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## AICPA Comment Letter on UBTI for Exempt Organizations

The American Institute of CPAs (AICPA) submitted comments to the IRS (<https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20191202-aicpa-comments-notice-2018-67.pdf>) on guidance regarding the calculation of the unrelated business income tax applicable to tax-exempt organizations. In general, organizations described in Sections 401(a) and 501(c) of the Internal Revenue Code of 1986, as amended, are exempt from federal income tax (tax-exempt organizations) but may be subject to tax on income generated from unrelated businesses. (All section references herein are to the Code, unless otherwise stated.) Under the 2017 Tax Cuts and Jobs Act (TCJA), Section 512(a)(6) was added, which requires the separate computation of unrelated business taxable income for each trade or business of a tax-exempt organization that is subject to the unrelated business income tax. (Prior to the enactment of the TCJA, tax-exempt organizations could aggregate the income and losses from all unrelated, regularly carried on active trades or businesses to calculate UBTI.) In August 2018, the IRS released Notice 2018-67, which provides interim rules for determining whether a tax-exempt organization has more than one unrelated trade or business and how to calculate unrelated business taxable income with respect thereto, pending the issuance of regulations. The Notice also addresses the net operating loss deduction and treatment of global intangible low-taxed income for purposes of determining the unrelated business income tax.

The AICPA addresses the rules set forth in Notice 2018-67 (<https://www.irs.gov/pub/irs-drop/n-18-67.pdf>). Specifically, the comment letter (1) requests that a de minimis exception be added in regulations for organizations reporting less than \$100,000 of gross unrelated business income, (2) requests additional guidance for determining separate trades or businesses, (3) provides guidance on the aggregation of certain investment activities as a single trade or business and (4) requests guidance on the correct methodology for determining and utilizing net operating losses.

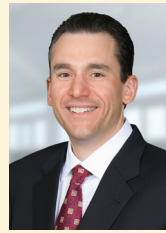
## NYSBA Report on First-Year Depreciation Deduction

The New York State Bar Association (NYSBA) submitted a report to the IRS ([https://www.nysba.org/Sections/Tax/Tax\\_Section\\_Reports/Tax\\_Section\\_Reports\\_2019/Report\\_1428.html](https://www.nysba.org/Sections/Tax/Tax_Section_Reports/Tax_Section_Reports_2019/Report_1428.html)) on the first-year depreciation deduction under Section 168(k) and related Treasury regulations that were recently issued. (See our prior coverage here (<https://www.stradley.com/insights/publications/2019/09/tax-insights-september-25-2019>).) Section 168(k), which permits an additional first-year depreciation deduction in the placed-in-service year of qualification, was amended by the TCJA to increase the amount of the depreciation to 100% and broaden the items that qualify. Generally, the report addresses what it states is inconsistent treatment of partnerships for purposes of the bonus depreciation deduction and discusses recommendations to resolve the issue. Additionally, the report sets forth other recommendations for (1) the five-year lookback rule, (2) intercompany transfer rules, (3) rules regarding the imputation of prior use by predecessor, (4) series transfer rule and (5) the de minimis use rule.

## Philadelphia Department of Revenue Provides Explanation of Philadelphia BIRT and NPT

The Philadelphia Department of Revenue has issued an explanation (<https://www.phila.gov/2019-11-25-birt-and-npt-philly-business-taxes-explained/>) of the Business Income &

Receipts Tax (BIRT) and the Net Profits Tax (NPT), which are two of the applicable business taxes in the city of Philadelphia. BIRT applies to every entity, including sole proprietors, engaged in a business for profit in the City of Philadelphia. BIRT is a tax on the net income a business generates in Philadelphia and gross receipts of sales made or services performed in Philadelphia. NPT applies to noncorporate entities only, like partnerships, LLCs, and sole proprietorships. NPT is based on the net profits from the operation of a business and applies to all of the business activity of Philadelphia residents and the portion of profits earned by nonresidents from business conducted in Philadelphia. A taxpayer subject to NPT is allowed a credit against the tax of up to 60% of what they paid on the Net Income portion of the BIRT. ■



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