Chapman and Cutler LLP

Chapman Client Alert

November 3, 2017 Current Issues Relevant to Our Clients

Release of Tax Cuts and Jobs Act

On November 2, 2017, Representative Brady (the Chairman of the House Ways and Means Committee) released the proposed text of the long-awaited federal income tax reform bill entitled the "Tax Cuts and Jobs Act." Much of the early media coverage has focused on the changes to the individual and corporate tax rates and certain popular deductions. However, the bill also includes a provision that appears aimed at subjecting public pension plans to unrelated business taxable income (UBTI). Although the bill purports to be a clarification of existing law, the position taken in the bill is contrary to the position taken by most public pension funds. If enacted, a change in the analysis of potential investments may be necessary.

The text of the relevant section of the Act is pasted below for your reference.

> Title V – Exempt Organizations
>
> Subtitle A – Unrelated Business Income Tax
>
> Sec. 5001 – CLARIFICATION OF UNRELATED BUSINESS INCOME TAX TREATMENT OF ENTITIES TREATED AS EXEMPT FROM TAXATION UNDER SECTION 501(a).
>
> (a) IN GENERAL.—Section 511 is amended by adding at the end the following new subsection:
>
> ''(d) ORGANIZATIONS AND TRUSTS EXEMPT FROM TAXATION NOT SOLELY BY REASON OF SECTION 501(a).—For purposes of subsections (a)(2) and (b)(2), an organization or trust shall not fail to be treated as exempt from taxation under this subtitle by reason of section 501(a) solely because such organization is also so exempt, or excludes amounts from gross income, by reason of any other provision of this title.''.
>
> (b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

Although the outlook of the bill is highly uncertain at this point, it is common for provisions of bills that are introduced to reappear in later versions or later bills. If enacted, this provision could have potentially wide-reaching impacts on public pension plans, particularly with respect to their investment transactions. We will continue to monitor the legislation and consider what steps might be advisable to plan for this significant potential change.

For More Information

If you would like further information concerning the matters discussed in this article, please contact any of the following attorneys or the Chapman attorney with whom you regularly work:

Kelley M. Bender
Chicago
312.845.3439
bender@chapman.com

Kimberly R. Bischoff
Charlotte
980.495.7305
bischoff@chapman.com

Van E. Holkeboer
Chicago
312.845.3401
holkeboer@chapman.com

Andrew Wool
Chicago
312.845.3730
wool@chapman.com

Chapman and Cutler LLP
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