

## ASAE Issue Brief

### *Increase in Tax-Exempt Organizations' Unrelated Business Taxable Income: Parking & Transit Benefits for Employees*

**The American Society of Association Executives (ASAE), its 46,000 members and the UBIT Coalition urge Congress to repeal the 21-percent "income tax" on benefits that tax-exempts provide employees.**

#### **BACKGROUND**

The Tax Cuts and Jobs Act (TCJA), signed into law December 2017, created **Section 512(a)(7)** to levy a **21-percent tax on nonprofit employers who provide parking and/or transit benefits to employees**. A separate but related provision of the TCJA prohibits for-profit businesses from deducting parking and/or transit benefits provided to employees. Congressional intent at the time was for Section 512(a)(7) to ensure parity between nonprofits and for-profits. Section 512(a)(7) increases the amount of Unrelated Business Taxable Income (UBTI / UBIT) reportable by a tax-exempt organization. According to a study commissioned by Independent Sector, tax-exempt organizations will divert an average of \$12,000 annually from mission-oriented programs due to this tax and its administrative cost.<sup>1</sup>

Congress enacted UBIT in 1950 to address complaints of unfair competition with for-profit small business and to capitalize on a growing source of tax revenue. The statute was expanded in 1969 to cover all tax-exempt organizations. Under the UBIT statute, an association / nonprofit organization is required to pay tax on activities considered unrelated to its exempt purpose. An activity will likely be interpreted by the Internal Revenue Service (IRS) as unrelated to an organization's exempt purpose if it meets three requirements: it is a trade or business (i.e., conducted to produce income through the sale of goods or services); it is conducted frequently or continuously in a way comparable to that of a commercial enterprise; and it is not substantially related to the exempt purpose of the organization (i.e., it is not aimed at a goal or purpose other than simply realizing income).

The TCJA also created **Section 512 (a)(6)**, which **prohibits organizations from using losses in one unrelated trade or business to offset profits in another**. Organizations must now calculate UBIT separately for each trade or business. The Independent Sector-commissioned study indicates Section 512(a)(6) will cost impacted organizations about \$15,000 per year.

#### **UBIT COALITION**

In 2018, ASAE formed the UBIT Coalition – now with over 115 member organizations – to help advocate repeal of Sections 512(a)(6) and 512(a)(7). The Coalition meets quarterly to exchange ideas and deploy advocacy resources. In April 2019, the Coalition sent a letter with more than 600 signatories urging Congressional leadership to repeal this tax.

#### **KEY MESSAGING**

- **ASAE and the UBIT Coalition seek fair tax treatment for the association and nonprofit sectors and urge repeal of Sections 512(a)(6) and 512(a)(7).**
- In addition to the new tax, nonprofits, associations and charitable organizations must self-value benefits to determine tax liability, navigate a burdensome administrative process to file and **divert mission-oriented funds that would otherwise support communities across the country.**

<sup>1</sup> How the TCJA's New UBIT Provisions Will Affect Nonprofits. Independent Sector/Urban Institute. January 2019. Available at <https://independentsector.org/resource/research-on-ubit-provisions-in-2017-tax-cuts-and-jobs-act/>.

- In June 2019, the Economic Mobility Act (H.R. 3300), which includes repeal of Section 512(a)(7), passed the House Ways & Means Committee.
- **Historically, UBIT statute applied to revenue sources – money coming in. For the first time, however, the TCJA applies UBIT to an expenditure – money going out – for employee benefits.**
- There are more than 62,000 trade and professional organizations nationwide.
- There are more than 1.3 million 501(c)(3) religious and charitable organizations nationwide.<sup>2</sup>
- Nonprofit organizations employ 12.5 million Americans / 10.2 percent of the private workforce.<sup>3</sup>
- According to the IRS, “most charitable nonprofits are relatively small: 97 percent have budgets of less than \$5 million annually, 92 percent operate with less than \$1 million per year and 88 percent spend less than \$500,000 annually for their work.”<sup>4</sup>

## LEGISLATION

Several bills in Congress would repeal Sections 512(a)(7) and/or 512(a)(6):

<b>Lessen Impediments from Taxes (LIFT) for Charities Act (H.R. 1545 / S. 632)</b>	
<b>Lead Sponsor(s)</b>	Reps. Mark Walker (R-NC) & Tom Suozzi (D-NY) / Sens. James Lankford (R-OK) & Chris Coons (D-DE)
<b>Summary</b>	Repeal Section 512(a)(7)
<b>Status</b>	Referred to House Ways & Means Committee / Senate Finance Committee
<b>Stop the Tax Hike on Charities and Places of Worship Act (H.R. 1223 / S. 501)</b>	
<b>Lead Sponsor(s)</b>	Rep. James Clyburn (D-SC) / Sen. Sherrod Brown (D-OH)
<b>Summary</b>	Repeal Section 512(a)(7) and increase the corporate tax rate by .03% (H.R. 1223) and 1% (S. 501)
<b>Status</b>	Referred to House Ways & Means Committee / Senate Finance Committee
<b>Nonprofits Support Act (H.R. 513)</b>	
<b>Lead Sponsor(s)</b>	Rep. Mike Conaway (R-TX)
<b>Summary</b>	Repeal Section 512(a)(7) and Section 512(a)(6), which requires organizations to compute unrelated business taxable income separately for each trade or business
<b>Status</b>	Referred to House Ways & Means Committee
<b>Preserve Charities and Houses of Worship Act (S. 1282)</b>	
<b>Lead Sponsor(s)</b>	Sens. Ted Cruz (R-TX) & Jeanne Shaheen (D-NH)
<b>Summary</b>	Repeal Section 512(a)(7) and Section 512(a)(6)
<b>Status</b>	Referred to Senate Finance Committee
<b>Economic Mobility Act (H.R. 3300)</b>	
<b>Lead Sponsor(s)</b>	Rep. Richard Neal (D-MA) – Chair, House Ways & Means Committee
<b>Summary</b>	Repeal Section 512(a)(7), among other provisions
<b>Status</b>	Approved by House Ways & Means Committee on June 20, 2019

## RESOURCES

1. [Independent Sector report](#) (January 2019)
2. [UBIT Coalition letter to Congress](#) (April 2019)
3. [ASAE Congressional testimony](#) (June 2019)
4. [Joint Committee on Taxation Overview of Section 512\(a\)\(7\)](#) (June 2019)

<sup>2</sup> IRS Data Book 2018; North American Industry Classification System (NAICS); U.S. Census Bureau

<sup>3</sup> Research Data on the Nonprofit Sector, 2017 Annual Averages. U.S. Bureau of Labor Statistics. March 2019. Available at <https://www.bls.gov/bdm/nonprofits/nonprofits.htm>.

<sup>4</sup> Business Master Files, Revenue Transaction Files and Electronic (e-File) Form 990 returns for fiscal year 2016. Internal Revenue Service. June 2018. Available at <https://www.irs.gov/e-file-providers/e-file-for-charities-and-non-profits>.