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*Association of Unity Churches International*  
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*Associate Reformed Presbyterian Church*  
Ms. Mary Kate Wold\*  
*Episcopal Church*

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# CHURCH ALLIANCE

Acting on Behalf of Church Benefits Programs

**Counsel:**

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June 26, 2018

David J. Kautter  
Assistant Secretary for Tax Policy  
U.S. Department of the Treasury  
And  
Acting Commissioner  
Internal Revenue Service

William M. Paul  
Acting Chief Counsel and Deputy Chief Counsel (Technical)  
Internal Revenue Service

Re: Request for Transition Relief Under 26 U.S.C. Sections 512(a)(6)  
and (7)

Dear Sirs:

The Church Alliance is a coalition of the chief executive officers of 38 church benefits organizations which are affiliated with mainline and evangelical Protestant denominations, two branches of Judaism, and Catholic schools and institutions.

Church Alliance members provide employee benefits, including in many cases, health and pension coverage, to approximately one million participants (clergy and lay workers, hereinafter “church workers”) serving over 155,000 churches, synagogues, and affiliated organizations such as schools, colleges and universities, nursing homes, children’s homes, homeless shelters, food banks, and other ministries.

Coalition members and the steeples and church-related institutions that participate in our plans are generally structured as tax-exempt organizations. For that reason, we respectfully add our voice to those of organizations, including the American Institute of CPAs and the National Council of Nonprofits, among others, that have requested a delay in implementation of changes relating to Sections 512(a)(6) and (7) of the Internal Revenue Code that were enacted as part of the recent Tax Cuts and Jobs Act (“TCJA”; Public Law No. 115-97).

Treasury and the Internal Revenue Service (“Service”) granted similar transition relief from new information reporting requirements in

Notice 2013-45<sup>1</sup>, stating: “[t]his transition relief will provide additional time for dialogue with stakeholders in an effort to simplify the reporting requirements consistent with effective implementation of the law. It will also provide ... reporting entities additional time to develop their systems for assembling and reporting the needed data.” The same justification clearly calls for transition relief in the case of Sections 512(a)(6) and (7), and we respectfully urge you to provide an appropriate delay in the implementation of these sections.

### **Section 512(a)(6)**

Section 512 of the Internal Revenue Code, as amended by the TCJA, contains a new paragraph (6), which changes the method of calculation to be used by tax-exempt organizations for tax reporting and payment for income earned through certain unrelated trades or businesses. This change impacts our member organizations, as well as the church-related institutions we serve.

The church benefit boards that make up the Church Alliance invest billions of dollars of retirement, welfare plan, and religious institutional assets on behalf of their beneficiaries. For the efficiency and certainty of these investments, the most critical need for clarification with respect to Section 512(a)(6) relates to the definition of a “trade or business” and whether an activity, such as investing or “alternative investing”, constitutes “more than 1 unrelated trade or business.” As sophisticated investment fiduciaries, many of the Church Alliance’s church benefit boards invest in partnerships and other alternative investment vehicles.

As such we agree with and reiterate the AICPA’s observation: “Absent specific guidance, it is not possible to determine whether a tax-exempt organization that receives, for example, one hundred Schedules K-1, Partner’s Share of Income, Deductions, Credits, etc., is required to track and report each Schedule K-1, or each line of income on each Schedule K-1, as a separate trade or business. A narrow definition of a trade or business for purposes of the computation of UBTI could potentially lead to hundreds or thousands of trades or businesses, which is burdensome to taxpayers, tax practitioners and the IRS to record, report, and audit. Tax-exempt organizations would need, at a minimum, upgraded general ledger software to track each trade or business, to maintain the appropriate records for tax preparation at the end of the tax year. Guidance is necessary for the development of such software.”

As other organizations have noted, there is an acute need for guidance about how Treasury and the Service will interpret Section 512(a)(6). Among other aspects requiring

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<sup>1</sup> In addition to this example, which is similar in that it created a new reporting requirement with financial ramifications for non-reporting, many others exist, including some which provided transition relief for significant periods of time. *See e.g.*, Notice 2011-1 (delaying compliance with Section 2716 of the Public Health Service Act, including any sanctions for failure to comply, until after regulations or other administrative guidance of general applicability has been issued under Section 2716). Although Section 2716 contained a provision for rules “similar” to rules appearing in Code Section 105(h), the fact that compliance remains delayed (from an original effective date of plan years beginning on or after September 23, 2010) indicates that Treasury and the Service may have significant discretion with respect to commencement of implementation.

clarification, tax-exempt organizations need guidance on how to assemble and report the necessary information. This need is compounded by the fact that the organizations we serve have never been required to report and pay tax in this way before, which underscores the need for regulatory direction. Treasury and the Service also would benefit from input from stakeholders in developing this guidance.

We note that issuance of regulations for Section 512(a)(6) is one of the top 10 items in your Priority Guidance Plan, published on May 9, 2018. We urge you to delay the implementation of the provision until these regulations have been issued in final form. Without them, our member organizations and the institutions they serve will not be able to ascertain whether they are in compliance, or otherwise carrying out the intent of the provision. This will only create confusion and hardship for affected organizations, many of which are small, mission-focused, community organizations with limited resources.

### **Section 512(a)(7)**

The TCJA also added a new paragraph (7) to Section 512, declaring as taxable income certain amounts paid by tax-exempt organizations (e.g., for a qualified transportation fringe benefit, parking facility used in connection with qualified parking, etc.).

This paragraph also requires tax exempt organizations to pay tax differently for periods after December 31, 2017, calling for payment of tax on amounts that are not income, but expenditures, thus requiring additional time for organizations to adapt their systems for compliance. For example, of the 155,000 churches, synagogues, and affiliated organizations represented in the Church Alliance, a great number provide a parking lot but have never been required to ascertain an amount related to such parking for employees, nor have they ever had to file a Form 990-T in order to pay a tax on amounts “spent” by the church to provide parking. Thus, absent relief, thousands of small churches, with volunteer treasurers, will potentially be tasked with filing a Form 990-T for the first time, and determining how much tax to pay for their church parking lot. Despite the deduction reflected in Section 512(b)(12), with respect to thousands of local churches and many conventions or associations of churches, there is no exception to the burdensome Form 990-T filing requirement related to these UBTI amounts.

Again, the stakeholder community, Treasury, and the Service would benefit from transition relief to allow adequate time to consider stakeholder input, and provide time for affected taxpayers to adapt their systems for reporting and payment as may be necessary.

### **Conclusion**

In conclusion, the Church Alliance respectfully requests that the Treasury and the Internal Revenue Service provide transitional relief from the implementation of Section 512(a)(6) and (7) of the Internal Revenue Code until tax years beginning after final regulations are issued, so that stakeholders have had a reasonable time to develop systems to comply with

the regulations. This relief is important to providing compliance certainty to our member organizations and the institutions they serve, to ensure that the resources of America's religious communities are properly directed and focused on their mission work.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karishma Shah Page'. The signature is fluid and cursive, starting with a small loop on the left and extending to the right.

Karishma Shah Page  
Partner, K&L Gates LLP  
On Behalf of the Church Alliance