Tax reform: Issues for exempt organizations (Pub. L. 115-97)

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Introduction and Executive Summary

On December 22, 2017, the president signed into law H.R. 1, originally known as the "Tax Cuts and Jobs Act." The new law represents the largest change to U.S. tax policy in decades and includes several changes that are specifically relevant to exempt organizations and their donors, as well as a number of generally applicable provisions that could decrease incentives for charitable giving or affect exempt organizations with unrelated businesses or taxable subsidiaries (e.g., reduced corporate income tax rates, repeal of the corporate alternative minimum tax (AMT), limitations of net operating loss (NOL) deductions).

This report explains certain key provisions of particular interest to exempt organizations and their donors and summarizes other changes of broad, general applicability that may have more indirect effects. A comprehensive **KPMG report** discussing the new law provides additional analysis and observations regarding the myriad tax law changes in H.R. 1, including:

- Expensing of capital investment, limitation of the deduction for interest expense, and a multitude of other changes to the corporate tax rules
- A temporary deduction against business income earned by passthrough entities that permits certain non-corporate owners (i.e., owners who are individuals, trusts, or estates) of certain partnerships, S corporations, and sole proprietorships to claim a 20% deduction against qualifying business income
- Certain special rules for tax year of inclusion that generally require accrual method taxpayers to recognize income no later than the tax year in which the item is recognized as revenue on an applicable financial statement (i.e., the all events test is satisfied no later than the year in which the revenue is recognized for financial accounting purposes)
- Fundamental changes to the taxation of multinational entities, including a shift from the current system of worldwide taxation with deferral to a hybrid territorial system, featuring a participation exemption regime with current taxation of certain foreign income, a minimum tax on low-taxed foreign earnings, and new measures to deter base erosion and promote U.S. production
- Significant changes relevant to the taxation of insurance businesses
- Temporary changes to the individual income tax rules, including reductions in the individual income tax rates, new limits on itemized deductions (such as the deduction for state and local taxes), an increased standard deduction, an increased gift and estate tax exemption amount, and a more restrictive permanent cost-of-living bracket adjustment

Given the sheer size of the new law and the rapid pace of the legislation's development, clarifications and corrections can be expected to be needed for some provisions. It is possible that the Joint Committee on Taxation (JCT) may release a "blue book" general explanation of the new law. If so, the blue book might clarify the intent of some provisions.

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However, for some issues, changes to the statute might still be needed to provide sufficient certainty.[1]

This is one of a series of reports that KPMG has prepared as tax reform legislation has moved through various stages of the legislative process. To read KPMG's reports and coverage of legislative developments, see ***TaxNewsFlash-Tax Reform***.

Documents

- Text of the tax bill, **H.R. 1** [PDF 491 KB] (185 pages)
- The **conference agreement** [PDF 4.25 MB] (1097 pages) includes (1) bill language, (2) an explanatory statement, and (3) a preliminary revenue table prepared by the staff of the JCT.
- The **CBO cost estimate** for the conference agreement on H.R. 1.
- **JCX-67-17** Estimated Budget Effects Of The Conference Agreement For H.R.1, The "Tax Cuts And Jobs Act"
- **JCX-68-17** Distributional Effects of the Conference Agreement for H.R. 1
- **JCX-69-17** Macroeconomic Analysis of the Conference Agreement for H.R. 1

[1] A number of judicial decisions have addressed the role of blue books. For example, see *U.S. v. Woods*, 134 S. Ct. 557 (2013), in which the Court explained that blue books:

> are "written after passage of the legislation and therefore d[o] not inform the decisions of the members of Congress who vot[e] in favor of the [law]." We have held that such "[p]ost-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation." While we have relied on similar documents in the past, our more recent precedents disapprove of that practice. Of course the Blue Book, like a law review article, may be relevant to the extent it is persuasive. [Citations omitted throughout.]

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Exempt organizations, generally

Excise tax on excess tax-exempt organization executive compensation

Section 13602 of the new law adds new Code section 4960, which imposes an excise tax equal to the corporate tax rate (21%) on "remuneration" in excess of $1 million paid by an "applicable tax-exempt organization" to a "covered employee."

An applicable tax-exempt organization is an organization exempt from tax under section 501(a), an exempt farmers' cooperative (section 521(b)(1)), a political organization (section 527), or an entity that excludes income from taxation under section 115(1).

A covered employee is any of an organization's current or prior five highest-paid employees for any tax year beginning after December 31, 2016.

Remuneration means wages (as defined in section 3401(a)) and is treated as paid when there is no substantial risk of forfeiture of the rights to such remuneration. Therefore, payments from a section 457(f) plan are included in the year vested. However, remuneration does not include any designated Roth contribution (section 402A(c)), amounts that are excludable from gross income, or payments to licensed medical professionals (e.g., doctors, nurses, or veterinarians) for the performance of medical or veterinary services.

A tax-exempt organization's remuneration of a covered employee also includes remuneration paid with respect to employment of that employee by certain related persons and governmental entities, including organizations that control or are controlled by the tax-exempt organization, organizations that are controlled by one or more persons that control the tax-exempt organization, and supporting or supported organizations of the tax-exempt organization. However, remuneration that is not deductible by reason of the $1 million limit on deductible compensation (Code section 162(m), which applies to compensation paid to certain officers of a publicly traded company) is not taken into account for purposes of the provision.

The excise tax is also imposed on any "excess parachute payment" paid by an applicable tax-exempt organization to a covered employee. A "parachute payment" generally is defined as a payment contingent upon an employee's separation from employment if the aggregate present value of such payment equals or exceeds three times the employee's "base amount." Generally, the base amount is an employee's includible compensation over the most recent five taxable years. If the "three times" threshold is reached, the excise tax is applied to the excess of the parachute payment over the base amount.

Parachute payments do not include payments under a qualified retirement plan, a simplified employee pension plan, a simple retirement account, a tax-deferred annuity (section 403(b)), or an eligible deferred compensation plan of a state or local government

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or tax-exempt organization (section 457(b)). Further, parachute payments do not include payments to licensed medical professionals for the performance of medical or veterinary services or to individuals who are not highly compensated employees under section 414(q).

The provision applies to taxable years beginning after December 31, 2017.

The JCT estimated the provision will increase revenues by approximately $1.8 billion over 10 years.

KPMG observation

The new law provides rules for tax-exempt entities that are similar to, and intended to parallel, section 162(m) limits on the deductibility of remuneration in excess of $1 million paid by publicly traded corporations. In addition, similar to the amendments made to section 162(m), once an employee is a covered employee, such employee will be a covered employee of the organization in perpetuity.

State colleges and universities. The new law provides that the excise tax on remuneration in excess of $1 million applies to an organization that "has income excluded from taxation under section 115(1)" but does not expressly reference state or local governmental units or "integral parts" thereof. State or local governments and their integral parts do not (and, in fact, cannot) have their income excluded under section 115(1) but rather are not taxed on the basis of the doctrine of implied statutory immunity. The omission of any reference to state or local governments or their integral parts in the statute appears to indicate that the excise tax does not apply directly to such governmental entities (however, see discussion below regarding related organizations).

Five highest compensated employees. Unlike section 162(m), new section 4960 does not define "highest compensated employees," creating ambiguity for an organization in determining its covered employees and putting pressure on the determination of which entity is the "employer" or whether there is more than one common law employer of any given employee.

Medical services. The definition of remuneration does not include remuneration paid to licensed medical professionals for the performance of medical services. The conference report provides that for purposes of determining a covered employee, such remuneration is not taken into account. As a result, it appears that many physicians will not be covered employees. However, for individuals who provide both medical and other services, it will be necessary to reasonably allocate compensation between such roles to properly determine an organization's covered employees.

Related organizations. The statute provides a separate definition for remuneration from related organizations that includes any "related person or governmental entity." In addition, a related organization is subject to the excise tax in proportion to its share of the

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remuneration paid to the covered employee. Because the statute specifically identifies governmental entities, it appears that state colleges and universities that are related to an applicable tax-exempt organization may be subject to the tax, albeit indirectly, even if they do not exclude income under section 115(1) and hence are not themselves applicable tax-exempt organizations.

Taxable year. The statute appears to require an organization to use its fiscal year in determining its highest compensated employees and the remuneration potentially subject to the excise tax. Although different from how a fiscal year organization reports compensation on its Form 990, this approach parallels the section 162(m) deduction disallowance, which applies to compensation paid or incurred during the organization's tax year.

Estimated tax payments. It does not appear that this excise tax is subject to the requirement to make estimated payments (see section 6655(g)(3)).

Repeal of advance refunding bonds

Section 13532 of the new law amends Code section 149(d) by subjecting to tax the interest on advance refunding bonds – bonds used to pay principal, interest, or redemption price on a prior bond issue. Advance refunding bonds are those refunding bonds that are issued *more* than 90 days before the redemption of the refunded bonds. In general, under pre-enactment law, governmental bonds and qualified 501(c)(3) bonds could be advance refunded only one time, while private activity bonds (other than qualified 501(c)(3) bonds) could not be advance refunded at all. The provision applies to bonds issued after December 31, 2017.

The JCT estimated the repeal of advance refunding bonds will increase revenues by approximately $17.4 billion over 10 years.

KPMG observation

Under pre-enactment law, the advance refunding rules permitted an issuer to refinance a prior bond issue to achieve debt service savings even though that issue may not be callable for more than 90 days from the issuance of the refunding bonds. This provision will likely increase the cost of debt for organizations that were eligible to advance refund prior bond issues, such as section 501(c)(3) organizations.

Advance refunding bonds issued on or before December 31, 2017 are not affected by these changes. Notably, the provision does not appear to include a transition rule that would permit the advance refunding of bonds issued before January 1, 2018. In addition, interest on refunding bonds issued *within* 90 days of the redemption of the refunded bond (i.e., not *advance* refunding bonds) remains tax-exempt.

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Repeal of deduction for local lobbying activities

Section 13308 of the new law amends section 162(e) to disallow the deduction for lobbying expenses with respect to legislation before local government bodies (including Indian tribal governments). The provision is effective for amounts paid or incurred on or after December 22, 2017 (the date of enactment).

JCT estimated that this provision will raise approximately $800 million over a 10-year period.

KPMG observation

The new law conforms the treatment of expenses for lobbying at the local level to the existing disallowance of such expenses for lobbying at other levels of government. Expenses associated with other common government affairs activities, such as monitoring legislation, attempts to influence rules and regulations, relationship building, and reputational lobbying at the local government level are considered deductible as ordinary and necessary business expenses.

This amendment may affect section 501(c)(4), (5), and (6) organizations that engage in lobbying activities. Under section 6033(e), such organizations must now include local lobbying expenditures in disclosures to members or pay a proxy tax with respect to these expenditures.

Increased percentage limitation for certain charitable contributions

Section 11023 of the new law amends Code section 170 by increasing the adjusted gross income (AGI) limitation for charitable contributions of cash made by individuals to public charities and certain private foundations to 60% (from the current 50% limitation). This new rule applies to contributions made in tax years beginning after December 31, 2017 and before January 1, 2026.

KPMG observation

The new law retains the charitable contribution deduction, even increasing the amount individual taxpayers may claim as a deduction in a single tax year; however, other changes (e.g., lower tax rates, nearly doubling the standard deduction, limitation of the deduction for state and local taxes, and doubling the exemption amount for the estate, gift, and generation-skipping transfer taxes) may have an indirect impact on charitable giving by reducing or eliminating the tax benefit for many taxpayers. For a discussion of other changes affecting charitable giving (e.g., disallowed deduction for the right to purchase seating at a collegiate athletic event), see the “Colleges and universities” discussion below.

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Repeal of substantiation exception in case of contributions reported by donee

Section 13705 of the new law repeals Code section 170(f)(8)(D), an inactive provision that exempted donors from substantiating charitable contributions of $250 or more through a contemporaneous written acknowledgment, provided that the donee organization filed a return with the required information. The repeal of section 170(f)(8)(D) applies to contributions made in tax years beginning after December 31, 2016.

The JCT estimated the provision would have negligible revenue effects.

Unrelated business taxable income

Unrelated business taxable income separately computed for each trade or business activity

Section 13702 of the new law adds new Code section 512(a)(6), which requires a tax-exempt organization to calculate separately the net unrelated business taxable income (UBTI) of each unrelated trade or business. Any loss derived from one unrelated trade or business may not be used to offset income from another unrelated trade or business, and NOL deductions are allowed only with respect to the trade or business from which the loss arose.

This change does not apply to any NOLs arising in a tax year beginning before January 1, 2018, and such NOLs may be applied to reduce aggregate UBTI arising from all unrelated businesses.

The JCT estimated the provision will increase revenues by approximately $3.5 billion over 10 years.

KPMG observation

Under pre-enactment law, tax-exempt organizations calculated UBTI based on all unrelated business activities regularly carried on, less the deductions directly connected with carrying on those activities. In other words, losses generated by one activity generally could offset income earned from another activity. The new law prevents organizations from calculating UBTI on an aggregate basis.

Under the new law, it is unclear how to determine whether an activity constitutes a single or multiple trades or businesses. For example, a tax-exempt organization with investments in partnerships will need to determine at what level to identify the separate trade or business: the investment partnership, the activities within that partnership, the lower tier partnership, or elsewhere?

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Limitation of deduction by employers of expenses for entertainment and certain fringe benefits

Section 13304 of the new law significantly amends to section 274 of the Code. Specifically, it repeals deductions for entertainment, amusement, and recreation when directly related to the conduct of a taxpayer's trade or business. The new law provides that no deduction is allowed for (1) an activity considered entertainment, amusement, or recreation, (2) membership dues for any club organized for business, pleasure, recreation, or other social purposes, or (3) a facility or portion of a facility used in connection with any of the above. The special "charitable sporting event" deduction rules were eliminated as well.

The new law generally retains the 50% deduction for food and beverage expenses associated with a trade or business, effective for amounts paid or incurred after December 31, 2017. The new law also applies the 50% limitation to certain meals provided by an employer that were formerly 100% deductible. The expanded 50% limit applies to food and beverages provided to employees as de minimis fringe benefits, to meals provided at an eating facility that meets the requirements for an on-premises dining facility, and to meals provided on-premises to employees under section 119 for the convenience of the employer. The 50% deduction limit applies for years after 2017 and before 2026. The on-premises meals and section 119 meals expenses would be nondeductible after 2025.

The new law also disallows any deduction for expenses associated with providing qualified transportation fringes and any expenses to provide transportation for commuting between the employee's residence and place of employment (unless ensuring the safety of an employee). Qualified transportation fringes include van pools, subway or transit cards, and qualified parking.

JCT estimated this provision will increase revenue over 10 years by approximately $23.5 billion for meals and entertainment expenses and $17.7 billion for qualified transportation fringes.

KPMG observation

The new provisions essentially suggest that the employer has a choice to include qualified transportation fringes and free meals in employee taxable income and take a 100% tax deduction or exclude the amounts from employee taxable income and take a lesser deduction. The effects of a 0% deduction may be felt especially by the sporting event arenas, entertainment arenas, and possibly at collegiate sports events.

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Unrelated business taxable income increased by amount of certain fringe benefit expenses for which deduction is disallowed

Section 13703 of the new law modifies the definition of UBTI to add new Code section 512(a)(7), which increases UBTI by any amount for which section 274 would disallow a deduction but that is paid or incurred by a tax-exempt organization for any qualified transportation fringe (defined in section 132(f)), any parking facility used in connection with qualified parking (defined in section 132(f)(5)(C)), and on-premises athletic facilities (defined in section 132(j)(4)(B)). The modification does not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business regularly carried on by the organization.

These changes apply to amounts paid or incurred after December 31, 2017.

The JCT estimate of the effects of this provision on revenue is included in the estimate above for the repeal of the deduction for qualified transportation fringes.

KPMG observation

As an initial matter, before the new provision can cause a tax-exempt organization to include an amount paid or incurred in UBTI, section 274 generally must disallow a deduction for that amount to taxable employers (see "Limitation of deduction by employers of expenses for entertainment and certain fringe benefits," discussed above). However, only certain section 274 exclusions apply for this purpose.

New section 512(a)(7) appears to apply to qualified transportation fringes, parking facilities, and on-premises athletic facilities. However, with respect to these items, it appears that section 274 currently disallows deductions solely for qualified transportation fringes. Other than as qualified parking, it does not appear that tax-exempt organizations will increase UBTI for amounts paid or incurred with respect to parking facilities. The same appears to be the case for on-premises athletic facilities.

Although the new law generally applies to tax years beginning after December 31, 2017, this provision applies to "amounts paid or incurred" after December 31, 2017. Therefore, a fiscal year taxpayer may be impacted by this provision for amounts paid or incurred in 2018 within its tax year beginning in 2017.

Reductions in corporate tax rate

Section 13001 of the new law modifies Code section 11 by eliminating the progressive corporate tax rate structure, which previously imposed a maximum corporate tax rate of 35%, and replacing it with a flat tax rate of 21% (and makes various corresponding changes throughout the Code). The new rate is effective for tax years beginning after December 31, 2017.

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The JCT estimated that the rate reduction will decrease revenues by approximately $1.35 trillion over 10 years.

KPMG observation

This reduction is intended to make the U.S. corporate tax rate more competitive with the rates imposed by other countries. Consistent with the overall theme of the new law, this provision lowers tax rates in exchange for the elimination of certain tax benefits.

Section 15 generally results in the application of a "blended" tax rate for tax years of fiscal year taxpayers that include the effective date of the rate change (December 31, 2017). Section 15 presumably would apply to the corporate rate change without modification. The potential application of section 15 to other changes made by the new law (such as how it might apply to the repeal of corporate AMT) is not entirely clear and administrative guidance may be needed.

Repeal of corporate AMT

Section 12001 of the new law amends Code section 55 by repealing the corporate AMT, effective for tax years beginning after December 31, 2017. Any AMT credit carryovers to tax years after that date generally may be utilized to the extent of the taxpayer's regular tax liability (as reduced by certain other credits). In addition, for tax years beginning in 2018, 2019, and 2020, to the extent that AMT credit carryovers exceed regular tax liability (as reduced by certain other credits), 50% of the excess AMT credit carryovers are refundable (a proration rule with respect to short tax years). Any remaining AMT credits will be fully refundable in 2021.

The JCT estimated that the repeal of the corporate AMT will reduce revenues by approximately $40.3 billion over a 10-year period.

KPMG observation

Repealing the corporate AMT eliminates some of the complexity inherent in U.S. corporate taxation. For taxpayers with significant corporate AMT credit carryovers, the new law allows the full use of the credits to (i) reduce or eliminate regular tax liability, and (ii) obtain tax refunds to the extent the AMT credit carryovers exceed regular tax liability.

While the new law repeals the AMT, it also generally limits the NOL deduction for a given year to 80% of taxable income, adding a more restrictive version of the 90% limitation that previously existed only in the AMT regime. As shorthand, the 90% limitation in the AMT regime could be viewed as imposing a 2% tax rate (20% AMT rate multiplied by the 10% of income that could not be offset with an NOL deduction). This "shorthand" rate is 4.2% under the new law (21% corporate tax multiplied by the 20% of income that cannot be offset with NOLs).

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Modified NOL deduction

Section 13302 of the new law amends section 172 by limiting the NOL deduction for a given year to 80% of taxable income, effective with respect to losses arising in tax years beginning after December 31, 2017. This limitation is similar to, although more restrictive than, the 90% limitation for NOLs in the prior corporate AMT regime (which is repealed by the new law).

With limited exceptions, the new law also repeals the carryback provisions for NOLs; the statutory language indicates that this provision applies to NOLs arising in tax years ending after December 31, 2017. Pre-enactment law generally provided a two-year carryback and 20-year carryforward for NOLs, as well as certain carryback rules for specific categories of losses.

The statutory language of the new law provides for the indefinite carryforward of NOLs arising in tax years ending after December 31, 2017, as opposed to a 20-year carryforward.

The JCT estimated that the provision will increase revenue by approximately $201.1 billion over 10 years.

KPMG observation

The new law does not appear to limit the three-year capital loss carryback allowed for corporations or impose a limitation on the utilization of capital loss carryovers.

The new law requires corporations to track NOLs arising in tax years beginning (1) on or before December 31, 2017, and (2) after December 31, 2017, separately, as only the latter category of NOLs would be subject to the 80% limitation.

The application of the 80% limitation to a tax year to which both (i) NOLs subject to the 80% limitation and (ii) NOLs not subject to such limitation can be carried over is not entirely free from doubt. For example, assume a calendar year taxpayer has $90 of NOLs carried forward from its 2017 tax year (non-80% limited losses), $10 of NOLs carried forward from its 2018 tax year (80% limited losses), and $100 of income in its 2019 tax year. Arguably the taxpayer may utilize (i) all of the 2017 unlimited losses of $90 and (ii) all of the 2018 limited losses of $10, as the deduction of the 2018 NOL carryforward allowed under revised section 172(a) would be $10, which is the lesser of (a) the NOL carryover subject to the 80% limitation ($10), and (b) 80% of taxable income computed without regard to the NOL deduction ($80). Alternatively, arguably the taxpayer cannot use any of $10 NOL from 2018, because the aggregate NOL carryover deduction is limited to 80% of taxable income (again, computed without regard to the NOL deduction), or $80. Under this interpretation, the available NOLs would absorbed chronologically, i.e., $90 of 2017 NOL is absorbed first (and is not subject to the 80% limitation), but no amount

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of the $10 of 2018 NOL could be absorbed because the $80 taxable income limitation had already been utilized by the 2017 NOL carryover. Although it is not free from doubt, there is a good argument that the former approach (allowing the deduction of the $10 of 2018 NOLs in 2019) ought to apply.

The 80% limitation applies to losses arising in tax years beginning after December 31, 2017, whereas the statutory language regarding the indefinite carryover and the elimination (for most taxpayers) of the NOL carryback applies to losses arising in tax years ending after December 31, 2017. Accordingly, under the statutory language, the NOLs of fiscal year taxpayers arising in tax years that begin before December 31, 2017 and end after December 31, 2017 would not be subject to the 80% limitation but (for most taxpayers) may not be carried back and may be carried forward indefinitely. However, the conference report's explanatory statement and the JCT revenue table for the conference agreement describe the effective date for the indefinite carryover and modification of carrybacks differently, indicating that the provision applies to losses arising in tax years beginning after December 31, 2017.

Colleges and universities

Excise tax based on investment income of private colleges and universities

Section 13701 of the new law enacts new Code section 4968, which imposes a 1.4% excise tax on the net investment income of private colleges and universities with at least 500 students (more than 50% of which are located in the United States) and non-exempt use assets with a value at the close of the preceding tax year of at least $500,000 per full-time student. A university's assets generally will include assets held by certain related organizations (including supporting organizations to the university and organizations controlled by the university), and a university's net income generally includes investment income derived from those assets.

The provision applies to tax years beginning after December 31, 2017.

The JCT estimated the provision will increase revenues by approximately $1.8 billion over 10 years.

KPMG observation

The provision does not apply to public colleges or universities even if similarly situated in asset size to their private counterparts.

In determining whether the excise tax applies to a particular college or university, it is necessary to determine whether and to what extent to include the assets and net investment income of related organizations. For example, the new law provides that such amounts shall be taken into account with respect to no more than one educational

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institution. In addition, unless the related organization is controlled by, or a supporting organization of, the college or university, only assets and net investment income that are intended or available for the use or benefit of the educational institution shall be taken into account.

The conference report's explanatory statement indicates that Congress intends for Treasury and the IRS to promulgate regulations describing the following:

- Assets that are used directly in carrying out the educational institution's exempt purpose;
- Computation of net investment income; and
- Assets that are intended or available for the use or benefit of the educational institution.

Repeal of deduction for amounts paid in exchange for college athletic event seating rights

Section 13704 of the new law modifies Code section 170(l) by eliminating the charitable contribution deduction for payments made for the benefit of a higher education institution that grant the donor the right to purchase seating at an athletic event in the athletic stadium of such institution. Pre-enactment law generally permitted a deduction of 80% of the value of the payment.

The provision applies to tax years beginning after December 31, 2017.

The JCT estimated the provision will increase revenues by approximately $2 billion over 10 years.

Healthcare

Temporary reduction in medical expense deduction floor

Section 11027 of the new law amends Code sections 56(b)(1)(B) and 213(f), which permit individuals to deduct qualified medical expenses in excess of 7.5% of AGI for tax years 2017 and 2018 for regular tax and AMT purposes. Under pre-enactment law, the deduction was limited to medical expenses in excess of 10% of AGI. After 2018, the 10% AGI threshold would be applicable.

The JCT estimated the provision will decrease revenue by approximately $5 billion over 10 years.

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KPMG observation

Under pre-enactment law, the deduction was limited to medical expenses in excess of 10% of AGI. For tax years before January 1, 2017, the threshold was 7.5% for seniors (age 65 or older). For all taxpayers, the deduction threshold was 10% for AMT purposes.

Reduce Affordable Care Act individual shared responsibility payment to zero

Section 11081 of the new law amends section 5000A, which imposes an excise tax on individuals who do not obtain minimum essential coverage, by reducing the tax to zero for months beginning after December 31, 2018. Unlike other provisions in the new law that affect the taxation of individuals, this provision is not subject to the December 31, 2025 expiration date.

The individual shared responsibility provision requires individuals to be covered by a health plan that provides at least minimum essential coverage, or be subject to a tax for failure to maintain the coverage. The tax is imposed for any month that an individual does not have minimum essential coverage, unless the individual qualifies for an exemption.

The JCT estimated that reducing the individual shared responsibility payment to zero will increase revenues by approximately $314 billion over 10 years.

KPMG observation

The elimination of the excise tax is projected to result in a greater number of uninsured individuals in the United States, leading to an increase in uncompensated care. In light of this change, hospitals may wish to consider reviewing their financial assistance policies and making adjustments accordingly.

Employees

Suspension of exclusion for qualified moving expense reimbursements

Section 11048 suspends Code section 132(g), which excludes qualified moving expense reimbursements from an employee’s gross income and from the employee’s wages for employment tax purposes. Such expenses include amounts received (directly or indirectly) from an employer as payment for (or reimbursement of) expenses that would, under pre-enactment law, be deductible as moving expenses if directly paid or incurred by the employee. Qualified moving expense reimbursements do not include amounts actually deducted by the individual.

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The new law suspends the exclusion for tax years beginning after December 31, 2017 and before January 1, 2026. The exclusion is preserved for U.S. Armed Forces members (and family members).

The JCT estimated that this provision (subject to a December 31, 2025 sunset) will increase revenues by approximately $4.8 billion over 10 years.

Suspension of deduction for moving expenses

Section 11049 suspends Code section 217, which permits an above-the-line deduction for moving expenses paid or incurred in connection with starting work either as an employee or as a self-employed individual at a new principal place of work.

The new law suspends the deduction for moving expenses for tax years beginning after December 31, 2017 and before January 1, 2026. However, certain rules providing income exclusions to members of the U.S. Armed Forces (or their spouse or dependents) are retained.

The JCT estimated that this provision (subject to a December 31, 2025 sunset) will increase revenue by approximately $7.6 billion over 10 years.

KPMG observation

Suspension of the exclusion and the deduction for moving expenses can be expected to increase the cost of relocating employees. Businesses required to move employees to meet their business needs could face significantly higher costs if they choose to provide a gross-up for taxes.

Suspension of exclusion for qualified bicycle commuting reimbursement

Section 11047 suspends Code section 132(f)(1)(D), which previously excluded up to $20 a month in qualified bicycle commuting reimbursement from an employee’s gross income. The new law applies for tax years beginning after December 31, 2017 and before January 1, 2026.

The JCT estimated this provision (subject to a December 31, 2025 sunset) will increase revenue by less than $50 million over 10 years.

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