

SENATE TAX REFORM PROPOSAL – TAX-EXEMPT

The following chart sets forth some of the provisions affecting tax-exempt organizations in the Senate’s version of the Tax Cuts and Jobs Act, as approved by the Senate on December 2, 2017. This chart highlights only some of the key issues and is not intended to address all aspects of the proposed legislation. If you have any questions, please contact your Andersen Tax advisor.

As of December 2, 2017

TAX-EXEMPT ORGANIZATIONS		
Provision	Description of Proposed Change	Comments
Tax-Exempt Organizations – Unrelated Business Taxable Income (UBTI)	<p>The bill does not address the inclusion of certain fringe benefits provided to tax-exempt organization employees as UBTI.</p> <p>The bill would require that organizations that carry on more than one unrelated trade or business must separately calculate UBTI for each trade or business.</p> <p>The provision would be effective for tax years beginning after 2017.</p>	<p>The Senate bill does not mention the inclusion of fringe benefits as UBTI while the House bill did include these items as UBTI in order to mirror the deductibility of fringe benefits for businesses.</p> <p>Calculating UBTI on a separate trade or business basis effectively prohibits a tax-exempt organization from using deductions from one trade or business to offset income from another. In effect, this treats separate unrelated businesses much like Publicly Traded Partnerships (PTPs), the rules for which prevent netting income and losses from separate PTPs but allow losses to carry into subsequent years to offset income from the same PTP in those years.</p> <p>The proposal with respect to name and logo royalty treatment as UBTI was not included in the Senate bill that passed the Senate.</p>
Tax-Exempt Organizations – Excise Tax on Excess Executive Compensation	<p>A 20% tax would be imposed on certain tax-exempt organizations (organizations exempt from tax under Sec. 501(a), an exempt farmers’ cooperative, a federal, state or local government entity with excludible income, or a political organization) for the sum of the compensation paid to a covered employee in excess of \$1 million in a tax year and any excess parachute payment paid to such covered employee.</p> <p>A covered employee would be one of the five highest compensated employees of the organization. An individual who becomes a covered employee for any taxable year after December 31, 2016 would continue to be a covered employee in subsequent years.</p> <p>Compensation includes all compensation paid by the tax-exempt organization and any compensation paid by a related organization.</p> <p>An excess parachute payment would occur when the sum of any payment of compensation is contingent on the covered employee’s separation from service and such compensation equals or exceeds three times the average of the covered employee’s taxable compensation for the five-calendar year period ending before the year of separation from service.</p>	<p>This would be a new provision as currently there are no limits to tax-exempt employee compensation, other than it must be reasonable for services performed. This provision is designed to bring tax-exempt organizations into alignment with for-profit corporations relating to provisions preventing the deduction of compensation over \$1 million for certain employees as well as the deductibility of certain severance-pay arrangements.</p> <p>It may impact compensation paid to university executives and athletic coaching staff.</p>

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Tax-Exempt Organizations – Excise Tax Based on Investment Income of Private Colleges and Universities	This provision would impose a 1.4% excise tax on certain private colleges and universities that have at least 500 students and assets (other than those used directly to meet their exempt purpose) that exceed \$250,000 per full-time student, as measured at the close of the preceding tax year. The bill amendment clarifies that endowment assets formally held by organizations related to the college or university otherwise subject to the excise tax would also be subject to such tax. A second bill amendment clarified that the provision would apply only to assets held for the educational institution and investment income that relates to such assets. The provision would be effective for tax years after 2017.	This provision is focused on schools with what are seen as excessive endowments. The Senate provision is the same as the provision that was passed by the House Ways and Means Committee.
Tax-Exempt Organizations – Exception from Private Foundation Excess Holdings Tax for Independently-Operated Philanthropic Business Holdings was Removed		The provision with respect to the excess holdings tax was not included in the Senate bill that passed the Senate.
Repeal of Deduction for Amounts Paid in Exchange for College Athletic Event Seating Rights	No charitable deduction would be allowed for a payment to a college or university when a right to purchase tickets or seating at an athletic event is received in connection with the payment. The provision would be effective for tax years after 2017.	
Tax-Exempt Organizations – Modification of Organizations that may Qualify as a 501(c)(6) Tax-Exempt Entity		The provision with respect to professional sports leagues qualification as a tax-exempt was not included in the Senate bill that passed the Senate.



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Tax-Exempt Organizations – Excess Benefit Transactions		The provision with respect to excess benefit transactions was not included in the Senate bill that passed the Senate.

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