UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA

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August 9, 2018

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Secretary Mnuchin:

We are writing on behalf of the Union of Orthodox Jewish Organizations of America ("Orthodox Union")—the nation's largest Orthodox Jewish umbrella organization—to express our concern and opposition to the widespread, overly burdensome, and intrusive impact that Section 512(a)(7) of the Internal Revenue Code ("IRC") will have on our organization, our constituent synagogues and K-12 parochial schools and upon America's entire nonprofit and religious community.

This troublesome provision was added to the IRC by Section 13703 of Public Law 115-97, introduced in Congress as the "Tax Cuts and Jobs Act," and signed into law by President Trump on December 22, 2017 (the "Act.") This Act directs the Secretary of Treasury to "issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance."

As your department begins the process of writing these regulations and guidance, we request that you delay implementation of Section 512(a)(7) until such time as a legislative correction is passed to relieve houses of worship and other nonprofits from the burdensome provisions of this Act. The amendments made by section 512(a)(7) "shall apply to amounts paid or incurred after December 31, 2017," meaning that our synagogues and schools could be required to file a tax return before receiving guidance from the Treasury Department.

Section 512(a)(7) states that "Unrelated business taxable income of an organization shall be increased by any amount for which a deduction is not allowable under this chapter…and which is paid or incurred by such organization for any qualified transportation fringe…, any parking facility used in connection with qualified parking…, or any on-premises athletic facility…"

These provisions mean—for the first time in the history of their existence—that thousands of synagogues within our organization (and

countless other houses of worship) will be required to file reports (specifically 990-T) with the federal government. This unprecedented change in the tax law is a significant and worrisome change. Houses of worship have long been exempted from taxation to uphold the separation of church and state embodied by the Establishment Clause of the First Amendment of the United States Constitution. The US Supreme Court, in a 1970 majority opinion written by Chief Justice Warren E. Burger in *Walz v. Tax Commission of the City of New York,* reinforced this principle, stating, "The exemption creates only a minimal and remote involvement between church and state… It restricts the fiscal relationship between church and state, and tends to complement and reinforce the desired separation insulating each from the other." By placing a tax on houses of worship, Section 512(a)(7) creates an unacceptable potential for government intrusion and entanglement with America's religious organizations.

Beyond this important issue of principle, the new tax code provision will cost houses of worship, K-12 religious schools and a host of other nonprofits many thousands of dollars a year - dollars that were never budgeted for. (In the case of the K-12 schools, we also note that the President has consistently championed policies of "school choice" and a desire to support non-public schools. The imposition of a new tax on these schools is obviously in the opposite direction.) The charitable organizations will be required to pay a 21% tax on the cost of providing otherwise nontaxable transportation and parking benefits to synagogue and school employees, even if the organization does not otherwise conduct any activities unrelated to its nonprofit mission. This unrelated business income tax ("UBIT") will subject nonprofit organizations that subsidize transit passes and parking for their employees, even if these employees use pre-tax funds from their salaries to pay for such benefits. Certain municipalities require employers to provide transit passes for employees, making this tax particularly burdensome on nonprofits located therein.

In addition to the new federal requirements, many nonprofits may be required to file state returns and possibly pay state income tax because of state laws' reliance on federal tax policy. For some of these organizations, the cost of preparing and filing the tax return could exceed the actual tax; however, the overriding principle remains that this Act represents a violation of the critical separation of church and state.

Again, we strongly urge the Treasury Department to delay its implementation and enforcement of Section 512(a)(7) and to express its support for Congress passing one of the several legislative solutions currently under consideration.

Sincerely,

Nathan J. Diament Jerry Wolasky