

Tax Reform Highlights for Exempt Organizations

The following chart highlights significant provisions of proposed tax reform legislation – H.R. 1, the *Tax Cuts and Jobs Act* – relating to exempt organizations. The differences between the House bill, the Senate bill, and the substitute agreed to in conference are noted here, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes. Crowe tax-exempt specialists are closely monitoring the legislative process to assess the significant impact of any final legislation on exempt organizations.

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TOPIC	HOUSE BILL	SENATE BILL	CONFERENCE AGREEMENT
Alternative Minimum Tax (AMT)	<ul style="list-style-type: none"> Repeals the individual and corporate AMT 	<ul style="list-style-type: none"> Temporarily increases both the exemption amount and the exemption amount phaseout thresholds for the individual AMT Does not change corporate AMT 	<ul style="list-style-type: none"> Temporarily increases both the exemption amount and the exemption amount phaseout thresholds for the individual AMT Follows the House bill in repealing the corporate AMT
Charitable Contributions	<ul style="list-style-type: none"> Increases the adjusted gross income (AGI) limitation on cash contributions from 50% to 60% Repeals the special rule that provides a charitable deduction of 80% of the amount paid for the right to purchase tickets for athletic events Adjusts for inflation the amount deductible per mile driven in service to a charitable organization Repeals the exception to the contemporaneous written acknowledgment requirement for contributions of \$250 or more when the donee organization files the required return 	<ul style="list-style-type: none"> Increases AGI limitation from 50% to 60% Denies a charitable deduction for payments made in exchange for college athletic seating rights Repeals the substantiation exception for certain contributions by donee organizations Does not provide for inflation adjustment for charitable mileage 	<ul style="list-style-type: none"> Follows the Senate bill (increases the percentage limit for charitable contributions of cash to public charities, denies a charitable deduction for payments made in exchange for college athletic event seating rights, and repeals the substantiation exception for certain contributions reported by the donee organization – but does not include the provision from the House bill that allows the charitable standard mileage rate to be adjusted for inflation)
Corporate Tax Rates	<ul style="list-style-type: none"> After 2017, 20% corporate tax rates apply 	<ul style="list-style-type: none"> After 2018, 20% corporate tax rates apply 	<ul style="list-style-type: none"> After 2017, provides for a 21% corporate tax rate
Donor-Advised Funds (DAFs)	<ul style="list-style-type: none"> Requires sponsoring organizations to annually disclose on the Form 990 the average amount of grants made from DAFs and their policies with respect to the frequency and minimum level of distributions from those funds 	<ul style="list-style-type: none"> No similar provision 	<ul style="list-style-type: none"> Does not include the House bill provision
Employer-Provided Housing	<ul style="list-style-type: none"> Limits the exclusion for housing provided for the convenience of the employer and for employees of educational institutions to \$50,000 (\$25,000 for a married individual filing a joint return) and phases out for highly compensated individuals 	<ul style="list-style-type: none"> No similar provision 	<ul style="list-style-type: none"> Does not include the House bill provision
Executive Compensation	<ul style="list-style-type: none"> Subjects a tax-exempt organization to a 20% excise tax on compensation in excess of \$1 million paid to any of its five highest-paid employees for the tax year Applies to all remuneration paid, including cash and the value of all noncash remuneration (including benefits), except for payments to a tax-qualified retirement plan and amounts excludable from gross income Applies to excess parachute payments paid by the organization Does not change Section 4958 	<ul style="list-style-type: none"> Applies 20% excise tax provision Eliminates the benefit of rebuttable presumption of reasonableness contained in the intermediate sanctions regulations; changes such requirements to be “minimum standards of due diligence” instead Eliminates the special rule that allows organization managers to rely on professional advice in determining whether the manager knowingly participated in an excess benefit transaction (although reliance on professional advice will be a relevant consideration) Treats athletic coaches and investment advisers as disqualified persons 	<ul style="list-style-type: none"> Follows the Senate bill with modifications Provides for a tax rate equal to corporate tax rate (21%) Treats remuneration as paid when no longer subject to a substantial risk of forfeiture (thus, can apply to the value of remuneration that is vested even if not yet received) Exempts compensation paid to employees who are not highly compensated employees from the definition of parachute payment Exempts compensation attributable to services of qualified medical professionals (doctor, nurse, or veterinarian) for services in such capacity Does not change Section 4958
Political Activities	<ul style="list-style-type: none"> Removes the limitation that tax-exempt entities must refrain from “participating in, or intervening in” political campaigns as long as such political speech is in the ordinary course of the organization’s business and any associated expenses are minimal (sunsets for tax years beginning after Dec. 31, 2023) 	<ul style="list-style-type: none"> No similar provision 	<ul style="list-style-type: none"> Does not include the House bill provision

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Private College Investment Income	<ul style="list-style-type: none"> Imposes a new 1.4% excise tax on the investment income of private educational institutions with at least 500 students and investment assets totaling at least \$250,000 per full-time student 	<ul style="list-style-type: none"> Clarifies House bill Requires that the educational institution have at least 500 tuition-paying students Increases asset-per-student threshold from \$250,000 to \$500,000 Clarifies the operation of the related-party rules 	<ul style="list-style-type: none"> Follows the Senate bill but includes only institutions with more than 50% of the tuition-paying students located in the United States
Private Foundation Excise Taxes	<ul style="list-style-type: none"> Eliminates the two-tier excise tax on private foundation net investment income and replaces it with a single rate of 1.4% 	<ul style="list-style-type: none"> No similar provision for replacement of two-tier excise tax on net investment income with a single rate of 1.4% 	<ul style="list-style-type: none"> Does not include the House bill provision relating to simplification of the excise tax on private foundation investment income
Tax-Exempt Bonds	<ul style="list-style-type: none"> Includes in income any interest on newly issued private activity bonds and taxes interest on advance refunding bonds 	<ul style="list-style-type: none"> No similar provision for private activity bonds Similar provision applies to advance refunding bonds 	<ul style="list-style-type: none"> Does not include the House bill provision relating to private activity bonds Follows the Senate bill relating to advance refunding bonds (repeals the exclusion from gross income for interest on a bond issued to advance refund another bond)
Trade Associations and Labor Organizations	<ul style="list-style-type: none"> No provisions 	<ul style="list-style-type: none"> Removes professional sports leagues from Section 501(c)(6) classification Extends the intermediate sanctions rules to Section 501(c)(5) and (c)(6) organizations 	<ul style="list-style-type: none"> No provisions
Tuition Assistance	<ul style="list-style-type: none"> Repeals Section 117(d), which permits educational institutions to provide their employees, spouses, or dependents with tuition reductions that are excluded from taxable income Repeals Section 127, which allows employers to offer employees up to \$5,250 annually in tuition assistance, which is excluded from taxable income 	<ul style="list-style-type: none"> No similar provisions 	<ul style="list-style-type: none"> Does not include the House bill provisions
Unrelated Business Taxable Income (UBTI)	<ul style="list-style-type: none"> Requires the results of certain research to be made freely available to the public in order to avoid treatment as UBTI <ul style="list-style-type: none"> Currently, in the case of research performed by colleges, universities, or hospitals, the exclusion of research income is not limited to publicly available research Exempts entities on the values of providing their employees with transportation fringe benefits and on-premises gyms and other athletic facilities by treating the funds used to pay for such benefits as UBTI Limits the NOL deduction to 90% of taxable income (tax years beginning after Dec. 31, 2017) Subjects public pension plans to the UBTI rules 	<ul style="list-style-type: none"> No similar provisions as to publicly available research, fringe benefit expenses, or public pension plans Computes UBTI separately with respect to each trade or business, and allows an NOL deduction only with respect to a trade or business from which the loss arose Limits the NOL deduction to 80% of taxable income (tax years beginning after Dec. 31, 2022) Includes in an organization's gross UBTI income derived from the licensing of an organization's name or logo 	<ul style="list-style-type: none"> Follows the Senate bill relating to the computation of UBTI separately for each trade or business activity – does not allow a deduction from one trade or business to be used to offset income from a different unrelated trade or business Follows the House bill relating to the inclusion in UBTI of the values of employer-provided transportation fringe benefits and on-premises gyms and other athletic facilities Follows the Senate bill relating to the NOL deduction, except that the provision limits the NOL deduction to 80% of taxable income (tax years beginning after Dec. 31, 2017) Does not include the House bill provision relating to the exclusion from UBTI of only income from fundamental research the results of which are freely available to the general public Does not include the House bill provision that would subject pension plans to the UBTI rules Does not include the Senate bill provision that would include in an organization's gross UBTI income derived from the licensing of an organization's name or logo