

Part III – Administrative, Procedural, and Miscellaneous

Relief from Additions to Tax for Underpayment of Estimated Income Tax for Tax-Exempt Organizations That Provide Certain Qualified Transportation Fringes

Notice 2018-100

This notice provides certain tax-exempt organizations a waiver of the addition to tax under section 6655 of the Internal Revenue Code (Code) for underpayment of estimated income tax payments required to be made on or before December 17, 2018, to the extent the underpayment of estimated income tax results from the changes to the tax treatment of qualified transportation fringes under sections 13304(c) and 13703 of “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018” (the Act). Pub. L. No. 115-97, 131 Stat. 2054. This relief applies to a tax-exempt organization that (1) provides qualified transportation fringes (as defined in section 132(f)) to an employee for which estimated income tax payments, affected by changes to sections 274 and 512 under the Act, would otherwise be required to be made on or before December 17, 2018, and (2) was not required to file a Form 990-T, Exempt Organization Business Income Tax Return, for the taxable year preceding the organization’s first taxable year ending after December 31, 2017. This relief is limited to tax-exempt organizations that timely file

Form 990-T and timely pay the amount reported for the taxable year for which relief is granted.

BACKGROUND

Generally, the Code requires taxpayers to pay federal income taxes as they earn income. To the extent these taxes are not withheld, a taxpayer must pay estimated income tax on a quarterly basis.

Subsections 6655(c) and (d)(1)(A) of the Code generally provide that, in the case of a corporation, private foundation, private foundation organized as a trust, or tax-exempt organization, estimated income tax is required to be paid in four installments and the amount of any required installment is 25 percent of the required annual payment. Generally, under section 6655(d)(1)(B), the required annual payment is the lesser of (i) 100 percent of the tax shown on the return for the taxable year or (ii) 100 percent of the tax shown on the taxpayer's return for the preceding taxable year, so long as the preceding taxable year was a full twelve months long. However, section 6655(d)(1)(B)(ii) shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax. Under section 6655(e), the amount of the required installment is the annualized income installment or adjusted seasonal installment for those taxpayers who establish that such amount is lower than 25 percent of the required annual payment determined under section 6655(d). Section 6655(a) imposes an addition to tax for failure to make a sufficient and timely payment of estimated income tax.

On December 22, 2017, the Act amended the Code. Among other things, the Act affected employers who provide qualified transportation fringes to employees. Under section 274(a)(4), added by section 13304(c) of the Act, employers may no longer deduct expenses for qualified transportation fringes provided to employees. Section 13304(c) of the Act also added section 274(l), which disallows deductions for transportation and commuting benefits except as necessary for ensuring the safety of the employee. Section 274(l)(2) provides that deductions for qualified bicycle commuting reimbursements (as described in section 132(f)(5)(F)) are not disallowed by section 274(l)(1) for any amounts paid or incurred after December 31, 2017, and before January 1, 2026. Section 274(a)(4) does not disallow deductions for qualified bicycle commuting reimbursements during the same period because section 132(f)(8) suspends their exclusion from gross income for any taxable year beginning after December 31, 2017 and before January 1, 2026. Thus, for the suspension period, qualified bicycle reimbursements are not qualified transportation fringes.

Under section 512(a)(7), added by section 13703 of the Act, tax-exempt organizations must increase unrelated business taxable income (UBTI) by any amount for which a deduction is not allowable by reason of section 274 and which is paid or incurred for any qualified transportation fringes (as defined in section 132(f)) and any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)). (While new section 512(a)(7) also mentions on-premises athletic facilities, the Act did not include a corresponding change to section 274; accordingly, a deduction for expenses paid or incurred for on-premises athletic facilities is disallowed due to application of section 274 only if it discriminates in favor of highly compensated

employees. See IRC § 274(e)(4). This Notice does not address the possibility of estimated tax payments of UBTI related to discriminatory on-premises athletic facilities.) These provisions are effective for amounts paid or incurred after December 31, 2017.

TRANSITIONAL RELIEF FOR UNDERPAYMENT OF ESTIMATED INCOME TAX

Enactment of section 512(a)(7) may result in tax-exempt organizations owing unrelated business income tax and having to pay estimated income tax for the first time. These taxpayers would not be eligible to use the safe harbor in section 6655(d)(1)(B)(ii) to calculate the required annual payment of estimated income tax on the basis of the tax shown on the return for the taxpayer's preceding taxable year and may need additional time to develop the knowledge and processes to comply with estimated income tax payment requirements. Accordingly, in the interest of sound tax administration, the addition to tax under section 6655 for failure to make estimated income tax payments otherwise required to be made on or before December 17, 2018, is waived for certain tax-exempt organizations that provide qualified transportation fringes (as defined in section 132(f)) and any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)) to an employee to the extent that the underpayment of estimated income tax results from enactment of section 13304(c) and section 13703 of the Act. This relief is available only to any tax-exempt organization that was not required to file a Form 990-T for the taxable year immediately preceding the organization's first taxable year ending after December 31, 2017. This relief is limited to tax-exempt organizations that timely file Form 990-T and timely pay the amount reported for the taxable year for which relief is granted. Taxpayers who do not qualify for relief under this notice may avoid an addition to tax for underpayment of estimated

income tax if they meet one of the statutory safe harbor or exception provisions under section 6654 or section 6655 of the Code.

To claim the waiver under this notice, the tax-exempt organization must write “Notice 2018-100” on the top of its Form 990-T.

Simultaneous to the publication of this Notice, Notice 2018-99 is being published which provides interim guidance for taxpayers to determine the amount of parking expenses for qualified transportation fringes that is nondeductible under section 274(a)(4) of the Code and for tax-exempt organizations to determine the corresponding increase in the amount of UBTI under section 512(a)(7) attributable to the nondeductible parking expenses.

CONTACT INFORMATION

The principal author of this notice is Michael A. Franklin of the Office of the Associate Chief Counsel (Procedure and Administration). For further information, please contact Mr. Franklin at (202) 317-6844 (not a toll-free number).