2016 Higher Education Tax Update

Revised May 2016

Contents

IRS “Data-Driven Decision Making”

In 2015, the IRS Exempt Organizations (EO) Division Examinations Section, migrated from a “project-oriented” exam selection process to a more “data-driven” process. Over the prior several years, the EO Division had selected organizations for examinations largely through “compliance projects” (e.g., Colleges & Universities Compliance Project and Employment Tax Compliance Project). Starting in 2014, the EO Division began utilizing “data-driven decision making.” With this process, the EO Division is utilizing queries run based upon answers included on Form 990-series returns to identify issues that may require examination.

An example (not given by the EO Division, who closely guards their queries!) might be an instance where an organization answers “Yes” to Form 990, Part VI, Line 5, “Did the organization become aware during the year of a significant diversion of the organization’s assets?” and then fail to “explain the nature of the diversion, dollar amounts and/or other property involved, corrective actions taken to address the matter, and pertinent circumstances on Schedule O (Form 990 or 990-EZ).”

An IRS official, speaking at a conference in November 2015, gave the following example:

> It's that we try as we’re making decisions to use data and that’s rather than having a hunch about something, so let’s go off and do that. Instead, let’s step back and make sure that the data supports the direction in which we’re going. To give you a recent example of data-driven decision-making in the exempt organizations world, Exempt Organizations finalized a case selection model that uses the core Form 990 and supplementary forms and schedules to identify possible issues of non-compliance. The case selection model combines over 150 data queries into one master query that is run against all filed Forms 990 to identify organizations with the most potential non-compliance. The individual queries are categorized by the significance or risk of the potential issue by using return information and internal data sources to identify organizations for potential non-compliance. Obviously, the whole idea is that any time we’re doing examinations, and again in a time of very limited resources, let’s use our resources the best we can. Hopefully, something will be done with respect to high-risk organizations so where there’s that potential for non-compliance, that’s when the IRS examiner should be out there.

This should serve as a heads up to all exempt organizations to ensure that they carefully review Form 990 before filing.

Form 1098-T Penalty Relief – Prior Year Penalty Notices

Over the past few years, many higher education institutions have received penalty notices from the IRS with regard to “errors or omissions” with respect to student TINs (taxpayer identification numbers). In June 2015, the Trade Preferences Extension Act of 2015 provided relief from penalties that had been assessed with regard to incorrect or missing taxpayer identification numbers on Form 1098-T, Tuition Statement.

The announcement on the IRS website stated:

> **For Colleges and Universities: IRS Waives Penalties for Missing or Incorrect Taxpayer Identification Numbers**
>
> The IRS is waiving penalties assessed against any college, university or other educational institution for Forms 1098-T that were filed with an incorrect or missing taxpayer identification number (TIN). The IRS is granting this relief for tax years 2012, 2013 and 2014.
>
> Relief for these three years is being given in light of recent legislation that provides relief to educational institutions from future penalties for missing or incorrect TINs if the educational institution certifies under penalty of perjury that it has complied with regulations governing solicitation of payee TINs. Although this legislation permits this certification, it does not remove the requirement to properly solicit payee TINs.
>
> For tax year 2012, each educational institution that was previously assessed such penalty will receive a letter from the IRS informing them of the IRS’ decision. Affected institutions that do not receive a letter by

Form 1098-T Penalty Relief – Prior Year Penalty Notices, continued

> Oct. 1, 2015, should respond to the IRS using the original penalty assessment notice. The IRS is not assessing penalties for incorrect or missing TINs for tax years 2013 and 2014.

The above notice may be found at: https://www.irs.gov/uac/Newsroom/For-Colleges-and-Universities:-IRS-Waives-Penalties-for-Missing-or-Incorrect-Taxpayer-Identification-Numbers

2015 Form 1098-T Penalty Relief

In addition to the penalty relief regarding missing or incorrect TINs on Form 1098-T that was provided in the Trade Preferences Extension Act of 2015, the IRS announced — in early 2016 — prospective penalty relief in this area for the 2015 tax year (reporting in 2016). In order for an educational institution to "qualify" for this 2015 relief, "if the educational institution certifies, under penalty of perjury in the form and manner prescribed by the IRS (which have not yet been released) that it properly requested TINs from students."

The process for properly requesting TINs is enumerated in Treasury Regulation 1.6050S(1)(e)(iii) as follows:

> Manner of soliciting TIN. An institution or insurer must request the individual's TIN in writing and must clearly notify the individual that the law requires the individual to furnish a TIN so that it may be included on an information return filed by the institution or insurer. A request for a TIN made on Form W-9S, "Request for Student's or Borrower's Taxpayer Identification Number and Certification," satisfies the requirements of this paragraph (e)(3)(iii). An institution or insurer may establish a system for individuals to submit Forms W-9S electronically as described in applicable forms and instructions. An institution or insurer may also develop a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as admission or enrollment forms or financial aid applications.

This relief is limited to the 2015 Form 1098-T required to be filed by eligible educational institutions by 2/29/16, or 3/31/16 if filed electronically.

Safe Harbor for Form W-2 "Errors" (Birthday Gifts?!)

The PATH Act of 2015 contains a provision (in Section 202) that apparently provides a way to give holiday or birthday gift cards of $25 or less to employees without including the value of those gift cards in the employee's Form W-2 compensation.

> Section 202. Safe harbor for de minimis errors on information returns and payee statements. The provision establishes a safe harbor from penalties for the failure to file correct information returns and for failure to furnish correct payee statements by providing that if the error is $100 or less ($25 or less in the case of errors involving tax withholding), the issuer of the information return is not required to file a corrected return and no penalty is imposed. A recipient of such a return (e.g., an employee who receives a Form W-2) can elect to have a corrected return issued to them and filed with the IRS. The provision is effective for returns and statements required to be filed after December 31, 2016. (RIA Checkpoint summary of the PATH Act of 2015)

This is my favorite tax "thing" in years! It rivals Revenue Ruling 2007-41 (which I believe is the best thing the IRS has ever produced!). For years, we've been "arm wrestling" with the IRS about the situation enumerated below (From "Tax Tips for Christian Higher Education" blog at ABHE.org, August 5, 2015. Subscribe to "Tax Tips" at: https://www.abhe.org/blog/tax-tips-category-page/).

Here's the story…

Safe Harbor for Form W-2 “Errors” (Birthday Gifts?!), continued

Birthday Gift Cards for Employees

Situation

Ward, the CFO at Marathon Bible College (MBC), a private college exempt under Internal Revenue Code section 501(c)(3), calls us with a question. MBC has historically given employees in the accounting department $15 Moonrox Coffee gift cards for their birthdays. Historically, MBC has considered these birthday presents as a de minimis fringe benefit for these employees. Ward asks if this is the correct treatment for tax purposes. Regrettably, we have to tell him that no, the gift cards should be taxable and included in compensation for the accounting department employees and reported in the employees’ Form W-2 each year.

Rules

Here is a situation where we have to answer based on the way the IRS applies the tax rules. Clearly, in my opinion, the IRS is in error in their enforcement/interpretation of the taxability of most gift cards. The applicable case law is a 1961 district court case, *Hallmark Cards, Inc. v. U.S*. This case provides the proper analysis in this case. The Hallmark court reviewed the Service’s determination that employer-provided fifteen and twenty-five dollar “special gift certificates,” which were redeemable in merchandise at any store that sold Hallmark’s products were subject to employment taxes at the time the employees received them. In *Hallmark*, the court concluded that the “amounts provided for in the gift certificates were not intended as wages. They were intended to be gifts and gratuities, and in no wise to be considered as any part of the compensation to [Hallmark’s’] employees.”

Further, tax regulations set forth that merchandise (such as a bag of coffee), given as a birthday or holiday gift, would generally qualify as a nontaxable, de minimis fringe benefit. Income Tax Regulation § 1.132-6(e)(1) provides examples of de minimis fringe benefits that are excludable from an employee’s gross Income. These include occasional typing of personal letters by a company secretary; occasional personal use of an employer’s copying machine; occasional cocktail parties, group meals, or picnics for employees and their guests; traditional birthday or holiday gifts of property (not cash) with a low fair market value; occasional theater or sporting event tickets; coffee, doughnuts, and soft drinks; local telephone calls; and flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).

The IRS currently relies on a twisted ruling — Technical Advice Memorandum (TAM) 200437030. This TAM (to the best of anyone’s ability to decipher its convoluted and contradictory “logic”) goes in contrast to the Hallmark case and sets forth that any gift card with a value on it will be taxable to the receiving employee. So, although broken, we are forced to live with conventional wisdom and draconian IRS rules in this arena.

Bottom Line

While the old rules about giving employees turkeys for Thanksgiving and hams for Christmas (or other “merchandise”) as holiday/birthday gifts of “de minimis” value and not having those be taxable compensation are likely still viable, “valued” gift cards may create taxable compensation. You should take a look at how your school is handling these types of gifts to ensure proper tax treatment.

The information provided herein presents general information and should not be relied on as accounting, tax, or legal advice when analyzing and resolving a specific tax issue. If you have specific questions regarding a particular fact situation, please consult with competent accounting, tax, and/or legal counsel about the facts and laws that apply.

My Commentary

The IRS and Congress were not inclined to intervene directly and give us what we have doggedly asked for — some type of announcement, advice, or ruling allowing, say, up to $25 in gift cards given to employees, which would not be taxable to them. However, intentionally or not, they have given us that precise gift! The PATH Act of 2015, in Section 202, effectively allows us to give employees up to $25 each year in gifts cards without reporting the value of that generous gift on the employee’s Form W-2. Note that this is not equivalent to the $25 limit on business gifts.

Form 1098-T Reporting Changes

Higher education institutions will no longer have the option of reporting **amounts billed** on IRS Form 1098-T, Tuition Statement, after 2015. The change is effective for tax year 2016 forms, generally filed in 2017. All institutions will be required to report payments for qualified tuition and related expenses.

Beginning with the 2016 tax year, institutions will be required to report payments for qualified tuition and related expenses in Box 1 of IRS Form 1098-T. There will no longer be an option to report amounts billed for qualified expenses in Box 2.

The new ruling comes in the form of PATH Act of 2015 Section 212 which amends I.R.C. section 6050S (b)(2)(B)(i). Many higher education institutions are concerned with the changes required to their reporting systems and that 2016 has already begun with no guidance in sight from the IRS. As NACUBO noted:

> These are the very same issues that we have raised with Treasury officials and Hill staff on the tax writing committees for the past several years. They don't seem to understand that forcing Box #1 reporting doesn't necessarily generate a more perfect picture of what a student paid for qualified tuition and related expenses. In seeking a fictional "plug and play" solution to taxpayer confusion surrounding 1098-Ts and what number to include on the individual's tax return, they have created another whole set of struggles for colleges and universities that will only add to existing taxpayer confusion and noncompliance.

Hopefully, we will get some type of "first-in/first-out" hierarchical guidance from the IRS on Form 1098-T "Box 1" reporting early in 2016.

**UPDATE:
On April 27, 2016, the IRS issued Ann. 2016-17, in which it agreed to waive any penalties for the 2016 Form 1098-T with regard to the "Box 1" issue. The IRS cited student account changes, training requirements, and form testing as reasons for the waiver. Ann. 2016-17 states:

> Following the enactment of PATH, numerous eligible educational institutions informed the IRS that implementation of the law change will require computer software reprogramming and other changes that cannot be implemented in time to meet the applicable filing and furnishing due dates for Form 1098-T for calendar year 2016.
>
> In light of this, the IRS will not impose penalties under section 6721 or 6722 with respect to 2016 Forms 1098-T solely because the eligible educational institution reports the aggregate amount billed for qualified tuition and related expenses for the 2016 calendar year. Thus, eligible educational institutions will continue to have the option of reporting either the amount of payments of qualified tuition and related expenses received or the amount of qualified tuition and related expenses billed for the 2016 calendar year without being subject to penalties.

IRS Charitable Rollover Made Permanent

****DEVELOPMENT DIRECTOR ALERT****

For the past several years, taxpayers who are age 70.5 or older were allowed to make tax-free distributions to a charity from an Individual Retirement Account (IRA) of up to $100,000 per year. Eligible taxpayers did not include these contributions/distributions in gross income nor claim them as a deduction on their returns, thus they were not subject to the charitable contribution percentage limits.

The provision continually "expired" and — through 2014 — had been retroactively extended late in a following year. In 2013, there was a two-year retroactive extension that expired 12/31/13. In December 2014, Congress "extended" the provision to 12/31/14. So, the law had expired at 12/31/14 and we went through 2015 wondering if it would be extended. Now, with Section 112 of the PATH Act, Congress has amended I.R.C. section 408(d)(8)(F) to make the provision permanent. The PATH Act wording is: "Section 408(d)(8) is amended by striking subparagraph (F). EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2014."

IRS Charitable Rollover Made Permanent, continued

There was some conversation about lowering the taxpayer age and/or allowing the "rollovers" to be made into donor advised funds. These changes did not happen.

**UPDATE:
The proposed Charities Act of 2016 (s. 2750) includes verbiage that would make donor-advised funds an eligible charity for purposes of the IRA rollover law that permits an IRA owner at least 70.5 years old to exclude from their gross income up to $100,000 per year in distributions made directly from the IRA to certain public charities.

Form 990 Extension Changes

Exempt organizations that are required to file Form 990-series returns must file by the 15th day of the fifth month after their year-end. Under current law, these organizations may apply for two three-month extensions of time to file (the first extension is "automatic"). Form 8868 is used to request both of these extensions. In July 2015, Congress passed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. This law includes changes to the filing deadlines of several returns. Exempt organizations will still be required to file Form 990 by the 15th day of the fifth month, however, the new law prescribes that the two three-month extensions will be replaced with one automatic six-month extension. The IRS is working to make changes to Form 8868 to accommodate these changes.

The new extension process will be effective for taxable years beginning after December 31, 2015. Thus, organizations will continue to submit two three-month extensions for 2015 Form 990-series returns (tax years beginning in 2015).

Filing Deadline Changes for Forms W-2 and 1099-MISC

The PATH (Protecting Americans from Tax Hikes) Act of 2015 has accelerated the filing deadlines for Forms W-2 and 1099-MISC. Section 201 of the PATH Act inserts a new I.R.C. section 6071(c) stating:

> (c) RETURNS AND STATEMENTS RELATING TO EMPLOYEE WAGE INFORMATION AND NONEMPLOYEE COMPENSATION.—Forms W–2 and W–3 and any returns or statements required by the Secretary to report nonemployee compensation shall be filed on or before January 31 of the year following the calendar year to which such returns relate.

This new provision will require Forms W-2, W-3, and returns or statements to report non-employee compensation (such as Form 1099-MISC) to be filed on or before January 31 of the year following the calendar year to which such returns relate. The provision is effective for returns and statements relating to calendar years after the date of enactment (e.g., filed in 2017). In addition, electronically filed returns will no longer be eligible for an extended filing date.

"Cadillac" Tax Gets Two-Year Postponement

As a provision of the PATH Act of 2015, the "Cadillac Tax" under the Affordable Care Act has been "delayed" two years. The excise tax on high-cost employer-sponsored health plans enacted as part of the ACA will first be effective in 2020 rather than 2018 as originally scheduled. Thus the first required reporting by providers and employers will now be in 2020 for the 2019 tax year. The so-called "Cadillac Tax" includes a 40% penalty against health insurance plans that provide benefits over certain thresholds to employees. Note that most governments are exempted from this "tax" or penalty.

Are You an “ALE”? (“ALE” Calculations for 2014 and 2015)

We covered this issue in the December 16, 2015, Tax Tips post on the Christian Higher Education blog (mentioned above, which is also sent as a weekly eblast to subscribers) that may be found at www.abhe.org. Subscribe at: https://www.abhe.org/blog/tax-tips-category-page/

Issue

We continually talk with Christian colleges, seminaries, and universities who are under the impression that they are not an applicable large employer (ALE) for purposes of the Affordable Care Act — until they learn more about the ALE calculations…

Situation

Troas Bible College (TBC) is a private college and a public charity under IRC section 501(c)(3) and section 170(b)(1)(A)(ii). We sent TBC’s controller, Lisa, an email “head’s up” asking her if TBC was an applicable large employer (ALE) for 2015. She wrote back and said, “No. We are a small employer because we only have 37 full-time employees who work over 30 hours a week.”

We replied that the calculation involved more than just “full-time employees.” This led to a phone call and, when we ran the calculations, TBC had 53 “FTEs” (full-time equivalent workers). That meant a lot more work for TBC — but they also avoided potentially large penalties.

*Note that there are transitional rules for 2015 that generally mean that if your 2014 ALE calculation results in 99 or fewer “FTE5s” (see below), you might not be an ALE for 2015.

Rules (from the IRS website)

Identifying Full-Time Employees:

Determining which employees are full-time employees is central to the employer shared responsibility provisions.

An employer must identify its full-time employees to determine:

- If it is an ALE, and, therefore, subject to the employer shared responsibility provisions;
- To whom it must offer minimum essential coverage to avoid an employer shared responsibility payment; and
- The amount of any potential liability for an employer shared responsibility payment. Note that an employer is not obligated to calculate its liability, and should not make a payment without first being contacted by the IRS.

In general, for purposes of the employer shared responsibility provisions, a full-time employee is, for a calendar month, an employee employed on average at least 30 hours of service per week, or 130 hours of service per month.

> If you are an applicable large employer, you are subject to the employer shared responsibility provisions and may be subject to one of two potential employer shared responsibility payments for a given month if at least one of your full-time employees received the premium tax credit (PTC) for purchasing coverage through the Health Insurance Marketplace (Marketplace) and for that same month you either: (1) did not offer coverage to at least 95% (70% for 2015) of your full-time employees (and their dependents) or (2) you offered such coverage but at least one of your full-time employees received the PTC (because the coverage was unaffordable, did not provide minimum value, or the full-time employee was not offered coverage). (From IRS Publication 5208, Affordable Care Act: Are you an applicable large employer?)

A helpful tip

Annual ALE Calculation – “FTE5”

The regulations permit the use of two measurement methods for identifying full-time employees. The most common approach can be done using 30 hours per week or 130 hours per month as the denominator and is described in more detail below. Another option is the “look-back method.”

Are You an "ALE"? ("ALE" calculations for 2014 and 2015), continued

FTE1
A good place to start is with the "130 hours per month" plan. After all, why do something 52 times a year when you only have to do it 12 times? Basically, you determine the number of full-time employees you have by listing all workers who hold a full-time position or work more than 130 hours per month (or 30 hours per week) for each month of the year. Let's call that number FTE1.

FTE2
Next, take all hours each month worked by workers who are not in the FTE1 list and divide that number of hours by 130 hours per month (or 30 hours per week). Let's call this number FTE2.

FTE3
Add FTE1 and FTE2 together to get FTE3 for each month in a given year. Add the 12 months together and divide by 12. If this FTE3 is less than 50 (remember the IRS says to "round down" – so if your FTE3 comes out to 49.88, that would be 49) stop here — you are a "small employer." If FTE3 is 50 or greater, you might be an ALE — but keep going….

FTE4
If your annual ALE calculation is greater than 50, take a look at your list of workers and identify which are a) seasonal workers and, b) federal or state work-study program participants. Add a + b and this is your FTE4.

FTE5
Take your annual ALE calculation (FTE3) and subtract FTE4 from it. This gives you FTE5. And again, if FTE5 is less than 50 you are a "small employer." If FTE5 is 50 or greater, you are an ALE for the following year.

Now, if FTE5 is close to 50, you might:

- Re-calculate FTE1 and FTE2 based on 30 hours per week (rather than 130 hours per month) to see if the FTE3 number might be lowered. And then continue on to calculate a revised FTE5.
- Explore the potential advantages of the more complicated look-back method.

This revised FTE5 is your "final answer" and determines whether or not you are an ALE.

Bottom Line

There are numerous misconceptions when it comes to Affordable Care Act provisions and how they might affect Christian colleges, which could cause future anguish and gnashing of teeth. At the very least, a best practice is to use the "Measurement Method" above to calculate monthly — and ultimately by year — your number of FTEs. Check with you tax advisors for clarification.

The information provided herein presents general information and should not be relied on as accounting, tax, or legal advice when analyzing and resolving a specific tax issue. If you have specific questions regarding a particular fact situation, please consult with competent accounting, tax, and/or legal counsel about the facts and laws that apply.

Extra Time to File Forms 1095-B and 1095-C

In late 2015, the IRS announced extended deadlines for some of the filing of first-year ACA reporting forms. The IRS announced that it has extended the due dates for Affordable Care Act (ACA) reporting Form 1095-B, Health Coverage, and 1095-C, Employer-Provided Health Insurance Offer and Coverage Insurance.

The new, extended due dates are as follows:

March 31, 2016 - Forms provided to employees (previously February 1)
May 31, 2016 - Forms filed with the IRS if using a paper form (previously February 29)
June 30, 2016 - Forms filed with the IRS if filing electronically (previously March 31)

Extra Time to File Forms 1095-B and 1095-C, continued

Individuals who file personal income tax returns before they receive reporting forms from their employers will not need to amend their returns if the information on Form 1095-B or 1095-C is different.

Obergefell v. Hodges – The Supreme Court and "Same Sex Marriage"

On June 26, 2015, the Supreme Court found that same-sex marriage was legal throughout the United States. Immediately, the issue was raised across the press, social media, and in private conversations as to whether this decision (*Obergefell v. Hodges*) would result in limits, censorships, and/or legal actions against Christian colleges, seminaries, and universities whose beliefs stood in contrast to the Supreme Court's decisions and the resulting government mandates.

At the core of these speculations was the issue of whether religious organizations might lose their tax-exempt status. Might the IRS begin to revoke the exempt status of Christian higher education institutions? There appeared to be precedent for this action by the IRS and advocates of this position have been citing the *Bob Jones University v. the U.S.* racial discrimination case from the 1970s. In fact, Justice Roberts, in his dissent in *Obergefell*, stated "Indeed, the Solicitor General candidly acknowledged that the tax exemptions of some religious institutions would be in question if they opposed same-sex marriage."

Further, in the majority Supreme Court opinion of the *Obergefell* case, Justice Kennedy makes a strong "public policy" case for same-sex marriage. This is important because "public policy" is the litmus test the IRS has historically used as a guide to revoking organizations' (e.g. Bob Jones University's) exempt status.

With regard to loss of tax exemption by religious organizations due to the Obergefell decision, IRS Commissioner Koskinen testified before the Senate in July 2015 stating, "At this time, there is no basis for us [the IRS] to revisit tax-exempt status on that grounds." Further, the Congressional Research Service, in an October 2015 report entitled, "Recognition of Same-Sex Marriage: Implications for Religious Objections," emphasized that Koskinen "stated that the IRS would not currently apply the doctrine to religious entities acting in opposition to same-sex marriage, but left open the possibility that the agency could change its position in response to future legal and policy developments." Other IRS officials, when speaking about this issue and using *Bob Jones* as a precedent, have indicated that it generally takes time for Supreme Court decisions of this nature to become "public policy" — the apparent test for the IRS with respect to tax-exempt status revocation.

Before the IRS revoked tax-exempt status in *Bob Jones,* there was the *Brown v. the Board of Education* case, the U.S. Civil Rights legislation enacted by Congress in the 1960s and several other decisions — along with repeated public outcry. When the issue had become "public policy," the IRS acted in revoking the tax-exempt status of Bob Jones and others.

There will continue to be legal maneuvering, articles in the press, and passionate outcries on both sides of this issue. It is somewhat disconcerting for religious organizations that the issue is not settled with the IRS and that a small number of bureaucrats could ultimately decide to begin revoking the tax-exempt status of organizations when they see fit. It is probable that we will see several iterations of First Amendment rights cases in the near future that will ultimately hold the sway on "public policy" for this issue.

In the meantime, it would appear prudent for religious organizations to count the cost of their tax-exempt status. Wise management teams at churches, religious schools, and other organizations are looking at what impact the following might have on their operations:

- Taxability of revenues
- Potential decrease in contribution revenue
- Loss of property tax exemptions
- Loss of sales tax exemptions
- Loss of unrelated business exclusions
- Impacts of filing new federal and state tax forms
- Affordable Care Act implications
- Changes to other federal and state not-for-profit benefits

2016 “Token” Amounts

The deductible amount for “insubstantial benefits to donors” for 2016 was increased by an amount that kept pace with past years’ increases.

IRS Publication 1771 sets forth the following:

> Token Exception — Insubstantial goods or services a charitable organization provides in exchange for contributions do not have to be described in the acknowledgment.
>
> Goods and services are considered to be insubstantial if the payment occurs in the context of a fund-raising campaign in which a charitable organization informs the donor of the amount of the contribution that is a deductible contribution, and:
>
> 1. The fair market value of the benefits received does not exceed the lesser of 2 percent of the payment or $X,* or
> 2. The payment is at least $Y,* the only items provided bear the organization’s name or logo (e.g., calendars, mugs, or posters), and the cost of these items is within the limit for “low-cost articles,” which is $Z.*
>
> Free, unordered low-cost articles are also considered to be insubstantial.

The “asterisked amounts” are $106 (X) for 2016 ($105 for 2015) or the amount contributed to the charity was at least $53 (Y) for 2016 ($52.50 for 2015) and the donor receives only “token benefits” (e.g., bookmarks, calendars, mugs, posters, tee shirts, etc.) generally costing no more than $10.60 (Z) for 2016 ($10.50 for 2015).

Two things:

1. Note that the token amounts represent the **cost** to the charity, not fair market value.
2. Token items can generally include books, etc. that are marked/stamped with the charity’s logo or name.

I.R.C. Section 7611 Memo Re: Employment Tax Audits

Internal Revenue Code section 7611 imposes restrictions upon the IRS with respect to church audits. Never mind that the IRS has never formally defined “church” in the code or regulations. They utilize a list of 14 characteristics from a 1977 speech by an IRS official that was first published by the Service in 1978 as a news release! (For more on that, see Internal Revenue Manual section 7.26.2.2.4, updated 3/30/1999.)

U.S. tax law has continually recognized that there is legal tension between the IRS’s rights to examine exempt organizations and a church’s rights (sometimes referred to as the “separation of church and state”). I.R.C. section 7611 was enacted to provide detailed guidelines that the IRS must follow when making tax inquiries to, and/or tax examinations of, churches. In a nutshell, the IRS may only examine a church if they have a reasonable belief (on the basis of all facts and circumstances and with written notice) that the church 1) does not qualify for exemption from income tax or, 2) may be carrying on an activity that is a trade or business unrelated to its exempt purpose. Under I.R.C. section 7611(a)(2), the IRS can only begin a tax inquiry into a church if “an appropriate high-level Treasury official” approves the inquiry. In addition, there are numerous notification deadlines and calendar restrictions imposed upon the IRS with regard to these “church exams.”

Historically, the IRS has held that the restrictions set forth in I.R.C. section 7611 do not apply to “employment tax inquiries” of churches. But, in a memo dated December 17, 2015, the IRS’s Small Business/Self-Employed Division has reversed course and instructed IRS examiners that the section 7611 restrictions — now — also apply to employment tax inquiries and exams. This should be good news to churches.

In the December 17 memo, the IRS states that: 1) I.R.C. section 7611 procedures apply to employment tax inquiries; 2) IRS examiners should not initiate any examinations on a church; 3) if for some reason an employment tax examiner encounters a church employment tax issue, the examiner should immediately contact a manager.

I.R.C. Section 7611 Memo Re: Employment Tax Audits, continued

On a related matter, I.R.C. section 7611 has been at the center of an ongoing court case (*United States v. Living Word Christian Center*) wherein the judge has required the IRS to designate the "appropriate high-level Treasury official" in regulations. Because the IRS has not yet complied to the court's satisfaction, many would say that "section 7611 audits" have not been conducted since 2009. Although the IRS has had the "appropriate high-level Treasury official" designation on their "Priority Guidance Plan" (denoted as, "Final regulations under s. 7611 relating to church tax inquiries and examinations. Proposed regulation were published on August 5, 2009") for the past several years, they have not — to date — released these regulations.

New Notification Requirements for Section 501(c)(4) Organizations

Historically, "social welfare organizations" under I.R.C. section 501(c)(4) could apply for exempt status using Form 1024, Application for Recognition of Exemption Under Section 501(a) or "self-declare" and establish the organization without filing Form 1024.

IRS Publication 557, "Tax-Exempt Status for Your Organization," states, "Organizations that believe they are properly classified as a 501(c)(4) organization may also self-declare and begin filing Form 990s, without submitting a Form 1024."

Now, Section 405 of the Protecting Americans From Tax Hikes (PATH) Act of 2015 has instituted a new filing requirement for 501(c)(4) organizations — even those that have existed for years. The provision created by this section calls for 501(c)(4) organizations to file a simple one-page notice of registration with the IRS within 60 days of the organization's formation. In addition, existing 501(c)(4)s will adhere to this streamlined "registration" process. The current, voluntary 501(c)(4) application process will be eliminated. The IRS will be required to provide a letter of acknowledgement of the registration within 60 days after an application is submitted. The organization can use this acknowledgement to demonstrate its exempt status to state and local tax authorities, for instance.

Section 405(b) of the PATH Act stipulates the following with regard to contents of the "one-page notice":

> The notice required under subsection (a) shall include the following information:
> 1. The name, address, and taxpayer identification number of the organization.
> 2. The date on which, and the State under the laws of which, the organization was organized.
> 3. A statement of the purpose of the organization.

The IRS is working diligently to define and design the "simple one-page notice" and expects to provide the form and guidance in 2016.

Proposed Regulations on Political Activities by 501(c)(4)s

On November 29, 2013, the IRS released proposed regulations seeking to more clearly define the activities and expenditures that would be treated as "political" as distinct from "social welfare" within the meaning of Section 501(c)(4). The proposed regulations defined the promotion of social welfare as excluding "candidate-related political activity" such as communications that expressly advocated for a clearly identified political candidate or communications made within 60 days of a general election, or within 30 days of a primary election, that identified a candidate or political party. Voter registration events and "get out the vote" drives were included in the definition of candidate-related political activity.

Comments Requested

- The proposed regulations requested comments by February 27, 2014.
- Many issues will require additional proposed regulations.
- Over 170,000 comments were received — smashing previous "records."

The IRS "backed off" on the proposed regulations in June 2014 in order to study the myriad comments and future solutions. Then during 2015, in speeches, Commissioner Koskinen stated that the IRS hoped to have new 501(c)(4)

Proposed Regulations on Political Activities by 501(c)(4)s, continued

political regulations issued before June 30, 2015. Later in 2015, IRS officials began to state that the new political regulations would not be issued until 2016 and would not take effect until after the 2016 national elections.

Finally, in December 2015, as part of the appropriations bill, Congress put the kibosh on the 501(c)(4) political regulations by including a provision that prohibits the IRS from using any resources on promulgating these regulations through 2016.

What a saga!!

Summary of 2016 Key Tax Facts

2016 Inflation-Adjusted Amounts

The Internal Revenue Service announced annual inflation adjustments for more than two dozen tax provisions for tax year 2016, including the following:

- The annual exclusion for gifts remains at $14,000 for 2016, like it was for 2015.
- The “gross income” threshold for filing Form 990-T remains at $1,000 for 2016 — the same as it has been since 1951!
- The OASDI (i.e., Social Security) maximum compensation base (“FICA limit”) is $118,500 for 2016, equal to the amount for 2015.
- The threshold for filing Form 990 electronically remains at $10,000,000 and 250 information returns.
- The foreign earned income exclusion rises to $101,300 for 2016, up from $100,800 in 2015.

IRS Mileage Rates

Standard mileage rates moved down. The optional mileage allowance for owned or leased autos (including vans, pickups, or panel trucks) has decreased by 3.5¢ to 54¢ per mile for business travel after 2015. The rate for using a car to get medical care or in connection with a move that qualifies for the moving expense also has decreased by 4¢ to 19¢ per mile for 2016. The charitable mileage rate remains steady at 14¢ per mile — this amount is statutory.

UBIT Issues

In reality, the most recent big “UBIT” news came two years ago in the form of the IRS Advisory Committee for Tax Exempt and Governmental Entities (ACT) 2014 Report.

There was very little UBIT activity in the form of cases in 2015, but there have been recent cases of note for Christian higher education institutions…

Unrelated Business Income Tax – Fees Generated from Market Vendors

In Private Letter Ruling 201544025, the IRS came to the conclusion that the alumni association of a community college was subject to income from fees received from market vendors at a weekly flea market they hosted. The IRS found that the flea market activity was not substantially related to the association's exempt purpose of providing financial and civic support for the college. In addition, it was held that fees that generated from market vendors were not real property rents that are excluded from unrelated business taxable income.

Unrelated Business Income Tax – Purchase and Revenue from a Retail Mall

In PLR 201444043, Sole membership LLC/exempt supporting organization’s ownership of a retail center adjacent to a university’s campus won't be treated as UBTI or cause revocation of organization’s exempt status.

UBIT Issues, continued

Unrelated Business Income Tax – 512(b)(13) Exclusion

As part of the Protecting Americans from Tax Hikes Act of 2015, the "section 512(b)(13) exclusion" for payments of rents, royalties, annuities, and/or interest from a controlled organization to its tax-exempt parent was extended permanently — retroactive to December 31, 2014.

Unrelated Business Income Tax – Pouring Agreements

In a 2014 CapinCrouse web survey, 61% of over 100 institutions said that they had a "pouring agreement" in place. These agreements, which can also be "exclusive provider" agreements, can be fraught with UBIT issues. The IRS's 2002 CPE Text states:

> An arrangement that acknowledges the payor as the exclusive sponsor of an exempt organization's activity generally does not, by itself, result in a substantial return benefit. Any portion of the payment attributable to the exclusive sponsorship arrangement, therefore, may be a qualified sponsorship payment. However, an arrangement that limits the sale, distribution, availability, or use of competing products, services, or facilities in connection with an exempt organization's activity generally results in a substantial return benefit. The portion of the payment attributable to the exclusive provider arrangement is not a qualified sponsorship payment.

We should all be looking closely at our Coke and Pepsi "pouring agreements" to ensure that they do not result in UBIT. The IRS team that conducted the 34 audits in the CUCP stated in 2013 that they found no issues with "pouring agreements" except for potential "appearances" of coaches or others.

Form 5578 Filing

Late in 2015, we began to get the first of several inquiries regarding the filing of Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax. Generally, this form is used by schools that do not file Form 990 to comply with the rules set forth in Revenue Procedure 75-50. Here's another "Tax Tip" that should help…

Issue

Questions have been posed regarding whether a college/seminary that does not file Form 990 would be required to file Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.

Situation

Sheila, the CFO at Idaho Bible College & Seminary (IBCS), calls us with a question. She states, "We have a letter from the IRS that says we are not required to file Form 990. In that letter, we are classified as an 'integrated auxiliary of a Church as described in section 1.6033-2(h) of the Treasury Regulations'. We are also classified as 170(b)(1)(A)(ii)."

We tell Sheila that IBCS should file Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax each year by the 15th day of the fifth month following the end of their tax year because they are "classified" as "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on" (school) by the IRS under I.R.C. section 170(b)(1)(A)(ii).

Rules

The short answer is that <u>schools</u> who file Form 990 report/handle this information on Schedule E of Form 990. Form 5578 is generally filed by <u>schools</u> that do not file Form 990.

Form 5578 Filing, continued

Who Must File?

Every organization that claims exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code and that operates, supervises, or controls a private school(s) must file a certification of racial nondiscrimination. If an organization is required to file Form 990, Return of Organization Exempt From Income Tax, or Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, either as a separate return or as part of a group return, the certification must be made on Schedule E (Form 990 or 990-EZ), Schools, rather than on this form.

An authorized official of a central organization may file one form to certify for the school activities of subordinate organizations that would otherwise be required to file on an individual basis, but only if the central organization has enough control over the schools listed on the form to ensure that the schools maintain a racially nondiscriminatory policy as to students. (Form 5578 instructions)

The "driving force" behind the racial non-discrimination reporting is Rev. Proc. 75-50. This Revenue Procedure does not include a specific exclusion from filing for "churches."

IRS Publication 1828, Tax Guide for Churches and Religious Organizations states:

Note: It is not considered racially discriminatory for a parochial school to select students on the basis of membership in a religious denomination if membership in the denomination is open to all on a racially nondiscriminatory basis. Further, a seminary, or other purely religious school, that primarily teaches religious subjects usually with the purpose of training students for the ministry, is not subject to the racially nondiscriminatory requirements because it is considered to be a religious rather than an educational organization. (IRS Publication 1828, page 28)

Thus, it would appear that the "continental divide" on this issue comes with whether a college/seminary/university is organized under Internal Revenue Code section 170(b)(1)(A)(i) as "a church or a convention or association of churches" or under Internal Revenue Code section 170(b)(1)(A)(ii) as "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on" (school). Pursuant to the information in IRS Publication 1828 (above) a church would not be required to file Form 5578 (nor, as a church, Form 990) annually. Generally, if you are organized as a "school" (under I.R.C. 170(b)(1)(A)(ii)) you would file Form 990 — if not, Form 5578 would be required.

Note: If you are organized under Internal Revenue Code section 170(b)(1)(A)(ii) as "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on" as a "school" rather than a "church," and are not filing Form 990, be very careful about documenting your reasons for not filing Form 990. Failure to file may result in penalties of up to $50,000 per year and possible revocation of your exempt status.

Bottom Line

As an accounting team member, you should know whether your institution is classified by the IRS as a "school" or as a "church." This should be enumerated on your IRS "determination letter." The classification could have a bearing on whether or not your institution is required to file certain forms — or may be subject to penalties, or worse. If you still have questions regarding the filing of Form 5578, Form 990, or other filings, ask your qualified tax advisor about these items. He or she will be able to help you navigate the rules that can prove difficult to decipher.

Colleges, Universities, and Seminaries

In January 2016, Capin Crouse conducted weekly "Quick Surveys" on four successive Tuesdays. Between 116 – 192 respondents participated (depending on the week) from a broad base of colleges, seminaries, and universities. We greatly appreciate the folks who took the time to respond and look forward to a similar project in January 2017.

Colleges, Universities, and Seminaries, continued

The subjects of these queries were:

- Are You an Applicable Large Employer (“ALE”)
- Form 1098-T Penalty Notices
- Alternative investments reported on Schedule K-1
- On-campus bookstores

In our first of four eQueries, we focused on the Affordable Care Act, specifically the “Applicable Large Employer” (ALE) status. There is a great deal of confusion about this “ALE concept.” Note also that the IRS has extended the deadlines for Form 1095-C and Form 1095-B reporting in 2016 for 2015.

Is your institution an Applicable Large Employer (ALE) for 2015?

About 83% of our respondents answered “Yes,” they were Applicable Large Employers.

The next week, eQuery #2, we asked about the Form 1098-T/IRS penalties issue. In late 2015, there were three “developments” with regard to Form 1098-T:

- “Forgiveness” of penalties with regard to Form 1098-T notices for prior years concerning incorrect or missing tax identification numbers (TINs) for students.
- The IRS will not penalize institutions for missing or incorrect TINs in 2015 — if you follow the written guidelines for requesting TINs.
- Higher education institutions will no longer have the option of reporting amounts billed on IRS Form 1098-T. All institutions will be required to report payments for qualified tuition and related expenses. The change is effective for tax year 2016 forms, generally filed in 2017.

Our question was…

Over the past three years, did your school receive an IRS penalty notice regarding Form 1098-T?

About 37% of our respondents answered “Yes,” they’d received penalty notices with respect to Form 1098-T filings.

In week three, we asked about investments in partnerships and Subchapter S corporations. More and more we see colleges, seminaries, and universities investing in various partnerships. According to the IRS, a partnership uses Schedule K-1 to report a partner’s share of the partnership's income, deductions, credits, and other items on an annual basis. And although the partnership generally isn't subject to income tax, an institution may be liable for tax on your share of the partnership income, whether or not distributed. If some of the income, expenses, etc. represent unrelated business income, you may have to report it on Form 990-T.

Does your institution receive any Schedule K-1, Partner's Share of Income, Deductions, Credits, etc. forms each year?

About 41% of our respondents answered “Yes.”

In eQuery #4 for 2016, we served up a “softball” regarding on-campus bookstores. Many schools are closing their brick and mortar bookstores in favor of an online version. We asked…

Does your institution have a bookstore on your campus?

About 72% of the many respondents said “Yes,” they still kept a bookstore going on campus. There were numerous comments such as:

- “No longer — we direct our students to Amazon.”
- “Yes... and it's a colossal drag on time, energy, resources and management attention.”
- “Yes, but we don’t operate it.”
- “No as of this school year! Yay!!!”

EO Referral Groups

On December 30, 2015, a memo was sent by the Director of Exempt Organizations, Examinations, Margaret Von Lienen, that affected Internal Revenue Manual sections 4.75.7, 4.76.7. The subject line of this memo is "Discontinuance of Referral Committees." It created an "EO Referral Group."

Per the memo, the EO Referrals Group will create within the group a peer review team of three classifiers rotated on an annual basis. The peer review team will be responsible for reviewing high-profile referrals. High-profile referrals include information items containing or involving the following:

a. Evidence or allegations of financial transactions with, including contributions to, individuals or organizations with known or suspected terrorist connections
b. Evidence or allegations involving a church
c. High-impact issues (e.g., the decision may result in media attention)
d. Sensitive cases (e.g., the information was submitted by an elected official (other than Congress or Executive Branch))
e. Items submitted by a member of Congress (or congressional staff)
f. Other factors indicating that review by the peer review team would be desirable for reasons of fairness or integrity

Recommendations on the disposition of high profile referrals will be based on majority determination.

IRS Withdraws Section 170(f)(8) Proposed Regulations

Over the past several years, there have been several tax court cases where taxpayers had charitable contribution deductions disallowed because the receipt/statement they received from a public charity did not include the proper "statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction." In answer to this, the IRS issued proposed regulations on September 17, 2015 that would create a new form (perhaps Form 1098-D) creating — in the words of the IRS — a "framework for donee reporting… based on a specific-use information return that would include, among other things, the donor's name, address, and taxpayer identification number. Similar to other specific-use information returns filed with the IRS, the donor's taxpayer identification number was required in order to properly associate the donation information with the correct taxpayer."

Then, after over 38,000 comments from the public, the IRS withdrew the proposed regulations on January 7, 2016 with Internal Revenue Bulletin 2016-04. To use the IRS' own words:

> The proposed framework for donee reporting was intended to minimize the reporting burden on donee organizations by making it voluntary, and to protect donor privacy by not using the Form 990 series. In the preamble to the proposed regulations, the Treasury Department and the IRS expressed concern about the potential risk for identity theft with a donee reporting system based on a specific-use information return because donee organizations would be collecting donors' taxpayer identification numbers and maintaining those numbers for some period of time. The Treasury Department and the IRS requested comments, including specifically on whether additional guidance was necessary regarding the procedures a donee organization should use to mitigate the risk of identity theft of donor information.
>
> The Treasury Department and the IRS received a substantial number of public comments in response to the notice of proposed rulemaking. Many of these public comments questioned the need for donee reporting, and many comments expressed significant concerns about donee organizations collecting and maintaining taxpayer identification numbers for purposes of the specific-use information return. In response to those comments, the Treasury Department and the IRS have decided against implementing the statutory exception to the CWA requirement, and therefore that exception remains unavailable unless and until final regulations are issued prescribing the method for donee reporting. Accordingly, the notice of proposed rulemaking is being withdrawn. (from www.irs.gov/irb/2016-04_IRB/ar10.html)

Revenue Enhancement Opportunities

Finally, with all of the above in play, it makes sense for nonprofit colleges, seminaries, and universities to consider alternative revenue sources. With that in mind, here is one more dose of Tax Tips for Christian Higher Education (from the July 3, 2015 eBlast)…

Has Your College Considered "Revenue Enhancement Opportunities"?

Situation

Sami, the CFO at Marathon Bible College (MBC), a private college and public charity under Internal Revenue Code section 501(c)(3), called to say that at MBC's next board meeting they were having an emergency session on how to raise additional funding for next year's budget. She asked if we had any suggestions as to activities other Christian colleges were engaging in. We told Sami that it is best to diligently plan (Luke 14:28) and consider the "uniquenesses" of MBC before jumping into activities that may be successful at other institutions. Of equal importance, MBC should ensure that they have a strong knowledge of the IRS' unrelated business income tax rules so that they do not run afoul of the laws. We suggested that she engage our team to come in and do an REO (Revenue Enhancement Opportunities) program for their team.

Rules

From IRS Publication 598, "Tax on Unrelated Business Income of Exempt Organizations":
An exempt organization is not taxed on its income from an activity substantially related to the charitable, educational, or other purpose that is the basis for the organization's exemption. Such income is exempt even if the activity is a trade or business.

However, if an exempt organization regularly carries on a trade or business not substantially related to its exempt purpose, except that it provides funds to carry out that purpose, the organization is subject to tax on its income from that unrelated trade or business.

REO Summary

I'd like to try and relate some of the fun and power we've been seeing with the Revenue Enhancement Opportunities (REO) projects I've been privileged to facilitate over the past several months. First, great thanks to you for your time and insight in helping me brainstorm through improvements in the program!

In summary, we try to get as many leaders of the institution in the room as possible (CEO, COO, CFO, accounting team, board members, deans, key employees, development officers, athletic directors…). Many times, they do not believe we are going to have anywhere near as much fun as we do!

We usually begin the day by looking at a school's Form 990 and the footnotes to their audited financial statements brainstorming about "uniquenesses" that we see therein — with those uniquenesses charted on "big yellow stickies." This time is limited to 30-40 minutes.

Then, we have a few fun polling questions that are anonymously answered. What is your favorite scripture? What did you want to be when you grew up? etc. These are also "charted" and help us understand personal uniquenesses the group/institution has. We like to take breaks every 60-80 minutes to reload.

Next, we move toward brainstorming about 30 or so ideas for "wild and crazy revenue generating projects." This is a flexible, informal, open time. With our colleges, we see ideas tend toward development, facilities, certificate programs, and services. However, we try to break those molds. We chart items in four colors with black as information, blue as strengths/uniquenesses, green as positives, and red as negatives.

Then (usually about 2:00 or 2:30 p.m.), we engage in the process of narrowing those down to two workable ideas which we will move forward on with "Action Plans." Historically, we look for one idea that is "big and audacious" and one that is "just add water." The ideas that are taken down off the wall should not be forgotten — they are generally just long-term or "partnerable" ideas that may be returned to in the future.

Revenue Enhancement Opportunities, continued

Then, expanding upon the two chosen plans, we build outline descriptions, appoint point people, team members, and establish/calendarize action items. Going forth, we work the calendar — driven by action point dates — to implement the revenue generating projects. It is truly a blast!

I will continue to be involved with follow-up calls and emails and we've seen some really cool plans going forward. I did an "REO Session" yesterday that truly blew me away and — it seems — is revolutionizing the institution. (Among other things, we walked away with the "Three Rs": Recovery, Restoration, Recycling — of goods and people… as a guiding light for the chosen Plans/Projects!)

Bottom Line

As we look to the future, "alternative lines of income" can be very important for almost all Christian Colleges, Seminaries, and Universities. It is great to be as creative as possible, but you should understand that there are myriad opportunities — and snares — when you are dealing with "revenue enhancement."

Overtime Final Rules and Higher Education

On May 18, 2016, the United States Department of Labor released final Fair Labor Standards Act regulations regarding the updating of overtime rules. In a nutshell, the new regulations have the following effects:

- Exempt employees = current minimum salary of $23,660 / year ($455 per week)
- New regulations, Exempt = **$47,476** / year ($913 per week)
- Non-exempt = 1.5 times pay for all hours over 40 / week
- Effective December 1, 2016
- "Highly compensated employee" provisions from $100,000 to **$134,004** / year

The Department of Labor published a summary entitled "Overtime Final Rule and Higher Education," which may be found at www.dol.gov/sites/default/files/overtime-highereducation.pdf

This summary states:

> Higher education is a complex and important sector in our economy and civil society. It includes a large variety of institutions: public and private schools; community colleges, four-year colleges, and large research institutions; and small campuses of only a few hundred students and faculty and large campuses of thousands of people.

It goes on to address several provisions that apply to higher education institutions that provide exemptions from FLSA coverage for bona fide teachers, coaches, graduate and undergraduate students, and academic administrative personnel. For instance, "academic administrative personnel" as follows:

> The administrative personnel that help run higher education institutions and interact with students outside the classroom, such as department heads, academic counselors and advisors, intervention specialists and others with similar responsibilities are subject to a special salary threshold that does not apply to white-collar employees outside of higher education. These employees are not entitled to overtime compensation if they are paid at least as much as the entrance salary for teachers at their institution.

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About CapinCrouse

As a national full-service CPA and consulting firm devoted to serving not-for-profit organizations, CapinCrouse provides professional solutions to organizations whose outcomes are measured in lives changed. Since 1972, the firm has served mission-focused not-for-profit organizations, churches, and higher education institutions by providing support in the key areas of financial integrity and security. With a network of offices across the nation, CapinCrouse has the resources of a large firm and the personal touch of a local firm. Learn more at capincrouse.com.