



Spencer Walters Talks to Nonprofit World about the Impact of the 4960 Excise Tax

ATTORNEYS

Spencer F. Walters

PRACTICE AREAS

Benefits & Compensation

Executive Compensation

Exempt Organizations & Charitable Giving

Federal Tax Policy & Advocacy

Nonprofit World

June 4, 2019

IPB partner Spencer Walters spoke to *Nonprofit World* about the potential impacts of the Section 4960 excise tax on nonprofit organizations, for an article entitled "New Excise Tax: How Will It Impact Nonprofits?" in the June issue of the magazine. This 21% tax on amounts over \$1 million paid to certain employees applies to nonprofit organizations and related entities beginning in 2018. Many nonprofits may presume that the tax couldn't possibly apply to them since they don't pay their employees million-dollar salaries.

Not necessarily so, says Spencer. "The most surprising part of the IRS rules is that the tax could apply even if no employee of the nonprofit organization is paid \$1,000,000 or has pay in excess of the severance threshold. One way this can happen is because the definition of pay is different from what we ordinarily call pay. It's not taxable wages reported to the employee on a W-2. Nor is it pay that the organization may already report on a Form 990 filing. Another way the tax could unexpectedly apply is because of the "related entity" rule. If a nonprofit has a related entity, then all pay from every related entity counts. It counts for purposes of whether the employee is a top-five highest-paid employee. And it counts for purposes of whether the employee exceeds \$1,000,000 in pay or hits the severance threshold. This means an employee could receive little or no pay from a nonprofit organization but a related company or entity would still owe the excise tax." Read the full Q&A [here](#).