

confidence
GAINED



2019 TAX & BENEFITS UPDATE

FOR NOT-FOR-PROFITS

BILL ENCK, ROGER PRINCE & BARBARA MCGUAN

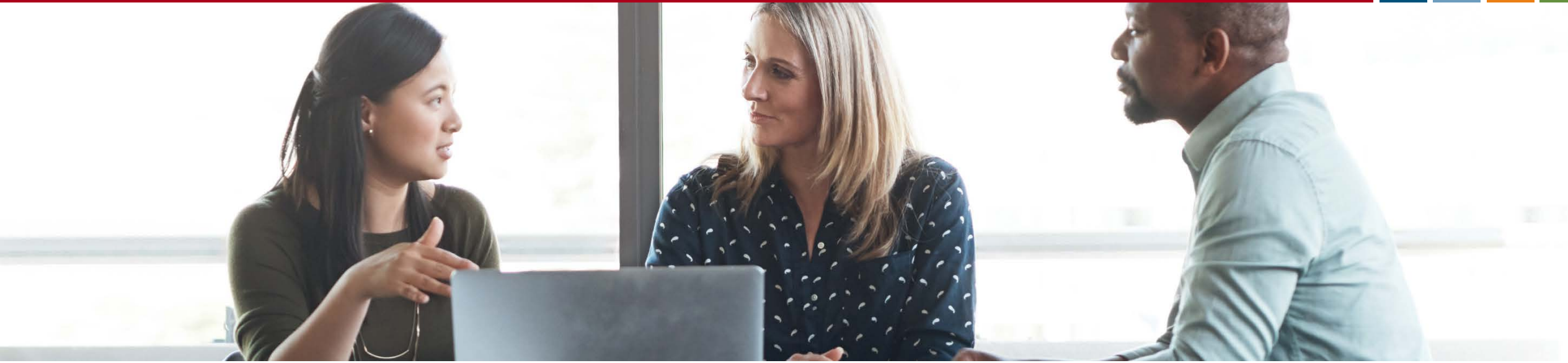


BENEFITS UPDATE

- ACA developments
- The parking dilemma
- Excess and reasonable compensation
- 403(b) expenses

TAX UPDATE

- Unrelated business income and Net operating losses
- Excise tax on Net investment income
- Third-party users of the Form 990



ACA PENALTY NOTICES

FIRST

“a” penalty vs. “b” penalty: Understand the difference

What is the importance of premium tax credits (PTCs)?



ACA PENALTY NOTICES

MOST ASSESSMENTS HAVE BEEN BASED ON INCORRECT INFORMATION:

- Incorrect Form 1094-C
- Incorrect/blank Form 1095-C, Line 14 and 16
- Form 1095-C for part-time employees



ACA PENALTY NOTICES

WHAT CAN EMPLOYERS DO BETTER?

- Document look-back measurement methods
- Determine affordability
- Review Forms prepared by service provider
- Reporting for related entities

Do not try to respond without input from experienced professionals.



IMPACT OF REPEAL OF ACA INDIVIDUAL MANDATE (EFFECTIVE JANUARY 1, 2019)

MOST LIKELY IMPACT ON EMPLOYERS –

- More EEs may decline coverage.
- However, less EEs may go to Exchanges.
- Net impact on Employer penalties is uncertain.
- Net impact on Employer premium costs is uncertain.



WILL THE EMPLOYER MANDATE GO AWAY?

UNLIKELY ANYTIME SOON!

TEXAS FEDERAL CASE VOIDED THE FULL ACA IN DECEMBER, 2018.

Decision stayed pending appeal to 5th Circuit.

Case possibly headed to Supreme Court.

NO CONGRESSIONAL EFFORTS CURRENTLY HAVE ANY TRACTION.



THE PARKING DILEMMA

- Many nonprofits have reported UBIT as a result of new rules.
- Mostly impacts urban locations.
- Can continue to be a pre-tax employee benefit.
- All guidance to date in the form of IRS Notices.



THE PARKING DILEMMA

STRATEGIES TO ELIMINATE OR MINIMIZE

- It is better to own than to rent (depreciation).
- If possible, eliminate all reserved EE parking.
- Count every space available!
- The \$1,000 UBI exclusion still applies.
- We can help – this is complex.



THE PARKING DILEMMA.

IS CONGRESSIONAL HELP ON THE WAY FOR NONPROFITS?

Very unlikely in the current legislative climate.

- This is a significant revenue raiser.
- Must be offset by some other means of revenue.

EXCISE TAX ON EXCESS COMPENSATION

- **Who is a “covered employee”?** Top five highest paid in current year or any prior year after December 31, 2016
- **What is considered excess compensation?** Compensation exceeding \$1 million OR excess parachute payments
- **Exclusions:** payments to licensed medical professionals directly related to providing medical or veterinary services

83.17	82.59	0.95	0.78	83.16	83.17	82.13
115.32	114.31	0.88	1.01	115.30	115.33	113.53
5.16	5.12	0.78	0.04	5.15	5.16	5.10
38.97	38.56	1.05	0.41	38.96	38.98	37.83

Excise Tax on Excess Compensation

NOTICE 2019-9 – PROVIDES CLARIFICATION.

- Outside Board Directors are not impacted.
- The entity providing the compensation is the “common law employer.”
- Excess compensation may or may not be unreasonable compensation.

EXCISE TAX ON EXCESS COMPENSATION

IN WHAT SITUATIONS DO WE SEE ISSUES ARISE?

- Section 457(f) plans.
- Severance Agreements.

REASONABLE COMPENSATION

IS THE ANNUAL COMPENSATION AN EXCESS BENEFIT TRANSACTION?

Familiar question for nonprofits.

Is procurement of a Compensation Study enough?

- Watch out for special situations.
- Watch out for lengthy severance.
- Consider procuring a Tax Opinion Letter.



SECTION 403(b) EXCESSIVE FEE CASES

STARTED WITH THE FOR-PROFIT SECTOR.

Class-action suits resulted in some large awards.

- Excessive recordkeeping fees.
- Excessive investment fees.

PLAINTIFF'S ATTORNEYS NOW GOING AFTER NFPS.

Universities and Healthcare systems targeted at first.



- An organization may be subject to tax if it is carrying on an activity that is:
 - Trade or business
 - Regularly carried on
 - Not Substantially Related to Exempt Purpose
- All three must be met before the activity is subject to tax.



UNDER THE NEW RULES

- Unrelated business income (UBI) – track and report each trade or business on a separate basis
- Net Operating Losses (NOLs) cannot offset income derived from another activity
- Guidance needed regarding how broadly a line of business will be defined and what to do with investment and other UBI amounts

NOTICE 2018-67

**RELIANCE – UNTIL PROPOSED REGULATIONS ARE ISSUED,
PUBLIC COMMENTS BEING GATHERED**

**SEPARATE TRADE OR BUSINESS – USE REASONABLE, GOOD-
FAITH INTERPRETATION OF SECTIONS 511-514**

- NAICS 6-digit code
- Fragmentation principle under section 513(c)
- Comments requested for debt-financed and controlled entity UBI

NOTICE 2018-67

PARTNERSHIP INTERESTS – AGGREGATE IF ONE OF FOLLOWING TESTS ARE MET:

- De minimus test: EO holds no more than 2% of both the profits interest and capital interest (average of beginning and ending %s)
- Control test: EO holds no more than 20% of the capital interest and does not have control or influence over the partnership (F&C)

Ownership by disqualified persons, supporting orgs, and controlled entities count toward the ownership %s

OK to aggregate partnership interests into one silo if they meet the rules above

Acquired prior to 8/21/18: can aggregate underlying partnerships

UNDER THE NEW RULES

- Post-2017 NOLs:
 - Only 80% of NOL carryover can offset income
 - Maintain separately for each UBI activity
 - NOLs carry forward indefinitely
- Pre-2018 NOLs:
 - Deduction not limited to the activity that created it
 - Not limited to 80%
 - Can only be carried forward 20 years
- Corporate tax rate changed to flat 21%



EXCISE TAX ON NET INVESTMENT INCOME

- 1.4% excise tax on net investment income earned annually on assets not used directly in carrying out educational purposes
- Provision applies to organizations with at least 500 full-time students (with 50% of students located in the US) with qualifying assets of at least \$500,000 per student, or a total of at least \$250 million in applicable assets
- Attribute related organizations when determining thresholds
- Notice 2018-55 provides “step up” in basis

GUIDESTAR: SEAL OF TRANSPARENCY

- **Bronze:** Org name, contact, address and email, Mission statement, Name of org leader & board chair, Program descriptions, and Geographical service area
- **Silver:** Bronze + Audited financial statements or basic financial info
- **Gold:** Bronze + Silver + Goals, Strategies, Capabilities, Indicators, and Progress
- **Platinum:** B + S + G + Metrics Reporting
- **Website:** <https://www.guidestar.org/>

TOP THREE WATCHDOG SITES

- Charity Navigator: <https://www.charitynavigator.org/>
- Better Business Bureau Wise Giving Alliance: <http://www.give.org/>
- Charity Watch: <https://www.charitywatch.org/home>

CHARITY WATCH

HOW DOES CHARITY WATCH RATE YOUR ORGANIZATION?

- Program % of total expenses (>75%)
- Cost to Raise \$100.00 (<\$25)

LETTER GRADE: A+ TO F

BETTER BUSINESS BUREAU

- How does the BBB rate your organization?
 - 20 Standards Across 4 Different Categories

CATEGORY 1: GOVERNANCE and OVERSIGHT

- Board Oversight
- Board Size - Minimum of 5 members
- Board Meetings – Minimum of 3 evenly spaced meetings
- Board Compensation-No more than 10% of board is compensated.
- Conflict of Interest – No material conflicting interest with the charity.

BETTER BUSINESS BUREAU

CATEGORY 2: MEASURING EFFECTIVENESS

- Effectiveness Policy – Assess the organization’s performance at least every two years.
- Effectiveness Report – Submit a report of the Effectiveness assessment to the governing board.

BETTER BUSINESS BUREAU

CATEGORY 3: FINANCES

- Program Expenses - 65% of Total Expenses on programs
- Fund Raising Expenses - Spend no more than 35% of related contributions on fund raising.
- Accumulating Funds – Avoid accumulating funds that could be used for current program activities.
- Audit Report
- Detailed Expense Breakdown
- Accurate Expense Reporting
- Budget Plan – Board approved budget for each year.

BETTER BUSINESS BUREAU

CATEGORY 4: FUND RAISING AND INFORMATIONAL MATERIALS

- Accurate Materials
- Annual Report - Summary of accomplishments
- Website Disclosures
- Donor Privacy
- Cause Marketing Disclosures – How does your charity benefit from the sale of goods?
- Complaints – Respond to any complaints filed with the BBB.

CHARITY NAVIGATOR

HOW DOES CHARITY NAVIGATOR RATE YOUR ORGANIZATION?

- Financial Health
- Accountability and Transparency

CHARITY NAVIGATOR

FINANCIAL HEALTH – SEVEN METRICS

Financial Efficiency

- Program Expense Percentage
- Administrative Expense Percentage
- Fundraising Expense Percentage
- Fundraising Efficiency (fundraising expense / total contributions)

CHARITY NAVIGATOR

FINANCIAL HEALTH – SEVEN METRICS

Financial Capacity

- Program Expense Growth
- Working Capital Ratio
- Liabilities to Assets Ratio

CHARITY NAVIGATOR

ACCOUNTABILITY AND TRANSPARENCY

- *Accountability* is an obligation or willingness by a charity to explain its actions to its stakeholders.
- *Transparency* is an obligation or willingness by a charity to publish and make available critical data about the organization.
 - Information is gathered from Form 990 and the Organization's Website.

CHARITY NAVIGATOR

INFORMATION FROM FORM 990

- Independent Board
- Material Diversion of Assets
- Audited Financial Statements with an Audit Oversight Committee
- Loans to or from related parties
- Documents Board Meeting Minutes
- Conflict of Interest Policy
- Whistleblower Policy
- Record Retention Policies
- CEO Salary & Process to determine compensation

CHARITY NAVIGATOR

INFORMATION FROM YOUR ORGANIZATION'S WEBSITE

- Listing of the Board Members
- Key Staff Listing
- Audited Financial Statements Availability
- Form 990 Availability
- Donor Privacy Policy

CHARITY NAVIGATOR

CREATING YOUR SCORE

Distance of two component scores from a perfect score.

$$100 - \sqrt{\frac{(100 - \text{Financial})^2 + (100 - \text{A\&T})^2}{2}}$$

Overall Rating:	★★★★	★★★☆☆	★★☆☆☆	★☆☆☆☆	0 Stars
Overall Score:	≥ 90	80 - 90	70 - 80	55 - 70	< 55

CHARITY NAVIGATOR - AN EXAMPLE

	Score (out of 100)	Rating
Overall Score & Rating	88.71	
Financial	84.04	
Accountability & Transparency	100.00	

CHARITY NAVIGATOR - AN EXAMPLE

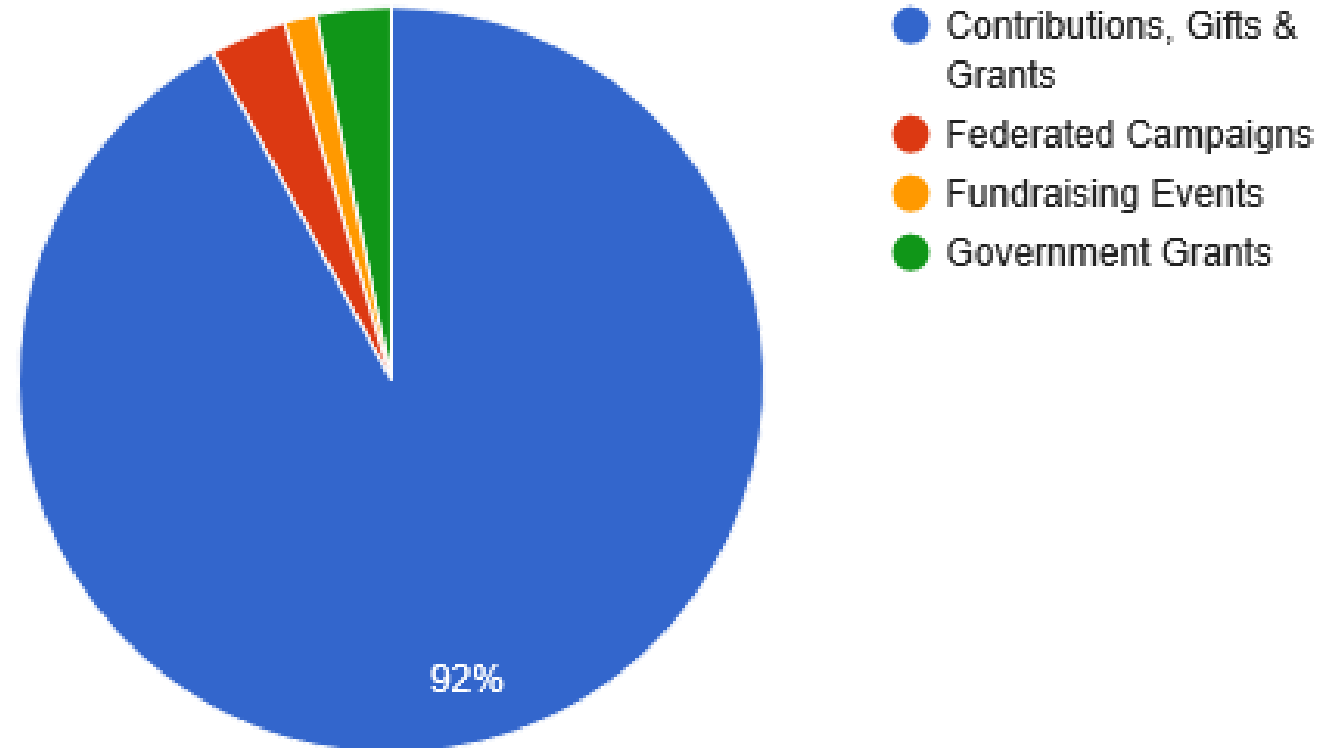
Financial Performance Metrics	
Program Expenses <i>(Percent of the charity's total expenses spent on the programs and services it delivers)</i>	89.4%
Administrative Expenses	4.0%
Fundraising Expenses	6.4%
Fundraising Efficiency	\$0.19
Working Capital Ratio (years)	0.25
Program Expenses Growth	3.0%
Liabilities to Assets	51.1%

CHARITY NAVIGATOR - AN EXAMPLE

Accountability & Transparency Performance Metrics	
Information Provided on the Form 990	
Independent Voting Board Members	<input checked="" type="checkbox"/>
No Material diversion of assets	<input checked="" type="checkbox"/>
Audited financials prepared by independent accountant	<input checked="" type="checkbox"/>
Does Not Provide Loan(s) to or Receive Loan(s) From related parties	<input checked="" type="checkbox"/>
Documents Board Meeting Minutes	<input checked="" type="checkbox"/>
Provided copy of Form 990 to organization's governing body in advance of filing	<input checked="" type="checkbox"/>
Conflict of Interest Policy	<input checked="" type="checkbox"/>
Whistleblower Policy	<input checked="" type="checkbox"/>
Records Retention and Destruction Policy	<input checked="" type="checkbox"/>
CEO listed with salary	<input checked="" type="checkbox"/>
Process for determining CEO compensation	<input checked="" type="checkbox"/>
Board Listed / Board Members Not Compensated	<input checked="" type="checkbox"/>
Is the following information easily accessible on the charity's website?	
Donor Privacy Policy	<input checked="" type="checkbox"/>
Board Members Listed	<input checked="" type="checkbox"/>
Audited Financials	<input checked="" type="checkbox"/>
Form 990	<input checked="" type="checkbox"/>
Key staff listed	<input checked="" type="checkbox"/>

CHARITY NAVIGATOR - AN EXAMPLE

Contributions Breakdown (FYE 06/2018)



Expenses Breakdown (FYE 06/2018)



QUESTIONS?

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