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Federal Tax Law - Tax Cuts and Jobs Act

The [Tax Cuts & Jobs Act](#), signed into law by President Trump on Dec. 22, 2017, included numerous provisions that affect the work of nonprofits and the people and communities we serve. With very few exceptions, the bill harmed the ability of charitable nonprofits and foundations to address needs in communities and advance their missions.

ISSUE	PROVISIONS	IMPACT ON CHARITABLE NONPROFITS
CHARITABLE CONTRIBUTION DEDUCTION	Charitable contribution deduction is limited to 30% of AGI (down from 30% to 30% of AGI) and 50% of AGI for cash contributions.	Charitable contributions are a critical source of funding for nonprofits. The new 30% limit will reduce the amount of contributions that nonprofits can deduct, potentially reducing their revenue.
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Why It Matters

The [2017 federal tax law](#) had broad reaching tax policy implications that affected nonprofits negatively while providing significant, permanent tax cuts for corporations and other businesses, temporarily lowering individual tax rates, and repealing many deductions as well as the [individual mandate under the Affordable Care Act](#). At the time of passage, costs were estimated at \$1.5 trillion over the ten years.

Where We Stand

"The message to charitable nonprofits is simple: The majority in Congress doesn't care about charitable nonprofits or the vital work you do for people in local communities; you're on your own to do so much more for so many more with so much less."

- [Statement in Response to the House and Senate passing the Tax Cuts and Jobs Act](#), National Council of Nonprofits, December 20, 2017

What Nonprofits Can Do

Let Congress know that they can still protect charitable giving incentives through a [non-itemizer or universal deduction](#), rather than a time to shrink giving.

What's in the Tax Law?

The following summarizes the provisions in the Tax Cuts and Jobs Act that relate most directly to the sustainability and work of charitable nonprofits.

- **Charitable Giving:** The law increased the standard deduction for individuals (to \$12,000), couples (to \$24,000), and heads of households (to \$18,000), resulting in a decline in the number of those who itemize from 30% of taxpayers to less than 10% of taxpayers. The increase in the standard deduction expires after 2025. See more information at [Federal Charitable Giving Incentives](#).
- **Estate Tax:** The law maintained the estate tax but doubled the exemption to about \$11 million for individuals and about \$22 million for couples, effective through 2025. In addition to reducing federal revenues by nearly \$100 billion over ten years, the estate tax is an important source of revenue for the work of

charitable nonprofits and creation of foundations as it encourages donors to address future needs in their communities through estate planning. The Treasury Department and the Internal Revenue Service issued [final regulations](#) confirming that individuals taking advantage of the increased gift and estate tax exclusion will not be adversely impacted after 2025. [Treasury Decision 9884](#) includes four illustrative examples and states that individuals planning to make large gifts between 2018 and 2025 can do so without concern that they will lose the tax benefit of the higher exclusion level once it decreases after 2025.

- **Unrelated Business Income Tax (UBIT) | “Trade or Business” or Siloing:** The bill increased **unrelated business income taxes** (UBIT) by requiring that nonprofits calculate their taxes on each trade or business separately, and not aggregate profits and losses of all entities, as under current law. As a result, a deduction from one trade or business for a taxable year may not be used to offset income from a different unrelated trade or business for the same taxable year. The IRS [Final Rule on Unrelated Business Taxable Income Separately Computed for Each Trade or Business](#) allows nonprofits to group their unrelated business income into 20 or so broad buckets, or silos, based on the first two numbers of [NAICS codes](#). For instance, all types of accommodations and food services fall into one category (72). The final rule, however, does not include a *de minimis* test, which had been recommended by nonprofits and accountants. The Nonprofit Relief Act of 2019 ([H.R. 3323](#)) failed but would have repealed this provision.
- **Unrelated Business Income Tax (UBIT) | Transportation Benefits:** The bill created and imposed an *income* tax on *expenses* of nonprofits incurred in providing employees with transportation fringe benefits, such as parking and transit passes. After [extensive advocacy from nonprofits](#), an [amendment](#) to a [bipartisan tax package](#) included the **repeal** of the tax provision in 2019. The Internal Revenue Service issued guidance regarding [how organizations can claim a refund](#) for taxes paid under 512(a)(7) of the 2017 tax law.
- **Excise Tax on Nonprofit Colleges and Universities:** The law created a new 1.4 percent excise tax on net investment income of **nonprofit colleges and universities** with assets of at least \$500,000 per full-time student and more than 500 full-time students. The IRS and Treasury Department [released final regulations](#) which excluded the calculation of net investment revenues derived from institutional student loans, housing for student, faculty, and staff, and

royalties derived from patents and copyrights resulting from the work of students or faculty members, among other things. See [analysis by NACUBO](#). The tax on endowment and other investment income applies to only a few dozen institutions, but it is considered “unsound policy objectionable to all charitable organizations that have the foresight and ability to build reserves that are dedicated to advancing their missions,” according to a [letter from the National Council of Nonprofits](#).

- **Excise Tax on Highly Compensated Employees:** The legislation levies a new 21 percent excise tax on nonprofits that pay **compensation of \$1 million** or more to any of their five highest-paid employees. The Internal Revenue Service [Notice 2019-09](#) clarified that (1) nonprofits should use the calendar year ending within the nonprofits' fiscal year to calculate the tax; and (2) nonprofits generally will not be able to avoid the tax by splitting highly-compensated employees' pay between multiple related organizations, among other things.
- **State and Local Taxes (SALT):** The law capped the deductibility of state and local income taxes and property taxes at \$10,000, in the aggregate. Several states responded by passing legislation to allow residents to avoid (“workaround”) that cap by letting state taxpayers treat their payment of state income taxes made to government-run charitable organizations as “donations.” Treasury and the IRS attempted to curtail those workarounds in proposed regulations that, however, also appear to apply to many programs in 32 states and the District of Columbia that [provide a state or local tax credit for donations](#) to certain nonprofits. Under [Treasury Decision 9864](#) taxpayers may not claim as federal charitable deductions the portion of donations that generate state or local tax credits. The new restriction applies to donations made to both nonprofits run by governmental entities as well as charitable nonprofits operated independent of government. The new regulation also offers a safe harbor provision for individuals who claim the value of the tax credit as an itemized deduction for the state and local taxes (SALT) they paid, up to the \$10,000 SALT cap. [Read the National Council of Nonprofits analysis](#).

What’s Not in the Tax Law?

- **Nonprofit Nonpartisanship / “Johnson Amendment”:** The final version of the tax law did not include language to repeal or weaken the Johnson

Amendment, which had previously been included in the House-passed version. The Senate Parliamentarian scratched a provision because it violated the “[Byrd Rule](#),” a budget rule that prevents policy changes on reconciliation legislation reserved only for revenue, spending, and deficit reduction provisions. One Senator personally argued with the Parliamentarian and sought to modify the provision at the last minute to avoid the protection of the Byrd Rule. The House-passed provision would have politicized the 501(c)(3) community by allowing charitable, religious, and philanthropic organizations to engage in partisan electioneering for or against candidates if such action is “in the ordinary course of the organization’s regular and customary activities in carrying out its exempt purpose,” and it incurs no more than “*de minimis*” incremental expenses in doing so. The result of the proposal, according to the Joint Committee on Taxation, would have been the diversion of billions of non-deductible dollars from political organizations, like candidate and party campaign committees, to newly politicized churches and charitable entities because donors would for the first time be able to take charitable tax deductions.

- **Intermediate Sanctions:** The law ultimately makes no changes to the **volunteer mileage rate** or the law on **intermediate sanctions**, although significant, harmful reforms were included in an earlier Senate draft that may be seen again in the future.
- **Other Items:** The law does not include numerous troubling provisions that had been passed in the House version, including repeal of **private activity bonds**, raising **taxes on private foundations** in the name of tax simplification, increasing reporting requirements for **donor advised funds**, and a measure to deny operating foundation status to some art museums.

More About The Tax Cuts & Jobs Act

- Webinar Recording: [Now What: How the New Federal Tax Law Impacts Charitable Nonprofits](#), National Council of Nonprofits, Jan. 11, 2018.
- [2018 Tax Law Checklist: New Federal Tax Law - Now What for Nonprofit Board and Staff Members?](#), National Council of Nonprofits, Apr. 17, 2018.
- [Nonprofit Analysis of the Final Tax Bill](#), National Council of Nonprofits, Apr. 5, 2018.

- [Nonprofits Must Move Swiftly to Fight for Sound Public Policies](#), *Chronicle of Philanthropy*, Tim Delaney and David L. Thompson, National Council of Nonprofits, Jan. 3, 2018.

Additional Resources

- [H.R. 1](#), Tax Cuts and Jobs Act Text, Dec. 22, 2017.
- [Conference Report on the Tax Cuts and Jobs Act](#), House of Representatives, Dec. 15, 2017.
- [Joint Explanatory Statement of the Committee on Conference](#), Committee of Conference, Dec. 15, 2017.