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

\[
\text{Employer’s share of remuneration} \times \text{Total Tax} = \frac{\text{Total of all applicable remuneration paid}}{\text{Total Tax}}
\]

• 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 \times 21\% = $21,000 IRC 4960 Tax

- ATEO’s share:
  
  $21,000 \times \frac{900,000}{1,100,000} = $17,182

- Related organization’s share:
  
  $21,000 \times \frac{200,000}{1,100,000} = $3,818
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
### Schedule N – Tax on Excess Executive Compensation (Section 4960)

See instructions

<table>
<thead>
<tr>
<th>(a) Item number</th>
<th>(b) Name of covered employee</th>
<th>(c) Excess remuneration</th>
<th>(d) Excess parachute payment</th>
<th>(e) Total. Add column (c) and (d).</th>
</tr>
</thead>
<tbody>
<tr>
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<td>6</td>
<td>Attachment, if necessary. See instructions ..........................</td>
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</table>

**Total. (add column (e) items 1 – 6)**

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**Tax. Enter 21% of the amount above here and on Part I, line 13.**

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• Do you pay any employees > $1 million, 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
• 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?