

Tax Law Updates

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Tax Treatment of Payments by Controlled Subsidiaries to Parent Tax-Exempt Organizations

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act), which includes various provisions that affect tax-exempt organizations. Under section 512(b)(13) of the Internal Revenue Code, certain passive income (e.g., rents, interest, and royalty payments) paid by controlled subsidiaries to a controlling parent tax-exempt organization counts as unrelated business taxable income (UBTI) to the parent, unless the payments qualify under an arm's-length exception if they meet a fair market value standard. The PATH Act makes this arm's-length exception permanent. Thus, so long as the controlled subsidiary makes passive income payments at fair market value to the controlling parent ("control" being defined as the parent holding more than 50% of the stock or beneficial interest in the controlled subsidiary), the payments will not generate any UBTI to the parent.

New Deadlines for Filing Form 5500 and Form 990

On July 31, 2015, President Obama signed into law the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Surface Transportation Act) which, among other things, extended certain filing deadlines for IRS Forms 990 and 5500.

A tax-exempt organization is required to file Form 990, Return of Organization Exempt from Income Tax, by the fifteenth day of the fifth month following the end of the organization's fiscal year (e.g., for calendar year-end organizations, by May 15th). Under the prior law, an organization that needed more time to file its Form 990 could obtain a three-month automatic extension (e.g., for calendar year-end organizations, until August 15th) by filing Form 8868 before the initial due date. Under the Surface Transportation Act, the IRS will automatically grant a six-month extension for Form 990 filings upon request (e.g., for calendar year-end organizations, until November 15th).



Employers that sponsor retirement, health, or welfare plans must generally file Form 5500 for those plans with the U.S. Department Labor by the last day of the seventh month after the plan year ends (e.g., for calendar year-end plans, by July 31st). Under the prior law, filers could obtain an automatic 2 ½-month extension (e.g., for calendar year-end plans, until October 15th) by filing Form 5558 before the initial due date. Under the Surface Transportation Act, the IRS will automatically grant a 3 ½-month extension (e.g., for calendar year-end plans, until November 15th) for Form 5500 filings upon request.

The Surface Transportation Act applies to filings for taxable years beginning on or after January 1, 2016. Thus, the earliest a CAA with a December 31st fiscal year-end may take advantage of the automatic six-month extension for its Form 990 and the automatic 3 ½-month extension for its Form 5500 is when it makes its filings for fiscal year 2016 (i.e., beginning with the filings due in 2017).

State Associations Take Note: New Mandatory 501(c)(4) Tax-Exempt Status Filings

Prior to the passage of the PATH Act, organizations intending to operate as 501(c)(4) organizations were not required to file an exemption application with the IRS. Instead, potential 501(c)(4) organizations could either self-certify their exemption or complete a Form 1024 application for tax-exempt status to receive an IRS determination letter recognizing their exempt status.

The PATH Act added a new section 506 to the Internal Revenue Code that now requires 501(c)(4) organizations formed after December 18,

2015 to file a one-page notice of registration (the Section 506 Notification) with the IRS within 60 days of formation. The IRS will then provide the organization with an acknowledgment letter, which serves as evidence of IRS recognition of the organization's tax-exempt status, within 60 days of receiving the Section 506 Notification. A section 501(c)(4) organization that was in existence as of December 18, 2015 must file the Section 506 Notification only if it has never filed a Form 1024 or a Form 990 with the IRS. Such organization must make the Section 506 Notification filing within 180 days of the enactment of the PATH Act (i.e., by June 15, 2016).

In [Internal Revenue Bulletin 2016-6](#), issued on February 8, 2016, the IRS indicated that the Treasury Department intends to issue temporary regulations implementing the Section 506 Notification requirement. In order to provide adequate transition time for organizations to comply with the new procedures, the Treasury Department and the IRS will extend the due date for submitting the Section 506 Notification until at least 60 days from the date the regulations are issued.

Failure to file a required Section 506 Notification will result in a penalty not to exceed \$5,000, and the IRS may also impose a penalty on organization managers that fail to comply with the IRS's demand to make such a filing. *Thus, Community Action network organizations operating as 501(c)(4) tax-exempt organizations should ensure that they either: (i) previously filed a Form 1024 or Form 990; or (ii) will file the Section 506 Notification within the required time frame.*

