

**Testimony submitted by**  
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**to**  
**Committee on Ways and Means, Subcommittee on Oversight**  
**United States House of Representatives**

**Hearing: “Ending the TCJA Tax on Houses of Worship, Charities and Nonprofits”**  
**June 19, 2019**

Chairman Lewis, Ranking Member Kelly and Members of the Subcommittee, my name is Nathan Diament and I am the executive director for public policy for the Union of Orthodox Jewish Congregations of America (also known as the Orthodox Union) – the nation’s largest Orthodox Jewish umbrella organization.

Founded in 1898, the Orthodox Union represents nearly 1,000 synagogues across the United States and more than 500 Jewish day schools which educate hundreds of thousands of K-12 children. We are a nonpartisan charitable organization.

America’s amazing charitable sector is how our society gives life to the ancient teaching of Hillel the Elder:

“If I am not for myself, who will be for me?  
If I am only for myself, what am I?”<sup>1</sup>

While striving daily to achieve success for ourselves and our families, Americans organize themselves into more than 1.5 million charities to do good works and serve our fellow citizens and communities.<sup>2</sup> These institutions are large and small, secular and sacred.

In the American Jewish community, we have our synagogues and schools as primary community institutions, and we have an extensive network of charitable and social service agencies as well.<sup>3</sup>

The new Section 512(a)(7) of the Internal Revenue Code is hurting many of our community’s congregations and our schools financially. And I will share that impact – that diversion of limited resources from the core work of our institutions -- with you.

But above and beyond any financial impact, this new provision of the tax code raises a more serious issue of principle by legislating an unprecedented breach in the essential arrangements we have in this country to protect our synagogues, churches and other houses of worship from improper interference by the state.

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<sup>1</sup> Ethics of the Fathers 1:14

<sup>2</sup> See National Center for Charitable Statistics, <https://nccs.urban.org/project/nonprofit-sector-brief>

<sup>3</sup> See <https://www.guidestar.org/nonprofit-directory/religion/jewish/1.aspx> and <https://www.jfnareport.org/>

As Members of the Ways & Means Committee, you are well aware that houses of worship are insulated from entanglement with the government in various ways. Perhaps most significantly, houses of worship are generally exempt from filing reports with the IRS. A church does not even need to formally apply for tax exempt status under Internal Revenue Code Section 501; even without filing an application, a church or synagogue or other house of worship is deemed to be a tax exempt entity. Similarly, houses of worship are exempt from filing Form 990 reports with the IRS.<sup>4</sup> This too is an important measure of protection – for both the synagogue and the state – from improper interference and entanglement.

Section 512(a)(7) breaches this fundamental and principled arrangement. By the mere fact that a suburban church provides parking for its clergy and staff or an urban synagogue provides subsidized transit passes to its staff – these houses of worship may be compelled for the first time to file a reporting form (990-T) with the IRS.

(And, disturbingly, this was done without consideration or debate of this important aspect of this matter.)

Beyond this principled policy, the new tax imposed by Section 512(a)(7) has a disruptive economic impact on our houses of worship. As you surely know, most churches and synagogues operate on tight budgets. An average synagogue in my community might have an annual operating budget of about \$700,000. But once the salaries are paid, and then utilities, and then, sadly in today's times – security costs – there is relatively little money left for the kind of social service and community programming a congregation is committed to perform.

So, any funds diverted from the congregational budget are diverted from programs and services for the community. And, in the case of the new tax we are discussing today – a synagogue will in many cases find itself spending more money on a tax lawyer or CPA to help it comply with the new tax than the amount of the tax bill itself. After all, this synagogue has never filed a form with the IRS and now must; not to mention having to understand an IRS Notice laying out a four step method for determining its UBIT liability.<sup>5</sup>

Alongside this impact on our houses of worship, the Section 512(a)(7) is hurting our community's K-12 religious schools, which are organized as nonprofit entities and receive little, if any, government support. These schools provide our children with an essential religious education as well as an outstanding education in math, science, English etcetera.

These hundreds of schools are located in urban and suburban settings – schools like the Atlanta Jewish Academy in Georgia and the North Shore Hebrew Academy on Long Island (and many others in the Catholic, Evangelical and other faith communities). With schools employing 100 or more teachers, coaches administrators and other staff, it is not surprising that these kinds of schools report (in some cases) new tax obligations under Section 512(a)(7) in excess of \$50,000 or \$60,000. This new tax liability (coming from the provision

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<sup>4</sup> See page 4, Joint Committee on Taxation, *Overview of Section 512(a)(7): Unrelated Business Taxable Income Increased by Disallowed Fringe Benefits* (JCX-25-19), June 14, 2019.

<sup>5</sup> See JCX-25-19 at page 12.

of parking spaces or subsidized mass transit) is diverting resources that would otherwise be spent on educating children and awarding scholarships to those in need.

In the face of all of these negative impacts of the new tax imposed by the TCJA through Section 512(a)(7), we are grateful that many Members of the House and Senate – on a bipartisan basis -- have introduced multiple pieces of legislation to repeal this harmful new tax.<sup>6</sup>

We are, however, deeply disappointed that Congress has not yet taken up this legislation and passed it. This is a bipartisan consensus issue. It has united the entire nonprofit and charitable sector – religious and secular, liberal and conservative, small institutions and large ones – in a coalition calling for Congress to act since last year.

This is not only an important problem, it is an urgent problem because countless numbers of Americans who rely upon their local synagogue or church, YMCA or Jewish Social Services Agency, food pantry or senior center to help them each day – are having their services cut back because of this new tax obligation enacted in the TCJA.

In the face of this, we are grateful to you Chairman Lewis for having called this hearing to highlight this problem for America's houses of worship and charities.

I pray that this hearing is the first critical step toward the Ways & Means Committee and then the whole House of Representatives rapidly passing legislation to repeal Section 512(a)(7).

Because, after all, the ancient teaching of Hillel the Elder, which I mentioned at the outset, concludes with a challenge to us all:

“If not now, when?”

Thank you.

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<sup>6</sup> See JCX-25-19 at page 17.