Parking Was Intended to Be A Qualified Fringe Benefit

by David van den Berg

Parking facilities are qualified transportation fringe benefits and the drafters of the new tax law intended for taxable and exempt employers to be unable to take deductions for them, a Joint Committee on Taxation staffer said.

"The same types of expenses for which a taxable entity cannot take a deduction are also the same types of expenses to which [section] 512(a)(7) is intended to apply," said JCT legislation counsel Veena Murthy during an April 26 Georgetown University Law Center conference in Washington.

The Tax Cuts and Jobs Act (P.L. 115-97) eliminated the employer deduction for transit and parking benefits, but those benefits remain tax free for employees.

An IRS official said during a March conference that parking and transportation are qualified transportation fringe benefits subject to unrelated business income tax rules under new section 512(a)(7).

"The big question that the statute leaves unanswered is the computation of the amount of the UBIT inclusion," Alexander L. Reid of Morgan, Lewis & Bockius LLP told Tax Analysts April 26. "One reading which seems justified by the conjunctive logic of the statute is that the UBIT inclusion should be the lesser of the disallowed deduction under [section] 274 and the value of the benefit provided to the employee under [section] 132(f)."

When asked why an employee forgoing salary to buy their own transit benefit ends up being an expense of the employer, Murthy said lawmakers intended for items or amounts excluded from employee income that are costs to the employer to no longer be deductible for employers. They also wanted to treat taxable and exempt employers the same way on this point, she said.

Intent Clear for College Coaches

Gordon Clay, JCT senior legislation counsel, discussed another issue resulting from a provision in the TCJA that has roiled the nonprofit sector — the applicability of the 21 percent excise tax under new section 4960 to employees at public colleges and universities. The IRS has received numerous questions about the provision, which imposes the tax on compensation of more than $1 million paid to an exempt organization's five highest-paid employees, and is closely studying its scope, including whether it should apply to college coaches.

"This is one area where the congressional intent probably is pretty clear, based on a lot of statements from members about college football coaches," Clay said, adding "it would be something that if there is a technical process at some point that we would need to think about." A Senate Finance Committee staffer previously told Tax Analysts that the excise tax applies to all exempt organizations and that further congressional action on the tax isn't needed.

Clay addressed questions about how the new excise tax will interact with the intermediate sanctions regime under section 4958, which imposes a tax on executives at exempt organizations who get compensation considered more than reasonable.

The application of section 4958 shouldn't be affected, Clay said. "I think that wasn't the intent here — to suggest than an excess benefit transaction for purposes of section 4958 is anything other than what's described in the statutory language." ■