BusinessManagement DAILY

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Salt and pepper on agenda at IRS hearing on SALT regs

Nonprofits still jammed over parking benefits

The IRS held a hearing Nov. 5 on the proposed regulations that would implement the Tax Cuts and Jobs Act's $10,000 cap on state and local tax deductions—so-called SALT deductions. The proposed regs have not gone over well with states, and surprisingly, it's not just "blue states" such as New York, New Jersey and Connecticut that object.

Here's our semi-regular feature updating the TCJA.

Proposed SALT regs

Some states (we're looking at you New York and New Jersey) enacted laws that allow residents to skirt the SALT limitation by making charitable contributions to public funds in virtually the same amount as their state taxes. Donors receive a state tax credit in the amount of their contributions.

The advantage: Charitable contributions are still 100% deductible on a 1040.

The proposed regs would shut that down, by requiring taxpayers to reduce their federal deduction for charitable contributions by the amount of any state tax credit received. The regs would also provide exceptions for dollar-for-dollar state tax deductions, tax credits of not more than 15% percent of contributions or of the fair market value of the property transferred and for contributions made by businesses.

New York Gov. Andrew Cuomo made the predictable move of blasting the regs and calling for an investigation by the Treasury Inspector General for Tax Administration into whether the IRS politicized the regs.

What wasn't anticipated was that objections would be heard from some conservative "red states," precisely because the reduction in charitable contributions could impact state or charitable programs:

- The Montana Nonprofit Association wants the IRS to carve out an exception for state and local tax credit programs that require gifts to be made to a qualified permanent endowment. It wants an exception for tax credit programs that were in existence before Jan. 1, 2018
- The North Dakota Association of Nonprofit Organizations wants the IRS to narrow the regs to apply only to charitable contributions made to government entities. It also wants an exception for tax credit programs that were in existence before Jan. 1, 2018
- Lawmakers from Georgia are concerned that the regs would jeopardize state programs that rely on tax credits. They want an exception for programs that weren't intended to thwart the $10,000 cap, so donors don't have their federal taxes raised.

UBIT for nonprofits

Nonprofits may be liable for unrelated business income taxes—UBIT. The TCJA revises the definition of unrelated

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business taxable income to include qualified transportation fringe benefits, including employer-provided parking. There are three problems with this provision:

1. Nonprofits have never viewed pretax deductions as an employer expense.
2. It's not clear whether the excise tax applies to the value employees derive from the benefit (which could be $0) or the cost to the employer, and the two may be very different.
3. Nonprofits that never had any unrelated business income must now file Form 990-T.

The IRS has yet to release any guidance, but it has released a draft Form 990-T and instructions.

Good news: According to the draft instructions, nonprofits that are required to file Form 990-T only because they have unrelated business taxable income in excess of $1,000 for expenses related to qualified transportation fringe benefits must complete the following parts of the form:

- The heading (above Part I) except C, E, H and I
- Part III and IV (complete only the relevant lines)
- Signature area.