



# TaxNewsFlash

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## Proposed regulations: Section 4968 excise tax, net investment income of colleges, universities (text of regulations)

The U.S. Treasury Department and IRS this afternoon released for publication in the Federal Register proposed regulations (REG-106877-18) providing guidance for determining the excise tax imposed under section 4968 on the net investment income of certain private colleges and universities.

Read the [proposed regulations](#) [PDF 298 KB] (58 pages).

A related IRS release—[IR-2019-120](#)—states that the proposed regulations provide guidance clarifying how to determine net investment income, including how to include the net investment income of related organizations and how to determine an institution’s basis in property. The IRS also noted that the proposed regulations incorporate the interim guidance provided in Notice 2018-55—that for property held by an institution at the end of 2017, the proposed regulations generally allow the educational institution to use the property’s fair market value at the end of 2017 as its basis for figuring the tax on any resulting gain.

According to the IRS, an estimated 40 or fewer institutions will be affected.

The purpose of this report is to provide text of the proposed regulations. The proposed regulations are scheduled to appear in the Federal Register on July 3, 2019.

### Overview

These proposed regulations concern section 4968 as enacted by the 2017 tax law (Pub. L. No. 115-97)—the law that is referred to as the “Tax Cuts and Jobs Act” (TCJA). This measure imposes a 1.4% excise tax on the net investment income of private colleges and universities with at least 500 tuition-paying 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 IRS in June 2018 issued Notice 2018-55 to announce that regulations would be issued to clarify the calculation of net investment income for purposes of section 4968(c). The notice provided a one-time "step up" to fair market value for assets held as of December 31, 2017. Read [TaxNewsFlash](#)

The proposed regulations indicate that the effective date of the new rules will be tax years beginning after the date when final regulations are published, but taxpayers may rely on the proposed regulations in the meantime.

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