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2018 Year End Nonprofit Tax Update

December 17, 2018

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Tax Cuts and Job Acts-Nonprofit Implications

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Tax Cuts and Jobs Act – Key EO Provisions

- Section 512(a)(6) Separate Computation of UBIT
- Section 512(a)(7) UBI by Disallowed Fringe
- Section 4960 Tax on Excess Tax-Exempt Organization Executive Compensation
- Section 4968 Excise Tax based on Investment Income of Private Colleges and Universities

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Section 512(a)(6) Separate Computation of UBIT

(6) SPECIAL RULE FOR ORGANIZATION WITH MORE THAN 1 UNRELATED TRADE OR BUSINESS In the case of any [organization](#) with more than 1 [unrelated trade or business](#)—

(A) [unrelated business taxable income](#), including for purposes of determining any net operating loss deduction, shall be computed separately with respect to each such trade or business and without regard to subsection (b)(12),

(B) the [unrelated business taxable income](#) of such organization shall be the sum of the [unrelated business taxable income](#) so computed with respect to each such trade or business, less a specific deduction under subsection (b)(12), and

(C) for purposes of subparagraph (B), [unrelated business taxable income](#) with respect to any such trade or business shall not be less than zero.

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Section 512(a)(6) Separate Computation of UBIT

- Effective date: Taxable Years Beginning after December 31, 2017
- Carryovers of Net Operating Loss- If arose from taxable years beginning before January 1, 2018, Subparagraph (A) of Section 512(a)(6) shall not apply and the UBTI of the organization, after application of Subparagraph (B) of Section 512(a)(6), shall be reduced by the amount of such net operating loss

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Section 512(a)(6) Separate Computation of UBIT

- A word about NOLs (IRC Section 172):
 - Effective for NOLs arising in 2018 and thereafter, NOL can no longer be carried back; can only offset up to 80% of taxable income
 - 20 year carryforward period is eliminated; carry forward indefinitely
 - Appears existing NOLs prior to 1/1/18 are NOT subject to 80% limitation

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Notice 2018-67

- Issued in August 2018
<https://www.irs.gov/pub/irs-drop/n-18-67.pdf>
- Requested comments on calculation of UBTI under Section 512(a)(6)
- Provided some interim and transition rules
- Comments to be submitted on or before December 3, 2018

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Notice 2018-67: Requested Comments On:

- The general interim rule for distinguishing between trades and businesses under IRC 512(a)(6) outlined in Section 3 of the Notice;
- Whether other Code sections may provide a model for identifying separate trades or businesses (section 3.03 of the Notice)
- Whether North American Industry Classification System (NAICS) 6-digit (or less) codes might be the basis of a method for identifying separate trades or businesses (section 3.03 of the Notice)
https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf
- The general rules for allocating deductions between trades or businesses (section 3.04 of the Notice)

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Notice 2018-67: Requested Comments On:

- The treatment of unrelated debt financed income, specified payments received from controlled entities, and certain insurance income (IRC Section 512 (b)4, (13) and (17) discussed in section 4 of the Notice
- The scope of the activities that should be included in the category of “investment activities” (section 5.02)
- The treatment of income derived from activities in the nature of an investment through partnerships (sections 5 and 6)
- Any additional considerations that should be given to how IRC section 512(a)(6) applies within the context of IRC Section 512(a)(3) (section 7)
- The calculation and ordering of pre-2018 and post-2017 net operating losses (NOLs) and the treatment of pre-2018 NOLs that will expire in a given tax year if not taken before post-2017 NOLs (section 9)

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Notice 2018-67: Interim Guidance

- Section 6: interim and transitional rules for partnership investments allowing for aggregation of qualifying partnership interests under de minimis (section 6.02) and control (section 6.03) tests and allowing for the treatment of a partnership interest as comprising of a single trade or business for interests acquired prior to August 21, 2018.
- Section 8: Any amount included in unrelated business taxable income under IRC section 512(a)(7) regarding qualified transportation benefits and parking taxable to the organization is not an unrelated trade or business and is not subject to IRC Section 512(a)(6).
- Section 10: global intangible low-taxed income (GILTI) will be treated as a dividend which is generally excluded from UBTI under IRC Section 512(b)(1).

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Notice 2018-67: Interim Guidance-Partnerships

- Aggregation of “investment activities” only for those in which the exempt organization does not significantly participate =qualifying partnership interests
 - Aggregation includes unrelated debt-financed income
- Interim and transition rules **do not**:
 - Apply to exempt organizations described in 501(c)(7) that are subject to 512(a)(3)
 - Impact application of 512(c) and the fragmentation principle under 513(c)

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Notice 2018-67: Interim Guidance-Partnerships

- *De minimis* test : Met if the exempt organization holds directly no more than 2 percent of the profits interest and no more than 2 percent of the capital interest
 - EO may rely on Schedule K-1 for percentage interest
 - Have to take into account the interest in the same partnership of a disqualified person (as defined by Section 4958(f)), a supporting organization (as defined by Section 509(a)(3)), or a controlled entity (as defined by Section 512(b)(13)(D))
 - If fail this test, can still aggregate if meet *control* test

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Notice 2018-67: Interim Guidance-Partnerships

- *Control* test : Met if the exempt organization:
 - Directly holds no more than 20% of the capital interest
 - Does not have control or influence over the partnership
 - Exempt Organization may rely on Schedule K
 - Facts and Circumstances Determine Control or Influence
 - Require/Prevent Operational Performance
 - EO Management Participate In Partnership Management
 - Power to Appoint /Remove Officers/Employees

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Notice 2018-67: Transition Rule-Partnerships

- For a partnership interest acquired prior to August 21, 2018: Exempt Organization may treat such partnership interest as comprising a single trade or business for purposes of Section 512(a)(6) whether or not there is more than one trade or business conducted by the partnership or lower-tiered partnerships
 - Directly or indirectly

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Section 512(a)(7) UBI by Disallowed Fringe

(7) INCREASE IN UNRELATED BUSINESS TAXABLE INCOME BY DISALLOWED FRINGE

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.

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Section 512(a)(7) UBI by Disallowed Fringe

- Effective date: Disallowed Fringe Benefits provided from 1/1/18
- Impacted 6/30/18 year end entities
- Applies to direct pay by employer and indirect (pre-tax arrangements)
- Estimated Payments to be considered
- Fiscal Years Beginning Before 1/1/18: Would file on the 2017 Form 990-T, line 12
- Tax Rate: 21% (as a corporation)

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Section 512(a)(7) UBI by Disallowed Fringe

- Matters to consider:
 - Likely will have many new 990-T filers
 - 990-Ts have to be paper filed; not likely to change soon
 - Is it better to pay this tax or make taxable and pay the related employment taxes and any municipal fines for not offering the benefit?
 - Advocacy Efforts

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IRS Notice 2018-99-Qualified Transportation Fringes (QTF)

- Released Monday December 10 2018
- Provides interim guidance to determine:
 - Amount of parking expenses for QTFs that is nondeductible under Section 274(a)(4)
 - For EOs: corresponding increase in the amount of UBTI under Section 512(a)(7) for nondeductible parking expenses
- Intent to publish proposed regulations

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IRS Notice 2018-99-Qualified Transportation Fringes (QTF)

- May use any reasonable method, as provided within the Notice, to compute amounts
- May rely on this guidance until further guidance is issued

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IRS Notice 2018-99-Qualified Transportation Fringes (QTF)

- QTF are defined within the IRC as:
 - Transportation in a commuter highway vehicle between home and work
 - Any transit pass
 - Qualified parking (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)
- Maximum monthly excludable amount from employee income is \$260 for 2018.

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IRS Notice 2018-99-Qualified Transportation Fringes (QTF)

- QTF are provided by:
 - In kind
 - Bona fide cash reimbursement arrangement
 - Compensation adjustment arrangement

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IRS Notice 2018-99-Qualified Transportation Fringes (QTF)

- All QTFs disallowed for deductibility purposes (=taxable to an EO) with following exceptions
 - Amounts included in the employee's compensation (whole amount or excess FMV over the \$260/month)
 - Facilities made available to the general public
 - Can't be an exclusive list of guests

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IRS Notice 2018-99-Interim Guidance on QTF Parking Issues

- Taxpayer pays 3rd party for parking
 - Disallowed=Taxable to EO=Total annual costs paid
 - EXCEPT capped at \$260/mo/employee as excess taxable to employee

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IRS Notice 2018-99-Interim Guidance on QTF Parking Issues

- Taxpayer Owns or Leases All or Portion of a Parking Facility
 - Disallowed Total Parking Expenses=Taxable to EO=Any reasonable method to determine
 - EXCEPT can't use value as expenses are disallowed regardless of value (explicit in the Notice)
 - Have to allocate expenses to reserved employee spots otherwise not reasonable
 - Have until March 31, 2019 to change parking arrangements to remove or eliminate reserved employee spots and have these actions be treated as retroactive to January 1, 2018

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IRS Notice 2018-99-Interim Guidance on QTF Parking Issues

- Taxpayer Owns or Leases All or Portion of a Parking Facility
 - Total Parking Expenses to include, but are not limited to: repairs, maintenance, utility costs, insurance, property taxes, interest, snow & ice removal, trash removal, landscape costs, attendants, security
 - Rent or lease payments OR A PORTION of rent or lease payment (if not broken out separately)
 - Depreciation NOT a parking expense for purposes of this notice

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IRS Notice 2018-99-Interim Guidance on QTF Parking Issues

- Methodology suggested in Notice:
 - Step #1: Calculate the disallowance for reserved employee parking spots
 - Step #2: Determine the primary use of the remaining spots
 - Primary use: greater than 50% of the actual or estimated usage of the parking spots in the facility during normal business hours of a typical business day
 - Empty=available to the general public
 - Step #3: Calculate the allowance for reserved nonemployee spots
 - Step #4: Determine the remaining use and allocable expense

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IRS Notice 2018-99-Interim Guidance on Section 512(a)(7) issues

- Directly related to an unrelated trade or business-section 512(a)(7) does not apply but section 274(a)(4) disallowance does
- Disallowed QTF is taxable but is NOT a trade or business
- Have only 1 unrelated trade or business and UBTI under section 512(a)(7)=NOT subject to Section 512(a)(6)-UBTI silo'ing
- Can offset A SOLE unrelated trade or business LOSS against UBTI under Section 512(a)(7)

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IRS Notice 2018-99-Interim Guidance on Section 512(a)(7) issues

- Sum of **gross income** from unrelated trades and businesses PLUS UBTI from Section 512(a)(7) is less than \$1,000 in total, no need to file a Form 990-T

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IRS Notice 2018-99-Interim Guidance on Section 512(a)(7) issues

- Religious NPO J has a surface parking lot adjacent to its buildings.
- \$10,000 in parking expenses
- 500 spots for congregants, students, visitors and employees
- 10 spots reserved for certain employees
- Normal business hours-M to F: 50 employees non-reserved spots; 440 empty spots
- Normal business hours Sat Sun: 400 congregants and 20 employees

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IRS Notice 2018-99-Interim Guidance on Section 512(a)(7) issues

Step #1: Reserved Employee Spots=Taxable Amount

$$10 \text{ spots}/500 \text{ spots} \times \$10,000 = \$200$$

Step #2: Primary Use Determination

$$\text{M to F: } 440 \text{ spots}/490 \text{ spots} = 90\%$$

$$\text{Sat to Sun: } 470/490 = 95\%$$

Lot determined to be primarily for general public so NO other taxable amount

Total taxable amount = \$200 + No other UBTI=NO
FILING OF FORM 990-T below \$1,000

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IRS Notice 2018-99-Interim Guidance on Section 512(a)(7) issues

- Adapted Example #7
- NPO G owns a surface parking lot adjacent to its buildings.
- \$10,000 in parking expenses
- 100 spots for employees, visitors, and clients
- No spots reserved for any employees
- Normal business hours: 60 employees non-reserved spots

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IRS Notice 2018-99-Interim Guidance on Section 512(a)(7) issues

Step #1: Reserved Employee Spots=Taxable Amount

-0- reserved spots = \$0 taxable

Step #2: Primary Use Determination

40 spots/100 spots = 40%

Lot determined to be NOT for general public so no general public exception

Step #3: Reserved Nonemployee Spots

-0- reserved nonemployee spots (no marked VISITORS signs)

Step #4: Determine Remaining Usage and Allocation

60 spots/100 spots daily x \$10,000 = \$6,000 subject to disallowance and therefore IS TAXABLE

Total taxable amount = \$6,000

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IRS Notice 2018-100 Targeted QTF UBTI Underpayment Relief

- Relief IF
 - Have UBTI under Section 512(a)(7)
 - Did NOT have file a Form 990-T for prior tax year
 - Timely filed Form 990-T & timely paid any payment due
- Relief in the form of waiver of the failure to make estimated tax payments
- To claim, write “Notice 2018-100” on the top of Form 990-T

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Draft 2018 Form 990

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Draft 2018 Form 990

Form 990 Department of the Treasury Internal Revenue Service		Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations) ▶ Do not enter social security numbers on this form as it may be made public. ▶ Go to www.irs.gov/Form990 for instructions and the latest information.		OMB No. 1545-0047 2018 Open to Public Inspection
A For the 2018 calendar year, or tax year beginning _____, 2018, and ending _____, 20____				
B Check if applicable:				
<input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Final return/terminated <input type="checkbox"/> Amended return <input type="checkbox"/> Application pending				
C Name of organization Doing business as Number and street (or P.O. box if mail is not delivered to street address) Room/suite City or town, state or province, country, and ZIP or foreign postal code		D Employer identification number E Telephone number G Gross receipts \$		
F Name and address of principal officer:		H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. (see instructions) H(c) Group exemption number ▶		
I Tax-exempt status: <input type="checkbox"/> 501(c)(3) <input type="checkbox"/> 501(c)7 <input type="checkbox"/> (insert no.) 4947(a)(1) or <input type="checkbox"/> 527				
J Website: ▶				
K Form of organization: <input type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input type="checkbox"/> Other ▶				
L Year of formation: _____				
M State of legal domicile: _____				
Part I Summary				
1 Briefly describe the organization's mission or most significant activities:				
2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.				

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Draft 2018 Form 990: What's New?

- Excise taxes executive compensation, Part V NEW #15
(More Info: section 4960 and Form 4720)
- Excise tax on net investment income of certain colleges and universities, Part V NEW #16
(More Info: section 4968 and Form 4720)
- FASB changes; Part X
Instructions on how to adapt ASU 2016-14 financial statements to Part X

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Draft 2018 Form 990: FASB Changes



Effective for reporting years ending after December 15, 2017, ASC 958-205, *Not-for-Profit Entities—Presentation of Financial Statements (ASC 958)*, addresses reporting of **donor-restricted endowments and board-designated (quasi) endowments**. . Further, a number of states have enacted the *Uniform Prudent Management of Institutional Funds Act (UPMIFA)*. If the organization is subject to UPMIFA or **ASC 958**, it may affect the amounts reported on lines 27 through 29.

Line 27. Unrestricted net assets. Enter the balance per books of unrestricted net assets. For years ending after December 15, 2017, ASC 958 refers to “unrestricted net assets” as “net assets without donor restrictions.” Unrestricted net assets are neither permanently restricted nor temporarily restricted by donor-imposed stipulations. All funds without donor-imposed restrictions must be classified as unrestricted, regardless of the existence of any board designations or appropriations.

Line 28. Temporarily restricted net assets. For years ending after December 15, 2017, **ASC 958** does not use the term “temporarily restricted net assets.” However, this line can be used to show the balance per books of net assets with donor-imposed restrictions that may require resources to be used after a specified date (time restrictions), or used for a specified purpose (purpose restrictions), or both. Organizations may also opt to leave Line 28 blank and report all net assets subject to donor-imposed restrictions on Line 29.

Line 29. Permanently restricted net assets. Enter the balance per books of net assets with donor restrictions. If net assets with donor-imposed restrictions for time or purpose of expenditure are shown on Line 28, do not include those items in the balance shown on Line 29. Permanently restricted net assets (net assets with donor-imposed restrictions) are (a) assets, such

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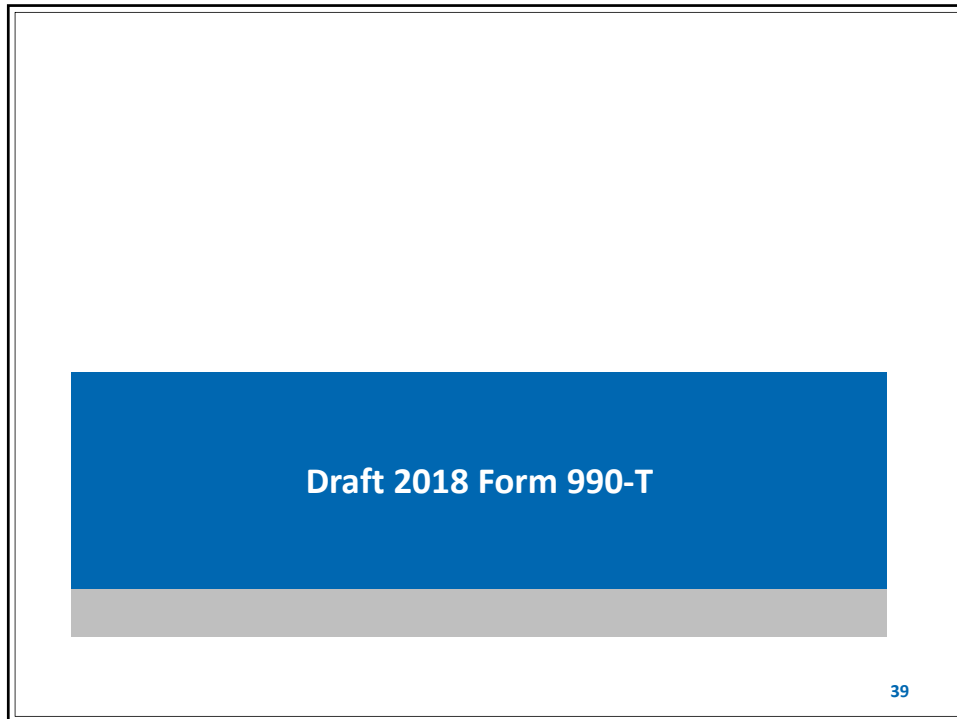
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Draft 2018 Form 990: What’s New?

- Increase in UBTI by disallowed fringe
 - Report on Form 990-T
- Changes to Schedule B Reporting of Donor Information
 - Rev. Proc. 2018-38 Tax-exempt organizations [other than 501(c)(3) or Section 527 political organization] no longer required to report the names and addresses of its contributors on Schedule B
 - Put “N/A” in column B until 2018 Schedule B instructions are out

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Current Draft 2018 Form 990-T

- Issued Originally in October, Revised Draft as of November 19, 2018
- 2018 Instructions for Form 990-T, Issued Draft as of October 22, 2018
- New Schedule M issued draft as of November 6, 2018

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Current Draft 2018 Form 990-T: What's New?

- Flat Corporate Tax of 21%
- Repeal of Corporate Alternative Minimum Tax; prior year AMT credit carryforward can be refundable
- Separate UBTI calculation for each trade or business: New Schedule M
- Increase in UBTI by disallowed fringe benefits-see Part III, line 34
- Use Form 8992 for Global Intangible Low-Taxed Income (GILTI) reporting and attach to Form 990-T
- Use Form 8993 for eligible deduction under Foreign-Derived Intangible Income (FDII) and GILTI under section 250 and attach it to Form 990-T

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Draft 2018 Form 990-T

Form 990-T Department of the Treasury Internal Revenue Service		Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)) For calendar year 2018 or other tax year beginning _____, 2018, and ending _____, 20____. ▶ Go to www.irs.gov/Form990T for instructions and the latest information. ▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).		OMB No. 1545-0687 2018 <small>Open to Public Inspection for 501(c)(3) Organizations Only</small>
A <input type="checkbox"/> Check box if address changed	Print or Type	Name of organization (<input type="checkbox"/> Check box if name changed and see instructions.)		D Employer identification number (Employees' trust, see instructions.)
B Exempt under section <input type="checkbox"/> 501(c)() () <input type="checkbox"/> 408(e) <input type="checkbox"/> 220(e) <input type="checkbox"/> 408A <input type="checkbox"/> 530(a) <input type="checkbox"/> 529(a)		Number, street, and room or suite no. If a P.O. box, see instructions.		E Unrelated business activity code (See instructions.)
C Book value of all assets at end of year	F Group exemption number (See instructions.) ▶		G Check organization type ▶ <input type="checkbox"/> 501(c) corporation <input type="checkbox"/> 501(c) trust <input type="checkbox"/> 401(a) trust <input type="checkbox"/> Other trust	
H Enter the number of the organization's unrelated trades or businesses. ▶ Describe the only (or first) unrelated trade or business here ▶ If only one, complete Parts I-V. If more than one, describe the first in the blank space at the end of the previous sentence, complete Parts I and II, complete a Schedule M for each additional trade or business, then complete Parts III-V.		I During the tax year, was the corporation a subsidiary in an affiliated group or a parent-subsidary/controlled group? ▶ <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," enter the name and identifying number of the parent corporation. ▶		
J The books are in care of ▶		Telephone number ▶		

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Draft 2018 Form 990-T

Form 990-T (2018)
Page **2**

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

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Draft 2018 Form 990- T Schedule M

SCHEDULE M (Form 990-T)			
Unrelated Business Taxable Income for Unrelated Trade or Business			
For calendar year 2018 or other tax year beginning		2018, and ending	2018
Department of the Treasury Internal Revenue Service Do not enter SSN numbers on this form as it may be made public. If your organization is a S corporation, enter the S corporation number.			
Name of the organization _____ Employer identification number _____			
Unrelated business activity code (see instructions) _____ Describe the unrelated trade or business _____			
Part I Unrelated Trade or Business Income			
1a. Gross receipts or sales			
b. Less returns and allowances			
2. Cost of goods sold (Schedule A, line 7)			
3. Other items deducted from the 1b			
4a. Capital gain/loss (attach Schedule C)			
b. Net gain/loss (from 4717, Part 6, line 17) (attach Form 4717)			
c. Capital loss disallowed (see instructions)			
5. Income (loss) from a partnership or an S corporation (attach statements)			
6. Rent income (Schedule C)			
7. Unrelated debt-financed income (Schedule E)			
8. Interest, annuities, royalties, and rents from a controlled organization (Schedule F)			
9. Investment income of a section 501(c)(3), (6), or (17) organization (Schedule G)			
10. Excluded exempt activity income (Schedule H)			
11. Advertising income (Schedule J)			
12. Other income (see instructions) (attach schedule)			
13. Total. Combine lines 1 through 12			
Part II Deductions Not Taken Elsewhere (See instructions for limitations on deductions.) (Except for contributions, deductions must be directly connected with the unrelated business income.)			
14. Compensation of officers, directors, and trustees (Schedule K)			
15. Salaries and wages			
16. Repairs and maintenance			
17. Bad debts			
18. Interest (attach schedule) (see instructions)			
19. Taxes and fees			
20. Charitable contributions (see instructions for limitation rules)			
21. Depreciation (attach Form 4562)			
22. Loss depreciation claimed on Schedule A and elsewhere on return			
23. Depletion			
24. Contributions to deferred compensation plans			
25. Employee benefit programs			
26. Excess exempt organization expenses (Schedule J)			
27. Excess membership costs (Schedule J)			
28. Other deductions (attach schedule)			
29. Total deductions. Add lines 14 through 28			
30. Unrelated business taxable income before net operating loss deduction. Subtract line 29 from line 13			
31. Deduction for net operating loss arising in tax years beginning on or after January 1, 2018 (see instructions)			
32. Unrelated business taxable income. Subtract line 31 from line 30			

For Paperwork Reduction Act Notice, see instructions. Cat. No. 711001P Schedule M (Form 990-T) 2018

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Questions? Contact Me!



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