Tax-exempt organization provisions in “One Big Beautiful” bill

KPMG analysis and observations

May 16, 2025

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Introduction

The House Ways and Means Committee on May 14, 2025, approved (by a vote of 26-19 along party lines) the **tax title** for the "One Big Beautiful" bill. The tax title was supplemented with a technical explanation (**JCX-21-25**), revenue estimate (**JCX-22-25R**), and distribution of the estimated revenue effects (**JCX-23-25**) from the Joint Committee on Taxation (JCT).

The bill includes provisions that would generally make permanent the expiring tax provisions of the 2017 Tax Cuts and Jobs Act (TCJA), such as the lower rates for individuals and for the international provisions of global intangible low-taxed income (GILTI), foreign-derived intangible income (FDII), and base erosion and anti-abuse tax (BEAT). The bill would also make several important adjustments to current law, including increasing the section 199A deduction for passthrough businesses (from 20% to 23%), and would restore for years 2025 through 2029 several expired business tax benefits from the TCJA, including the deductibility of U.S. research and development costs under section 174 and 100% bonus depreciation. The bill would also introduce for years 2025 through 2028 several new tax benefits proposed by the president during the campaign, such as 100% bonus depreciation for new manufacturing facilities and new deductions for tips and overtime pay.

To partially offset the cost of the above taxpayer-favorable changes, the bill includes a host of revenue-raising provisions, including an extension of the existing limit on the individual deduction for state and local taxes (SALT) (with an increase in the SALT cap to $30,000 for both individuals and married couples), as well as early sunsets, phase outs, and other changes to the energy tax credits enacted in the Inflation Reduction Act (IRA). The bill also provides for retaliatory measures on certain non-U.S. corporations and individuals if their home jurisdiction has adopted taxes deemed to be discriminatory or extraterritorial and would increase tax rates on certain university endowments and private foundations.

Further changes to the tax title could occur as the bill is considered by the House Budget or Rules 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. KPMG will continue to provide updates as the bill works its way through the process in Congress.

This report includes initial analysis and observations regarding the provisions in the bill related to tax-exempt organizations. This is one of a series of reports that KPMG has prepared on the bill, which can all be found here.

Expanded application of tax on excess compensation

Section 112020 of the bill would amend section 4960, which imposes an excise tax on an applicable tax-exempt organization (ATEO) and entities related to the ATEO if they pay remuneration in excess of $1 million (or an "excess parachute payment") to "covered employees." The amendment would significantly expand the definition of "covered employee" to include *any* employee (or former employee) of the ATEO or an entity related to the ATEO, not just the five highest compensated employees each year (in years after 2016) as under current law. The definition of covered employee would also be expanded to include *all employees* of tax-exempt *and* taxable organizations or governmental entities related to the ATEO, not just employees of related entities who are (or were) employees of the ATEO, as under current law.

The provision would apply in tax years beginning after December 31, 2025.

The JCT has estimated the provision will increase revenues by approximately $3.8 billion over 10 years.

KPMG observation

This proposal will have significant consequences for private businesses and other employers that are related to ATEOs, such as companies that have established company foundations and family businesses owned by individuals who also control a family foundation. Under this proposal, compensation in excess of $1 million paid solely with respect to an employee of the private employer, even one who has never been employed by the ATEO, will be subject to the excise tax. Although the impact of this proposal on public company employers is mitigated by coordination with section 162(m), they may not be wholly immune. The section 4960 excise tax would not apply with respect to the compensation paid to the limited number of employees who already are covered employees under section 162(m) and for whom the compensation deduction is limited. However, the expansion of the covered employee definition under section 4960 to cover all employees would subject compensation paid to any additional employees of the public company earning over $1 million to the section 4960 excise tax.

Given the prevalence of compensation in excess of $1 million paid to employees of businesses with related foundations and other charities, the financial impact of the proposal could be severe, making it unlikely for businesses to create or retain control of corporate charities. In addition, the $1 million compensation threshold is not indexed for inflation, so the impact of the proposal would grow over time as more employees may be expected to earn over $1 million annually.

Increase in tax rate on investment income of private colleges and universities

Section 112021 would make several significant amendments to the excise tax under Code section 4968 on the net investment income of certain private colleges and universities with investment assets of $500,000 or more per student. Most significantly, the bill would replace the current flat 1.4% rate with a tiered rate structure based on the size of an educational institution's "student adjusted endowment." The student adjusted endowment of an institution would be the aggregate fair market value of the assets of the institution (determined as of the end of the preceding tax year), other than those assets that are used directly in carrying out the institution's exempt purpose, divided by the number of eligible students of the institution. The rate structure would be as follows:

- 1.4% if the student adjusted endowment is more than $500,000 and not more than $750,000
- 7% if the student adjusted endowment is more than $750,000 and not more than $1.25 million
- 14% if the student adjusted endowment is more than $1.25 million and not more than $2 million
- 21% if the student adjusted endowment is more than $2 million

The proposal would limit the "eligible students" taken into account in determining the student adjusted endowment to students that are U.S. citizens, permanent residents, or certain others that are not in the United States temporarily but have an intention of becoming a citizen or permanent resident.

The bill would except any "qualified religious institution" from being subject to the tax. A qualified religious institution is defined as an institution established after July 4, 1776 , by, or in association with, a church or convention or associations of churches with which it has continuously maintained an affiliation and which maintains a published institutional mission that is approved by the governing body of the institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

In addition, the bill would include in net investment income certain interest income from student loans and royalty income from federally-funded research that the regulations under section 4968 currently exclude. Finally, the bill would direct the Secretary to prescribe regulations or other guidance to prevent avoidance of the tax (for example, through the "restructuring of endowment funds or other arrangements").

The provision would apply to tax years beginning after December 31, 2025.

The JCT has estimated the provision will increase revenues by approximately $6.7 billion over 10 years.

KPMG observation

Under both the current law and the proposed amendments, a university's assets generally include assets held by certain related organizations (including supporting organizations to the university and organizations controlled by the university), and a university's net income generally includes investment income derived from those assets. Because the tax rate differential between tiers is significant, relatively small changes in assets or enrollment could push an institution over (or below) a tier threshold, and related organizations will need to closely monitor and coordinate activity to effectively anticipate and mitigate tax exposure.

Increase in tax rate on investment income of private foundations

Section 112022 of the bill would amend the excise tax on the net investment income of certain private foundations under Code section 4940 by replacing the current flat 1.39% rate with a tiered rate structure that would depend on the aggregate fair market value of all of the foundation's assets *as of the close of the tax year*. The rate structure would be as follows:

- 1.39% for foundations with assets of less than $50 million
- 2.78% for foundations with assets of at least $50 million but less than $250 million
- 5% for foundations with assets of at least $250 million but less than $5 billion
- 10% for foundations with assets of $5 billion or more

For this purpose, the fair market value of the foundation's assets would not be reduced for liabilities. In addition, assets of an organization that controls or is controlled by (or is controlled by the same persons that control) the foundation would be treated as assets of the private foundation for this purpose. However, no assets would be taken into account with respect to more than one private foundation, and assets that are not "intended or available for the use or benefit" of the private foundation are not taken into account unless the related organization is controlled by the private foundation.

The provision would apply to tax years beginning after the date of enactment.

The JCT has estimated the provision will increase revenues by approximately $15.9 billion over 10 years.

KPMG observation

When calculating the fair market value of the foundation's assets, the proposal appears not to exclude assets that are used directly in carrying out a foundation's exempt purpose, as is the case in the private foundation rules when measuring a foundation's assets for purposes of determining a foundation's required minimum distribution. Therefore, private foundations that have relatively small endowments may nevertheless face high excise tax rates on their investment income if they conduct significant direct charitable activities or hold program related investments of a substantial size.

Moreover, the proposal requires that assets of certain related organizations be aggregated with a foundation's assets for purposes of determining the applicable tiered tax rate. The statute does not define "control" or "intended or available for the use or benefit of" the private foundation, which would leave several open questions as to which organizations—both taxable and tax-exempt—must be taken into account when aggregating assets. The regulations under the college and university investment tax section 4968 expressly carve out taxable corporations and partnerships and other passthrough entities from being considered "related" for purposes of asset aggregation under that provision. They also carve out charitable remainder trusts, grantor charitable lead trusts, and many taxable trusts (with certain exceptions). Treasury and the IRS might take a similar approach to asset aggregation under 4940, but it is unclear whether this Administration intends to prioritize new regulatory projects or whether such carve outs could be presumed without administrative guidance. In addition, unlike universities that generally have large boards, foundations are often controlled by a small number of individual donors and family members. These donors and family members may also sit on boards of other charities in their communities, increasing the potential for those other charities to be "related" to the foundation due to board overlap. The regulations under section 4968 provide that the assets and net investment income of a related organization are "intended or available for the use or benefit of" an educational institution "if such assets and net investment income are specifically earmarked or restricted for the benefit of, or otherwise are fairly attributable to, the educational institution." Perhaps regulations under 4960 could take a similar approach.

However, because the proposal provides that assets would not be taken into account with respect to more than one private foundation, the assets of foundations that are controlled by the same persons (or that control one another) would presumably not be aggregated for purposes of the asset thresholds.

Finally, the proposal relies on the value of assets *as of the end of the tax year* to determine the tax rate, rather than the value at the end of the *prior tax year*, as is the case with the tax on investment income of colleges and universities. Without knowing the tax rate until the end of the year, it would be very difficult for foundations to estimate their tax liability and plan for the liquidity needed to make tax payments. This is especially true given the large differential in tax rates resulting from the cliff structure of the tiers.

Direct pay retained, but several energy credits terminated, modified and phased out

The bill contains no proposal to sunset section 6417, the elective pay (or "direct pay") provision that currently provides tax-exempt and State, local and Tribal government entities access to a dozen clean energy credits, including the major production and investment tax credits. However, several material modifications to many of the clean energy tax credit provisions have been proposed, including early sunsets, phase outs, and other modifications.

Among the energy credits that are proposed to sunset quickly are two popular provisions that tax-exempt and government entities have accessed using the direct pay provision:

- Qualified commercial clean vehicle credit (section 45W), for which no credit would be available with respect to vehicles acquired after December 31, 2025 (except for vehicles acquired pursuant to a written binding contract entered into before May 12, 2025 and placed in service before January 1, 2033)
- Alternative fuel vehicle refueling property credit (section 30C), which would no longer be available for property placed in service after December 31, 2025.

The investment tax credit (section 48), which has continued viability for investments in geothermal energy property that begin construction before January 1, 2035, is proposed to sunset three years early. Under the proposal, the credit would phase down starting with property that begins construction in calendar year 2030, and the credit would be unavailable for property that begins construction after December 31, 2031.

Similarly, the clean electricity investment credit (section 48E) is proposed to phase out, starting with the allowance of only 80% of the credit amount for property placed in service in calendar year 2029; 60% for property placed in service in calendar year 2030; 40% for property placed in service in calendar year 2031; and no credit available for property placed in service after December 31, 2031.

For both investment tax credits, the proposal would add several new restrictions on the credits relating to certain foreign entities.

More information about the bill's proposals relating to the clean energy credits can be found in the Incentives and Credits report on KPMG's dedicated webpage.

Purchases of employee-owned stock disregarded for excess business holdings purposes

Section 112023 of the bill would amend the excess business holdings rules applicable to private foundation under section 4943 so that certain voting stock re-purchased by a business enterprise from an employee stock ownership plan ("ESOP") in which the enterprise's employees participate would be treated as outstanding stock. The proposal applies to voting stock that is (1) not readily tradable on an established securities market; (2) purchased by the business enterprise from the ESOP on or after January 1, 2020, in connection with a distribution from the ESOP, and (3) held by the business enterprise as treasury stock, cancelled, or retired. This rule would not apply with respect to the purchase of stock from an ESOP in existence for less than 10 years. In addition, the proposal would apply only to the extent that the foundation and disqualified persons together still own a minority voting stake (not exceeding 49% of the vote) after the purchase.

The proposal is effective for tax years ending after the date of enactment and to purchases by a business enterprise of voting stock in tax years beginning after December 31, 2019.

The JCT has estimated the provision will have a negligible revenue effect.

KPMG observation

In general, a private foundation is subject to an excise tax if it holds more than 20% of the voting stock in a corporation, reduced by the percentage of voting stock held by all of the foundation's "disqualified persons." Under the current rules, when a foundation owns stock in a business that purchases voting stock from shareholders other than the foundation or disqualified persons, the foundation's (and disqualified persons') relative percentage ownership could increase, potentially resulting in excess business holdings subject to excise tax. The proposal would effectively prevent this result in the case of stock re-purchased from an ESOP (and meeting the other requirements noted above).

Unrelated business income tax (UBIT) imposed on certain fringe benefit expenses

Section 112024 of the bill would require a tax-exempt organization to include as unrelated business taxable income (UBTI) amounts they pay or incur for any qualified transportation fringe benefits (as defined in section 132(f)), including certain expenses of parking facilities used by employees in connection with qualified parking. This increase in UBTI would apply only if a deduction for the expenses would not be allowable under section 274 and would not apply to the extent the expenses are directly connected to an unrelated business (as such amounts would not be deductible against the associated UBTI).

This proposal would not apply to churches, their integrated auxiliaries, conventions or associations of churches, religious orders, and educational organizations below the college level that are affiliated with a church or operated by a religious order.

The provision would apply to amounts paid or incurred after December 31, 2025.

The JCT has estimated the provision would increase revenues by approximately $2.7 billion over 10 years.

KPMG observation

This provision of the TCJA (known colloquially as the "parking tax"), was repealed retroactively because of significant opposition. The determination of nondeductible expenses related to providing qualified transportation fringe benefits was a costly and time-consuming annual determination, with the compliance costs potentially exceeding the tax revenue generated. For a sense of how detailed and time-consuming the exercise can be with respect to parking expenses alone, see Notice 2018-99. The prior version of this tax did not contain an exception for churches and certain other religious organizations.

Name and logo royalties treated as unrelated business taxable income

Section 112025 of the bill proposes treating the sale or license of a tax-exempt organization's name or logo (including any related trademark or copyright) as a regularly-carried-on unrelated trade or business. The proposal would also amend section 512 to provide that income from such activities is included in UBTI, notwithstanding the general exclusion of royalties and capital gains from UBTI otherwise available. Thus, any income derived from the sale or licensing of a tax-exempt organization's name or logo (or any trademark or copyright related to a name or logo) would be subject to tax.

The proposal is effective for tax years beginning after December 31, 2025.

The JCT has estimated the provision would increase revenues by approximately $3.8 billion over 10 years.

Exclusion of research income limited to publicly available research

Section 112026 of the bill would modify the exclusion from UBTI under section 512(b)(9) for all income that is derived from research performed by an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public. Under the proposal, the organization would exclude from UBTI only the income that is derived from fundamental research and only if the results of that research are made freely available to the general public.

The proposal is effective for amounts received or accrued after December 31, 2025.

The JCT has estimated the provision will have a negligible revenue effect.

KPMG observation

While current section 512(b)(9) requires the organization claiming the exclusion to be "operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public," it allows such an organization to exclude from UBTI "all income derived from research performed for any person," regardless of whether the research results are made freely available to the general public. The amendment would restrict the exclusion by applying it only to income derived from fundamental research and only if the results of that research are made freely available to the public.

Termination of tax-exempt status of "terrorist supporting organizations"

Section 112209 of the bill permits 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 as a consequence of indirect or unknowing action. The proposal includes a requirement for the Secretary to disclose the basis of a TSO designation and provides organizations with the right to challenge designations made without such disclosure in court. In addition, provision of certain assistance or support could be allowed if specifically approved by government officials.

The proposal is effective for designations made after the date of enactment in tax years ending after such date.

The JCT has estimated the provision will have a negligible revenue effect.

Proposals relating to charitable giving

1% floor on deduction of charitable contributions by corporations

Section 112028 of the bill would amend Code section 170(b)(2)(A) to permit a corporation to claim a deduction for charitable contributions only to the extent that the aggregate of such contributions exceeds 1% of the corporation's taxable income (as defined in section 170(b)(2)(D)). Total deductions for charitable contributions by the corporation would continue to be limited to 10% of taxable income, with the excess carried forward 5 years. However, the proposal would *not* modify the current treatment of qualified conservation contributions by certain corporate farmers and ranchers or Native Corporations.

The proposal would apply to tax years beginning after December 31, 2025.

The JCT has estimated the provision would increase revenues by approximately $16.6 billion over 10 years.

Reinstatement of nonitemizer partial deduction for charitable contributions

Section 110112 of the bill would temporarily reinstate the partial deduction for charitable contributions (previously a temporary provision in the Coronavirus Aid, Relief, and Economic Security (CARES) Act) for individuals who do not itemize their deductions. The maximum deduction amount would be $300 for married taxpayers filing jointly and $150 for all other taxpayers. As in the previous iteration, the deduction would only be available for contributions made in cash to certain charitable organizations and would not include contributions of noncash property or contributions to supporting organizations, donor advised funds, or most private (non-operating) foundations. Contributions carried forward to the tax year in question would not be eligible for this deduction.

The proposal would be effective for tax years beginning after December 31, 2024, and ending before January 1, 2029.

The JCT has estimated the provision would have a revenue cost of approximately $6.9 billion during the years it is in effect.

Tax credit for contributions of individuals to scholarship granting organizations

Section 110109 of the bill would create a new, nonrefundable tax credit for certain charitable contributions of cash or marketable securities to organizations described in section 501(c)(3) (and not private foundations) substantially all of the activities of which are providing scholarships to eligible elementary and secondary school students. Students eligible to benefit from the scholarships must be members of households with incomes not greater than 300% of the area median gross income. The credit allowed to a taxpayer for a tax year could be up to the greater of 10% of the taxpayer's aggregate gross income or $5.000.

The credit would have to be taken in lieu of a charitable contribution deduction and would be reduced by the amount allowed as a credit on a State tax return.

The proposal sets an aggregate volume cap on the total amount of credits at $5 billion for each of calendar years 2026 through 2029, and zero for any calendar years after 2029. Generally, for purposes of allocating volume cap for a calendar year, the Secretary is directed to allocate the credit on a first-come, first-served basis.

The proposal would be effective for tax years ending after December 31, 2025.

The JCT estimated the provision would have a revenue cost of approximately $20.4 billion over 10 years.

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