



Feb. 22, 2019

Internal Revenue Service

CC:PA-LPD:PR (Notice 2018-99) Room 5203

P.O. Box 7604 Ben Franklin Station, Washington, DC 20044

RE: Notice 2018-99

To whom it may concern:

I am commenting on behalf of Colorado Nonprofit Association and our 1,400 nonprofit member organizations on the Request for Comments from the Treasury Department and Internal Revenue Service published in Notice 2018-99 on December 10, 2018. Most of our members have annual budgets less than \$1 million and fewer than 10 employees.

We are pleased that the IRS is taking steps to provide guidance on how nonprofits can comply with this transportation fringe benefits tax established by the 2017 Tax Cuts and Jobs Act. Nonprofits became liable for the tax in January of 2018 and it has taken more than 11 months for guidance to be issued. We hope this will be the first step toward clarifying how nonprofits comply with this part of the new tax law.

To summarize, notice 2018-99 provides the following instructions:

- Indicates that the tax applies to employer expenses rather than the value of the benefit to employees. This is likely helpful to employers but taxable expenses may include compensation of parking lot staff, removal of snow and ice, lease or property taxes, etc. These expenses are not easy to separate from total operational expenses and will require analyses to determine whether the employer has sufficient unrelated business tax liability.
- Designated or reserved employee parking signs will trigger taxes unless the signs are taken down by March 31, 2019.
- Nonprofits may have to pay accounting fees to determine if parking is clearly public and to allocate expenses appropriately.
- Although the \$1,000 threshold applies, not every nonprofit with parking facilities will be required to file with the IRS. Calculating the expenses to determine whether taxes are owed will likely cost more than the exemption.

This new federal income tax on nonprofits' expenses imposes costs and administrative burdens on nonprofits, which takes resources away from carrying out their charitable missions and recruiting and retaining employees. The IRS ought to help alleviate the negative impacts of this flawed public policy.

The IRS should delay implementation until after the rulemaking is finished. We ask the IRS to delay implementation until one year after final regulations are promulgated. This includes making this delay retroactive to January 1, 2018 and waiving late penalties that have accrued since that date. Given that several Congressional bills seek to repeal this policy, a one-year delay would not only



allow time to let the legislative process play out but give nonprofits time to prospectively prepare for compliance rather than reporting retroactively. The latter means nonprofits would need to change their bookkeeping and calculate taxes from a retroactive perspective.

The rules do not address transit passes. Many Colorado nonprofits pay for bus, light rail, or other transit passes for employees. The rulemaking does not address how nonprofits should handle these expenses or provide any relief for the lack of guidance to date.

Taxes should not be applied to agreements by employees to reduce their compensation via pre-tax plans to pay for commuting expenses. These agreements are not traditionally considered fringe benefits and it would be difficult for employers to make changes mid-year if the rules are not delayed. It's likely that many employers would drop these plans due to the prospect of a tax penalty. It's also unfair to tax employees on their voluntary decisions to reduce their own compensation to save on their transportation costs.

It's unfair to tax nonprofits for providing transportation benefits that are required or encourage by local laws. We ask the IRS to state that employers providing transportation or commuter benefits under compulsion of law are exempt from this tax. This policy discourages cities and counties from having laws that encourage workers to use public transportation.

The rule ought to exempt volunteers from those determined to be employees for the purposes of taxation. Volunteers should be listed as members of the general public when determining parking lot usage because they are not paid employees.

If a nonprofit provides housing for an employee that includes parking, such as housing for a church's priest or pastor, then the nonprofit should not be taxed for providing that parking benefit as part of providing the employee's residence.

The rules ought to help resolve potential conflicts with federal grant or collective bargaining agreements. It's unclear whether the cost of the new tax to nonprofits is reimbursable to their grants and contracts with federal agencies. Also, the rule does not address how it will impact collective bargaining agreements in place between nonprofit employers and their employees.

We ask the IRS to consider these comments with respect to future actions on these rules.

Sincerely,

A handwritten signature in blue ink that reads "Mark Turner".

Mark Turner,
Senior Director of Public Policy