



# TaxNewsFlash

## United States

No. 2017-509  
November 14, 2017

### Tax reform proposals that may affect tax-exempt organizations and donors

A number of provisions in both the House Ways and Means tax reform bill and in the Senate Finance Committee Chairman's mark would affect tax-exempt organizations and their donors.

The charts below identify some of these provisions, whether and to what extent the proposals differ between the two versions of the bills or proposals (at this stage), and highlight where more information can be found in the KPMG reports prepared for the current version of each bill.

These charts reflect proposals as of November 9, 2017, for the Ways and Means bill and as of November 13, for the Senate Finance Chairman's mark and identified by the page numbers in the following KPMG reports:

- [House Republican tax reform bill-Initial observations on Ways and Means Committee bill](#) [PDF 1.8 MB]
- [Senate tax reform bill-Initial observations on Chairman Hatch's mark](#) [PDF 1.1 MB]

Page numbers below refer to where additional information may be found in the KPMG reports on the House bill and the Senate mark, respectively.

#### Exempt organization provisions

The proposals contain numerous provisions that specifically apply to tax-exempt organizations, including certain governmental entities.

Proposal	Ways and Means bill (11/9/17)	Senate Chairman's mark (11/9/17) pages 45-46, 62-66
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	pages 50, 67-68, 97-100	
<b>General</b>		
<b>Impose a 1.4% excise tax on the investment income of certain private colleges and universities</b> (new section 4969)	Included (section 5103)	Included
<b>Repeal tax-exempt status for professional sports leagues</b> (section 501(c)(6))	Not included	Included
<b>Permit section 501(c)(3) organizations to make political campaign statements in the ordinary course of their activities, provided the expenses are de minimis</b> (new section 501(s))	Included (section 5201)	Not included
<b>Enhance the reporting required by sponsoring organizations of donor advised funds (“DAFs”)</b> (new section 6033(k)(4),(5))	Included (section 5202) The House bill would require sponsoring organizations to annually report the percentage of assets paid out of DAFs and their policies on inactive accounts.	Not included
<b>Compensation</b>		
<b>Impose an entity-level excise tax on excess compensation</b> (new section 4960)  The proposals would impose a 20% excise tax on compensation in excess of \$1 million (and “excess parachute payments”) paid by certain exempt organizations (including related organizations) to the top-5 highest compensated employees	Included (section 3802)	Included
<b>Modify intermediate sanctions</b>	Not included	Included

(section 4958)		<p>The Senate mark would:</p> <ul style="list-style-type: none"> <li>• Expand the intermediate sanctions to section 501(c)(5) and 501(c)(6) organizations</li> <li>• Eliminate the rebuttable presumption of reasonableness</li> <li>• Expand “disqualified persons” to include athletic coaches and investment advisors</li> <li>• Impose a 10% entity-level tax unless organizations meet due diligence standards</li> </ul>
<b>Unrelated business income tax (“UBIT”)</b>		
<b>Subject organizations described in section 501(a) to UBIT, even if they exclude income from tax under another provision</b> (new section 511(d))	Included (section 5001)	Not included
<b>Modify the fundamental research exception</b> (section 512(b)(9))	Included (section 5002) The House bill would limit the exclusion from UBTI for organizations operated primarily for fundamental research to research that is made freely available to the general public.	Not included
<b>Include the value of certain fringe benefits that are non-</b>	Included (section 3308)	Not included

<b>deductible under section 274 as UBTI</b> (new section 512(a)(6))		
<b>Treat income from the sale or license of a tax-exempt organization's name or logo as UBTI</b> (sections 512(b)(1), (2), (5)), 513)	Not included	Included
<b>Compute UBTI separately for each unrelated trade or business</b>	Not included	Included
<b>Private foundations</b>		
<b>Simplify the private foundation excise tax on net investment income to a single 1.4% rate</b> (section 4940)	Included (section 5101)	Not included
<b>Create an exception from the excess business holdings rules for independently-operated philanthropic businesses</b> (new section 4943(g))	Included (section 5104)	Not included
<b>Limit private operating foundation status for art museums to those that are open to the public for at least 1,000 hours per year</b>	Included (section 5102)	Not included

### **Tax-exempt (and related) organizations as businesses**

The current tax reform proposals include a number of provisions that would affect tax-exempt organizations that engage in unrelated trades or businesses or that have related taxable entities. Of particular interest may be the corporate rate reduction, repeal of the corporate AMT, the elimination of numerous business deductions and tax credits, and increased expensing.

<b>Proposal</b>	<b>Ways and Means bill (11/9/17)</b> pages 27-28, 35-36, 49-50	<b>Senate Chairman's mark (11/9/17)</b> pages 26-28, 36-37
<b>Replace graduated corporate income tax rates</b>	Included (section 3001)	IncludedThe new rates would take effect for tax

<b>with flat 20% tax rate</b> (section 11(b))	The new rates would take effect for tax years beginning after December 31, 2017.	years beginning after December 31, 2018.
<b>Repeal of corporate AMT</b> (sections 55-59)	Included (section 2001)	Included
<b>Eliminate deduction for entertainment expenses and certain fringe benefits</b> (section 274)  The proposal generally repeals the present-law exception to the deduction disallowance for entertainment, amusement, or recreation that is directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business (and the related rule applying a 50% limit to such deductions). It generally retains the deduction for food and beverage expenses associated with a trade or business.	Included (section 3307)  The House bill would disallow deductions for (1) a de minimis fringe that is primarily personal in nature, (2) a qualified transportation fringe, including costs of operating a facility used for qualified parking, and (3) an on-premises athletic facility provided by an employer to its employees, including costs of operating such a facility. In addition, it would disallow a deduction for entertainment expenses paid as part of a reimbursement arrangement to a tax-exempt entity.	Included  The Senate mark would expand the 50% limitation for food and beverage expenses associated with operating a trade or business to expenses associated with an eating facility that meets the requirements for a de minimis fringe.

### Tax-exempt organizations as employers

The tax reform proposals also affect compensation paid by tax-exempt organizations to their employees. In addition to provisions affecting retirement plans and deferred compensation, the proposals would modify compensation by changing the taxability of certain fringe benefits, imposing excise taxes on certain compensation, and increasing unrelated business taxable income ("UBTI") for certain organizations.

<b>Proposal</b>	<b>Ways and Means bill (11/9/17)</b> pages 19-21, 23-24	<b>Senate Chairman's mark (11/9/17)</b> Pages 24-25
<b>Modification of employer-provided housing exclusion</b> (section 119)	Included (section 1401)  The House bill would limit the	Not included

	exclusion for employer-provided housing to \$50,000 annually and would phase out the exclusion for highly-compensated employees.	
<b>Repeal exclusion for qualified tuition reductions made by 170(b)(1)(A)(ii) tax-exempt colleges and universities (section 117(d))</b>	Included	Not included
<b>Taxable fringe benefits (section 132)</b>  The proposals would include in taxable income moving expense reimbursements and tax preparation services.	Included  The House bill would also include as taxable income: <ul style="list-style-type: none"> <li>• Employer-provided education assistance(section 1204)</li> <li>• Employer contributions to Archer Medical Savings Accounts (section 1311)</li> <li>• Employee achievement awards(section 1403)</li> <li>• Adoption assistance(section 1406)</li> </ul>	Included  The Senate mark would also include as taxable income qualified bicycle commuting expenses.

## Tax-exempt bond provisions

The proposals address and modify certain rules relating to tax-exempt bonds.

<b>Proposal</b>	<b>Ways and Means bill (11/9/17)</b>  pages 58-59	<b>Senate Chairman's mark (11/9/17)</b>  page 53
<b>Termination of private activity bonds (section 103(b))</b>	Included (section 3601)  The House bill would eliminate the tax-exempt treatment of interest received from "qualified 501(c)(3)" bonds as well as certain other bonds.	Not included
<b>Repeal of advance refunding bonds (section 149(d))</b>	Included (section 3602)	Included

The proposal would tax the interest earned on bonds used to pay the principal, interest, or redemption price on a prior governmental or qualified 501(c)(3) bond issued more than 90 days before redemption.		
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## Donors

In addition to proposed amendments to the charitable contribution deduction (discussed below), a number of other provisions may be of interest to donors of tax-exempt organizations: e.g., an increased standard deduction, AMT repeal, modification or repeal of the estate tax, lower tax rates, and a repeal of the overall limit on itemized deductions.

<b>Charitable contribution deduction</b>	<b>Ways and Means bill (11/9/17)</b>	<b>Senate Chairman's mark (11/9/17)</b>
	pages 21-22	pages 21, 65-66
<b>Increase the 50% AGI limit to 60% for cash contributions</b> (section 170(b)(1))	Included (section 1306(a))	Included
<b>Deny the deduction for college athletic event seating rights</b> (section 170(l))	Included (section 1306(b))	Included
<b>Adjust the charitable mileage rate for inflation</b> (section 170(i))	Included (section 1306(c))	Not included
<b>Repeal substantiation exception for contributions reported by donees</b> (section 170(f)(8)(D))	Included (section 1306(d))	Not included

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