

March 28, 2018

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Mr. Secretary:

On behalf of ASAE's 40,000 members, we appreciate the recently-updated Publication 15-B, "Employer's Tax Guide to Fringe Benefits," to assist all employers in understanding how the IRS interprets provisions in the new tax law regarding the taxability of transportation, parking and other fringe benefits.

While this document does shed new light on these provisions, it also raises more questions for tax-exempt employers who are trying to determine their unrelated business taxable income (UBTI) liability for qualified transportation fringe benefits; costs associated with any parking facility used to provide employee parking; and costs associated with any on-premises athletic facility.

Given that the new tax rules are in effect for the current year and tax-exempt employers still don't fully understand how to determine the added tax costs associated with providing certain fringe benefits, ASAE respectfully urges Treasury to delay implementation of these new rules until such time as additional guidance can be developed and shared with employers.

Like their for-profit counterparts, many tax-exempt employers offer transportation and parking benefits to employees. We understand that Section 512(a)(7) of the new law requires tax-exempt organizations to incur UBI liability if they pay directly for employees' transportation and parking benefits. However, the updated Publication 15-B confirms this rule applies to both employer subsidies paid to employees for these benefits, as well as employee deferrals through a pre-tax compensation reduction agreement. Because employees pay for transportation themselves through a payroll deduction in a pre-tax manner, tax-exempt employers have not previously viewed pre-tax compensation reduction agreements as a fringe benefit. The fact that providing a pre-tax compensation reduction agreement now has negative tax consequences for tax-exempt employers was unexpected, and will have many organizations scrambling to recalculate their tax liability for transportation and parking benefits utilized by their employees this tax year.

Obviously, absent any additional or corrective guidance, many tax-exempt employers will seek to determine if any changes could be made to their transportation and parking benefits that could help mitigate the tax consequences, but getting rid of these benefits for employees will negatively impact hiring opportunities for many tax-exempt organizations. Additionally, tax-exempt organizations of a certain staff size in some municipalities are required by law to provide these tax-free benefits to their employees. For example, the District of Columbia requires employers with more than 20 employees to provide either 1) an employee-paid pre-tax cafeteria plan; 2) an employer-paid direct benefit; or 3) employer-provided transportation. The updated

Publication 15-B does not provide any guidance for employers in jurisdictions where it is mandatory that these benefits be offered.

Additional clarity is also needed for employers that have on-premises athletic facilities. Section 512(a)(7) includes on-premises athletic facility benefit costs being reported as UBI. However, since the law was passed, practitioners have questioned whether the tax liability changes if the gym is on the property owned or leased by an employer but not operated directly by the employer.

Since passage of these sweeping tax changes in late December of last year, tax-exempt employers have been working diligently to understand the law's impact on the tax-exempt community and, in particular, what should be reported as UBI at the applicable corporate tax rates. It's clear from the confusion and volume of questions about how the new tax law impacts tax-exempt entities that we need more time and more guidance to fully understand our compliance obligations.

Thank you for your careful attention to this letter and we stand ready to meet with Treasury representatives should you have additional questions about the concerns we have raised.

Sincerely,



John H. Graham IV, FASAE, CAE
President and CEO