



Related Lawyers

Matthew I. Whitehorn
Stephanie Searles Vogel

Related Practices

Tax

Media Contact

Peter Dunn
Director of Client
Relations and
Communications
Philadelphia, PA
pdunn@dilworthlaw.com

NONPROFITS REJOICE! CONGRESS REPEALS NONPROFIT “PARKING TAX” AND PROVIDES FOR FLAT RATE EXCISE TAX ON PRIVATE FOUNDATION NET INVESTMENT INCOME

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By Stephanie S. Vogel

Following hefty criticism by the nonprofit sector, Congress retroactively repealed section 512(a)(7) of the Internal Revenue Code with passage of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, signed into law on December 20, 2019. Code section 512(a)(7), which had been added to the Internal Revenue Code as part of the 2017 Tax Cuts and Jobs Act, subjected tax-exempt employers to tax on costs incurred to provide employees with qualified parking and other qualified transportation fringe benefits by treating such expenses as unrelated business taxable income (“UBTI”). Many nonprofits were required to file a Form 990-T and including these parking and transportation amounts on their 2018 and 2019 tax returns. **The repeal is effective retroactive to December 22, 2017, meaning that any organization that incurred any UBTI as a result of Code section 512(a)(7) should be eligible to seek a refund.**

This 2019 act also simplifies the private foundation excise tax on net investment income under Code section 4940. Effective for taxable years beginning after December 20, 2019, a new flat rate excise tax of 1.39% of net investment income replaces the two-tier structure, which had imposed a 2% tax on net investment income which could be reduced to 1% if the private foundation met certain distribution requirements during a five-year measuring period. This change means that private foundations are no longer required to monitor investments and grant making in an attempt to manage its excise tax rate.

If you have any questions about the repeal of Code section 512(a)(7), how to get your nonprofit’s refund, or the changes to the private foundation net investment income excise tax, please contact [Matthew Whitehorn](#) or [Stephanie Vogel](#).