College and University Professional
Association for Human Resources

May 21, 2018

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

David Kautter
Acting Commissioner
Internal Revenue Service
111 Constitution Avenue, NW
Washington, DC 20224

Submitted electronically at: https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications

Re: Urgent Request to Delay Implementation of the New UBTI Provisions in Public Law No. 115-97

Dear Secretary Mnuchin and Commissioner Kautter:

I write on behalf of the College and University Professional Association for Human Resources (CUPA-HR) to express our concerns with implementation of new unrelated business income tax provisions in Public Law No. 115-97 (H.R. 1, the Tax Cuts and Jobs Act, or TCJA) enacted in December 2017. CUPA-HR shares the concerns set forth in recent comments and letters filed by the National Association of College and University Business Officers (NACUBO), the American Society of Association Executives, the National Council of Nonprofits, and the American Institute of Certified Public Accountants. We request that the Department of Treasury and the IRS delay implementing Section 512(a)(7), Increase in Unrelated Business Taxable Income (UBTI) by Certain Disallowed Fringe Benefits, and Section 512(a)(6), Requirement to Compute UBTI Separately for Each Trade or Business, until one year after Final Rules are promulgated.

CUPA-HR serves as the voice of human resources in higher education, representing more than 25,000 human resources professionals and other campus leaders at over 2,000 colleges and

universities across the country, including 93 percent of all United States doctoral institutions, 78 percent of all master's institutions, 53 percent of all bachelor's institutions, and 500 two-year and specialized institutions.

Section 512(a)(7), Increase in Unrelated Business Taxable Income (UBTI) by Certain Disallowed Fringe Benefits

Under the TCJA, beginning January 1, 2018, the federal government will levy a 21 percent tax on tax-exempt and taxable organizations alike. The tax covers, among other things, the value of any qualified transportation fringe benefit provided on a pre-tax basis to employees. Unfortunately, we have not yet received any detailed guidance from the IRS on this provision, and understand that guidance is not expected to be issued until halfway through the tax season.

Colleges and universities offer a wide range of transportation benefits to their employees across the country, and often to students and the community. In many cases, these arrangements create great value to the public good by offering a much-needed service, reducing traffic and improving local air quality.

The new requirements under IRC Section 512(a)(7) have raised many complex questions and created uncertainty for higher education institutions as to what the IRS considers an amount "paid or incurred" for a qualified transportation benefit. Making a reliable determination regarding the amount of taxable benefits is simply not possible without further guidance from the IRS. Recent comments from IRS officials have also raised questions about the extent to which the tax applies to amounts employees voluntarily set aside from their salaries through a pre-tax qualified plan to pay for their own commuting expenses. Confusion also exists over how mandated commuter benefits, like in New York City and Washington, D.C., should be treated.

Section 512(a)(6), Requirement to Compute UBTI Separately for Each Trade or Business

Under Section 512(a)(6), the TCJA now requires organizations "with more than one unrelated trade or business" to compute their unrelated business income "separately with respect to each such trade or business." Yet, the agency offers no definition of what constitutes a "trade or business" in this context or how they will interpret "computed separately." This has created significant uncertainty and has left organizations with many questions about how they should properly document, compute and report incomes and losses.

The IRS Should Delay Implementing UBTI Requirements Until 1 Year After Rules Are Finalized

For legal, policy and practical reasons, and consistent with established precedent, the Department of Treasury and the IRS should immediately delay implementing the two new UBTI subsections, retroactive to January 1, 2018, until one year after Final Rules are promulgated to provide both the necessary official guidance for compliance and a reasonable transition period for colleges and universities to develop the necessary recordkeeping systems.

Without guidance from the IRS on how to deal with these new provisions, higher education institutions will struggle to comply and risk errors that could lead to over-payment or under-

payment. A delay of this tax that is retroactive to January 1 followed by detailed guidance that doesn't take effect for one year is crucial for the higher education community. Schools cannot comply with the new law without clear guidance and sufficient time to transition. We look forward to working with you on these matters.

Sincerely,

Christi Layman

Christi Layman
Government Relations Manager
College and University Professional Association for Human Resources

Cc:
Ms. Sunita Lough, Commissioner, TE/GE, Internal Revenue Service
Ms. Janine Cook, IRS Deputy Associate Chief Counsel, TE/GE, Internal Revenue Service
Ms. Vicki Judson, Associate Chief Counsel, TE/GE, Internal Revenue Service
Ms. Elinor Ramey, Attorney-Advisor, Office of Tax Policy, U.S. Department of the Treasury