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Taxation of Employer Provided Parking

The Tax Cuts and Jobs Act (TJCA) added Internal Revenue Code Section 512(a)(7):

> 512(a)(7) INCREASE IN UNRELATED BUSINESS TAXABLE INCOME BY DISALLOWED FRINGE.—
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> Unrelated business taxable income of an organization shall be increased by any amount for which a deduction is not allowable under this chapter by reason of section 274 and which is paid or incurred by such organization for any qualified transportation fringe (as defined in section 132(f)), any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)), or any on-premises athletic facility (as defined in section 132(j)(4)(B)). The preceding sentence shall not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business which is regularly carried on by the organization. The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking or for on-premises athletic facilities.

This language is being interpreted and reported by some observers as now requiring non-profit organizations, including churches, to annually file federal Form 990-T and pay unrelated business income tax on the cost of parking provided to employees.

History

The statute incorporates IRC 132 and 274 by reference. Accordingly, one must understand the provisions of those sections to draw a proper conclusion from this new provision.

The Energy Policy Act of 1992 initiated provision under Section 132(f), to incentivize employers to give employees a tax-free fringe benefit for using mass transit and ride-sharing for commuting to and from work in an effort to help protect the environment. The provision was made permanent in 2015 under the Protecting Americans from Tax Hikes Act.

Covered arrangements included commuter highway vehicles, transit passes, and "qualified parking", defined by IRC 132(f)(5)(C) as "parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes."

Section 162, providing for the deduction of ordinary and necessary business expenses, in conjunction with Section 274, establishing dollar limitations, allowed employers providing such arrangements, an income tax deduction for the costs of providing these transportation benefits to their employees.

The intent was to allow an employer to subsidize terminal parking for commuter vehicles on or near business premises, or parking at or near the beginning of a mass transit route, in a tax advantaged manner for both employer and employee.

Tax Cuts and Jobs Act

TJCA does not remove the tax advantaged treatment of commuter benefits for employees.

Employers however, cannot deduct expenses paid or incurred after December 31, 2017, for any qualified transportation fringe benefit as defined under Section 132(f) (including mass transit, ride-sharing and qualified parking). The loss of deduction is a countermeasure to the decrease in tax rate.

Consequently, since tax-exempt organizations without unrelated business income may not be required to file a return otherwise, Section 512(a)(7) now causes the filing of a return (Form 990-T) for an increase in unrelated business income for tax-exempt employers which provide transportation fringe benefits to its employees. Further, pursuant to the dis-aggregation provisions of Section 512(a)(6), the amount of the benefits provided may not be offset by losses from any other unrelated business activity.

Conclusion

Tax-exempt organizations, including churches, church-controlled organizations or associations of churches, which provide transportation fringe benefits as described in Section 132, will be required to file Form 990-T and pay the tax due on unrelated business taxable income.

Churches, like other traditional employers, that provide parking for the convenience of the employer and the safety of the employee, and which do not provide transportation-related fringe benefits, are not within the scope of new Section 512(a)(7).

Observations

The historical context of the provision is clearly aimed at metropolitan areas in an attempt to alleviate congested highways and crowded parking areas. Affected non-profit organizations should carefully consider the value of continuing commuter benefits given the compliance and direct tax costs particularly in the absence of any other unrelated business income activity. Re-characterization of benefit costs to taxable wages may be a preferred option.

This content is for general information purposes and should not be used as a substitute for consultation with qualified legal or tax professionals. Questions or comments may be directed to the undersigned.

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