

December 23, 2019

Congress Repeals Nonprofit “Parking Tax” and Provides for Single-Tier Excise Tax on Private Foundation Net Investment Income

As part of a year-end consolidated appropriations act signed into law on December 20, 2019, Congress acquiesced to heavy criticism leveled by the nonprofit sector and retroactively repealed section 512(a)(7), which had been added to the Internal Revenue Code as part of the tax reform legislation enacted at the end of 2017. This section, which had left tax-exempt organizations scratching their heads for nearly two years, would have subjected tax-exempt employers to taxation on costs incurred to provide employees with qualified parking and other qualified transportation fringe benefits by treating such expenses as unrelated business taxable income (“UBTI”). The repeal is effective retroactive to December 22, 2017, meaning that any organization that incurred UBTI as a result of section 512(a)(7) should be eligible to seek a refund. Unclear at the moment is whether the IRS will establish a separate, consolidated refund process for claims attributable to section 512(a)(7). In the meantime, we can all rest easy knowing that parking is once again free, and that “income” for UBTI purposes really means income and not expenses.

The year-end act also simplifies the excise tax on private foundation net investment income under Code section 4940. Effective for taxable years beginning after December 20, 2019, a new single-tier excise tax of 1.39 percent of net investment income replaces the existing two-tier structure, which imposed a 2 percent tax on net investment income which could be reduced to 1 percent if the private foundation met certain distribution requirements during a five-year measuring period.

If you have any questions about the repeal of section 512(a)(7) or the changes to the private foundation net investment income excise tax, please contact a member of the tax-exempt organizations practice.