



Tax Exempt & Government Entities

Tax Cuts and Jobs Act – EO Provision

Excise Tax on Excess Tax-Exempt Organization Executive Compensation Section 13602 – IRC 4960

Training based on TCJA guidance issued through
September 30, 2018



IRC 4960: Objectives

- Discuss enactment of IRC 4960
- Define:
 - Applicable Tax Exempt Organization
 - Covered employees
 - Excess parachute payments
- Describe the calculation of the excise tax
- Review changes to Forms 990 & 4720



- Excise tax on excess tax-exempt organization executives
 - Code section 4960 (new)
 - Imposes a 21% excise tax on
 - Applicable tax-exempt organizations
 - That pay \$1 million or more in remuneration to
 - Any of their five highest-paid “covered” employees;
 - Plus any excess parachute payment to a covered employee
 - Effective for taxable years beginning after 12/31/2017

- **Applicable Tax-Exempt Organizations (ATEO)**

- (c) **Definitions and Special Rules -**

- (1) The term means any organization which for the taxable year -

- (A) is exempt from taxation under section 501(a),

- (B) is a farmers' cooperative org described in sec 521(b)(1),

- (C) has income excluded from taxation under sec 115(1), or

- (D) is a political organization described in section 527(e)(1)



IRC 4960 - Remuneration

- In general: wages defined in IRC 3401(a) and as included under 457(f) but doesn't include:
 - Designated 402A(c) Roth contributions;
 - Remuneration paid to a licensed medical professional (including a veterinarian) which is for the performance of medical or veterinary services or
 - Remuneration the deduction for which is not allowed by reason of section 162(m)



IRC 4960 – Related Organization

- Remuneration from related to ATEO org included if it:
 - Controls, or is controlled by, the ATEO;
 - Is controlled by person or persons controlling ATEO;
 - Is a supported organization (as defined in section 509(f)(3)) or supporting organization (as defined in section 509(a)(3)) of the ATEO during taxable year; or
 - In the case of a 501(c)(9) VEBA ATEO, establishes, maintains, or makes contributions to ATEO



Related Organization Share of Tax

- Each employer of a covered employee is liable for their pro-rata share of excise tax:

$$\frac{\text{Employer's share of remuneration}}{\text{Total of all applicable remuneration paid}} \times \text{Total Tax}$$

- Each related employer would be required to file a Form 4720 for its proportionate share



Example – Share of Tax

- ATEO pays an employee \$900,000 and related employer pays the same employee \$200,000

Total Tax = \$100,000 X 21% = \$21,000 IRC 4960 Tax

- ATEO's share:

$\$21,000 \times \$900,000 / \$1,100,000 = \$17,182$

- Related organization's share:

$\$21,000 \times \$200,000 / \$1,100,000 = \$3,818$



IRC 4960 – Covered Employees

- Any employee (including former employee) of an applicable tax-exempt organization if employee:
 - Is one of the 5 highest compensated employees of the organization for the taxable year, or
 - Was a covered employee of the organization (or any predecessor) for any preceding taxable year beginning after 12/31/2016



- The excess of any parachute payment over the base amount portion allocated to such payment
 - Parachute payment: any payment to, or for benefit of, a covered employee in the nature of compensation if:
 - It is contingent on separation from the employment, and
 - It has an aggregate present value ≥ 3 times the base amount
 - Base amount: similar to the section 280G(b)(3) rules shall apply for purposes of determining base amount
- There are exceptions for certain payments



Form/Instruction Changes

- Form 4720 - used to compute & report the excise tax
- Schedule N (new) carries over to Part 1, new line 13 of Form 4720
- Forms 990 and 990-PF trigger questions added
- Instructions for Form 1120-C, U.S. Income Tax Return for Cooperative Associations



Form 4720, New Schedule N

Schedule N – Tax on Excess Executive Compensation (Section 4960) See instructions				
(a) Item number	(b) Name of covered employee	(c) Excess remuneration	(d) Excess parachute payment	(e) Total. Add column (c) and (d).
1				
2				
3				
4				
5				
6	Attachment, if necessary. See instructions			
Total. (add column (e) items 1 – 6).....				
Tax. Enter 21% of the amount above here and on Part I, line 13.....				



Audit Tips – Interview Questions

- Do you pay any employees > \$ 1million, including taxable fringe benefits?
- Was compensation paid by related organizations?
- Did you make any parachute payments?
- Are you familiar with the excise tax for compensation paid over \$1 million?
- Was Form 4720 filed to report the excise tax?



Audit Tips – Review Items

- List of separated employees and severance payments
- Forms W-2 and payroll disbursements for compensation over \$1 million
- Form 990 Part VII Section A and Sch J – Compensation Information



Expected Guidance

- Associate Chief Counsel (ACC) lists the following guidance item for IRC 4960:
 - Notice providing guidance on certain priority issues involving scope of coverage and calculation
 - IRC §4960
 - (TEGE) Sec. 13602
- Target Finish Date: 09/26/2018

- Discussed enactment of IRC 4960
- Defined
 - “Applicable Tax Exempt Organization”
 - “Covered employees” and
 - “Excess parachute payments”
- Described the calculation of the excise tax
- Reviewed changes to Form 990 and Form 4720



Questions:

- Questions?