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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

<http://appropriations.senate.gov>

November 27, 2018

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, D.C. 20220

Dear Secretary Mnuchin:

We write to call your attention to the challenges that tax-exempt organizations, including charitable nonprofits, houses of worship, and foundations, are experiencing regarding compliance with the new Internal Revenue Code Sections 512(a)(6) and 512(a)(7) under the Tax Cuts and Jobs Act (Public Law No. 115-97) enacted in December 2017.

As you know, under the Tax Cuts and Jobs Act, two sections apply the Unrelated Business Income Tax (UBIT) of 21% to charitable nonprofits, houses of worship, and foundations. While we understand that nonprofits have historically paid UBIT if they operated unrelated businesses or trades, Section 512(a)(6) imposes a significantly different method of calculating and reporting the income and loss for each unrelated business or trade for nonprofits in ways that are unclear.

Section 512(a)(7) directs nonprofits to pay UBIT on employee benefits such as transit passes, parking spots, and provided meals for the first time. Nonprofits are organized around a cause, mission, or community need, and employees of nonprofits often have the same access to parking and meals that others in the community have because the nonprofit serves the whole community. Eating a meal with the homeless in their shelter should not be a taxable benefit for their employees; it is part of the work of the nonprofit. Parking is most often not an unrelated business for a nonprofit, and it is only an issue in the narrow case that the nonprofit leases their parking spaces on days or times they are not normally used for the nonprofit. If a nonprofit owns spaces in an urban area for the use of their employees, that is no different than providing the employee office space to work during the day or a bike rack to store their bike. That is not unrelated business. If a nonprofit is near a large university and they use their parking lot as a fundraiser during a sports game or concert, it is the same as using their parking lot to set up a table to sell lemonade on a summer afternoon as a fundraiser. A parking lot is not a benefit to most nonprofits, it is an essential part of their reach into the community. Parking lots for nonprofits are often gravel and unstriped; it is not even possible to note a cost per space, because there is no way to accurately determine how many spaces they have on their open lot.

Requiring these organizations to pay a federal tax on these employee benefits, something

they have never been required to do before, will cause them to not only face an increased operating cost, but also an administrative burden by filing 990-T forms with the IRS for the first time.

As Senator Lankford and I mentioned in our previous letter to the Department and IRS regarding the impact of the Tax Cuts and Jobs Act on the charitable deduction, nonprofits in Oklahoma, Delaware, and all across the country provide countless services to Americans in need, including combating homelessness, lifting faith, providing health care to the medically underserved, and improving outcomes for disadvantaged youth. Also, as co-chairs of both the National Prayer Breakfast and the Senate Prayer Breakfast, we believe that we have a moral obligation to support our neighbors most in need, and nonprofits play an essential role in doing just that.

The new unrelated business income taxes on tax-exempt entities ostensibly took effect on January 1, 2018. Nonprofits had only a few days over the holidays to learn of and try to understand these new tax liabilities, adapt their accounting systems and procedures to secure full compliance, and budget for the unanticipated costs. Many organizations were in the middle of their fiscal years on January 1, and thus were expected to adjust their systems retroactively.

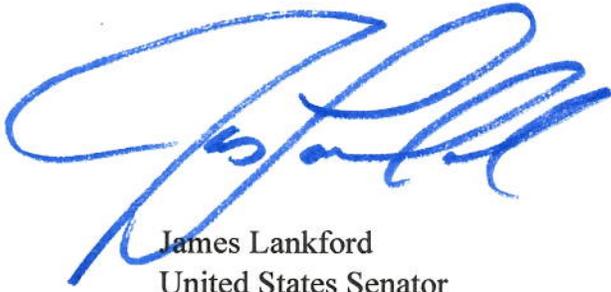
It is the responsibility of the Department of the Treasury to issue regulations that provide guidance to the affected communities in order to enable them to comply with the new law. We understand that on August 21, 2018, Notice 2018-67 was released with interim guidance regarding issues arising under Section 512(a)(6). However, many questions remain unanswered for charities, houses of worship, foundations and other tax-exempt organizations and their professional advisers on both sections, despite these organizations writing to the Department and IRS. Also, on November 8, the Department of the Treasury and IRS published a 2018-2019 Priority Guidance Plan, placing guidance for Section 512(a)(7) on this list. However, this still does not provide taxation clarification for nonprofits.

We urge the Department and IRS to delay the implementation of both Section 512(a)(6) and 512(a)(7) until one year after Final Rules are issued. It is essential that the Department of the Treasury and IRS engage the regulated community during the formal rulemaking process to identify not only how the wording of the new provisions is causing confusion and operational compliance challenges among nonprofits and their professional tax advisors, but also possible regulatory solutions.

Mr. Secretary, we believe strongly that a one year delay in implementing the Final Rules is a necessary step that will provide additional time for the Department to work with Congress and the tax-exempt community, including America's charitable nonprofits and houses of worship, so that they are able to continue providing critical services to communities in Delaware, Oklahoma, and across the country without undue burden or interruption.

We urge you to act swiftly on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Lankford', written in a cursive style.

James Lankford
United States Senator

A handwritten signature in blue ink, appearing to read 'Chris Coons', written in a cursive style.

Christopher A. Coons
United States Senator