Is your tax-exempt organization ready to report its excess executive compensation?

McGlinchey Tax Alert

April 11, 2019

By: Douglas W. Charnas , Katherine Conklin

Download a PDF version of the alert.

For many tax-exempt organizations that must pay excise tax on excess executive compensation, the time is approaching to file Form 4720. Form 4720 includes a new Line 13 in Part I, and Schedule N for tax-exempt organizations to report excess executive compensation. The instructions to Form 4720 also have been revised. Form 4720 must be filed and the excise tax paid by the due date for filing the tax-exempt organization's Form 990-PF, Form 990, Form 990-EZ, or Form 5227. If the tax-exempt organization is not required to file any of these forms, Form 4720 must be filed by the 15th day of the 5th month after the organization's accounting period ends. A tax-exempt organization may file Form 8868, Application for Automatic Extension of Time to File an Exempt Organization Return, to request an automatic extension of time to file Form 4720. The automatic extension will be granted if Form 8868 is properly completed and timely filed. ***Form 8868 does not extend the time to pay tax.*** To avoid interest and penalties, a tax-exempt organization must pay the tax due by the original due date of Form 4720.

Beginning in 2018, certain tax-exempt organizations are subject to a 21% excise tax on compensation in excess of $1 million paid to certain employees. The excise tax also applies to any excess parachute payments made after 2017.

The Tax Cut and Jobs Act of 2017 added Section 4960 to the Internal Revenue Code of 1986, which imposes a 21% excise tax on “excess remuneration” and “excess parachute payments” that an “applicable tax-exempt organization” pays a “covered employee.” At the end of 2018, IRS issued Notice 2019-09, which provides interim guidance defining certain terms (including those above), and instructs taxpayers on how to report and pay the excise tax. The Notice, which is 92 pages, includes 39 questions and answers.

Notice 2019-09 provides that taxpayers may apply a reasonable, good faith interpretation of the statute, until Treasury and the IRS issue proposed regulations or other future guidance. It goes on to say:

> The positions reflected in this notice constitute a good faith, reasonable interpretation of the statute. Whether a taxpayer’s position that is inconsistent with this notice constitutes a good faith, reasonable interpretation of the statute generally will be determined based upon all of the relevant facts and circumstances, including whether the taxpayer has applied the position consistently and the extent to which the taxpayer has resolved interpretive issues based on consistent principles and in a consistent manner. Notwithstanding the previous sentence, this preamble describes certain positions that the Treasury Department and the IRS have concluded are not consistent with a good faith, reasonable interpretation of the statutory language. The Treasury Department and the IRS intend to embody these positions as part of the forthcoming proposed regulations.

Thus, the Notice serves as a safe harbor if a tax-exempt organization follows the positions reflected in the Notice that are considered good faith interpretations of the statute.

Because many tax-exempt organizations soon will begin filing information returns for taxable years beginning after 2017, it is important for them to understand the new excise tax and meet the deadline for paying it.

For more information about this alert, please contact one of the authors or any member of McGlinchey Stafford’s Corporate and Tax Law teams.

Related Professionals

Douglas W. Charnas

Katherine Conklin

Related Services

Tax Credits

Tax Planning

Taxation