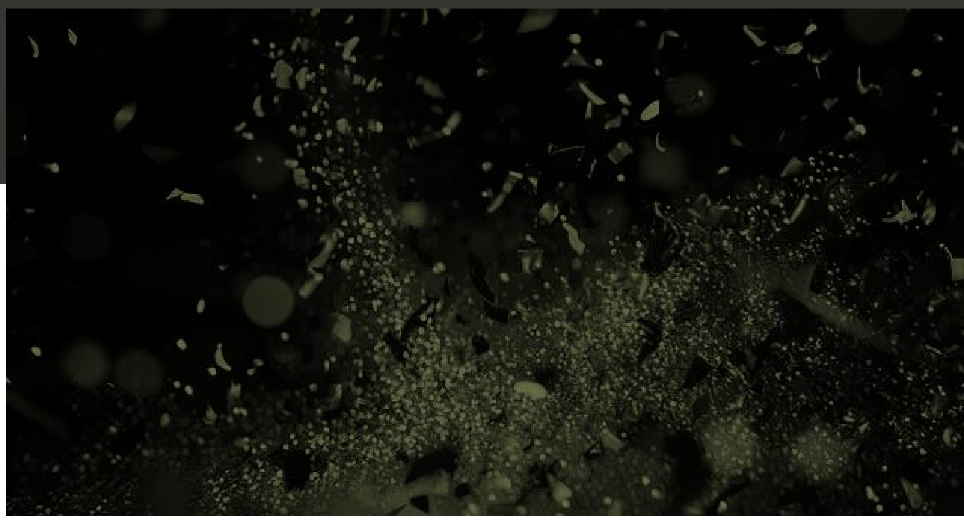
IRS

Surprise Tax Hits Churches, Other Nonprofits

10.23.18 | Linda J. Rosenthal, JD



In the final months of 2017, the GOP majorities in the House and Senate rushed to throw together and pass tax legislation before the end of the year. What became the Tax Cuts and Jobs Acts of 2017 (“TCJA”) was a hodge-podge of items that had been on various Republican taxation wish lists for some time.

The legislation was written, rewritten, revised, and amended at break-neck speed with no Democratic input and with few committee hearings. Many legislators candidly acknowledged they did not read the behemoth legislation before hurriedly voting for its passage.

What emerged and became effective January 1, 2018, had a number of …unwelcome elements, shall we say. As explained by Brian Faler of Politico, in late June 2018: “Republicans have quietly imposed a new tax on churches, synagogues and other nonprofits, a little-noticed surprising change that could cost some groups tens of thousands of dollars.” Faler adds: That could force thousands of groups that have long had little contact with the IRS to suddenly begin filing returns and paying taxes for the first time.”

Suffice it to say, “(m)any organizations are stunned to learn of the tax….”: a 21 percent tax on the value of some employee fringe benefits including parking and meals.

The Fringe Benefits Tax

The provision in question was “part of a broader Republican effort to strip the [federal tax breaks] for employee benefits like parking and meals….” The TCJA authorized huge tax cuts, especially for businesses. Looking for ways to offset these revenue losses, lawmakers decided to trim workers’ fringe benefits to cut some $40 billion over the next ten years.

The targets were deductions that many companies had long taken for client entertainment and for providing food for employees. Part of the plan was to treat for-profit entities and nonprofits "equally" but that was a challenge because the latter don't pay federal income taxes, so it couldn't be done as an elimination of tax deductions. Instead, the new tax provision morphed into a 21 percent tax on the value of some employee benefits.

Opposition to Fringe Benefits Tax Growing

Reporter Faler surmises that "many" lawmakers were "surely unaware of the provision when they approved the tax plan." This tax change went largely unnoticed while the TCJA was speeding its way through Congress late last year, and "many groups are outraged to now learn of the requirement."

Galen Carey, vice president of government relations at the National Association of Evangelicals, predicts "huge headaches" in connection with this new fringe benefits tax: a "significant and administrative burden" on its membership. "The cost of compliance, especially for churches that have small staffs or maybe volunteer accountants and bookkeepers — we don't need this kind of hassle."

According to Steven Woolf, senior tax policy counsel for The Jewish Federations of North America, his member groups will face about $75,000 is extra taxes annually. "A lot of people are just finding out about it," he adds, "and the more people find out about it, the more pressure there will be on Treasury and Congress to either delay implementation or consider changing this."

In addition to outrage, there are lots of questions about this new taxation of fringe benefits.

"Many nonprofits say they are confused over how exactly the tax is supposed to work." How should they go about valuing items like employee parking spaces? Are the garages provided as part of residences for clergy taxable? Are bus services that universities provide for faculty and students now taxable? How should orchestras deal with travel for performances in other locations? "At what point is something a travel reimbursement? And at what point is it a commuter benefit?" said Heather Noonan, vice president for advocacy at the League of American Orchestras.

The Treasury Department is drafting regulations to address some of these questions – although – of course – the customary transition period included in tax bills was omitted and nonprofits are obligated to deal with it immediately and make payments on a quarterly basis.

Organizations including the Boys & Girls Clubs of America, Goodwill Industries, the YMCA and the National Council of Nonprofits are now "demanding the tax at least be delayed." saying it is unfair to ask them to be paying a levy they don't understand.

Mike Batts, chairman of the board of the Evangelical Council for Financial Accountability, says: "It's absurd." His group is now circulating a petition against this new tax. "What we're talking about is an income tax on the church for providing parking to its employees — that's what we're talking about." So far, more than 600 churches and other groups have already signed the petition.

At least one GOP member of the House, Rep. Michael Conaway (R-Texas), introduced legislation in June 2018 to kill the tax. But Rep. Kevin Brady, the chairman of the House Ways and Means

Committee, takes a hard line resisting any such changes.

Conclusion

This provision of the Tax Cuts and Jobs Act that flew way under the radar last December is coming home to roost six months later, and could mean political trouble for the GOP in addition to the burdens on the affected nonprofit organizations. "Churches' tax-exempt status, in particular, has long been considered sacrosanct and Republicans are relying on the faithful to back them in the November elections."

A charming postscript, also reported by Politico: Many of the top Congressional GOP aides who wrote the Tax Cuts and Jobs Acts are jumping ship: "leaving the Hill in droves to cash in as lobbyists on K Street and other marquee private-sector destinations" – all in connection with the implementation of the TCJA.
In the words of The Church Lady, comedian Dana Carvey's Saturday Night Live character from weekends past: "Well…., isn't that special?

— Linda J. Rosenthal, J.D., FPLG Information & Research Director