

**MEMO# 20857**

February 12, 2007

# **Notice 2007-18 Provides Guidance Regarding Excise Taxes On Tax-Exempt Entities That Are Parties to Tax Shelter Transactions**

[20857]

February 12, 2007

TO: 529 PLAN MEMBERS No. 2-07

ACCOUNTING/TREASURERS MEMBERS No. 4-07

ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 1-07

TAX MEMBERS No. 8-07

UNIT INVESTMENT TRUST MEMBERS No. 2-07 RE: NOTICE 2007-18 PROVIDES GUIDANCE REGARDING EXCISE TAXES ON TAX-EXEMPT ENTITIES THAT ARE PARTIES TO TAX SHELTER TRANSACTIONS

Notice 2007-18 provides guidance clarifying the circumstances in which a tax-exempt entity may be treated as a party to a prohibited tax shelter transaction [\[1\]](#). Under Code section 4965, which was added in 2005, tax-exempt organizations are subject to entity-level and manager-level excise taxes and disclosure rules if they are parties to prohibited tax shelter transactions.

Specifically, the notice provides that a tax-exempt entity is a party to a tax shelter transaction if it (1) facilitates the transaction by reason of its tax-exempt, tax indifferent or tax-favored status; or (2) is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction. Example 2 illustrates when a tax-exempt entity will not be treated as a party to a prohibited transaction. In the example, a tax-exempt entity is a partner in a partnership that includes taxable and other tax-exempt entities. The partnership enters into a transaction that is the same or substantially similar

to a listed transaction. Under this example, the mere investment in an entity will not trigger the excise tax so long as the tax and economic consequences of a transaction entered into by the entity are not dependent on the tax-exempt entity's tax-exempt, tax indifferent or tax-favored status.

Lisa Robinson  
Associate Counsel

[Attachment](#)

**endnotes**

[1] See Institute [Memorandum](#) (15707) to 529 Plan Advisory Committee No. 14-03, Accounting/Treasurers Members No. 13-03, Advisor Distributor Tax Issues Task Force No. 5-03, Tax Members No. 15-03 and Unit Investment Trust Members No. 9-03, dated March 7, 2003.

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