STATE AND LOCAL TAX - STATE CONFORMITY TO TAX REFORM

May 23, 2019
With You Today

Elil Shunmugavel Arasu
STS- SALT Managing Director
BDO USA, LLP

8401 Greensboro Drive
McLean, VA 22102
Direct: (703) 336-1652
Email: earasu@bdo.com
Learning Objectives

- Explain issues of state conformity to the Tax Cuts and Jobs Acts of 2017
- Recognize how states are approaching changes to the IRC 512
- Identify additional issues to analyze for state income tax compliance for exempt entities
Agenda

- Federal State Conformity
- How the states conform or do not conform to the IRC
- State Conformity to the changes to IRC 512 and what nonprofits should be thinking about
- Other compliance concerns
State conformity to the Internal Revenue Code changes due to the TCJA
State Methods of Internal Revenue Code Conformity
H.R. 1 “Tax Cuts and Jobs Act”

- Date of Enactment is December 22, 2017
- “Rolling” Conformity - the IRC “as amended”
  - These states will automatically conform to the TCJA unless they decouple
  - 26 states, including Illinois, Massachusetts, Missouri, New York
- “Fixed-date” Conformity - the IRC “as in effect on ....” or “as amended through” a specific date
  - These states will not conform to the TCJA until they update their IRC conformity date (assuming no decoupling)
  - 21 states, including California, Indiana, Michigan, North Carolina
- “Selective” conformity - only specific IRC provisions on a “rolling” or “fixed-date” basis
State Methods of Internal Revenue Code Conformity

Fixed-date States that have NOT Updated

- California - remains IRC “as enacted on” 1/1/2015.
State conformity to the TCJA
Top Tax Reform-Related Issues for Nonprofits with State Questions

- Internal Revenue Code (IRC) Section 512(a)(7): Certain qualified transportation fringe benefits, including those relating to parking garages, must be reported as unrelated business income (UBI).
- IRC Section 4960: Tax on excess tax-exempt organization executive compensation
- IRC Section 512(a)(6): The losses from one unrelated trade or business activity cannot be used to offset the income from another unrelated trade or business.
States Also Have Varied Conformity Rules to IRC 501(c)

- Fully conform to federal
- Conform to federal determination, but require notification to state tax authority in order to follow federal tax treatment
- Require separate exempt entity application
How to Determine State Treatment

Has the State issued specific guidance?

- New York - S.08831/A.11051 (December 10, 2018)- decouples from the TCJA for UBTI reportable under IRC Section 512(a)(7) (transportation benefits).
How to Determine State Treatment

Is the State a rolling conformity or fixed date conformity state?

- The District of Columbia is a rolling conformity state
- Virginia is a fixed date conformity state
- California is selective and fixed-date
How to Determine State Treatment

Are there any state specific rules to consider?

- Pennsylvania - taxation of exempt entities
- New York - NOL rules
How to Determine State Treatment

If the parking benefits are UBT for State purposes, how are they apportioned?

- State issues to consider
  - Is the “income” a “receipt” as defined by state apportionment statute?
  - Guidance/Lack of guidance?
Questions?