

## Tax Cuts and Jobs Act, H.R. 1 Nonprofit Analysis of the Final Tax Bill Proposal\*

UPDATED December 20, 2017

ISSUE	HOUSE-SENATE CONFERENCE REPORT	IMPACT ON CHARITABLE NONPROFITS
<b>JOHNSON AMENDMENT</b> (NONPROFIT NONPARTISANSHIP)	<ul style="list-style-type: none"> <li>Preserves nonprofit nonpartisanship by leaving longstanding law intact.</li> <li>House-passed version would have weakened existing law, which for 60+ years has protected charitable nonprofits, houses of worship, and foundations so they can work in communities free from partisan pressures, divisions, and interference.</li> </ul>	<ul style="list-style-type: none"> <li>The House-passed tax bill and several bills pending in Congress would repeal or weaken the Johnson Amendment.</li> <li>More than 5,600 organizations nationwide, along with thousands of religious leaders, faith organizations, law enforcement officials, and the vast majority of the general public oppose weakening the 1954 Johnson Amendment.</li> <li>Visit <a href="http://www.GiveVoice.org">www.GiveVoice.org</a> for more information.</li> </ul>
<b>STANDARD DEDUCTION AND INCENTIVES FOR CHARITABLE GIVING</b>	<ul style="list-style-type: none"> <li>Would increase the standard deduction for individuals (to \$12,000), couples (to \$24,000), and heads of households (to \$18,000).</li> <li>Would raise the limit on cash donations for those who itemize deductions to 60% of adjusted gross income (AGI), up from the current 50% of AGI.</li> <li>Would repeal the "Pease limitation" on itemized deductions that limits deductions for upper-income individuals.</li> <li>Would sunset after 2025.</li> </ul>	<ul style="list-style-type: none"> <li>As a result of the change, the charitable deduction would be out of reach of more than 90% of taxpayers. The Joint Committee on Taxation (JCT) estimates that itemized deductions will drop by \$95 billion in 2018. Not all of this would disappear; the change is estimated to <b>shrink giving to the work of charitable nonprofits by \$13 billion or more each year</b>. Estimates are that this drop in giving would <b>cost 220,000 to 264,000 nonprofit jobs</b>. While the loosening of the AGI limitations for charitable deductions and the eliminating limits on itemized deductions for upper income taxpayers would be helpful, the impact would be limited to the few taxpayers (5%) who would continue to itemize deductions.</li> </ul>
<b>UNIVERSAL DEDUCTION FOR CHARITABLE CONTRIBUTIONS</b> (ALSO CALLED NON- ITEMIZER OR ABOVE- THE-LINE DEDUCTION)	<ul style="list-style-type: none"> <li>No provision to extend charitable giving incentives to non-itemizers was included in the bill.</li> </ul>	<ul style="list-style-type: none"> <li>Congress failed to include a universal deduction that could have corrected the negative consequences of doubling the standard deduction.</li> <li>One such proposal is the <a href="#">Universal Charitable Giving Act</a> (H.R. 3988/S.2123), which would allow non-itemizers to deduct up to \$4,000/individual and \$8,000/couple each year.</li> </ul>
<b>STATE AND LOCAL TAX (SALT) DEDUCTIONS</b>	<ul style="list-style-type: none"> <li>Would limit the amount of state and local income taxes and property taxes, in the aggregate, that can be deducted from federal taxes to just \$10,000.</li> </ul>	<ul style="list-style-type: none"> <li>Would pressure state and local governments to enact tax and spending cuts, leading to elimination of programs serving people in need and increasing burdens on charitable nonprofits and foundations to fill the gaps.</li> </ul>

\* House-Senate Conference Report on the [Tax Cuts and Jobs Act](#), H.R. 1 (approved in the Senate and House on 12/20/2017).

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<b>ESTATE TAX</b>	<ul style="list-style-type: none"> <li>• Would maintain the estate tax, but double the exemption to about \$11 million for individuals and about \$22 million for couples.</li> <li>• Would expire after 2025.</li> </ul>	<ul style="list-style-type: none"> <li>• The estate tax is an important source of revenue for the work of charitable nonprofits as it encourages donors to address future needs in their communities through estate planning.</li> <li>• Doubling the exemption is estimated to reduce federal revenues by nearly \$100 billion over ten years and lower charitable giving by \$4 billion per year.</li> </ul>
<b>AFFORDABLE CARE ACT INDIVIDUAL</b>	<ul style="list-style-type: none"> <li>• Would repeal the individual mandate by reducing the penalties to \$0.</li> </ul>	<ul style="list-style-type: none"> <li>• It is predicted the provision will cause 13 million people to lose health insurance while raising premium costs.</li> <li>• Raises about \$318 billion which is used to offset other tax cuts in the bill.</li> </ul>
<b>PRIVATE ACTIVITY BONDS</b>	<ul style="list-style-type: none"> <li>• Makes no changes to current law.</li> <li>• House-passed version would have repealed private activity bonds.</li> </ul>	<ul style="list-style-type: none"> <li>• A variety of nonprofits, including schools, hospitals, museums, and affordable housing organizations, use these bonds to finance building and renovation projects.</li> </ul>
<b>UNRELATED BUSINESS INCOME TAX (UBIT)</b>	<ul style="list-style-type: none"> <li>• Would require unrelated business income tax (UBIT) to be calculated on each trade or business and not aggregated.</li> <li>• Some nonprofits with greater resources would pay a lower UBIT tax rate, since the House plan would lower the maximum corporate income tax rate from 35% to 20%.</li> </ul>	<ul style="list-style-type: none"> <li>• Only the first \$1,000 of unrelated business income is exempt from taxation under current law, so the proposed changes would affect many organizations of varying sizes.</li> <li>• The change to UBIT could result in increased taxes on nonprofits, taking revenue away from nonprofits' mission-related programs and services.</li> <li>• A provision to treat income from licensing a nonprofit's name or logo as unrelated business income that is subject to UBIT deleted from Senate version prior to enactment.</li> </ul>
<b>DONOR ADVISED FUNDS</b>	<ul style="list-style-type: none"> <li>• Makes no changes to current law.</li> </ul>	<ul style="list-style-type: none"> <li>• The bill does not include payout requirements for DAFs, which was a concern of some nonprofits and community foundations.</li> </ul>
<b>PRIVATE FOUNDATION EXCISE TAX</b>	<ul style="list-style-type: none"> <li>• Makes no changes to current law.</li> </ul>	<ul style="list-style-type: none"> <li>• The <a href="#">Joint Committee on Taxation</a> estimates that a provision in the House-passed bill would have raised about \$500 million in revenue over a decade, making it a tax hike on private foundations, and likely resulting in fewer or smaller grants to the work of charitable nonprofits.</li> </ul>
<b>NONPROFIT COLLEGE AND UNIVERSITY ENDOWMENTS</b>	<ul style="list-style-type: none"> <li>• Would create a new 1.4% excise tax on net investment income of nonprofit colleges and universities with assets of at least \$500,000 per full-time student and more than 500 full-time students.</li> <li>• Limited to institutions with more than 50% of students in U.S.</li> </ul>	<ul style="list-style-type: none"> <li>• The provision should be of concern to all charitable nonprofits because it represents an invasion of nonprofit independence, replacing the political will of elected officials with the fiduciary judgment of organizational trustees.</li> </ul>

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<b>VOLUNTEER MILEAGE RATE</b>	<ul style="list-style-type: none"> <li>Makes no changes to current law.</li> <li>House-passed version would have allowed the volunteer mileage rate to be adjusted for inflation.</li> </ul>	<ul style="list-style-type: none"> <li>For years, this rate has been fixed in statute at 14 cents per mile, which is far below the actual cost volunteers incur when they drive their vehicles on behalf of nonprofits.</li> <li>Adjusting the rate for inflation could reduce the cost of volunteering and prevented the further erosion of the value of the incentive over time.</li> </ul>
<b>HIGHLY-COMPENSATED NONPROFIT EMPLOYEES</b>	<ul style="list-style-type: none"> <li>Would impose a new 21% excise tax on nonprofits that pay compensation of \$1 million or more to any of their five highest-paid employees.</li> </ul>	<ul style="list-style-type: none"> <li>The excise tax is in lieu of denying tax deductions for salaries, according to JCT. The change is proposed to bring nonprofit pay rules in line with the for-profit cap on compensation.</li> </ul>
<b>ART MUSEUMS</b>	<ul style="list-style-type: none"> <li>Makes no changes to current law.</li> <li>The House-passed version would have required art museums that are private operating foundations to be open to the public for at least 1,000 hours per year.</li> </ul>	<ul style="list-style-type: none"> <li>Converting museums to private foundations would have subjected them to payout requirements and affected AGI restrictions on a donor's contributions to art museum – whether the 30% limit for foundations or the higher limit for donations to public charities.</li> </ul>
<b>DONOR ACKNOWLEDGMENT REQUIREMENTS SUBSTANTIATION</b>	<ul style="list-style-type: none"> <li>Would repeal an unused provision in the tax code that allows the IRS to create an optional tax return that nonprofits could file in lieu of providing donors with written acknowledgment of contributions.</li> </ul>	<ul style="list-style-type: none"> <li>The provision is a needed “cleanup” measure designed to block the IRS from requiring charities to collect and report donors' Social Security numbers or other sensitive personal information to substantiate charitable contributions.</li> </ul>
<b>INTERMEDIATE SANCTIONS</b>	<ul style="list-style-type: none"> <li>Makes no changes to current law.</li> </ul>	<ul style="list-style-type: none"> <li>An earlier draft of the House bill would have imposed an excise tax on the organization, rather than (or in addition to) its managers or the recipient of the excess benefit would effectively penalize the organization, which is the victim of the excess benefit transaction, as well as those who rely on the organization for services.</li> <li>The deleted language also would have removed or weakened the safe harbors for determining compensation reasonableness.</li> </ul>

Earlier versions of the Tax Bill:

- House-passed version of the [Tax Cuts and Jobs Act](#), H.R. 1 (passed 11/16/2017)
- Senate Manager's modified substitute version of the [Tax Cuts and Jobs Act](#) (passed 12/2/2017).

Adapted with permission from analyses prepared by the [North Carolina Center for Nonprofits](#) and the [Center for Non-Profits](#) in New Jersey.

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