

## IRS Interim Guidance for Organizations Subject to Unrelated Business Income Tax

**June 14, 2019**

Internal Revenue Service Notice 2018-67 (the “Notice”) sets forth interim guidance relating to Internal Revenue Code § 512(a)(6) *Special rule for organization with more than one unrelated trade or business*.

Enacted on December 22, 2017 as part of Public Law 115-97 (the “Tax Cuts and Jobs Act”), Code § 512(a)(6) provides that

in the case of any organization with more than 1 unrelated trade or business— unrelated business taxable income, including for purposes of determining any net operating loss deduction, shall be computed separately with respect to each such trade or business.

In enacting Code § 512(a)(6), Congress intended to eliminate an organization’s ability to use a deduction from one trade or business for a taxable year to offset income from a different unrelated trade or business for the same taxable year. However, no criteria was provided for determining what constitutes a separate unrelated trade or business for purposes of calculating unrelated business taxable income (“UBTI”).

The Treasury Department and the IRS intend to propose regulations for determining whether an exempt organization has more than one unrelated trade or business and how to identify separate trades or businesses for purposes of Code § 512(a)(6). In the interim, in accordance with the Notice,

exempt organizations may rely on a reasonable, good-faith interpretation of [the relevant Code provisions], considering all the facts and circumstances, when determining whether an exempt organization has more than one unrelated trade or business for purposes of § 512(a)(6).

A reasonable, good-faith interpretation includes using the North American Industry Classification System 6-digit codes (available [here](#)), which organizations have historically used to classify revenue on their annual IRS Form 990 returns.

The Notice also includes specific principles and transition rules regarding various issues arising under Code § 512(a)(6), including treatment of income from partnerships, treatment of amounts paid or incurred for transportation fringe benefits, and calculation of net operating losses. It also provides guidance on the treatment of global intangible low-taxed income for purposes of UBTI.

Read the full text of the Notice [here](#).

-Ahsaki Benion

---

---

related professionals

Jeremy S. Steckel / Partner

D 212-238-8786

[steckel@clm.com](mailto:steckel@clm.com)

Pamela A. Mann / Partner

D 212-238-8758

[mann@clm.com](mailto:mann@clm.com)