

GlobalNote®

UBTI Legislation Reintroduced

TO: Clients and Friends¹
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On July 31, Representative Sander Levin of Michigan introduced a bill (H.R. 3497) that would likely alter how U.S. tax-exempt organizations invest in investment funds. The bill, if enacted, would provide that debt incurred by a partnership in acquiring qualified securities, commodities or any option or derivative contract with respect to a security or commodity is not treated as “acquisition indebtedness” for purposes of determining the unrelated business taxable income (UBTI) of exempt organizations that are limited partners in the partnership. The proposed bill’s definition of securities, commodities and their derivatives does not appear to include interests in real property.

Under current law, an exempt organization’s return on an investment made with acquisition indebtedness is taxed as UBTI in proportion to the amount of the acquisition indebtedness, regardless of whether the organization uses leverage to directly acquire the investment or the partnership in which it invests uses leverage to acquire securities, commodities and their derivatives. The proposed change in law would likely alter or reduce the use by exempt organizations of so-called “blocker” offshore funds structured as corporations to avoid UBTI from leverage used by the fund, since, under the proposed law, the organizations could invest directly in US funds formed as limited partnerships and not be penalized by the indebtedness used by the funds to make investments.

The latest version is the same as legislation Levin previously introduced in the fall of 2007.

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