

Tax Update from the Swamp

September 12, 2019



Speaker Profile



Ira Nevelow

Partner-in-Charge, Nonprofit Tax Services

More than 30 years of experience, focused on taxation of nonprofits, estates and trusts, and individuals; Ira is a member of the Gulf States Area Tax Exempt and Governmental Entities Council and the TXCPA Nonprofit Organizations Conference Committee.

Today's Agenda

- ▶ Current Tax Events & How They Affect Your Business
- ▶ Changes to Form 990-T in 2018 That You Need to Know



Current Tax Events

& How They Affect Your Business

Current Tax Events

Taxpayer First Act signed
July 2019



Taxpayer First Act Signed



► Change in electronic filing rules

↳ Current law: Must file 990 if...

- File more than 250 returns,
- AND have at least \$10 million in assets at year-end.

↳ New law: All 990, 990-T and 990-PF filers must file electronically.

- This applies to tax years beginning after 7/1/19.
- IRS can grant relief from these rules to 990-EZ and 990-T filers for up to two years.

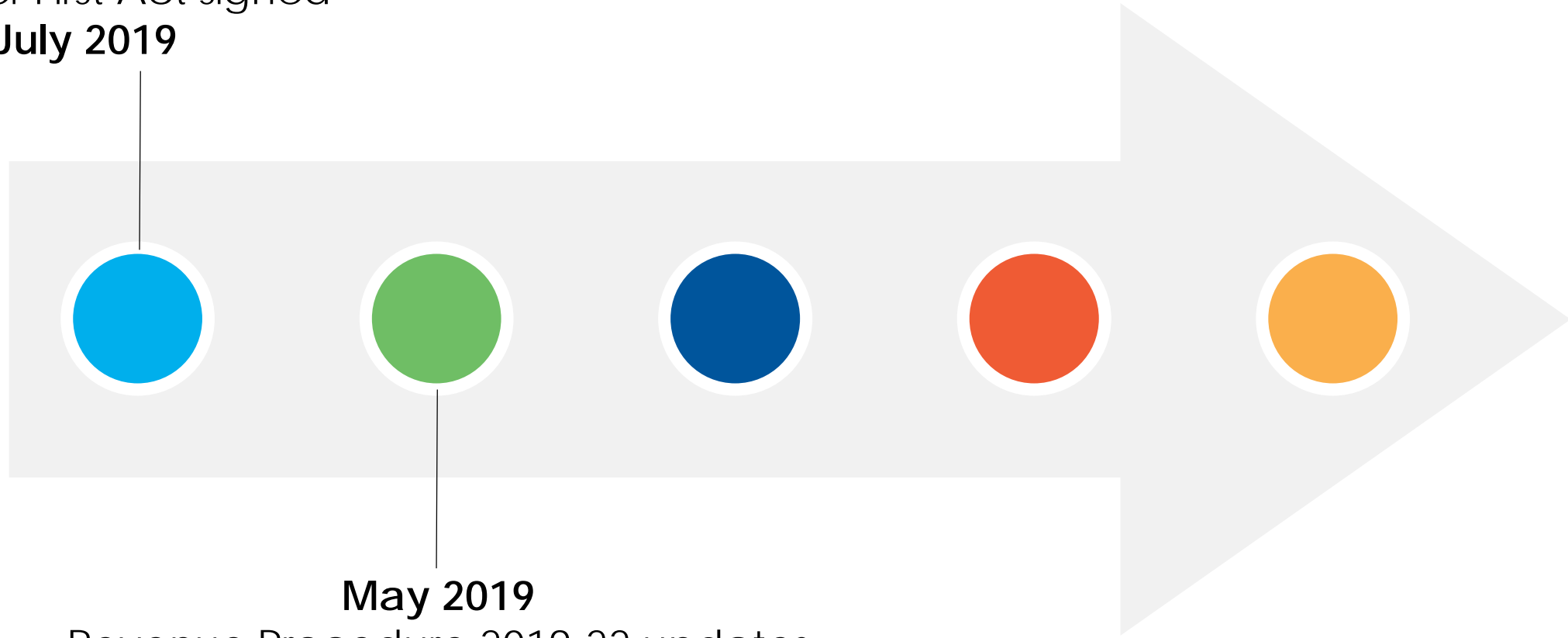
Taxpayer First Act Signed

- ▶ Make these returns available in machine readable format.
- ▶ After two consecutive years of failing to file, IRS sends notice to organization about potential loss of exempt status.



Current Tax Events

Taxpayer First Act signed
July 2019



May 2019
Revenue Procedure 2019-22 updates
Rev. Proc. 75-50 for private schools

Revenue Procedure 75-50

▶ Rev. Proc. 75-50 (Section 4.03) requirements

- Private schools must annually publish notice of its racially nondiscriminatory policy
- Where can it published?
 - Newspaper of general circulation
 - Through media broadcast



Revenue Proc. 2019-22

- ▶ Rev. Proc. 2019-22 published on May 28, 2019 allows online publication
 - ↳ The notice must be....
 - On the home page, posted year-round and clearly visible.
 - IRS will look at size, color, and placement in determining clear visibility.

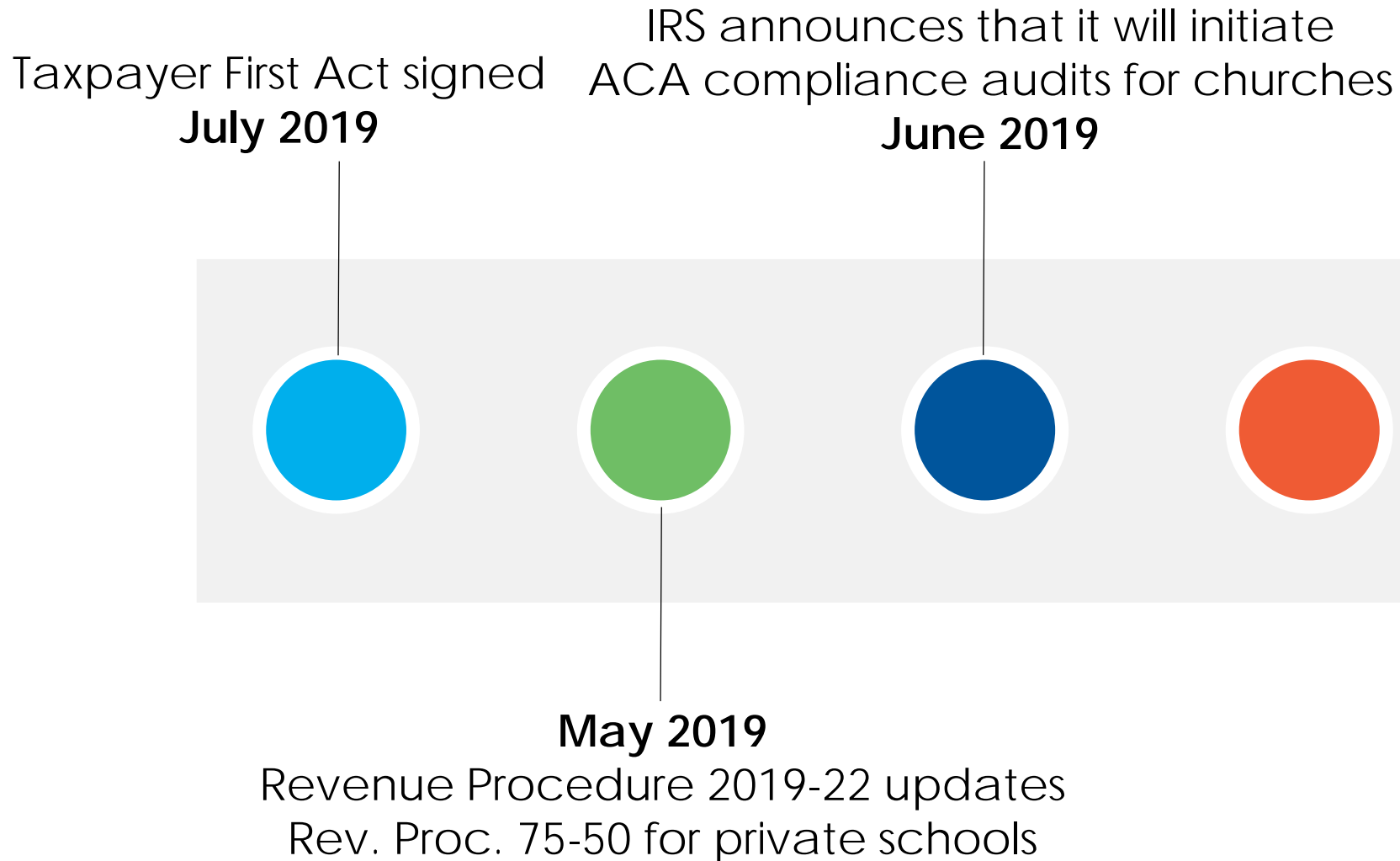


Revenue Proc. 2019-22

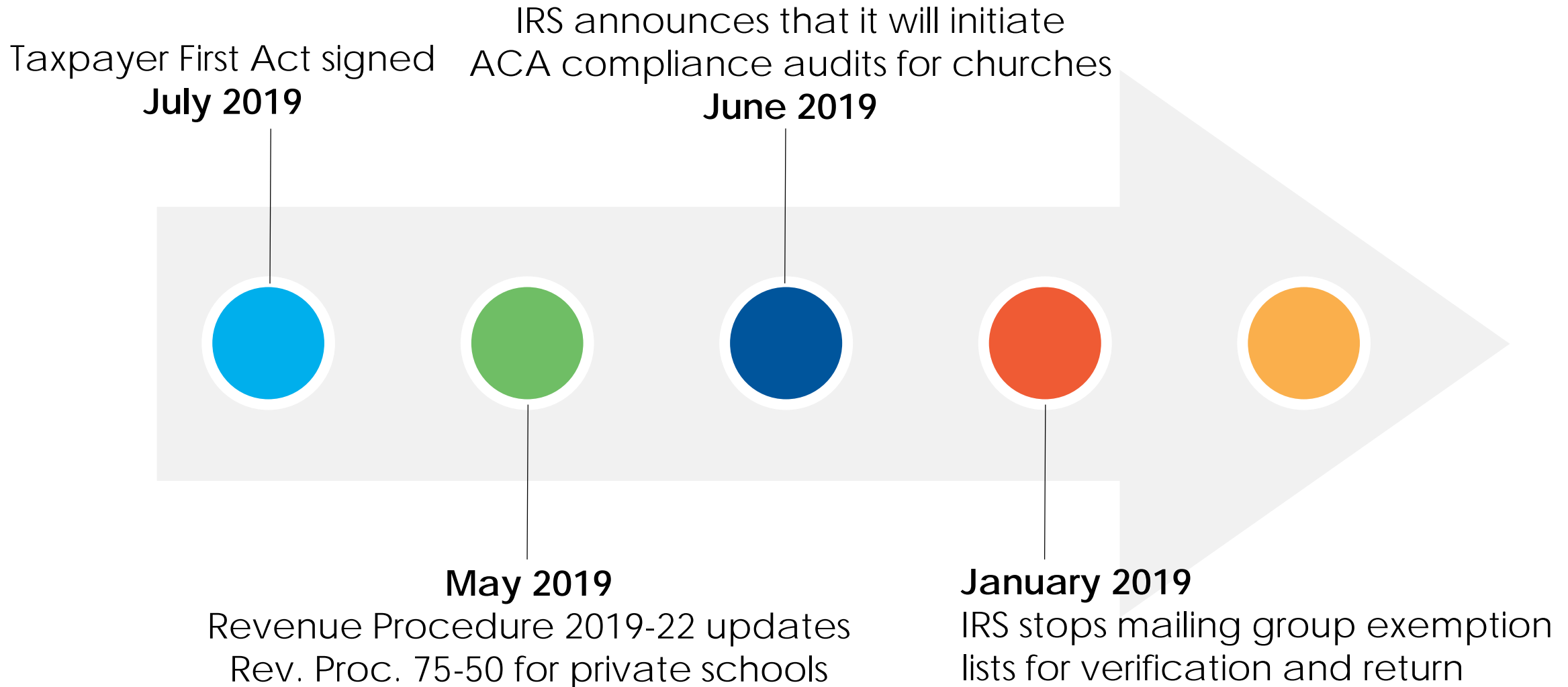
- ↳ Visitors must be able to see it without...
 - Logging in,
 - Submitting information,
 - Clicking a link,
 - OR hovering over a graphic.



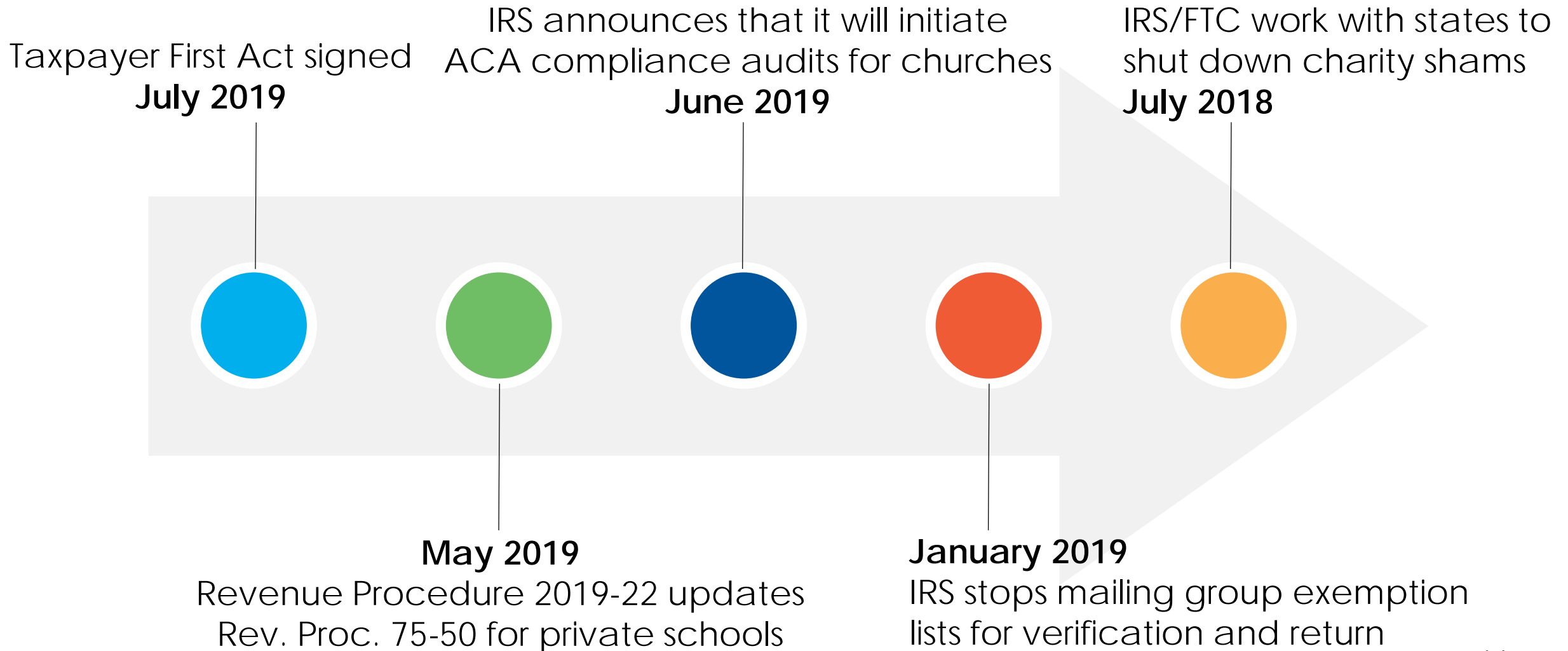
Current Tax Events



Current Tax Events



Current Tax Events

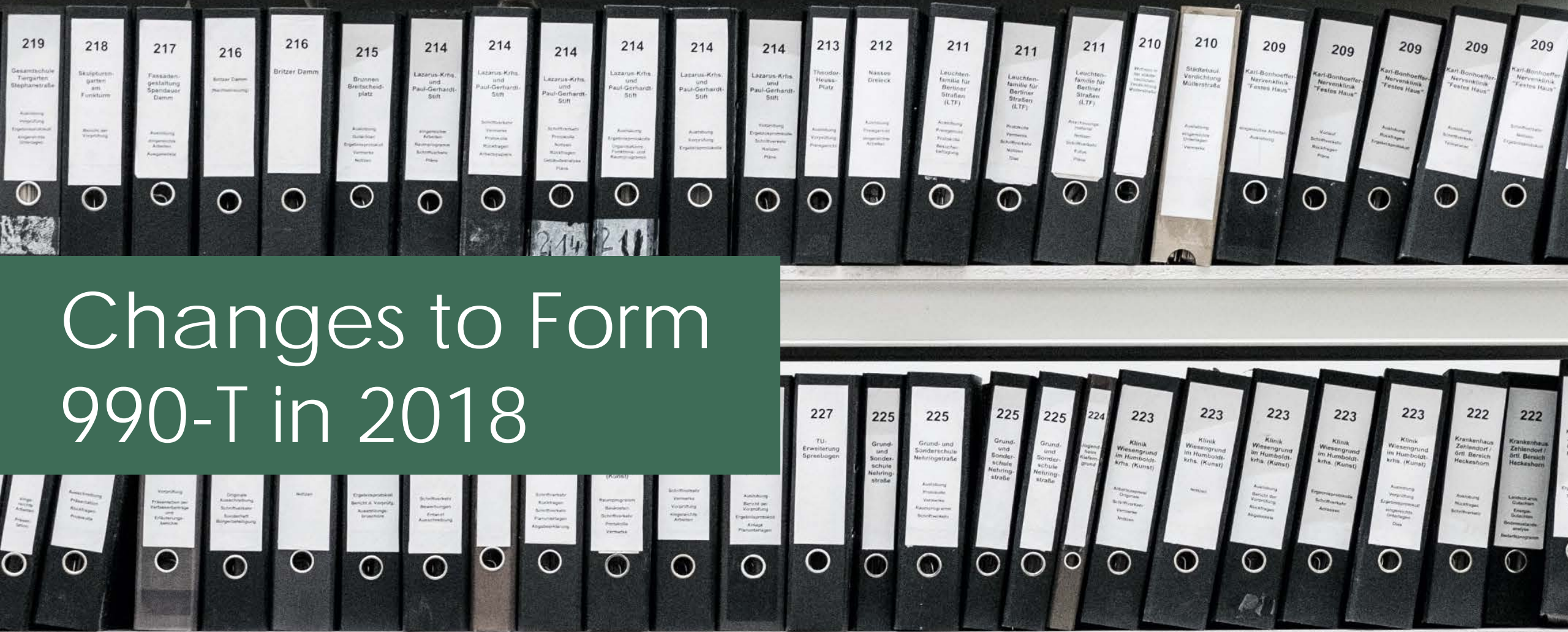


Operation Donate with Honor

FTC and States
Announce National
Initiative to Combat
Fraudulent Charities
That Falsely Claim to
Help Veterans and
Service Members



Changes to Form 990-T in 2018



Changes to Form 990-T in 2018



H Enter the number of the organization's unrelated trades or businesses. ► _____ Describe the only (or first) unrelated trade or business here ► _____. If only one, complete Parts I–V. If more than one, describe the first in the blank space at the end of the previous sentence, complete Parts I and II, complete a Schedule M for each additional trade or business, then complete Parts III–V.

Part III Total Unrelated Business Taxable Income

33	Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions)	33		
34	Amounts paid for disallowed fringes	34		
35	Deduction for net operating loss arising in tax years beginning before January 1, 2018 (see instructions)	35		

New Schedule M for Form 990-T

New Schedule M for Form 990-T



SCHEDULE M (Form 990-T)

Department of the Treasury
Internal Revenue Service

Name of the organization

Unrelated Business Taxable Income for Unrelated Trade or Business

For calendar year 2018 or other tax year beginning _____, 2018, and ending _____, 20 ____.

► Go to www.irs.gov/Form990T for instructions and the latest information.

► Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

OMB No. 1545-0687

2018

Open to Public Inspection for
501(c)(3) Organizations Only

Employer identification number

Unrelated business activity code (see instructions) ► _____

Describe the unrelated trade or business ► _____

Part I Unrelated Trade or Business Income

					(A) Income		(B) Expenses		(C) Net	
1a	Gross receipts or sales									
b	Less returns and allowances									
				c Balance ►	1c					
2	Cost of goods sold (Schedule A, line 7)				2					

New Schedule Requirements

- ▶ Used by organizations with multiple unrelated businesses
 - ↳ Notice 2018-67 created a reasonable, good-faith standard to identify separate businesses
 - ↳ One method: 6-digit NAICS codes meet the standard



Special Rules: Partnership Interests

- ▶ Under Notice 2018-67, partnership interests:
 - ↳ **Acquired before 8/21/18** – may be treated as a separate business, even if they own multiple activities
 - ↳ **Acquired after 8/21/18** – a nonprofit may aggregate multiple businesses if:
 - De minimis test: It owns no more than 2% of the profits interest and no more than 2% of the capital interest of a partnership.
 - Control test: It owns no more than a 20% capital interest and does not have “control or influence” over the partnership.
 - ↳ A nonprofit may further aggregate all partnership interests meeting one of these tests as a single business.

New Schedule Requirements

- ▶ Complete Form 990-T, page 1, Parts I and II, for the first such business.
- ▶ Report amounts from each additional trade or business on a separate Schedule M
- ▶ Do you need to file Schedules A – K for a specific business?
 - ↳ Add statements labeled at the top of the page identifying to which business the schedule relates

Treatment of Expenses

Treatment of Expenses

2017 Instructions

- Stated “Only expenses directly connected with unrelated trade or business income ***(except charitable contributions) may be deducted***” on lines 14 – 28 of the Form 990-T.

2018 Instructions

- Stated “Only expenses directly connected with the unrelated trade or business income ***of the particular trade or business being reported in Part I of Form 990-T or Schedule M (as applicable) may be deducted***” on these lines.

Treatment of Expenses

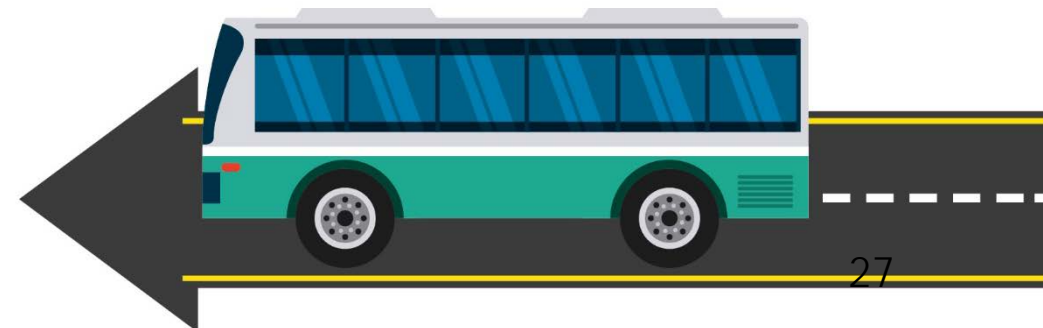
- ▶ Charitable deductions still ***do not*** have to be directly connected
- ▶ “Proximate and Primary Relationship”
- ▶ “Reasonable basis” allocation between exempt and non-exempt activities
 - ↳ IRS Priority Guidance Plan desires to issue “safe harbor” guidance



Disallowed Fringes

What is a Disallowed Fringe?

- ▶ Disallowed fringes are included in unrelated business income beginning January 1, 2018
 - ↳ Not considered an unrelated trade or business
 - ↳ Therefore, you cannot allocate any expenses
- ▶ Mass transit passes provided to employees
- ▶ Transportation in a commuter highway vehicle between the employee's residence and the primary place of business
- ▶ Qualified parking



Example – Qualified Parking

- ▶ IRS issues Notice 2018-99 on 12/10/18 to provide guidance on qualified parking
 - ➔ Amounts paid to a third party for employee parking spot is UBI to the extent that, in 2018, it does not exceed \$260 per month (\$265 in 2019). Any excess is wage income to the employee.
 - ➔ If the nonprofit owns or leases all or part of a parking facility, the income can be calculated using any reasonable method, so long as it allocates expenses to reserved employee spots.



The 5 Step Method

► Step 1

↳ Calculate the costs of operating the parking facility.

- (maintenance, repairs, property taxes, insurance, lease payments and parking lot attendant costs)

↳ What about depreciation?

- The notice says do not include depreciation.
- But on 6/14/19, The Joint Committee on Taxation published an overview which stated that expenses are “intended to include appropriate allocations of depreciation.”

The 5 Step Method

► Step 2

- ↪ Calculate the income from reserved employee spots.
 - It can be reserved by signage (for example, "Employee Parking Only") or a portion of a facility segregated by a barrier.
- ↪ Multiply the percentage of spots that are reserved by the expenses calculated in Step 1.

► Step 3

- ↪ Determine the primary use during normal business hours of the remaining spots.
- ↪ Stop here if the primary use is to provide general public parking.

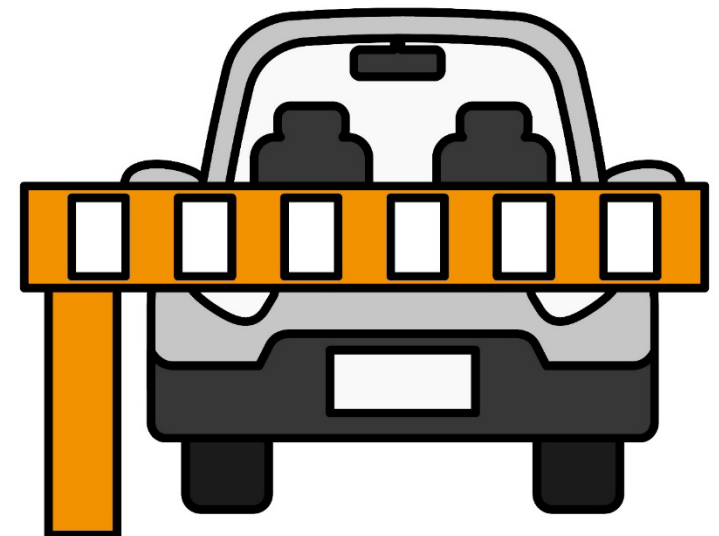
The 5 Step Method

► Step 4

- ↳ If the primary remaining use is for employees, calculate the allowance for reserved nonemployee spots. This is not income.

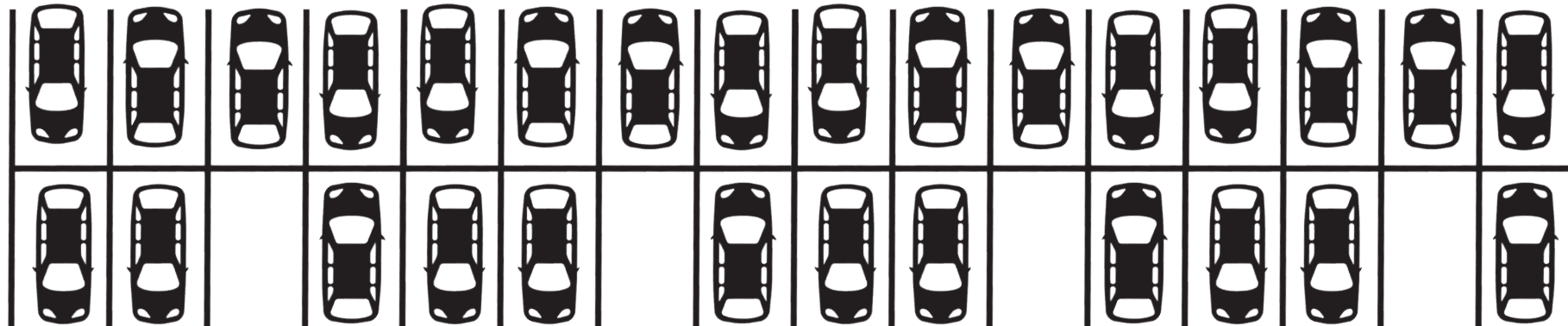
► Step 5

- ↳ Reasonably allocate the remaining use to employees and include that portion of expenses in income.



Remaining Issues

- ▶ How to calculate total parking spots when you lease space in a multi-tenant office building?
- ▶ How to calculate lease expense for use of a parking facility when it is not separately stated in your lease?
 - ↳ IRS says to use a reasonable method to allocate this cost.





Let's Connect



@weavercpas

facebook.com/weavercpas

linkedin.com/company/weavercpas

youtube.com/weavercpas

Insights blog – weaver.com



Questions?

Ira Nevelow, CPA, AEP, JD
Partner, Tax Services
Ira.Nevelow@weaver.com
972.448.6960