SEILER LLP
CERTIFIED PUBLIC ACCOUNTANTS

TAX ALERT

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Further Consolidated Appropriations Act of 2020 Provisions Impacting Tax-Exempt Organizations

On December 20, 2019, the President signed into law the "Taxpayer Certainty and Disaster Tax Relief Act of 2019" (the "Disaster Relief Act") as part of the Further Consolidated Appropriations Act, an omnibus spending package that funds the government through September 2020. The following excerpted provisions affect tax-exempt organizations.

Modification of excise tax on private foundations

Private foundations are subject to a 2% excise tax on net investment income, which could be reduced to 1% if the private foundation's qualifying charitable distributions (measured as a percentage of its investment assets) in a given year exceeded the private foundation's average payout rate over the preceding five years.

The Disaster Relief Act modifies the private foundation excise tax rules by replacing the current two-tiered system (2% or 1%) with a flat 1.39%. This modification intends to encourage private foundations to make larger one-time grants, such as in the case of disaster relief. The flat 1.39% rate applies to tax years beginning after December 20, 2019 or 2020 for calendar year taxpayers.

Repeal of the unrelated business income tax on parking and transit benefits

The Disaster Relief Act also retroactively repealed IRC Section 512(a)(7), which was enacted as a part of the Tax Cuts and Jobs Act of 2017, known as the "parking tax." The law originally required the unrelated business taxable income (UBTI) of tax-exempt organizations to be increased by expenses related to qualified transportation fringe benefits such as parking and public transit benefits provided by tax-exempt employers.

This imposed a 21% tax for tax-exempt public benefit corporations on parking and transit benefits made available to their employees, even if the employees paid for those benefits themselves through pretax salary reductions. It also applied even if local law (such as imposed by the City of San Francisco) mandated that employers provide those benefits.

The Disaster Relief Act retroactively repeals IRC Section 512(a)(7) as if it were never enacted. As such, tax-exempt organizations that paid the parking tax (on parking and transit benefits paid or incurred after December 31, 2017) may have federal and state refund claim opportunities. Tax-exempt organizations may claim a federal refund or credit attributable to the parking tax paid by filing an amended Form 990-T. Instructions and information is available at www.irs.gov/forms-pubs/how-to-claim-a-refund-or-credit-of-unrelated-business-income-tax-ubit-or-adjust-form-990-t-for-qualified-transportation-fringe-amounts. Organizations should check they state law before filing a state refund claim, as some states have not conformed to the repeal.

Although the new law repealed the "parking tax", tax exempt organizations are still not allowed to deduct expenses of providing qualified transportation fringe benefits to its employees against unrelated business income when the deduction would otherwise be allowable were it directly connected with the carrying on of an unrelated trade or business.

Temporary suspension of deduction limitations for charitable contributions for disaster relief

The Disaster Relief Act temporarily suspends the charitable deduction limitations for charitable donations associated with qualified disaster relief. This special treatment applies to contributions made in 2018 and 2019, as well as contributions made within 60 days after passage of the Act (December 20, 2019). Donors will be able to deduct the full amount of these contributions, even if the contribution amount exceeds the 60% adjusted gross income limitation for individuals or the 10% taxable income limitation for corporations. In order to claim the full deduction, donors must obtain acknowledgement from the charity that the donation was used or will be used for disaster relief purposes.

Action Required

Tax-exempt organizations should follow up with their Seiler tax advisor to confirm whether any of these changes impact your financial strategy.