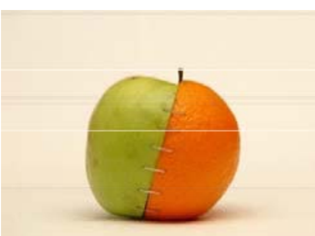
Repeal the New Tax on Nonprofit Transportation Benefits

Request: Repeal Section 512(a)(7), the Tax Cuts and Jobs Act provision that creates a new tax on nonprofit transportation benefits.

The Tax Cuts and Jobs Act (TJCA) of 2017 made several changes to the tax treatment of nonprofit entities, particularly in how these institutions function as employers. **The TCJA made it costlier for tax-exempt entities to operate by creating a new tax on the transportation and parking benefits provided to nonprofit employees.** All nonprofit organizations, large and small, including colleges and universities, will now be taxed, at the corporate tax rate (21%), on the value of transportation and parking benefits provided to employees (under Section 512(a)(7) of the tax code).

The new tax attempts to create comparable treatment between corporate employers and nonprofit employers. Under the TCJA, corporate employers are now denied the ability to deduct expenses for parking and mass transit benefits (under Section 274 of the tax code).



NACUBO believes this is flawed reasoning. **This is not parity of treatment, as the burden on tax-exempt organizations diminishes the public good they offer.** Straining a tax-exempt organization's ability to deliver its mission is not comparable to impacting the bottom line of a profit-seeking entity that generates personal benefit for owners or shareholders.

For example, the burden of taxes imposed on nonprofit colleges falls to a degree on students and families because there are no owners to tax. For other tax-exempt organizations, the burden might fall on the museum, library, or food pantry patron, patients, shelter residents, or other countless beneficiaries.

Taxation at Colleges and Universities. Contrary to the term *tax-exempt* organization, nonprofit entities are subject to normal corporate tax rates on certain activities that generate revenue, defined as *unrelated business income*. Whether an activity is subject to the unrelated business income tax (UBIT) a three-part test asks: Is it a trade or business; is it regularly carried on; and is it substantially related to the exempt organization's mission? For example, revenue from renting dormitory space to other organizations or individuals in the summer months could be an activity subject to taxation. There are also several categories of activities that, by statute, are not treated as unrelated business income. **NACUBO agrees that colleges and universities, whose primary missions are related to education, research, and community service, should pay taxes on income from unrelated business activities.**

The new transportation tax is not a tax on income. This is a tax on an expense. Corporate entities, under Section 274, are not facing a new tax, rather, they are facing a new disallowance in the expense column of their tax return.

Transportation Benefits at Colleges and Universities. Colleges and universities provide a vast array of transportation benefits to campus employees in urban, suburban, small-town, and rural settings across the country. Each college and university is unique in the way it provides transportation benefits to employees.

Colleges and universities offer many types of parking arrangements to their campus communities. Some institutions own or lease space in garages that charge for parking and are open to the public as well as campus employees and students. Some institutions might offer both free

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and pay parking to employees, depending on the location of the parking facility.

Colleges and universities with academic medical centers or hospitals incur significant costs in owning, leasing, or sharing parking facilities with other health-care/medical service provider organizations as part of their exempt purpose. Such parking is provided for health-care employees, the public, and patients seeking medical care.

Many institutions provide local bus or subway transit benefits to their campus communities. It is not uncommon for an institution to pay an annual lump sum to their local bus authority to cover the cost of students, faculty, and staff ridership for the year, with no tracking of actual use. In a small town, for example, employee use of transit may represent a tiny fraction of the university community's local bus ridership compared to student use. Some institutions operate their own transportation services, which may be freely accessible to the public.

In some cities and states, employers are legally required to provide certain pre-tax transportation benefits to employees (which may be subject to this new tax). Therefore, they will be unable to mitigate the impact of this new tax.

A new tax burden simply makes it costlier for nonprofit colleges and universities to provide employee benefits and adds to overhead and administrative expenses— driving up the cost of college for students and families.

The National Association of College and University Business Officers (NACUBO), founded in 1962, is a nonprofit professional organization representing chief administrative and financial officers at more than 1,900 colleges and universities across the country.

NACUBO's mission is to advance the economic vitality, business practices, and support of higher education institutions in pursuit of their missions.

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