PUBLICATION

Tax Change for the Tax-Exempt: How Will Organizations – and Their Donors – Be Affected?

Authors: Jacqueline A. Henson
December 22, 2017

The final Republican tax cut bill includes several provisions expected to impact tax-exempt organizations, their donors and their employees. First, the bill temporarily increases the charitable deduction amount allowed to individuals and ends certain charitable deductions for payments made to institutions of higher education. Second, the bill creates two new excise taxes affecting tax-exempt organizations – one on compensation and another on net investment income. Lastly, the bill introduces changes to the unrelated business income tax (UBIT) provisions.

Charitable Contributions

Under the bill, individual donors who itemize deductions may now claim a deduction for gifts totaling up to 60 percent of their adjusted gross income, an increase from the current 50 percent limit. This increased limit also applies to carryovers of unused charitable contributions over the five-year carryover period. The 60 percent limit sunsets at the end of 2025. The bill also repeals any charitable deduction accompanying a payment to an institution of higher education in exchange for which the donor receives the right to purchase tickets or seating at an athletic event. Furthermore, the bill repeals the exception that allowed charities an alternative to the contemporaneous written acknowledgment requirement on behalf of their donors who give $250 or more. Thus, if a donor does not have a contemporaneous written acknowledgment from the charity substantiating the contribution, the deduction will not be allowed.

Two New Excise Taxes

The bill creates two new significant excise taxes. First, it imposes a 21 percent excise tax on an organization tax exempt under I.R.C. 501(a) for compensation in excess of $1 million paid to one or more of the organization's five highest paid employees. This tax also applies to certain separation payments but does not apply to payments made to licensed medical professionals for their medical services. The second new excise tax is a 1.4 percent tax assessed on the net investment income of a private college or university that has at least 500 students during the preceding tax year, 50 percent of whose students are located in the U.S. and the fair market value of whose endowment assets total at least $500,000 per student.

Unrelated Business Income Tax

The bill includes several changes to the unrelated business income tax (UBIT) provisions in the Internal Revenue Code, the most significant of which are: 1) a provision requiring UBIT to be calculated separately against each unrelated business that a tax-exempt organization operates (thus, an organization would no longer be able to use losses from one unrelated business to offset profit from another unrelated business); and 2) a provision requiring a tax-exempt organization to include in its unrelated business income the value of certain fringe benefits provided to employees.

Several notable provisions relating to tax-exempt organizations were *not* included in the final bill. These excluded provisions include the repeal of the Johnson Amendment governing the political speech of churches, the expanded reporting for donor-advised funds, UBIT revisions to royalty income and the non-deductibility of private activity bond interest.

Additional Resources:

- New Tax Plan Changes Rules on Health Coverage, Employee Benefits and Executive Compensation
- No Business Left Behind – New Tax Bill Ushers in Significant Changes for All Companies
- Tax Overhaul Draws New Boundaries Around International Business
- Table: Key Differences Between House, Senate, and Final Bill
- Subscribe to Receive Future Tax Legislation Alerts from Baker Donelson