACA in a Careful, Thoughtful Manner](#) by Mark Mazur.

⁴ See Notices [2015-57](#), [2016-19](#) and [2016-27](#).

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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; Richard J. Locastro, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel at (301) 951-9090, rlocastro@grfcpa.com; or Ogochukwu Eke-Okoro, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9231, or ogo.eke-okoro@aicpa-cima.com.

Sincerely,



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

cc: Mr. David Horton, Commissioner, Tax Exempt & Government Entities, Internal Revenue Service
Ms. Margaret Von Lienen, Director, Exempt Organizations, Internal Revenue Service
Ms. Victoria Judson, Associate Chief Counsel (TE/GE), Office of Chief Counsel, Internal Revenue Service
Ms. Janine Cook, Deputy Associate Chief Counsel (TE/GE), Office of Chief Counsel, Internal Revenue Service
Ms. Elinor Ramey, Attorney Advisor, Office of Tax Policy, Department of the Treasury