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Tax Reform Affects Exempt Organizations



The House Ways and Means Committee on Thursday introduced its highly anticipated tax legislation, called the Tax Cuts and Jobs Act. The Act proposes major changes to the Internal Revenue Code, including lowering the number of tax brackets, increasing the standard income tax deduction, and repealing or limiting other deductions. You may have read about how tax reform is likely to affect your personal tax situation, for better or worse.

Here are a few provisions in the Act directed specifically at tax-exempt organizations:

- › The net investment income tax imposed on private foundations would be fixed at a flat 1.4%, replacing the current 2% tax that can be reduced to 1% under certain circumstances.
- › Certain private colleges and universities also would be subject to a 1.4% tax on net investment income. The tax would apply to educational institutions with at least 500 students and assets of at least \$100,000 per student (at least \$50 million in the aggregate), not including assets used directly in carrying out the institution's exempt

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ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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purpose.

- Churches for which political activity is otherwise impermissible would be allowed to include content regarding political candidates in sermons or other presentations made during religious services or gatherings, provided the preparation and presentation of such content is in the ordinary course of the organization's activities and results in only de minimis incremental expenses.
- Donor advised fund (DAF) sponsors would be required to provide additional reporting on the average amount of grants made from DAFs during the year and indicate if the sponsor had a policy with respect to frequency and minimum level of DAF distributions.
- An exception from the private foundation excess business holding tax would be created for a business enterprise that is wholly owned by a private foundation, if all net operating income is distributed to the foundation and the business meets certain requirements for being independently operated. The foundation's ownership interest also could not be acquired by purchase. (This provision provides a legislative solution to [Newman's Own Foundation's well-publicized excess business holding woes](#).)
- The exclusion from unrelated business income tax for income derived from research would be limited to research the results of which are freely available to the general public.
- An organization which operates an art museum as a substantial activity would not qualify as a private operating foundation unless the museum is open during normal business hours to the public for at least 1,000 hours during the taxable year.

More generally, many are concerned that charitable giving overall will decrease as a result of the proposal. Although the Act retains the charitable contribution deduction, fewer people may claim the deduction because the Act also significantly increases the standard deduction available. Many taxpayers as a result [may stop itemizing their deductions](#) and therefore no longer benefit from the itemized deduction for charitable contributions.

Expect the legislation to be heavily negotiated, and the Senate will weigh in with its own version of tax reform. We will be tracking tax reform legislation in the coming months, which President Trump and House Speaker Ryan ambitiously intend to enact before the end of the year.