

# Tax Reform Summary: What Nonprofits Should Know

By Dave Moja, Partner

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The House and Senate approved the Tax Cuts and Jobs Act (H.R. 1) on December 20, 2017, and President Trump is expected to sign it into law this week.

There are several elements of the Act that nonprofit organizations should be aware of:

- Charitable contributions – The deduction limit would increase to 60% from the current 50% limit. The five-year carryover period would be retained to the extent that the contribution amount exceeds 60% of the donor's adjusted gross income.
- Corporate tax rate – This would decrease to a new top rate of 21%, down from 35%.
- Political campaign activity – The Johnson Amendment, which restricts 501(c)(3) organizations from directly or indirectly participating in political campaign activities, remains unchanged. The House version of the bill had proposed allowing de minimis activity if it occurred within the ordinary course of the organization's business and resulted in no more than de minimis incremental expenses.
- Section 529 educational plans – Section 529 plans will be available for elementary and secondary school tuition.
- Unrelated business activities – Each unrelated business activity would stand alone with respect to profit or loss. Specifically, organizations that have more than one unrelated trade or business must first separately compute the unrelated business taxable income with respect to each unrelated trade or business and without regard to the specific \$1,000 deduction. Losses resulting from one trade or business would not be permitted to offset income from another trade or business. There is a transition rule for net operating losses (NOLs) arising in a taxable year before January 1, 2018. Such NOLs that are carried forward to a future taxable year are not subject to this rule.
- Unrelated business income tax (UBIT) on certain fringe benefits – The conference agreement includes the provision in the House bill under which UBIT includes any expenses paid or incurred by a tax-exempt organization for the following, provided such amounts are not deductible under section 274:
  - Qualified transportation fringe benefits,
  - A parking facility used in connection with qualified parking, or
  - Any on-premises athletic facility
- Excise tax on some private colleges and universities – The Act includes a 1.4% excise tax on the net investment income (not yet defined) of private colleges and universities that are “applicable educational institutions” (AEIs). This will generally mean schools that have at least 500 students, with 50% of students located in the U.S. The threshold computation would be for AEIs whose aggregate fair market value of assets is at least \$500,000 per student at the end of the preceding taxable year. (This would not include assets used directly in carrying out the institution's exempt purpose.) Note that the original conference report had qualified that the students must be “tuition-paying” students. This was removed from the final text of the Act due to a technicality in the Senate rules.
- Excess compensation – There would be a 21% excise tax on compensation in excess of the \$1 million paid by an applicable tax-exempt organization to one of its five highest-compensated employees when there is no substantial risk of forfeiture of the rights to such remuneration, as defined at I.R.C. section 457(f)(3)(B)C. This rule has several exemptions and limitations.

- Repeal of advanced refunding bonds – Both the House and Senate versions of the bill proposed taxing interest on advance refunding bonds (refunding bonds issued more than 90 days before the redemption of the refunded bonds). The conference bill adopted this measure. Interest on current refunding bonds would remain tax-exempt, and the provision would be effective for advance refunding bonds issued after 2017.
- Moving expenses – The conference bill includes provisions that would suspend the moving expense deduction and qualified moving expense reimbursements through 2025. There would be exclusions for active duty military members.
- Estate tax – The estate tax would be retained, with the exemption amount doubled. This would expire in 2026.

Two provisions in the House version of the bill were eliminated in the final text of the Act to meet Senate rules:

- A modification of the definition of “educational expenses” in Section 529 educational plans to include certain expenses incurred for a home school was taken out.
- The requirement that the students counted for purposes of the new 1.4% excise tax on the net investment income of private colleges and universities with at least 500 students and having 50% of students located in the U.S. be tuition-paying students was removed. All students, regardless of whether they pay tuition or not, must be counted toward the 500-student limit.

Note that many of the provisions of this bill would end on December 31, 2025. Be sure to consider the longevity of provisions when making any plans related to the new tax law.

Please [contact](#) our tax team with any questions or concerns about how this may affect your organization.

## About the Author

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