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May 8, 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 Immediate Guidance Regarding IRC Section 132(f) (Public Law 115-97, Section 274(a)(4))

Under the Tax Cuts and Jobs Act (Public Law 115-97), section 274(a)(4) disallows the deduction of expenses associated with the section 132(f) qualified transportation exclusion. In addition, the Act makes expenditures by tax-exempt organizations on transportation fringe benefits subject to a unrelated business taxable income (UBTI) tax of 21 percent. This is a marked departure in the UBIT statute, where tax-exempt organizations are now subject to tax on an expense as opposed to income.

As a result of this new provision, we are requesting a delay in implementation, the issuance of detailed guidance, a clear de minimis threshold, and an exemption for tax-exempts situated in localities that mandate such transportation benefits be provided.

On behalf of ASAE and the undersigned organizations, we respectfully urge Treasury to delay implementation of this provision for one year to assist tax-exempt organizations struggling to determine their UBTI liability for qualified transportation fringe benefits and costs associated with any parking facility used to provide employee parking.

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 now associated with providing certain fringe benefits, ASAE also recommends Treasury issue detailed guidance specific to tax-exempt entities and their liability under this new rule. For tax-exempt organizations with very little or no unrelated business income, treating transportation fringe benefits as UBTI will result in new reporting requirements for the first time. Even for tax-exempt organizations accustomed to reporting UBTI, they are already filing quarterly estimated taxes absent critically-needed guidance on this new tax.

For those tax-exempt employers who choose to continue to provide transportation benefits, valuation of these benefits becomes extremely difficult in certain areas, particularly rural areas. For example, an organization in a rural or suburban location that owns or leases a building and parcel of land may not charge its employees for the "free" parking. But how should that tax-exempt organization calculate its UBIT owed for the parking lot or

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parking spaces assigned to employees? What if the parking lot is open to both employees and customers/visitors? Due to this ambiguity, ASAE requests a clearly defined de minimis threshold to alleviate some of the administrative burden associated with this new tax obligation and ensure tax-exempts are in compliance.

Additionally, tax-exempt organizations of a certain size in some municipalities are required by law to provide transportation 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 benefit; 2) an employer-paid direct benefit; or 3) employer-provided transportation. Public Law 115-97 does not take into consideration these legal obligations, so tax-exempts in these localities should be granted an exemption because of their inability to avoid UBIT.

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 their sector 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 matter and we stand ready to meet should you have additional questions about these concerns.

Sincerely,

ASAE

[OTHER SIGNEES]