TaxNewsFlash

Exempt Organizations

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House passes "One Big Beautiful Bill Act" with provisions that would affect tax-exempts

The U.S. House of Representatives this morning passed H.R. 1, the budget reconciliation bill known as the "One Big Beautiful Bill Act." The largely party-line vote for passage was 215-214.

The bill includes, with some amendments, the tax title approved by the Ways and Means Committee last week (read *TaxNewsFlash*).

Prior to passage by the full House, the Rules Committee made two sets of changes to the tax title approved by the Ways and Means Committee. The first set of amendments to the tax title were incorporated into this version of the **bill** (changes can be viewed in redline **here**), and the second set of amendments to the tax title may be seen **here**.

Proposals that may affect tax-exempt organizations 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 value of the foundation's assets. Foundations with assets of $5 billion or more would be taxed at the highest, 10% rate. For purposes of setting the excise tax rate, certain related entities' assets would be aggregated with those of the foundation. **In addition, due to an amendment this week, the investment income of certain entities related to a foundation would also be subject to tax.**

Expanded taxes on executive compensation, employee benefits, and UBIT

- Amending the section 4960 excise tax on remuneration exceeding $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). **An earlier version would have also included all employees of organizations related to the tax-exempt as "covered employees," but this provision was amended.**

- 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%).

- 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.

A provision that would have required 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 was removed from the bill.

Charitable contribution provisions

The bill does not propose extending 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:

- Making 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, in effect similar to a provision that was passed by the House in the Tax Relief for American Families and Workers Act of 2024.

A provision that would have permitted 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), was removed from the bill.

What's next

The bill will be transmitted to the Senate for consideration to begin after the Congressional Memorial Day recess. The Senate is expected to make changes to the House-approved bill, possibly including the tax provisions.

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