

Planning and Updates for Not-For-Profit Organizations



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Agenda

1. 2017 Tax Cuts and Jobs Act
 - Taxation of Qualified Transportation Fringe Benefits
 - UBTI “Siloing”
2. Governance / Planning (PPP / EIDL Considerations)
 - Employee vs. Independent Contractors
 - Public Information
 - Form 990 Board Review
3. Future Funding Observations & Outlook
 - Charitable Giving
 - State Funding
4. 2020 Trends to Watch



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Repeal: Qualified Transportation Fringe Benefits Taxation

- Originally established by the Tax Cuts and Jobs Creation Act of 2017
 - Extremely unpopular within the NFP community
 - Reduced funds for exempt purpose spending
 - Taxes Paid
 - Administrative Burden (Tracking and Calculating)
- Taxpayer Certainty & Disaster Tax Relief Act (December 20, 2019):
 - Retroactive Repeal of Section 512(a)(7)
 - Considerations:
 - Amending Form 990-T
 - Amending Form 990
 - Cost Benefits
 - Taxes paid verse cost to attain refund



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Unrelated Business Taxable Income “Siloing”

- IRC Section 511
 - Imposes tax on unrelated business taxable income of exempt organizations
- IRC Section 512(a)(1)
 - ...the term “unrelated business taxable income” means the gross income derived by any organization from any unrelated trade or business... regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business...”
- Tax Cuts and Jobs Creation Act of 2017
 - Creation of IRC Section 512(a)(6)



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Unrelated Business Taxable Income

“Siloing” *(continued)*

- Tax Cuts and Jobs Creation Act of 2017
 - Created IRC Section 512(a)(6) - (effective: 1/1/2018)
 - (a) ...UBTI... shall be computed separately with respect to each such trade or business...
 - (b) ...UBTI so computed with respect to each such trade or business, less a specific deduction...
 - (c) ...UBTI with respect to any such trade or business shall not be less than zero...
 - Translation:
 - (a) – Each UBI category must be computed separately
 - Investments may be grouped into one category
 - Partnership investment with no significant participation (passive)
 - (b) – Calculation is the same as in the past for each category,
 - (c) – UBTI cannot be less than zero
 - NOL's must be tracked separately
 - \$1,000 Specific Deduction (taken from total UBTI)



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Unrelated Business Taxable Income “Siloing” *(continued)*

- Tax Cuts and Jobs Creation Act of 2017 *(continued)*
 - Net Operating Losses Generated prior to 1/1/2018
 - IRC 512(a)(6) does not apply
 - Allowed to be used against all “Silo’d” UBTI
 - Substantiation of NOL’s is *extremely important*
 - Form 990-T and Schedule M
 - Revised lay-out for Form 990T
 - Separate Schedule M for each separate trade or business

Part III Total Unrelated Business Taxable Income	
32	Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions)
32	



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Governance / Planning

Old Items Revisited for PPP / EIDL

- Employee vs Independent Contractors:
 - General Rule:
 - “an individual is an independent contractor if the payer has the right to control or direct **only the result of the work**, not **what** will be done and **how** it will be done”
 - Three areas of consideration:
 - **Behavioral Control**:
 - The ability of the business to direct or control the work performed, even if it is not exercised (when, where, how... and even training)
 - **Financial Control**:
 - The ability of the business to direct or control the financial and business aspects of the job (equipment costs, services to the market, payment method)
 - **Relationship**:
 - The interaction between the worker and the business (contract, benefits, relationship timing, importance to the business)



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Governance / Planning Old Items Revisited for PPP / EIDL (*continued*)

- Employee vs Independent Contractors (*continued*):
 - Especially important at this time, beyond the payroll tax implications
 - Form 990 / Application for Forgiveness
 - Calculation of FTE's and SBA audit
 - Multiple points of reference for the SBA to cross reference the information

- **Page 1, Part I:**

5	Total number of individuals employed in calendar year 2019 (Part V, line 2a)	5	
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- **Page 4, Part V:**

2a	Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return	2a	
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Governance / Planning Old Items Revisited for PPP / EIDL (*con't.*)

- Board Review of Form 990
 - Required by IRS vs. Recommended vs. Best Practices

11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?
b Describe in Schedule O the process, if any, used by the organization to review this Form 990.

11a			

- Considerations for information available to the SBA / Public
 - Employee numbers (FTE calculation)
 - Compensation details (Part VII and Schedule J)
 - Number of employees paid over \$100,000
 - Base, Bonus, Other Compensation and benefits information
 - Functional Expenses
 - Compensation (again), Benefits, Payroll Taxes, Occupancy, Fees for Services, Office Expenses, Interest, Insurance, etc...
- Disclosure of PPP / EIDL status
 - Schedule O
 - Loan Amounts, Forgiveness Status, Etc...

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Funding Observations and Outlook

- COVID-19 Impact of Funding
 - CARES ACT: Charitable Giving
 - New Deduction (after Standard Deduction): Up to \$300 per Individual (\$600 for a married couple)
 - New Cash Charitable Deduction Limits (not including DAF's / PF's):
 - Individuals: 100% of 2020 AGI (up from 60%) and excess rolls over to 2021
 - Corporations: 25% of taxable income (up from 10%)
 - Potential Impacts
 - State Budget Issues



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Funding Observations and Outlook (*continued*)

- State Projected Deficits:
 - PA - \$4B deficit through the end of FYE 2020
 - Philadelphia is projecting a budget deficit \$600 million
 - Philadelphia increased their N/R City Wage tax to 3.5019%
 - NJ - \$11B deficit through the end of FYE 2021
 - NY - \$4B to \$7B deficit through the end of FYE 2021
- Potential Budget Impacts:
 - Estimated \$650B budget shortfalls over the next three years
 - Virtually every aspect of state operations affected
 - Potential reductions to funding



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2020 Trends for Not-for-Profit Organizations to Watch

- Virtual Networking Platforms
 - Connecting and Interacting
 - Personal Communications
 - Donors
 - Other organizations
- Interaction with Private Sector
 - Millennials: More charitable focused than past generations
- Artificial Intelligence / Technology / Innovation
 - How organizations compete for funding
 - Using technology to find donors and make giving easier
 - “Siri / Alexa”
 - Text to Donate / Mobile



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Questions?

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Contact the Presenters at kmiller@kmco.com



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As a director in Kreischer Miller's Tax Strategies practice, Chris leads the firms' tax-exempt organization tax practice. Over the past 20 years, he has developed expertise in planning, organizing, administering, and supervising complex tax planning and compliance for various tax-exempt organizations. Chris oversees the tax preparation and technical accuracy of the tax positions taken by his tax-exempt organization clients. His client experience includes foundations, hospitals, museums, community development, social service organizations, cultural organizations, membership organizations, and various other charitable organizations.



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As the Director-in-Charge of Kreischer Miller's Tax Strategies practice, Lisa provides strategic leadership and management of the group, including recruiting, training, team member development, and serving as a resource on technical matters. She is a trusted advisor to her clients, providing tax and business advisory services for a broad range of privately-held businesses including real estate developers and investors, construction contractors, manufacturers, and distributors.



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