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Implications of the New Tax Law on Tax-Exempt Organizations

February 15, 2018



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General Information/Technical Questions



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CPE Credit

- **Important:** Three (3) CPE words will be provided during the presentation. Please write them down – we will not provide them again via WebEx or email (no exceptions).
- 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 Jennifer Disharoon at jdisharoon@grfcpa.com

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Webinar Objectives

<p>Learning Objective <i>To provide attendees with a better understanding of the impacts to tax-exempt organizations under the new tax law</i></p>	<p>Instructional Delivery Methods <i>Group Internet-based</i></p>
<p>Recommended CPE <i>1.0 CPE</i></p>	<p>Recommended Fields of Study <i>Tax</i></p>
<p>Prerequisites <i>None required</i></p>	<p>Advance Preparation <i>None</i></p>
<p>Program Level <i>Basic</i></p>	<p>Course Registration Requirements <i>None</i></p>
<p>Refund Policy <i>No fee is required to participate in this session.</i></p>	<p>Cancellation Policy <i>In the event that the presentation is cancelled or rescheduled, participants will be contacted immediately with details.</i></p>
<p>Complaint Resolution Policy <i>Gelman, Rosenberg & Freedman is committed to our seminar participants' 100% satisfaction and will make every reasonable effort to resolve complaints as quickly as possible. Please contact kdavis@grfcpa.com with any concerns.</i></p>	

Presenters

Meet your instructors



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

AKA “Tax Cuts and Jobs Act”



Background

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

Polling Question #1

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

- a. Yes*
- b. No*

Excise Tax on Excess Executive Compensation

“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

“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”

Compensation includes remuneration from “related entities”

- Related if controls or controlled by
- Supporting or supported organization
- “Brother/sister” relationship



How does this impact state colleges and universities?

Excise Tax on Excess Executive Compensation

“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

“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”

“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

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 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
- Includes assets and net investment income of related organizations

Excise Tax on Endowment Investment Income

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

- Bipartisan Budget Act of 2018 (signed February 9, 2018) modifies this provision
- Applicability to institutions with at least 500 “tuition-paying” students
- Dropped from the Tax Act because it was ruled “out of order”
- Impacts only a few institutions

Polling Question #2

How many sources of UBI does your organization have?

- a. 0 (zero)*
- b. 1 (one)*
- c. 1+ (more than one)*

Unrelated Business Income Tax

- New flat tax rate of 21%
- UBI will be separately computed for each “trade or business” activity

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

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

Polling Question #3

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



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



IRS has a “ guidance project open” for the amendments to IRC section 274 but no timetable as yet

Other Provisions

- Repeal of advance refunding bonds (no refinancing with new exempt bonds)
- Significant increase in standard deduction
- Repealed phase-out of overall itemized deductions
- SALT deduction limited to \$10K
 - Impact on jurisdictions with high income tax rate or high real estate taxes
 - “Creative” state workarounds???



Other Provisions

- 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

Not Included in the Final Bill

- “Newman’s Own” amendment for exception to excess business holdings for private foundations, but added by Bipartisan Budget Act of 2018
- Tax on name/logo royalties
- Simplified excise tax rate for private foundations
- Political statements by 501(c)(3) organizations
- Expanded tax on excess benefit transactions



Where Do We Go From Here?

- IRS updated its Priority Guidance Plan on February 7th to reflect implementation of issues of the Tax Act (including executive comp)
- Guidance goal for these are June 30th, 2018
- International issues are priorities
- Technical Corrections?
- Budget cuts for FY 19 under Administration's budget proposal?





Questions?

We'd like to hear from you!

Join Us Again

“Beating the Monthly Close Woes – Best Practices for Achieving Accurate and Timely Financial Statements” (*webinar*)

March 26, 2018

11:00 a.m. to 12:00 p.m.

Register at <https://www.grfcpa.com/resources/events/best-practices-for-achieving-accurate-and-timely-financial-statements>

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