

Testimony of Mr. John H. Graham IV, FASAE, CAE
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Before the U.S. House Ways and Means Oversight Subcommittee
“Ending the TCJA Tax on Houses of Worship, Charities, and Nonprofits”

June 19, 2019

Chairman Lewis, Ranking Member Kelly and members of the Oversight Subcommittee, thank you for convening this hearing. I am honored to testify before you regarding a critical issue for my members and my association. While the 2017 Tax Cuts and Jobs Act was in many ways necessary legislation, it wasn't perfect, and we ask this body to swiftly repeal the new unrelated business income tax applied on certain fringe benefits provided by tax-exempt employers.

My name is John Graham, and I am President and CEO of the American Society of Association Executives, the nation's largest organization representing the interests of trade and professional associations. ASAE has over 44,000 members nationwide, including almost 600 in Georgia and 1,200 in Pennsylvania. ASAE represents the interests of not only associations, but also, in part, charitable organizations and other types of nonprofit organizations. According to the IRS, there exist over 63,000 trade and professional associations and over one million charitable, philanthropic and nonprofit organizations. The latter employ over 10% of the U.S. workforce while membership organizations employ over 1.3 million people¹. ASAE is also the founder of

¹ <https://www.urban.org/research/publication/nonprofit-sector-brief-2015-public-charities-giving-and-volunteering>

the UBIT Coalition, a group of more than 100 tax-exempt organizations seeking fair treatment for the nation's association and nonprofit sector in the tax code, and specifically seeking changes to a couple provisions in the 2017 Tax Cuts and Jobs Act that have proven burdensome for the sector, including the provision central to today's hearing.

First, ASAE generally supported the 2017 effort to overhaul the tax code. Prior to 2017, the tax code had not been significantly revamped since 1986, growing longer and more arcane over the decades. The need to make the tax code simpler and fairer was real, and Congress is to be commended for undertaking this ambitious endeavor. However, as with any undertaking as complex and far-reaching as tax reform, there are bound to be unintended consequences with certain provisions that reveal themselves to be unfair or unworkable after the fact. The 21-percent tax on parking, transit and other benefits that nonprofit organizations provide to their employees is undoubtedly one of those provisions in need of a second look. Not only is the tax a huge burden for the nonprofit community, it also counts as a true outlier in the overall UBIT statute.

Congress enacted the unrelated business income tax in 1950 to address complaints of unfair competition with for-profit small businesses and to capitalize on a growing source of potential tax revenue. The statute was later expanded in 1969 to cover all tax-exempt organizations. Under the UBIT statute, an association is required to pay tax on the net gain from activities that are considered unrelated to its exempt purpose. An activity is likely to be interpreted by the IRS as unrelated to an organization's exempt purpose if it meets three requirements: it is a trade or business (conducted for the production of income through the sale of goods or services); it is

regularly carried on (i.e., conducted frequently or continuously in a way comparable to that of a commercial enterprise); and it is not substantially related to the exempt purpose of the organization (i.e., it is not aimed at a goal or purpose other than simply realizing income).

Examples of activities the IRS considers unrelated trades or businesses include membership list sales, book or magazine publishing, advertising sales and affinity programs.

Until passage of the 2017 tax law, UBIT was applied only to income sources. The tax law – for the first time – applies UBIT to an expense. Tax-exempt organizations typically have limited resources to devote to their missions but now must pay a significant tax on the parking, transit and gym memberships they provide to employees. Not only do organizations need to pay a new tax, but they must also value these benefits. This is difficult, as there is no clearly defined valuation method. Although the IRS issued interim guidance in December 2018, it is incomplete and raises more questions for tax-exempts that struggle to comply. This new requirement forces many tax-exempt employers to file federal Form 990-T for the first time, irrespective of their engagement in unrelated business activity. Many organizations have already misfiled Form 990-T or missed filing deadlines altogether.

Further, according to a January 2019 study commissioned by the Urban Institute and Independent Sector, the expansion of UBIT will divert an average of \$12,000 annually from organizations' mission-oriented programs². This figure does not even include the time and administrative cost to file taxes for the first time. These critical funds would otherwise support

² <https://independentsector.org/wp-content/uploads/2019/01/How-the-TCJAs-New-UBIT-Provisions-Will-Affect-Nonprofits.pdf>

programs and communities across the country. According to the IRS, “most charitable nonprofits are relatively small: 97 percent have budgets of less than \$5 million annually, 92 percent operate with less than \$1 million per year and 88 percent spend less than \$500,000 annually for their work.”³

Benefits are a significant recruitment tool for tax-exempt organizations to attract and retain talented employees. Without benefit incentives, associations and other nonprofits are hard-pressed to build the dedicated workforce crucial to support their missions. Moreover, thousands of tax-exempt organizations exist in municipalities where certain fringe benefits are mandated by local law. These organizations have no choice but to divert resources from their programs and mission goals to pay UBIT.

Of course, associations that choose to expand into more entrepreneurial business endeavors should pay taxes on those activities like any other business. That is after all why the UBIT statute exists. I would argue strongly that simple employee benefits like parking and transit are not a trade or business conducted for the production of income and therefore should not be regarded as taxable. Taxing these benefits only weakens an organization’s ability to carry out its tax-exempt purpose. Associations and the broader nonprofit sector remain undeniably enmeshed in the daily patterns of American life and community. In simple terms, nonprofit organizations earn their tax-exempt status by satisfying many of the needs of various industries, professions and the general public that the government would otherwise have to address. Just consider a few of the

³ https://www.supremecourt.gov/DocketPDF/18/18-966/94913/20190401132819077_Amici%20brief%20of%20National%20Council%20of%20Nonprofits%20et%20al.pdf

specific ways that associations benefit society and drive economic growth: Associations are the largest source of post-college education and professional development for America's workforce; Associations create product and safety standards for everything from children's toys to new building construction; Associations define and advance standards for professional certification and codes of ethics in a wide range of professional fields; and associations foster volunteerism by organizing community assistance programs and responding in times of greatest need, such as after natural disasters or catastrophic events.

UBIT repeal is an opportunity for bipartisanship. Legislators from both parties in both chambers of Congress have introduced repeal legislation going back to the 115th Congress. In fact, then-Chairman of the Ways and Means Committee Kevin Brady – a key architect of the 2017 Tax Cuts and Jobs Act – included a rollback of the fringe benefits tax as part of year-end legislation in 2018, which unfortunately did not come to pass. I am hopeful strong bipartisanship and an engaged association community will help foster repeal of this tax in 2019. Multiple bills to repeal the nonprofit benefits tax have been introduced in the 116th Congress. ASAE supports H.R. 1545, bipartisan repeal legislation introduced earlier this year by Reps. Mark Walker (R-NC) and Tom Suozzi (D-NY) and referred to this committee.

Thank you again for inviting me to participate in today's hearing. I look forward to answering the Committee's questions.