

# Welcome to Implications of the New Tax Law

*Co-hosted by: Gelman, Rosenberg & Freedman CPAs and Humentum*

The program will start promptly at **11:00 PM ET**

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Call: **+1-415-655-0002** | Access code/event number: **629 057 875**

# Housekeeping

## *General Information/Technical Questions*

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# Housekeeping

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- Please complete the electronic survey that will appear automatically at the end of the webinar. **Turn off your pop-up blocker** (leaving it on could block the survey).
- Attendees seeking CPE for this presentation must complete the survey and enter all three CPE words. You cannot claim CPE unless we receive a completed evaluation with the correct words.
- Technical questions about the survey can be addressed to Dominic Acosta at [dacota@grfcpa.com](mailto:dacota@grfcpa.com).

# Housekeeping

## Webinar Objectives

**Learning Objective**  
*To understand the Implications of the New Tax Law*

**Instructional Delivery Methods**  
*Group Internet-based*

**Recommended CPE**  
*1.0 CPE Credit*

**Recommended Fields of Study**  
*Tax*

**Prerequisites**  
*None required*

**Advance Preparation**  
*None*

**Program Level**  
*Basic*

**Course Registration Requirements**  
*None*

**Refund Policy**  
*No fee is required to participate in this session.*

**Cancellation Policy**  
*In the event that the presentation is cancelled or rescheduled, participants will be contacted immediately with details.*

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# Implications of the New Tax Law

## And Impacts to the Tax-Exempt Industry

July 10, 2018 – Co-hosted with Humentum



### *Presenters*

**Richard J. Locastro, CPA, JD**  
*Nonprofit Tax Partner*

**Stephen Kelin, CPA, JD**  
*Nonprofit Tax Principal*

### *Moderator*

**Katelyn Miller, CPA**  
*Nonprofit Tax Manager*

# Our Team

## *Meet Your Instructors*

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**Richard J. Locastro, CPA, JD**

*Nonprofit Tax Partner*



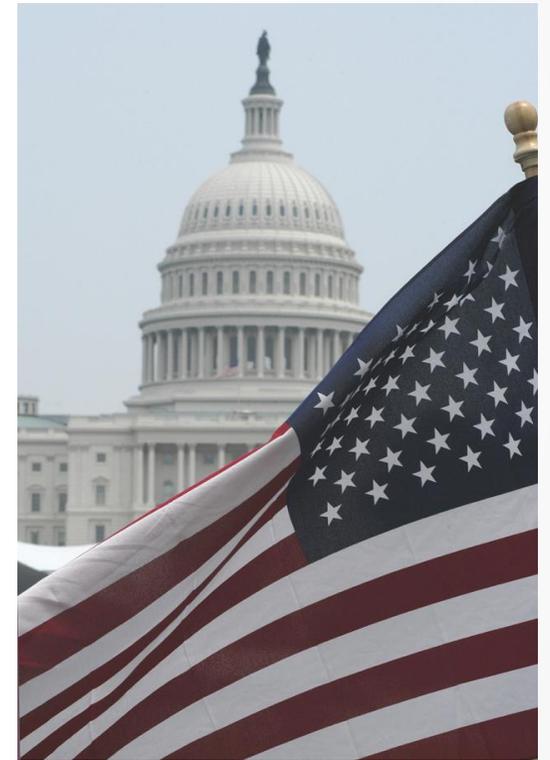
**Stephen Kelin, CPA, JD**

*Nonprofit Tax Principal*

# P.L. 115-97/H.R. 1 (2017 Act)

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AKA “Tax Cuts and Jobs Act”



# Background

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The Act was passed on December 20, 2017 and on December 22, 2017

- Drafted and enacted over very short timeframe
- Many provisions effective after December 31, 2017
- IRS and taxpayers have had little time to react before having to deal with ambiguities, and in some cases, errors
- IRS is (and has been) “resource constrained”



# U.S. Tax Reform

## *Key Implications for Tax-Exempt Organizations*



### Executive Compensation

New excise tax on certain compensation paid to highly paid executives



### University Endowments

New excise tax on certain college and university endowments



### UBIT

Changes to the calculation of unrelated business income



### Fringe Benefits

Disallowed deductions for certain fringe benefits

# Poll Question #1

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Are you concerned that the \$1 million threshold on compensation will impact your organization?

*A) Yes*

*B) No*

# Excise Tax on Excess Executive Compensation

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“Applicable tax-exempt organizations” will now pay an annual 21% excise tax (top corporate income tax rate) on compensation paid to a “covered employee” in excess of \$1,000,000 (IRC section 4960)

“Applicable tax-exempt organizations”:

- Section 501(c) and (d) organizations
- Political organizations under 527(e)(1)
- Organizations whose income is excluded under IRC section 115(1)

# Excise Tax on Excess Executive Compensation

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“Applicable tax-exempt organizations” will now pay an annual 21% excise tax (top corporate income tax rate) on compensation paid to a “covered employee” in excess of \$1,000,000 (IRC section 4960)

“Covered employee”\*:

- Five highest paid current or former employees, irrespective of “position” or “title”
- Also includes former employees who were previously included in the 5 highest paid

*\* Carve-out for licensed professionals providing medical services, includes doctors and veterinarians*

# Excise Tax on Excess Executive Compensation

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“Applicable tax-exempt organizations” will now be required to pay an annual 21% excise tax on compensation in excess of \$1,000,000 to its “covered employees” (IRC section 4960)

“Compensation”:

Applies to current compensation, deferred compensation, and “excess parachute payments”:

- Includes all remuneration for services as determined for income tax withholding purposes, and
- Amounts required to be included in gross income under IRC section 457(f), but
- Excludes designated Roth contributions

# Excise Tax on Excess Executive Compensation

## *Definition of an “excess parachute payment”*

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### “Compensation” – Parachute Payment

- Compensation to a covered employee contingent upon the employee’s **separation from employment** and the present value of the payment equals or **exceeds three times the base amount**.
- Base amount is the average compensation included in the covered employee’s gross income for the five taxable years ending before the date of the employee’s separation from employment.
- Excludes payments from retirement plan, SEP, SIMPLE IRA, 403(b) annuity, or an eligible deferred compensation plan of a state or local government employer.

# Excise Tax on Endowment Investment Income

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Applies to private colleges and universities with endowment per student of at least \$500,000 (IRC section 4968)

- 1.4% excise tax on net investment income (IRC 4940(c))
- Limited to institutions with at least 500 “tuition paying” students and > 50% of their students located in the U.S.
- Does not apply to state colleges and universities (under IRC 511(a)(2)(B))
- “\$500,000 per student” calculated on aggregate fair market value of assets at end of preceding taxable year, excluding assets used directly in carrying out exempt purpose
- Basis issues addressed in IRS Notice 2018-55
- Includes assets and net investment income of related organizations

# Poll Question #2

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How many sources of UBI does your organization have?

- A) 0 (zero)*
- B) 1 (one)*
- C) 1+ (more than one)*

# Unrelated Business Income Tax

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New flat tax rate of 21%

UBI will be separately computed for each “trade or business” activity

“Blended” rates for fiscal year filers – IRS Notice 2018-38

Questions:

- How will investment activities conducted through partnerships be treated?
- Similar activities conducted in-person and online?
- Is “facility rental” one “trade or business” or is it determined by the type of facility?
- And the list goes on....

# Unrelated Business Income Tax

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## Corporate AMT repealed, including AMT 90% NOL use limitations

- Generally, no carryback of NOLs
- Impact on NOLs:
  - NOL carryovers generated before January 1, 2018 are not impacted
  - Post 12/31/17 year NOLs are limited to 80% of taxable income
  - Transition rule for ordering of use of “pre” and “post” NOLs unclear, with significantly different results
- Impact of incorporating a taxable subsidiary which would permit aggregation of activities/losses

# UBI Example

*Impact of change in tax rate + “silo”-ing on net UBIT*

	Advertising	Debt-Financed Rental Income	Net	Tax rate	Tax
1) Old	2,000,000	-1,000,000	1,000,000	35%	350,000
1) New	2,000,000	-1,000,000	N/A	21%	420,000
2) Old	1,000,000	-1,000,000	0	35%	0
2) New	1,000,000	-1,000,000	N/A	21%	210,000
3) Old	1,000,000	-300,000	700,000	35%	245,000
3) New	1,000,000	-300,000	N/A	21%	210,000

# Poll Question #3

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Do you provide parking as a tax-free benefit to employees?

*A) Yes*

*B) No*

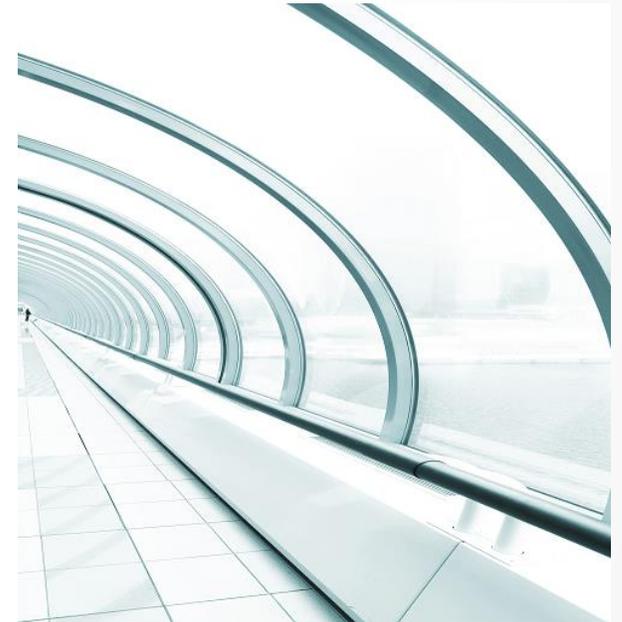
# Increased UBTI for Certain Fringe Benefits

UBTI increased by amount for which a deduction is disallowed under IRC section 274 and which is “paid or incurred” by the organization for certain fringe benefits

These fringe benefits include:

- Qualified transportation fringe benefits
- Parking facility used in connection with qualified parking
- On-premises athletic facilities (N/A due to drafting error?)

Q: does it apply to global employees?



# Increased UBTI for Certain Fringe Benefits

What constitutes amounts “paid or incurred”?

- Employer pays benefit and provides it to employee tax-free
- Employer includes amounts in taxable wages
- Employee pays with pre-tax dollars



# Increased UBTI for Certain Fringe Benefits

IRS updated Publication 15-B indicating that these benefits provided directly by employer, or through a compensation reduction agreement, are subject to deduction disallowance.

This position leads to the conclusion that qualified transportation fringe benefits paid by employee with pre-tax dollars result in UBI to the employer.

Several groups, (including ASAE, AICPA, and Council of Nonprofits) have already submitted comments to Treasury requesting a delay in implementation of IRC 512(a)(7).



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# Where Do We Go From Here?

- IRS updated its Priority Guidance Plan on February 7<sup>th</sup> to reflect implementation of issues of the Tax Act (including executive comp)
- Guidance goal for these are June 30<sup>th</sup>, 2018
- International issues are priorities
- Technical Corrections?



# Other Industry Considerations

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Federal Budget  
Reductions



Changes in  
Standard  
Deduction



Caps on  
Charitable  
Contributions



Donor-Advised  
Funds

# Other Industry Considerations

## *Federal Budget Reductions*

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### Proposed Budget Changes

In Trump's first proposed federal budget, we saw deep cuts in discretionary spending to many departments that impact nonprofits, while boosting financial resources to support defense, homeland security and veteran's affairs.

Proposes defunding 18 agencies including the [National Endowment for the Arts](#), [National Endowment for the Humanities](#), [Corporation for National and Community Service](#) and [Corporation for Public Broadcasting](#).

# Other Industry Considerations

## *Changes in the Standard Deduction and SALT Deduction Limitation*

### Increase in the standard deduction

At face-value, a higher standard deduction is a win for the majority of taxpayers. However the larger standard deduction (more money available instead of itemizing) could potentially deter people from making charitable contributions for the purpose of increasing and gaining the benefits from itemizing.

### SALT deduction limited to 10k



# Other Industry Considerations

## *Other Provisions*

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- Contribution deductibility increased to from 50% to 60% of AGI
- Charitable deduction not allowed for amounts paid for college athletic event seating rights (was deductible at 80%)
- Doubling of indexed Estate Tax exemption from \$5.5MM to \$11MM
- IRS prohibited from creating form to satisfy charitable contribution substantiation rules

# Other Industry Considerations

## *Donor-Advised Funds*

### The Appeal of Donor-Advised Funds



#### Tax Deduction

Receive an immediate tax deduction for full gifted amount



#### Capital Gains

No capital gains tax on the donated shares/amount



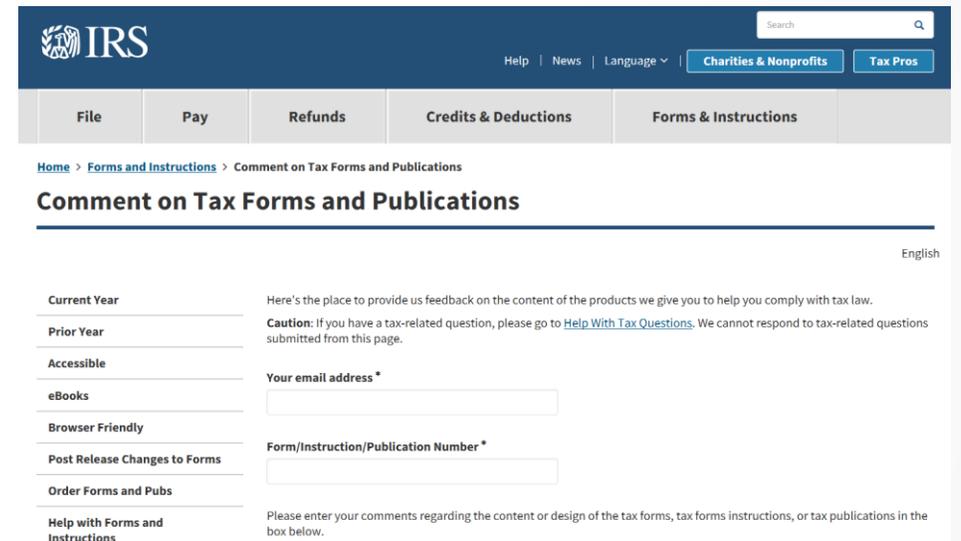
#### Time

Allows additional time for donor to choose a charity to fund

# Final Thoughts

*Add your voice to the call for relief!*

- The National Council of Nonprofits encourages you to go to the IRS public comment form at <https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications>
- Request that Treasury and the IRS delay implementing the two new UBIT subsections until one year after Final Rules are promulgated. (In the public comment form's line for Form/Instruction/Publication Number, fill in "Form 990-T".)



The screenshot shows the IRS website's 'Comment on Tax Forms and Publications' form. The header includes the IRS logo, a search bar, and navigation links for 'Charities & Nonprofits' and 'Tax Pros'. A menu bar contains 'File', 'Pay', 'Refunds', 'Credits & Deductions', and 'Forms & Instructions'. The breadcrumb trail is 'Home > Forms and Instructions > Comment on Tax Forms and Publications'. The main heading is 'Comment on Tax Forms and Publications' with a language selector for 'English'. On the left, there is a list of categories: 'Current Year', 'Prior Year', 'Accessible', 'eBooks', 'Browser Friendly', 'Post Release Changes to Forms', 'Order Forms and Pubs', and 'Help with Forms and Instructions'. The main content area contains a text box for feedback, a 'Caution' note about tax-related questions, and two required input fields: 'Your email address \*' and 'Form/Instruction/Publication Number \*'. A final text box prompts the user to enter comments regarding the content or design of tax forms, instructions, or publications.

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# Questions?

*We'd like to hear from you!*

# Join us again

*July 17, 2018, 11:00am – 12:00pm*

***Changes to Recognizing Revenue with Implementation  
of AUS 2014-09: Is Your Nonprofit Prepared?  
(webinar)***

*Registration and more information available here: <https://www.grfcpa.com/webinars/>*

# Get In Touch



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