

The webcast will start at 1 p.m. Eastern

- Visit capincrouse.com/2019-nonprofit-tax to access these materials from today's webcast:
 - Handout
 - Recording
- To receive CPE credit you must respond to the polling questions, which are not available on mobile devices. To receive CPE credit you must log in on a computer.
- CPE certificates will be emailed to you within the next few weeks.



2019 Nonprofit Tax Year-End Review

Ted Batson, Jr., Partner & Tax Counsel
12.19.19



Today's Agenda

- Update on minister's housing allowance litigation
- Sec. 512(a)(7) "parking tax" update
- IRS releases 2020 Form W-4
- IRS updates withholding tax estimator
- IRS Releases Draft Publication 15-T: *Federal Income Tax Withholding Methods*
- New IRS Form 1099-NEC
- New overtime regulations issued by DOL
- New regulations regarding individual coverage HRAs

Today's Agenda

- Form 990 changes
- Notice required before automatic revocation
- Rev. Proc. 2019-22: Disclosing nondiscriminatory admissions policy
- New Schedule B regulations (and more!)
- Sec. 512(a)(6) update
- Form 990-T changes
- Electronic filing of 990 series returns
- Changes to group exemption annual reporting requirement

Today's Agenda

- New online Form 1023 exemption application
- IRS increases syndicated conservation easement enforcement efforts
- Sec. 501(c)(4) employment tax audits
- Requirement to notify IRS of intent to operate as a 501(c)(4)
- Regulations limiting charitable deduction where state tax credit allowed
- Important IRS information letters
- 2019 Issue Snapshots

Minister's Housing Allowance Litigation

- On March 15, 2019 the Seventh Circuit ruled the minister's housing allowance is constitutional
- On June 14, 2019 the Freedom From Religion Foundation announced it would not appeal to the Supreme Court
 - [Freedom From Religion Foundation press release](#)
- For now there is no active threat to the minister's housing allowance

Sec. 512(a)(7) “Parking Tax” Update

- No new guidance since Notice 2018-99
- ~~Repeal is still an option, with several bills having been introduced~~
 - ~~There has been no talk of any of these bills being included in legislation that is currently being considered for passage before year-end~~
- On December 17, 2019 the House passed legislation repealing the parking tax as part of a larger tax package
- The Senate is expected to pass the bill and the President is expected to sign it
- Stay tuned!!!!!!

Polling Question 1

Our organization has paid the parking tax.

- a. True
- b. False

IRS Releases 2020 Form W-4

- The IRS has released the [2020 Form W-4](#)
- The IRS issued [FAQs](#) employers and employees may find helpful
- Employees hired in 2020 must use the new Form W-4
 - Employees hired prior to January 1, 2020 who have previously filed a Form W-4 are not required to file a new one
 - However, not doing so may risk under-withholding
- Form W-4 no longer relies on withholding allowances
- Ministers who voluntarily withhold through payroll enter the withholding amount on Form W-4, line 4(c)

IRS Updates Withholding Tax Estimator

- In support of the Form W-4 changes the IRS has created a [withholding tax estimator](#)
 - It will not be operational for 2020 withholding until after January 1, 2020
- To use the withholding estimator you must know basic details about your 2020 income, withholdings, and deductions, including:
 - Salary
 - Bonus
 - Dependents under age 17
 - Other dependents
 - Itemized deductions
 - Retirement plan contributions
 - Income from self-employment
 - Planned estimated tax payments

IRS Releases Draft Publication 15-T: *Federal Income Tax Withholding Methods*

- The IRS has released a draft Publication 15-T that describes two income tax withholding methods:
 - Percentage method
 - Wage bracket method
- The **percentage method** is designed for use with automated payroll systems and works with Forms W-4 from 2019 or earlier or 2020 or later
- The **wage bracket method** is only for use with Forms W-4 from 2020 or later and for manual payroll calculations

New IRS Form 1099-NEC

- The IRS is preparing to introduce new Form 1099-NEC (non-employee compensation)
- This form would be used instead of reporting non-employee wages on Form 1099-MISC, Box 7
- The forms will be required for calendar year 2020 reporting (i.e., for forms issued in January 2021)

VOID CORRECTED OMB No. 1545-0118
2020 Nonemployee Compensation Form 1099-NEC
Copy 1 For State Tax Department

1 Nonemployee compensation	\$
2 PAYER'S TIN	
3 RECIPIENT'S TIN	
4 Federal income tax withheld	\$
5 State tax withheld	\$
6 State Payer's state no.	
7 State income	\$

Form 1099-NEC www.irs.gov/Form1099NEC Department of the Treasury - Internal Revenue Service

New Overtime Regulations Issued by DOL

- On September 24, 2019 the DOL released the final regulations governing overtime pay for exempt workers
 - These rules were first proposed on March 7, 2019
 - The new rules replace the previously finalized rules issued in 2016 that were ruled invalid by a federal court
- The new rules are effective January 1, 2020

New Overtime Regulations Issued by DOL (continued)

- The new rules require that exempt employees receive weekly compensation of **\$684/week, up from \$455/week (\$35,568 annually, up from \$23,660 annually)**
 - Up to 10% of this amount may be paid in the form of **nondiscretionary** bonuses, incentives, and commissions
 - An employee earning at least \$107,432 (a highly compensated employee) is deemed exempt
 - [DOL Fact Sheet 17H](#) discusses highly compensated employees in more detail

New Overtime Regulations Issued by DOL (continued)

- There are no changes to the definition of an exempt employee
- The ministerial exception to the application of the Fair Labor Standards Act continues to exclude ministers from the application of this new overtime rule
- Expect to see more frequent periodic updates to this rate in the future
 - The frequency will be dictated by prevailing economic conditions, not a fixed timetable

Polling Question 2

Our organization does not expect major disruption from the new DOL overtime rules:

- a. Because we increased salaries in 2016
- b. Because we already require employees in this salary range to track their hours
- c. We haven't yet assessed this
- d. Other

New Regs Regarding Individual Coverage HRAs

- The IRS, DOL, and HHS issued new HRA regulations in June 2019
- These regulations permit:
 - Individual coverage HRAs
 - Excepted benefit HRAs

New Regs Regarding Individual Coverage HRAs (continued)

- Individual coverage HRA (ICHRA)
 - Must require that the participant and dependents enroll in individual health insurance coverage that is subject to and complies with the **no annual lifetime limit rule** and provides **coverage with no cost-sharing requirements for various preventive health services**
 - If the participant ceases to be eligible for coverage by the ICHRA, the HRA must not reimburse medical expenses incurred after the individual health insurance coverage ceases
 - Cannot steer participants/dependents with adverse health factors away from an employer's traditional group health plans toward individual health coverage

New Regs Regarding Individual Coverage HRAs (continued)

- Individual coverage HRA (ICHRA) (continued)
 - An employer can contribute as little or as much as the employer wants
 - The amount an employer provides is permitted to increase based on the number of dependents or based on the increase in age of the participant
 - ICHRA dollars can be used to pay for or reimburse qualified medical care expenses in addition to health insurance premiums
 - The employer must adopt reasonable procedures to substantiate individual health insurance coverage has been obtained

New Regs Regarding Individual Coverage HRAs (continued)

- Individual coverage HRA (ICHRA) (continued)
 - Unused account balances may carry over to the next year
 - Eligible participants must be permitted to opt out of and waive future reimbursements from the ICHRA option
 - An ICHRA can be integrated with Medicare to cover the cost of Medicare-related coverages
 - Care must be exercised to understand the application of the Medicare Secondary Payer rules

New Regs Regarding Individual Coverage HRAs (continued)

- Individual coverage HRA (ICHRA) (continued)
 - The ICHRA option must be offered on the same basis to all employees within the same class
 - An employer may not offer the same class of employees a choice between a group health plan and an ICHRA option

New Regs Regarding Individual Coverage HRAs (continued)

- Individual coverage HRA (ICHRA) (continued)
 - Employee classes are permitted to be based on:
 - Full-time employees
 - Part-time employees
 - Employees working in the same geographic location
 - Seasonal employees
 - Employees in a unit covered by a particular collective bargaining agreement
 - Employees who have not satisfied a waiting period
 - Non-resident aliens with no U.S.-based income
 - Salaried workers
 - Non-salaried workers (e.g., hourly workers)
 - Temporary employees of staffing firms
 - Any group of employees formed by combining two or more of these classes

New Regs Regarding Individual Coverage HRAs (continued)

- Individual coverage HRA (ICHRA) (continued)
 - Employees may use pre-tax cafeteria plan salary reductions to pay any portion of their individual health insurance premium not covered by the ICHRA
 - An individual health insurance policy purchased using pre-tax salary reductions cannot be a policy offered on an exchange
 - This will require cafeteria plan amendments
 - This is not the same as using Healthcare FSA dollars to pay premiums
 - There are special rules that must be followed to avoid having the cafeteria plan be covered by ERISA
 - State laws may limit the availability of this option

New Regs Regarding Individual Coverage HRAs (continued)

- Individual coverage HRA (ICHRA) (continued)
 - See the FAQs published at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/HRA-FAQs.pdf>

New Regs Regarding Individual Coverage HRAs (continued)

- Excepted Benefit HRAs (EBHRA)
 - Excepted benefits are benefits that are not part of a major medical plan, including:
 - Vision insurance
 - Dental insurance
 - COBRA payments
 - Long-term care insurance
 - EBHRA participants must be offered some form of group health plan
 - An EBHRA sits alongside a group health plan
 - Participants in a ICHRA cannot also be offered an EBHRA

New Regs Regarding Individual Coverage HRAs (continued)

- Excepted Benefit HRAs (EBHRA) (continued)
 - EBHRAs must be made available under the same terms and conditions to all similarly situated individuals
 - An EBHRA may not discriminate in favor of highly compensated individuals
 - There is an annual plan contribution limit of \$1,800 (indexed for inflation)
 - Unused amounts from the prior year carryover and do not count toward this limit
 - Contributions to other employer-provided HRA or account-based plans count against this limit unless they only cover excepted benefits

Polling Question 3

An Individual Coverage HRA:

- a. Will be beneficial to our organization
- b. May be beneficial to our organization
- c. We need to know more to determine if this will be beneficial to our organization
- d. Will not be beneficial to our organization

Form 990 Changes

- There are minimal changes to the 2019 Form 990
- Principal change is to Part X, Lines 27 and 28

		Organizations that follow FASB ASC 958, check here <input type="checkbox"/>		
		and complete lines 27, 28, 32, and 33.		
1 Balances	27	Net assets without donor restrictions	27	
	28	Net assets with donor restrictions	28	

- The form now conforms to ASU 2016-14

Notice Required Before Automatic Revocation

- I.R.C. § 6033(j)(1)(B) (formerly § 6033(j)(1)) provides for the automatic revocation of an organization's exempt status after failing to file a required Form 990 series return for three consecutive years
- The Taxpayer First Act added a new requirement that the IRS issue a notice warning of the possibility of revocation after the failure to file a required return for two consecutive years (I.R.C. § 6033(j)(1)(A))

Rev. Proc. 2019-22: Disclosing Nondiscriminatory Admissions Policy

- Background: [Rev. Proc. 75-50](#) requires that schools publicize their racially nondiscriminatory admissions policy
 - The original revenue procedure provided two mechanisms for meeting this publication requirement:
 - Publication of a notice of the racially nondiscriminatory policy in a newspaper of general circulation that serves all racial segments of the community
 - Use the broadcast media to publicize the racially nondiscriminatory policy if this use makes such nondiscriminatory policy known to all segments of the general community the school serves

Rev. Proc. 2019-22: Disclosing Nondiscriminatory Admissions Policy (continued)

- Compliance with this requirement is disclosed on Schedule E, Part 1, Line 3

3 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe. If "No," please explain. If you need more space, use Part II

3			

Rev. Proc. 2019-22: Disclosing Nondiscriminatory Admissions Policy (continued)

- [Rev. Proc. 2019-22](#) provides a new mechanism for educational organizations to comply with the publication requirement of [Rev. Proc. 75-50](#)
 - The organization's racially nondiscriminatory admissions policy may now be published on the organization's "primary publicly accessible Internet homepage at all times during its taxable year... in a manner reasonably expected to be noticed by visitors to the homepage."
 - Where a school does not have its own website, the notice may be placed on the school's primary landing page within the website of the entity (e.g., a church) with which it is affiliated

Rev. Proc. 2019-22: Disclosing Nondiscriminatory Admissions Policy (continued)

- Factors used to determine the adequacy of the posted notice include:
 - The size, color, and graphic treatment of the notice in relation to other parts of the homepage
 - Whether the notice is unavoidable
 - Whether other parts of the homepage distract attention from the notice
 - Whether the notice is visible without a visitor having to do anything other than simple scrolling on the homepage

Rev. Proc. 2019-22: Disclosing Nondiscriminatory Admissions Policy (continued)

- Unacceptable practices include:
 - A link on the homepage to another page where the notice appears
 - A notice that appears in a carousel
 - A notice that only appears by selecting a dropdown or by hovering over a particular portion of the screen (mouseover)

Rev. Proc. 2019-22: Disclosing Nondiscriminatory Admissions Policy (continued)

- The instructions to Schedule E, Part I, Line 3 require that if an organization is relying on publication on its homepage to comply with the publication requirement, the message must be on “its primary publicly accessible Internet homepage at all times during its tax year in a manner reasonably expected to be noticed by visitors to the homepage”
- If this is not the case (and no other publication methods have been used), then answer “No” and provide an explanation in Part II

New Schedule B Regulations (and More!)

- Background: In July 2018 the IRS issued Rev. Proc. 2018-38, which exempted organizations described in section 501(c) other than those described in section 501(c)(3) and section 527 from the requirement to disclose the identity of donors on Form 990, Schedule B
- In July 2019, a Montana U.S. District Court judge ruled that Rev. Proc. 2018-38 was invalid because the IRS had not followed the proper procedure in announcing the rule change

New Schedule B Regulations (and More!)

(continued)

- In September 2019, the IRS, in conformity with the procedures the judge ruled were previously violated, published proposed regulations that reinstate the exemption from disclosing donor names on Schedule B for 501(c) organizations other than those described in section 501(c)(3) and section 527
- The proposed regulations also incorporate into regulation form a number of miscellaneous provisions that had previously been announced in revenue procedures

New Schedule B Regulations (and More!)

(continued)

- The proposed regulations specifically state that they intentionally do not incorporate Rev. Proc. 96-10
 - Rev. Proc. 96-10 has been specifically relied on by many organizations “operated, controlled, or supervised by one or more churches, integrated auxiliaries, or conventions or associations of churches” as authority for not filing IRS Form 990
 - The IRS has solicited comments on why such organizations should not properly be classified as supporting organizations
 - The IRS believes it no longer has the discretion to exempt supporting orgs from filing Form 990 since the Pension Protection Act of 2006 added Code section 6033(a)(3)(B)

Sec. 512(a)(6) Update

- There has been no substantive new guidance since Notice 2018-67
- 512(a)(6) regulations are listed as a project on the IRS Priority Guidance Plan
- We are told that a prior guidance project regarding allocation of expenses in the case of dual-use facilities has been rolled into the 512(a)(6) regulations project
- With respect to indirect expenses
 - At conferences IRS personnel have stated:

“Use reasonable good faith”

 in regard to allocating expenses such as tax preparation fees among multiple unrelated business activities

2019 Form 990-T Changes

- Form 990-T changes reinforce changes arising from the 512(a)(6) siloing rules
- There is now allowed a deduction for NOLs from 2018 (post 12/31/2017)

28	Total deductions. Add lines 14 through 27	28
29	Unrelated business taxable income before net operating loss deduction. Subtract line 28 from line 13	29
30	Deduction for net operating loss arising in tax years beginning on or after January 1, 2018 (see instructions)	30
31	Unrelated business taxable income. Subtract line 30 from line 29	31

- The deduction for charitable contributions has been moved to Part III

Part III Total Unrelated Business Taxable Income		
32	Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions)	32
33	Amounts paid for disallowed fringe benefits	33
34	Charitable contributions (see instructions for limitation rules)	34
35	Total unrelated business taxable income before pre-2018 NOLs and specific deduction. Subtract line 34 from the sum of lines 32 and 33	35
36	Deduction for net operating loss arising in tax years beginning before January 1, 2018 (see instructions)	36
37	Total of unrelated business taxable income before specific deduction. Subtract line 36 from line 35	37
38	Specific deduction (Generally \$1,000, but see line 38 instructions for exceptions)	38
39	Unrelated business taxable income. Subtract line 38 from line 37. If line 38 is greater than line 37, enter the smaller of zero or line 37	39

Polling Question 4

Our organization is concerned about disclosing donor names on Schedule B

- a. True
- b. False

Electronic Filing of 990 Series Returns

- Taxpayer First Act requires exempt organizations to electronically file information returns
 - Applies to tax years beginning after July 1, 2019
 - For certain small organizations (those filing Form 990-EZ), implementation may be delayed until tax years beginning after July 1, 2021
 - A small organization is an organization with
 - Gross receipts less than \$200,000, and
 - Gross assets less than \$500,000
- In a December 13, 2019 notice, the IRS announced plans to require Form 990-EZ to be filed electronically for all tax years ending on August 31, 2020 or later

Electronic Filing of 990 Series Returns (continued)

- The electronically filed Form 990 is now required to be made publically available as soon as is practicable
- Form 990-T is required to be filed electronically for tax years beginning after July 1, 2019
 - The statute permits the IRS to delay implementation for up to two years
 - In a December 13, 2019 notice, the IRS announced it planned to begin requiring electronic filing of Form 990-T in 2021 for returns covering 2020

Changes to Group Exemption Annual Reporting Requirement

- General Rule: A “central organization” issued a group exemption is required to submit:
 - Information regarding all changes in the purposes, character, or method of operation of subordinates
 - A list of (a) subordinates that have changed their names or addresses during the year; (b) subordinates no longer to be included in the group exemption; and (c) subordinates to be added to the group exemption letter
 - Certain other detailed information about new subordinates
- This information is required to be provided 90 days before the end of the central organization’s fiscal year

Changes to Group Exemption Annual Reporting Requirement (continued)

- Historically the IRS has sent central organizations a list of the group members found in the IRS's records
 - This list was called the "List of Parent and Subsidiary Accounts"
 - This list would typically be sent approximately midway through the central organization's fiscal year
- New World: Effective January 1, 2019, the IRS ceased sending the midyear listings to central organizations
 - Central organizations are still required to submit the annually required information, but no longer have a prompt to do so

New Online Form 1023 Exemption Application

- The IRS has announced that it will be issuing a new online electronic Form 1023 exemption application
- May be released as early as January 2020
- A three-month transition period from paper filing to online filing is anticipated
 - This will allow applications in process to be completed without having to switch to the new online version
- Questions on the new form will be context-sensitive
 - Thus questions that are dependent on the answer of a screening question will only appear when relevant
 - Context-sensitive help will be provided throughout

New Online Form 1023 Exemption Application (continued)

- The form will still require:
 - A narrative of the applicant organization's actual and planned activities
 - Copies of the organization's organizing documents
 - Information about specific activities (e.g., grantmaking)
 - Information about compensation policies
 - Information about financial arrangements
 - Summary financial information
- PDF attachments of supporting documents may be uploaded
- The user fee will now be paid electronically

IRS Increases Syndicated Conservation Easement Enforcement Efforts

- Background
 - Code section 170(f)(3)(B)(iii) permits a deduction for qualified contribution contributions
 - In a syndicated conservation easement transaction, a promoter attracts investors by promising a conservation easement contribution deduction far in excess of the investor's investment
 - In [Notice 2017-10](#), the IRS announced that syndicated conservations easement transactions would not be a "listed transaction"
 - Listed transactions are subject to special disclosure rules and may subject participants to additional scrutiny and penalties

IRS Increases Syndicated Conservation Easement Enforcement Efforts (continued)

- On November 12, 2019, the IRS announced “a significant increase in enforcement actions for syndicated conservation easement transactions”
- This increase includes coordinated examinations (i.e., audits) across divisions of the IRS

Sec. 501(c)(4) Employment Tax Audits

- Background: Many Sec. 501(c)(4) organizations have a complementary Sec. 501(c)(3) organization
 - Frequently staff are shared between the two organizations
 - Wages paid to employees of a Sec. 501(c)(3) organization are exempt from federal unemployment tax (FUTA)
 - Wages paid to employees of a Section 501(c)(4) organization are not exempt from FUTA
- If the Sec.501(c)(3) organization is the common paymaster, it is required to report the FUTA obligation of the related Sec. 501(c)(4) organization
 - See Issue Snapshot [Common Paymaster](#)

Sec. 501(c)(4) Employment Tax Audits (continued)

- The IRS has initiated a number of audits of organizations that match this fact pattern
- This is visible to the IRS when the Sec. 501(c)(4) organization is required to report compensation information in Form 990, Part VII, but has not filed a Form 940 to report its FUTA tax liability

Requirement to Notify IRS of Intent to Operate as a 501(c)(4)

- In July 2019 the IRS issued new regulations under section 506
- Section 506 was added to the Code by the PATH Act in 2015

Requirement to Notify IRS of Intent to Operate as a 501(c)(4) (continued)

- Section 506(a) requires an organization described in section 501(c)(4) to notify the IRS within 60 days after being established that the organization is operating as a 501(c)(4) organization
 - The IRS has created Form 8976 to comply with this requirement
 - Form 8976 may be filed electronically
- Form 8976 does not replace Form 1024 for requesting a determination letter

Regulations Limiting Charitable Deduction Where State Tax Credit Allowed

- In June 2019 the IRS issued final regulations that:
 - Reduce the charitable contribution deduction for a gift to a state or local agency that created a state or local income tax credit by the amount of the credit
 - This rule is not applied if the amount of the resulting credit is no more than 15% of the gift
 - Do not reduce the amount of a charitable contribution deduction where the gift creates a state or local tax deduction
 - But if the state or local tax deduction exceeds the charitable contribution deduction, the charitable contribution deduction is reduced by the excess

Regulations Limiting Charitable Deduction Where State Tax Credit Allowed (continued)

- In December 2019 the IRS issued proposed regulations intended to:
 - Enshrine in regulations the safe harbor provided in Rev. Proc. 2019-12 for payments made by a C corporation or a specified pass-through entity for which a credit applicable to state or local tax assessed on the entity is allowed
 - The rule allows the C corporation or specified pass-through entity to deduct the amount paid as an ordinary and necessary business expense under section 162, irrespective of the \$10,000 cap on state and local tax payments under section 164(b)(6)

Regulations Limiting Charitable Deduction Where State Tax Credit Allowed (continued)

- In December 2019 the IRS issued proposed regulations intended to: (continued)
 - Address the treatment of payments made by an individual who receives a SALT credit, but whose SALT liability is less than the \$10,000 limit
 - Such individuals would be allowed to treat such payments as a SALT payment to the extent the credit generated is used to pay a state or local tax liability in the current or previous year, **but only** up to the \$10,000 limit (in combination with actual tax payments during the current or prior year)
 - Address the treatment of payments that generate credits issued by a party other than the donee

Important IRS Information Letters

- During 2019, the IRS issued two noteworthy information letters:
 - IRS information letter 2019-0007 [International grantmaking by domestic charities](#)
 - IRS Information letter 2019-0012 [Ministers and their tax status](#)

2019 Issue Snapshots

During 2019, the IRS Exempt Organizations division issued four Issue Snapshots.

Title	Date Released
Private Foundations – Issues Encountered Once a Self-Dealing Transaction Has Occurred	03/21/2019
Benefits Considerations for Fraternal Organizations Described in IRC Section 501(c)(8)	08/09/2019
Private Foundations - Self-Dealing IRC 4941(d)(1)(A)	10/22/2019
Private Foundations - Self-Dealing IRC 4941(d)(1)(B)	10/22/2019



Thank you.

Ted Batson, Jr., Partner & Tax Counsel
Professional Practice Leader – Tax
CapinCrouse LLP

✉ tbatson@capincrouse.com

📱 505.50.CAPIN ext. 1105



© Copyright CapinCrouse 2019