

Henderson Caverly & Purn LLP

NONPROFIT ORGANIZATIONS NEWSLETTER January 2019

IRS ISSUES GUIDANCE FOR DETERMINING NONDEDUCTIBLE AMOUNT OF PARKING FRINGE EXPENSES AND UBTI; PROVIDES PENALTY RELIEF TO TAX-EXEMPT ORGANIZATIONS

On December 10, 2018, the Internal Revenue Service issued interim guidance regarding the treatment of qualified transportation fringe ("QTF") benefit expenses paid or incurred after December 31, 2017. The guidance is provided in [IRS Notice 2018-99](#). The new rules assist taxpayers in determining the amount of parking expenses that are no longer tax deductible. They also help tax-exempt organizations determine how these nondeductible parking expenses create or increase unrelated business taxable income (UBTI).



The IRS acknowledges that this guidance falls late in the year and taxpayers that own or lease parking facilities may have already adopted reasonable methods in 2018 to determine the amount of their nondeductible parking expenses. Taxpayers may rely on the guidance or, until further guidance is issued, use any reasonable method for determining nondeductible parking expenses related to employer-provided parking.

A key part of this guidance is a special rule, enabling many employers to retroactively reduce the amount of their nondeductible parking expenses. Under this rule, employers will have until March 31, 2019, to change their parking arrangements to reduce or eliminate the number of parking spots they reserve for their employees. By making this change, many churches, schools, hospitals and other tax-exempt organizations may be able to reduce their associated UBTI. In some cases, the organization may avoid having to file a Form 990-T, Exempt Organization Business Income Tax Return, altogether. Such a change made in parking arrangements will apply retroactively to January 1, 2018.

The Treasury Department and the IRS request comments for future guidance to further clarify the treatment of QTFs under §§ 274 and 512. In particular, the Treasury Department and the IRS request comments about the definitions of "primary use" and "general public" and whether primary use should be used to determine the extent to which parking is made available to the general public under § 274(e)(7). The Treasury Department and the IRS request comments on other methods for determining the use of the parking spots and the related expenses allocable to employee parking. The Treasury Department and the IRS also request comments on the applicability of § 274(e)(8) to expenses for any goods or services that constitute a QTF sold by the taxpayer to an employee in a bona fide transaction for an adequate and full consideration in money or money's worth and the circumstances under which such a transaction should be excluded from the term QTF for purposes of § 274(a)(4). The Notices states that public comments should be submitted by February 22, 2019.

In addition, the IRS released [Notice 2018-100](#), announcing that it will provide estimated tax penalty relief in 2018 to tax-exempt organizations that offer these benefits and were not required to file a Form 990-T for the previous filing season. Additionally, some tax-exempt organizations will not

exceed the \$1,000 threshold below which an organization is not required to file a Form 990-T or pay the unrelated business income tax.

IMPORTANT DEADLINES FOR YOUR NONPROFIT ORGANIZATION'S CALENDAR



There are a number of state and federal annual filing requirements for nonprofit organizations. To avoid risk of suspension, penalties, or loss of tax exempt status, it is important to ensure your organization has the various deadlines calendared.

1. Statement of Information filing

Nonprofit corporations incorporated in California must file California Secretary of State Form SI-100, Statement of Information (Domestic Nonprofit, Credit Union, and Consumer Cooperative Corporations), every other year after incorporation, in the calendar month during which the organization filed its Articles of Incorporation. Failure to file could result in penalties and a suspension of the corporation's corporate powers. Form SI-100 may be filed online at: <https://businessfilings.sos.ca.gov/>.

Every foreign nonprofit corporation registered with the California Secretary of State to transact business in California must file Secretary of State Form SI-350, Statement of Information (Foreign Corporation). Form SI-350 must be filed annually by the last day of the month in which the corporation qualified to transact business in California. Failure to file could result in penalties and a suspension of the corporation's corporate powers. Form SI-350 may be filed online at: <https://businessfilings.sos.ca.gov/>.

2. Tax Return Due Dates

California:

California law requires a tax-exempt organization to file either a Form 199 Exempt Organization Annual Information Return, or 199-N (California E-Postcard), depending on the organization's gross receipts in the reporting year. Private foundations must file Form 199 every year, regardless of gross receipts.

Form 199 or Form 199-N must be filed with the Franchise Tax Board by the 15th day of the 5th month after the close of the organization's tax year. An organization that cannot file by that date may take an additional seven months to file without submitting a written request for extension, as long as its status is in good standing and not suspended. You may check your organization's status by visiting the Franchise Tax Board's [website](#). (If the organization owes any tax for the year, it also may need to file FTB Form 3539, Payment for Automatic Extension for Corporations and Exempt Organizations.)

An organization that fails to file the required Form 199 or Form 199-N for three consecutive years will automatically lose its tax-exempt status in California. The revocation of the organization's tax-exempt status is effective as of the filing due date of the third year. Under existing law, the Franchise Tax Board may also revoke an organization's California tax-exempt status if the IRS suspends or revokes the organization's tax-exempt status.

Federal:

Tax-exempt organizations generally must file an annual information return, Form 990 Return of Organization Exempt Form Income Tax, subject to certain exceptions. Most exempt organizations, including those classified as public charities, file either a Form 990, Form 990-EZ, or Form 990-N, depending on the organization's gross revenues in the reporting year and the organization's total assets. Organizations classified as private foundations or private operating foundations must file a Form 990-PF.

Form 990, 990-EZ, 990-N, or 990-PF must be filed by the 15th day of the 5th month after the end of your organization's accounting period. Thus, for a calendar year taxpayer, Form 990, 990-EZ,

990-N, or 990-PF is due May 15 of the following year. An organization may request an automatic extension of time to file a return by using IRS Form 8868.

If an organization does not file a required return or files late, the IRS may assess penalties. In addition, if an organization does not file as required for three consecutive years, it automatically loses its federal tax-exempt status.

3. Attorney General Form RRF-1

Every charitable nonprofit corporation, unincorporated association or trustee holding assets for charitable purposes that is required to register with the California Attorney General's Office is also required to file an Annual Registration Renewal Fee Report (RRF-1). The purpose of the Form RRF-1, as stated on the form itself, is "to assist the Attorney General's office with early detection of charity fiscal mismanagement and unlawful diversion of charitable assets." The Form RRF-1 must be filed four months and fifteen days after the close of the organization's calendar or fiscal year. An entity whose registration is delinquent or has been suspended or revoked is not in good standing with the Registry and is prohibited from engaging in conduct for which registration is required, including solicitation for charitable purposes. Failure to file the Form RRF-1 could result in the loss of California tax-exempt status. Charities previously registered and in good standing with the Attorney General's office may now use the Attorney General's registration [online renewal system](#).

Extensions of time for filing the RRF-1 will be allowed if an organization has received an extension from the IRS for filing the IRS Form 990, 990-PF, or 990-EZ. An organization shall file both forms (RRF-1 and IRS Form 990, 990-PF, or 990-EZ) with the Registry of Charitable Trusts at the same time, along with copies of all requests to the IRS for an extension and, where approval of the extension is not automatic, a copy of each approved extension request. The Form 990-N due date cannot be extended.

4. Annual meeting of Board Directors

The full Board should meet periodically, and at least once annually, to conduct the organization's business, whether in person or by scheduled conference call. If possible, a schedule of Board meetings should be fixed at the beginning of the year. Further, while routine decisions may be made by unanimous written consent, major decisions, such as those affecting an organization's policies and practices, should generally be contemplated and decided upon in the context of a Board meeting, which may be held telephonically.

Reminder: Note the new law adopted as of January 1, 2015, which provides that a California nonprofit corporation may not have non-voting members on the Board of Directors. The new law explicitly states that "[a] person who does not have authority to vote as a member of the governing body of the corporation, is not a director ... regardless of title." (California Corporations Code § 5047)

If you have questions regarding your organization's annual filing requirements, please call us at (858) 755-3000 or email us at JGrissom@hcesq.com.

IRS VIRTUAL WORKSHOPS

As part of its [Resource Library](#), the IRS' Stay Exempt [website](#) offers virtual workshops for small and mid-size tax exempt organizations. The workshops are designed to assist organizational leadership understand the benefits, limitations and expectations for exempt organizations.

[Workshops](#) are offered on the following topics:

- Applying for Section 501(c)(3) Status
- Maintaining 501(c)(3) Tax-Exempt Status
- Employment Issues
- Required Disclosures
- Form 990 Overview Course
- Unrelated Business Income
- Political Campaigns and Charities: The Ban on Political Campaign Intervention
- Charitable Gaming for Exempt Organizations



- Can I Deduct My Charitable Contributions?
- Protect Your Social Security Numbers

The [Resource Library](#) also offers answers to frequently asked questions (FAQs) for exempt organizations, Issue Podcasts, Retirement Plan Resources, and Indian Tribal Governments Resources.

IRS LAUNCHES INSTAGRAM ACCOUNT TO HELP TAXPAYERS

Agency adds social media platform to reach more taxpayers, share timely information on filing season, tax law changes, tax scams



As part of a larger mission of helping all taxpayers understand and meet their tax responsibilities, the Internal Revenue Service recently announced its debut on Instagram, adding this platform to its social media portfolio.

The IRSNews account (<https://www.instagram.com/irsnews>) will provide taxpayers the latest information on a variety of topics as taxpayers face numerous tax law changes for the upcoming 2019 filing season related to the Tax Cuts and Jobs Act. The IRS Instagram account will share taxpayer-friendly information to help people get ready for the upcoming tax season. And it will provide the latest tax scam information to help support the [Security Summit](#) initiative, a joint effort between the IRS, states and the nation's tax industry to combat tax-related identity theft.

“The addition of Instagram is another step for the IRS to share information more widely and reach additional taxpayers,” said IRS Commissioner Chuck Rettig. “This platform will help make people aware of important options they have during the upcoming filing season as well as other tax information they might not be aware. The IRS will continue to work with and help taxpayers in as many ways possible.”

Research shows that more than 70 percent of U.S. young adults between 18 and 24 are active on Instagram. The IRS plans to use Instagram to better serve this segment of the population, sharing content on tax topics that affect all taxpayers.

The IRS Instagram account will also periodically share information in Spanish and other languages.

IRSNews will also work in conjunction with IRS.gov and other existing agency social media options.

Other social media platforms offering official IRS information include:

- YouTube. The IRS offers video tax tips in English, Spanish or American Sign Language.
- Twitter. Follow [@IRSnews](#) for tax-related announcements and tips. [@IRStaxpros](#) tweets news and guidance for tax professionals. Tweets from [@IRSenEspanol](#) have and the latest tax information in Spanish.
- Facebook. News and information for taxpayers and tax return preparers.
- [LinkedIn](#). The IRS shares agency updates and job opportunities.

The IRS social media effort works closely with IRS2Go. Taxpayers can use this free mobile app to check their refund status, pay taxes, watch IRS YouTube videos and get IRS Tax Tips via email. Like Instagram, the IRS2Go app is available from the Google Play Store for Android devices, or from the Apple App Store for Apple devices. IRS2Go is available in both English and Spanish, based on the phone settings.

The IRS also reminds taxpayers they can subscribe to a number of email subscription services for the latest tax information. Taxpayers can visit [e-News subscriptions](#) to sign up.



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