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TaxNewsFlash

Exempt Organizations

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Ways and Means Committee approves tax title with provisions that would affect tax-exempts

The House Ways and Means Committee today approved without change (by a vote of 26-19 along party lines) the Chairman's Mark of the **tax title** introduced earlier this week. The Joint Committee on Taxation (JCT) has provided a technical explanation (**JCX-21-25**), revenue estimate (**JCX-22-25R**), and distribution of the estimated revenue effects (**JCX-23-25**).

The revenue cost of the taxpayer-favorable changes in the bill would be partially offset by a host of revenue-raising provisions. Notably, a number of these tax increases directly and adversely impact tax-exempt organizations and their donors. Proposals include:

Increased excise tax rates on investment income

- Replacing the current flat 1.4% rate of tax on the net investment income (NII) of certain private colleges and universities with a tiered rate structure—with rates of 1.4%, 7%, 14%, and 21%—based on an institution's endowment size-per-student. Endowments of more than $750,000 per student would see significant tax increases. The tax would be modified in several other significant respects as well.

- Replacing the current flat 1.39% rate of excise tax on the NII of private foundations with a tiered rate structure—with rates of 1.39%, 2.78%, 5%, and 10%—based on the size of the aggregate value of the foundation's assets. Foundations with assets of $5 billion or more would be taxed at the highest, 10% rate.

Expanded taxes on executive compensation and employee benefits

- Amending the section 4960 excise tax on remuneration in excess of $1 million currently paid by tax-exempt organizations to certain "covered employees," by expanding the definition of "covered employee" to include *all* current or former employees of the tax-exempt (not just the five highest-paid employees in tax years since 2016), as well as *all employees of organizations related to the tax-exempt* (including taxable organizations, such as companies with related company foundations and family businesses owned by the same individuals that control a related family foundation)

- Reinstating the repealed "parking tax"—albeit with an exception for certain church and church-affiliated organizations—which would subject expenses for employee qualified transportation fringe benefits (as defined in section 132(f)) provided by tax-exempt organizations, including certain expenses of parking facilities, to the unrelated business income tax (UBIT) at the corporate rate (21%)

Expanded UBIT liability

In addition to subjecting qualified transportation fringe benefits to UBIT, other proposals include:

- Requiring that income from the sale or license of a tax-exempt organization's name or logo be included in unrelated business taxable income and subject to UBIT

- Narrowing an exclusion from UBIT for income from research done by certain research organizations to encompass only fundamental research the results of which are publicly available

Charitable contribution provisions

The bill does not propose to extend the temporary individual limitation for cash contributions to certain charities (currently 60% of adjusted gross income); thus the limitation will return to 50% on January 1, 2026. Provisions relating to charitable giving proposed in the bill include:

- Reinstating a provision enabling non-itemizers to deduct charitable contributions, but only up to $300 for married taxpayers filing jointly and $150 for all other taxpayers

- Providing a new nonrefundable tax credit (in lieu of a deduction) for certain charitable contributions of cash or marketable securities to certain charitable organizations providing scholarships to eligible elementary and secondary school students

- Limiting the corporate deduction for charitable contributions to the extent that the corporation's aggregate contributions exceed 1% of the corporation's taxable income

Other provisions

Several other proposals would affect tax-exempt organizations, including:

- Proposing material modifications to the clean energy tax credit provisions enacted in the Inflation Reduction Act (IRA), including early sunsets, phase outs, and other changes to the energy tax credits. However, the elective pay provision, which provides access to these credits for charitable and State, local and Tribal government entities, would not be repealed.

- Retroactively imposing a deadline of January 31, 2024, for refundable employee retention tax credit (ERTC) claims, from the deadlines under current law of April 15, 2024 for claims related to 2020 and April 15, 2025 for claims related to 2021, similar to a provision that was passed by the House in the Tax Relief for American Families and Workers Act of 2024. The proposal would also extend the assessment period for the ERTC to six years after the date on which an ERTC refund claim is made.

- Permitting the Treasury Secretary to designate certain tax-exempt organizations as "terrorist supporting organizations" (TSOs), resulting in suspension of their tax-exempt status under section 501(p). The proposal is similar to bills introduced previously and could be interpreted to vastly expand the activities penalized by section 501(p) beyond those sanctioned by current anti-terrorist measures that apply broadly to organizations and individuals, potentially taking away exemption for indirect or unknowing action. The proposal includes a new requirement for the Secretary to disclose the basis of a TSO designation and provides organizations the right to challenge designations made without such disclosure in court. In addition, certain assistance or support could be provided if specifically approved by government officials.

What's next

Further changes to the tax title could occur as the bill is considered by the House Rules or Budget Committee, or even on the floor of the House during debate. In addition, the Senate could ultimately adopt tax provisions with significant differences as it considers its own version of the bill.

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