



# Updates and planning tips for the tax-exempt industry

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# Disclaimer

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The information provided herein is educational in nature and is based on authorities that are subject to change. You should contact your tax adviser regarding application of the information provided to your specific facts and circumstances.

# Your presenters

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# Agenda

- Current Events
- Changes for 2020 Tax Forms
- E-filing Mandates
- Tax Reform
  - Overview
  - Section 512(a)(7) - Disallowed Fringe Benefit Expenses
  - Section 512(a)(6) - Unrelated Business Taxable Income Siloing
  - Section 4960 - Excise tax on excess compensation
- Covid-19 Relief Provisions
  - Overview
  - Employee Payroll Retention Credit
  - Employer Social Security Payroll Tax Deferral
  - NOL Carryback

# Current Events

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## EO Statistics Provided by EO Division Director Margaret Von Lienen

- EO Rulings & Agreements received 101,000 applications for tax-exempt status and closed over 96,000 applications
- EO Examinations completed 3,240 examinations
  - Completed 374 compliance strategy examinations  
83% change rate
  - Completed 1,508 data driven examinations  
90% change rate
  - Completed 1,358 referrals, claims and other casework examinations  
87% change rate
- EO Compliance Unit completed 1,467 compliance checks



# Hot Topics

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## Electronic Signatures

### Aug. 27, 2020 memorandum from Department of Treasury

- Waived requiring handwritten signatures for certain forms signed and postmarked Aug. 28, 2020 - Dec. 31, 2020
- [https://www.irs.gov/pub/irs-utl/osee\\_e\\_wet\\_signature-deviation\\_8\\_27\\_2020.pdf](https://www.irs.gov/pub/irs-utl/osee_e_wet_signature-deviation_8_27_2020.pdf)

## Automatic Revocation

### Oct. 26, 2020 News Alert: “Information about Automatic Revocation and Filing Extensions Provided by Notices 2020-23 and 2020-35”

IRS extended filing dates from April 1 through July 14 to July 15, 2020, by Notices 2020-23 and 2020-35.

- Due to systemic limitations, IRS was unable to update this deadline in the program that automatically issues notices of revocation. This caused some revocation notices to be issued prematurely. (issued if fail to file Form 990 3 consecutive years).
  - IRS prevented eligible organizations that attempted to file electronically by July 15 from being listed as automatically revoked on IRS.gov
  - IRS is processing paper filings which allow the reversal of auto-revocation for those filers.
  - IRS is corresponding with organizations that received premature notices.
  - IRS dedicated fax number 855.247.6123 to receive correspondence from affected organizations

# Changes for 2020 Tax Forms

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- The IRS has released the 2020 draft Form 990, 990-PF and 990-T.
  - 990 – No substantial changes to the core form.
  - 990-PF – With the change in tax rate to a flat 1.39%, Part V of the Form 990-PF has been redacted on the 2020 draft.

Part I, line 8				3	
<b>Part V Qualification Under Section 4940(e) for Reduced Tax on Net Investment Income</b>					
<b>SECTION 4940(e) REPEALED ON DECEMBER 20, 2019 – DO NOT COMPLETE.</b>					
<b>1</b>	Reserved	(a) Reserved	(b) Reserved	(c) Reserved	(d) Reserved
	Reserved				
<b>2</b>	Reserved			2	

# Changes for 2020 Tax Forms

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- 990-T – Although the 2018 Form 990-T was updated for the silo-ing provision and introduced Schedule M, the 2020 Form 990-T has been further updated with silo-ing in mind and for the upcoming mandatory e-filing.
  - Total UBTI now be calculated on page 1.
  - New Schedule A to replace Schedule M for all activity silos.

**SCHEDULE A**  
(Form 990-T)

**Unrelated Business Taxable Income  
From an Unrelated Trade or Business**

► Go to [www.irs.gov/Form990T](http://www.irs.gov/Form990T) for instructions and the latest information.  
► Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

OMB No. 1545-0047  
**2020**  
Open to Public Inspection for  
501(c)(3) Organizations Only

A Name of the organization	B Employer identification number			
C Unrelated business activity code (see instructions) ►	D Sequence: of			
E Describe the unrelated trade or business ►				
Part I Unrelated Trade or Business Income		(A) Income	(B) Expenses	(C) Net
1a Gross receipts or sales		c Balance ►	1c	
b Less returns and allowances			2	
2 Cost of goods sold (Part III, line 8)			3	
3 Gross profit. Subtract line 2 from line 1c				

**DRAFT AS OF  
August 28, 2020**

# Taxpayer First Act – New Exempt Organization E-Filing Requirements Coming

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- The Taxpayer First Act, enacted July 1, 2019, requires tax exempt organizations to electronically file information returns and related forms.
  - Requires the agency to:
    - 1) Develop a comprehensive customer service strategy,
    - 2) Modernize its technology, and
    - 3) Enhance its cyber security.
- The new law will begin to affect tax exempt organizations in tax years beginning after July 1, 2019, however, the IRS is estimating that it will not be until 2021 that they are able to accept electronically filed Forms 990-T.



# Tax Reform

# Tax Cuts and Jobs Act: Major Provisions Impacting Exempt Organizations

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- Public Law 115-97 (the “2017 Tax Act”) was enacted including provisions impacting exempt organizations....including, but not limited to, the following:

★	Section 512(a)(7)	UBTI increased by disallowed fringe benefit expenses
★	Section 512(a)(6)	“Silo-ing” of Unrelated Business Income Activities
★	Section 4960	Excise Tax on Excess Compensation
	Section 172(a)	Section 172(a) amended to limit deductions post 2017 to 80% and eliminate NOL carryover.
	Section 4968	Excise tax on investment income of educational institutions

# UBTI – Disallowed Fringe Benefit Expenses

Section 512(a)(7)

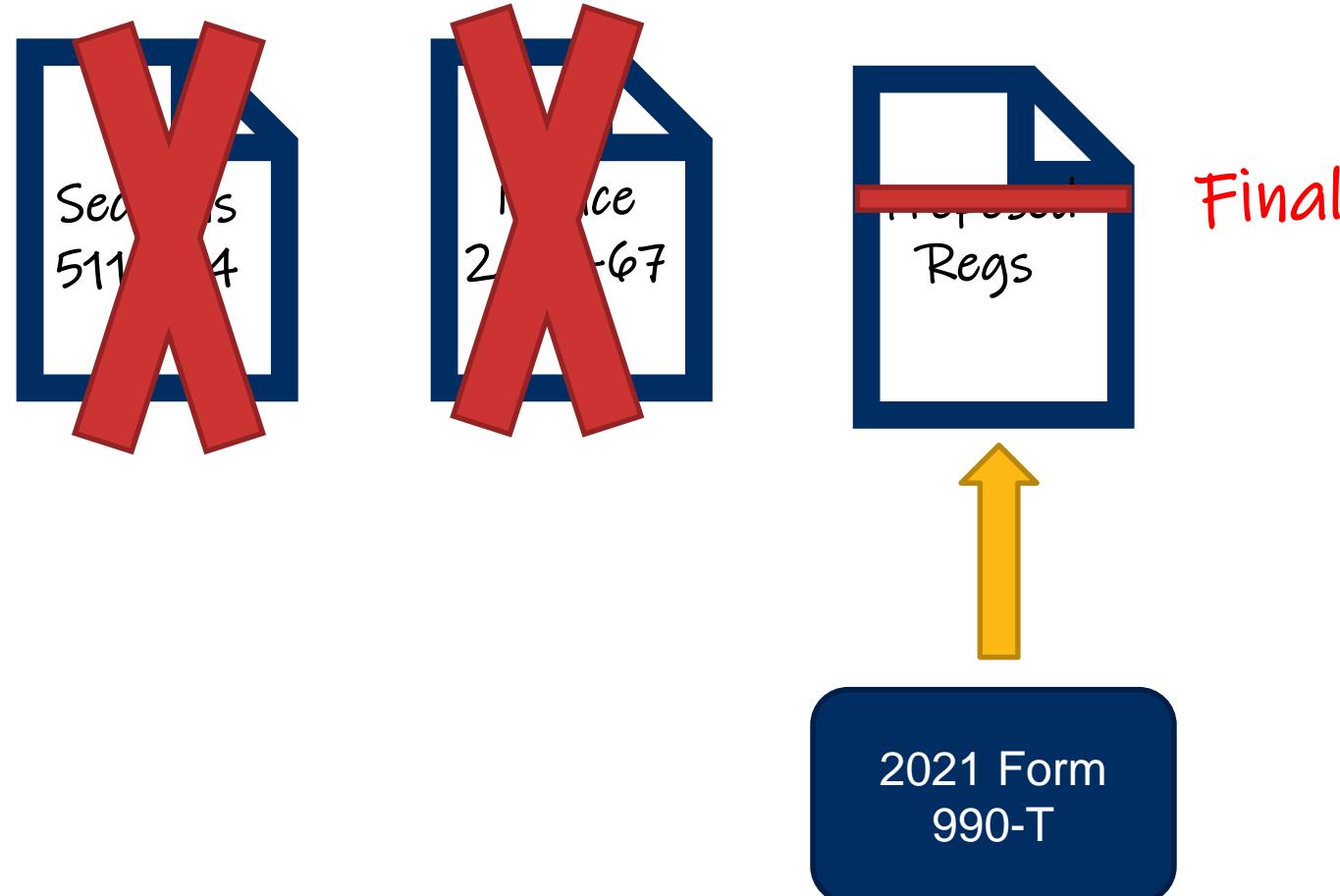
- Required an increase in unrelated business income by amounts incurred by the organization in providing fringe benefits to its employees. “Parking Tax”
- Effective Date: Expenses incurred after December 31, 2017. *Repealed December 20, 2019*
- Guidance - [How To Claim a Refund or Credit of UBI for QTF](#)
- Impacted Filings: Forms 990-T
  - 2017 (partial periods for fiscal year filers)
  - 2018
  - 2019 Estimated Tax Payments
- Other Considerations & Planning
  - Refund Status
  - Deadline for Amending
  - Coupled Affect of Other Provisions

- Requires an exempt organization with more than one unrelated trade or business to compute UBTI separately with respect to each unrelated trade or business.
- Effective Date: Tax years beginning after December 31,2017
- Guidance:
  - Notice 2018-67 – August 2018
  - Proposed Regulations – April 2020
  - Final Regulations – November 2020
- Impacted Filings: Forms 990-T
  - 2018 (Revised Form 990-T, Schedule M)
  - 2019
  - 2020 (Revised Form 990-T, Schedule A)

# Unrelated Business Taxable Income Siloing

Section 512(a)(6)

- Other Considerations & Planning
  - Regulations Finalized – Impact



## Final Section 512(a)(6) Regulations

- Issued November 20, 2020
- Retain the use of the 2-digit NAICS codes
- Retain the 2% de minimis test threshold for QPIs
- Retain
- the “Participation Test” – formerly the “Control Test”
  - i. Directly holds no more than 20 percent of the capital interest; AND
  - ii. Does not have control over the partnership.

## Final Section 512(a)(6) Regulations (Cont.)

- Gross to Gross Method not permitted in allocating expenses among related and unrelated activities unless:
  - No price difference exists between good or services provided in related and unrelated activities or
  - Adjustments are made to account for price differences.
- Charitable Contributions, Pre-2018 NOLs & Specific Deduction
  - Provide these are the only deductions allowed after arriving at total UBTI.

## Final Section 512(a)(6) Regulations (Cont.)

- NOLs
  - Retain that Pre-2018 NOLs must be utilized before Post-2017 NOLs
  - Pre-2018 NOLs are taken against the total UBTI in a manner that allows for the maximum utilization of post-2017 NOLs, rather than pre-2018 NOLs.
    - For example: An exempt organization may allocate all of its pre-2018 NOLs to one of its solos or it may allocate its pre-2018 NOLs ratably among each silo.
      - Whichever results in the greater utilization of the post-2017 NOLs.
    - Additional guidance expected for how changes made to section 172 (NOL carrybacks) affect section 512(a)(6).

# Excise tax on excess compensation

Section 4960

- Imposes a 21% excise tax on remuneration to a covered employee in excess of \$1 million and any excess parachute payment.
- Effective: Tax Years beginning after December 31, 2017
- Guidance:
  - Notice 2019-09
  - Proposed 512(a)(6) Regulations
  - Final Regulations – Expected
- Impacted filings: Forms 4720 & Form 990
  - 2018 (short periods for fiscal year filings)
  - 2019
- Other Considerations & Planning
  - Final regulations expected



# Covid-19 Relief Provisions

# Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

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## Paid FMLA & Paid Sick Leave

Obligates employers (fewer than 500 employees) to provide COVID-19-related protections and paid leave under FMLA and EPSLA.

## Employee Retention Credit

Credit against employer 6.2% SS for organizations who experienced a significant decline in gross receipts or were subject to a government shut down order.

## Loan Program for Retaining Employees

Establishes a SBA Paycheck Protection Program to provide gvt. loans for eligible businesses (fewer than 500 employees) that maintain certain employment and employee wages.



## Employer Payroll Tax Deposit Deferral

Permits employers to defer the due date for employer 6.2% Social Security tax.



## Net Operating Loss (NOL) Carrybacks

Restores NOL carrybacks that were eliminated by 2017 TCJA.

- Elective, refundable, advanceable credit against employer 6.2% SS tax due each quarter for organizations who experienced a significant decline in gross receipts or were subject to a government shut down order.
- Covered period: March 13, 2020 through Dec. 31, 2020
- Guidance: [FAQs: Employee Retention Credit under the CARES Act](#)
- Impacted Filings: Forms 941
  - 2020 Quarters 2, 3 & 4
- Other Considerations & Planning
  - Adequate Documentation/IRS Audit Defense Package
  - Amend a previous quarter

# CARES Act Employer Social Security Tax Deferral

Employer Payroll Tax  
Deferral

- Permits deferral of deposit of employer 6.2% SS tax payment.
- Covered period: March 27, 2020 through December 31, 2020
- Guidance: [Deferral of Employment Tax Deposits and Payments Through December 31, 2020](#)
- Impacted Filings: Forms 941
  - 2020 – Quarters 2, 3, and 4
- Other Considerations & Planning
  - 50% of deferred tax due December 31, 2021.
  - Remaining 50% of deferred tax Due December 31, 2022.

# Net operating loss (NOL) carrybacks

NOL Carrybacks

- Temporarily restores NOL carrybacks that were eliminated by TCJA for businesses and individuals and temporarily removes the 80% limitation on the use of post-2017 NOLs through 2020 tax year.
- Effective: Tax years 2018, 2019, 2020
- Guidance: [FAQs - Carryback of NOLs by Certain Exempt Organizations](#)
- Impacted Filings: Forms 990-T
  - 2013-2020 (5 year carryback)
- Other Considerations & Planning
  - 2020 Losses may be carried back.

# Net operating loss (NOL) carrybacks

## NOL Carrybacks



	Reference Lab	Laundry Services	Total Unrelated Business Taxable Income	NOL Carryforward
Prior to Silo Rules	\$400,000	(100,000)	300,000	-
Silo Rules	\$400,000	(100,000)	400,000	100,000

Carried Forward  
Indefinitely

# Net operating loss (NOL) carrybacks

## NOL Carrybacks

2018 NOL -  
\$100,000



Tax Year 2013  
2018 NOL  
Revised 2013

Total  
Unrelated  
Business  
Taxable  
Income

\$ 200,000
<u>(100,000)</u>
100,000

Tax at  
Graduated  
Rates

\$ 61,250
22,250

Estimated Tax Refund \$ 39,000

# Thank you

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