

IRS Issues Interim Guidance on UBTI

Aug. 21, 2018

Earlier today, the IRS and the Treasury Department released [Notice 2018-67](#), which provides interim guidance and transition rules on Section 512(a)(6) of the *Tax Cuts and Jobs Act* (P.L. 115-97). Section 512(a)(6) requires exempt organizations, with more than one unrelated trade or business, to calculate its unrelated business taxable income (UBTI) separately with respect to each trade or business.

The transition rules outlined in Notice 2018-67 include guidance on how to:

- Identify separate trades or businesses under Section 512(a)(6). The interim guidance allows taxpayers to rely on a reasonable, good-faith standard in making such a determination.
- Aggregate income from partnerships and debt-financed income from partnerships.
- Calculate net operating losses (NOLs) within the framework of Section 512(a)(6).

The notice also requests comments on various topics, including:

- The general interim rule for distinguishing between trades and businesses under Section 512(a)(6), outlined in Section 3 of the notice.
- Whether other code sections provide a model for identifying an exempt organization's separate trades businesses, apart from a facts and circumstances test, which would pose a heavy administrative burden on exempt organizations subject to Section 512(a)(6).
- Whether the North American Industry Classification System ([NAICS](#)) 6-digit codes should form the basis of a method to identify separate trades or businesses.
- The general rules for allocating deductions between trades or businesses.
- The treatment of items considered to be gross income from an unrelated trade or business, including the treatment of debt-financed income.
- The scope of activities that should be included in the "investment activities" category.
- The proper treatment of income derived from activities in the nature of an investment through partnerships.
- The calculation and ordering of post-2017 and pre-2018 NOLs and the treatment of pre-2018 NOLs that will expire if not taken before post-2017 NOLs.

The IRS and the Treasury Department have requested that comments be submitted by Dec. 3, 2018.

A copy of the notice is attached.