

## Key Provisions in the Federal Tax Law<sup>1</sup> for NJ Non-Profits

Updated January 23, 2018

### PART I – What’s in the Law

| Issue  | Description  | Comment  |
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| <b>Standard Deduction and Incentives for charitable giving</b> | <ul style="list-style-type: none"> <li>The law increases the standard deduction for individuals (to \$12,000), couples (to \$24,000), and heads of households (to \$18,000),</li> <li>Although the charitable giving deduction itself technically remains unchanged, it is only available for households that itemize on their tax returns. People who take the standard deduction cannot deduct their charitable gifts, and because the standard deduction is doubled under the new law, only an estimated 5% of taxpayers will itemize, compared with 30% under the previous law.</li> <li>Limits on cash donations will be increased from 50% of adjusted gross income (AGI) to 60% of AGI.</li> <li>Repeals the “Pease limitation” that currently limits deductions for high-income individuals.</li> <li>This entire section sunsets after 2025.</li> </ul> | <ul style="list-style-type: none"> <li>The new law effectively puts the charitable deduction out of reach for 95% of taxpayers. This change is projected to <b>cost charities \$13 billion or more each year</b> in lost giving and could result in the loss of <b>220,000 to 264,000 non-profit jobs</b>.</li> <li>While the loosening of the AGI limitations for charitable deductions, repealing limits on itemized deductions, and the elimination of the Pease limitation are helpful, their impact will be limited to the few taxpayers who will continue to take advantage of itemized deductions.</li> <li>The overall impact of these changes will be a devastating loss of contributions that charities desperately need to serve our communities.</li> <li>Charities had pushed for a universal (“above the line”) charitable giving incentive that would be available to taxpayer who do not itemize, but this was not included in the final version.</li> </ul> |
| <b>State and Local Tax (SALT) Deductions</b>                   | <ul style="list-style-type: none"> <li>Provides a \$10,000 aggregate cap on the deductions of state and local income taxes or property taxes.</li> </ul>   | <ul style="list-style-type: none"> <li>This provision is especially harmful to high cost of living states such as New Jersey, where a significant proportion of taxpayers’ expenses for state and local income, sales or property taxes exceeds the cap. As <a href="#">New Jersey Policy Perspective</a> reports, this change will hurt <a href="#">thousands of New Jersey families</a> across a wide range of income levels. The <a href="#">Center on Budget and Policy Priorities</a> has <a href="#">identified</a> a number of ways in which state and local governments nationwide, and disproportionately in states like New Jersey, would be negatively affected.</li> </ul>   |
| <b>Estate tax</b>  | <ul style="list-style-type: none"> <li>Maintains the estate tax, but doubles the exemption to about \$11 million for individuals and about \$22 million for couples.</li> </ul>  | <ul style="list-style-type: none"> <li>Doubling the exemption is projected to reduce federal revenues by nearly \$100 billion over 10 years and lower charitable giving nationally by \$4 billion per year. Even before this change, only the wealthiest 0.2% of estates were subject to the estate tax. With federal budget proposals already threatening to decimate funding for vital programs and services, this cut is especially costly on numerous levels. There is also deep concern that narrowing or repealing the estate tax will reduce the incentive to make planned legacy gifts to charities and will adversely affect charitable bequests.</li> </ul>  |

<sup>1</sup> Final legislation, formerly known as the “Tax Cuts and Jobs Act,” signed into law by President Trump on December 22, 2017. Unless otherwise stated, provisions take effect January 1, 2018. For a comparison of the earlier House & Senate versions of the legislation, see [http://www.njnonprofits.org/House\\_Senate\\_TaxReformComparison12162017.pdf](http://www.njnonprofits.org/House_Senate_TaxReformComparison12162017.pdf)

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| <b>Unrelated business income tax (UBIT)</b>    | <ul style="list-style-type: none"> <li>• Treats each business activity of a non-profit separately for UBIT purposes, which could result in more UBIT liability for some non-profits because there would be less opportunity to offset income with related expenses.</li> <li>• Some larger non-profits may pay a lower UBIT tax rate, since the new law lowers the maximum corporate income tax rate from 35% to 21%; but for the smallest organizations, the tax rate rises from 15% to 21%.</li> </ul> | <ul style="list-style-type: none"> <li>• It's worth noting that only the first \$1,000 of unrelated business income is exempt from taxation, so the changes would affect many organizations of varying sizes. Considering the magnitude of the funding cuts to many non-profit programs in the proposed federal budget blueprint, these changes to UBIT may result in increased taxes on non-profits, taking earned income revenue away from non-profits' mission-related programs and services.</li> <li>• An earlier Senate proposal that would have subjected income from licensing and royalties to UBIT was not included in the final version – a favorable outcome.</li> </ul> |
| <b>Affordable Care Act Individual Mandate</b>  | <ul style="list-style-type: none"> <li>• Repeals the individual mandate by reducing the penalties to \$0, effective January 1, 2019.</li> </ul>  | <ul style="list-style-type: none"> <li>• The individual mandate repeal raises approx. \$318 billion which is used to offset some of the cost of various tax cuts in the bill. The nonpartisan <a href="#">Congressional Budget Office</a> (CBO) estimates that repealing the individual mandate will result in 13 million fewer people having insurance coverage by 2027 and that average premiums will be 10% higher in most years than they would be under current law.</li> </ul>   |
| <b>Non-profit colleges and universities</b>    | <ul style="list-style-type: none"> <li>• Creates a new 1.4% 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.</li> <li>• Limited to institutions with more than 50% of students in U.S.</li> </ul>  | <ul style="list-style-type: none"> <li>• Concerns have been expressed that this provision is an invasion of non-profit independence, allowing the political will of elected officials to supplant the fiduciary judgment of organizational trustees.</li> </ul>  |
| <b>Highly-compensated non-profit employees</b> | <ul style="list-style-type: none"> <li>• Imposes a new 21% excise tax on non-profits that provide compensation of \$1 million or more to any of their five highest-paid employees.</li> </ul>  | <ul style="list-style-type: none"> <li>• The excise tax is in lieu of denying tax deductions for salaries, according to JCT. The change is proposed to bring non-profit pay rules in line with the for-profit cap on compensation.</li> </ul>  |
| <b>Donor acknowledgment requirements</b>       | <ul style="list-style-type: none"> <li>• Repeals an unused provision in the tax code that exempts donors from having a written acknowledgment from a non-profit if the non-profit provides the IRS with information about the contribution in its tax filings.</li> </ul>  | <ul style="list-style-type: none"> <li>• The provision is a needed “cleanup” measure designed to block the IRS from requiring charities to submit donors' Social Security numbers or other sensitive personal information to substantiate charitable contributions.</li> </ul>   |

## PART 2 - What's NOT in the Law

| Issue   | Description   | Comment  |
|---|---|--|
| <b>Johnson Amendment (non-profit nonpartisanship)</b>   | <ul style="list-style-type: none"> <li>Preserves non-profit nonpartisanship by leaving current law intact.</li> </ul>                             | <ul style="list-style-type: none"> <li>The final statute does not include House of Representatives language designed to gut the existing law (the Johnson Amendment) which has for 60+ years allowed charities and houses of worship to work in communities free from partisan pressures, divisions and interference.<br/>The broad-based charitable, religious and foundation communities as well as charity regulators, faith leaders and the general public strongly oppose efforts to weaken the Johnson Amendment. However, only a parliamentary technicality prevented the House proposal from becoming law, and repealing the Johnson Amendment remains a top priority for President Trump and Congressional leaders. This means that similar attempts to weaken these protections will likely resurface, as early in January as Congress begins to take up a variety of appropriations bills.</li> </ul> |
| <b>Universal deduction for charitable contributions</b> | <ul style="list-style-type: none"> <li>Provisions to extend charitable giving incentives to nonitemizers were not included in the law.</li> </ul> | <ul style="list-style-type: none"> <li>Despite urging from the charitable community, the House and Senate failed to include a universal charitable giving incentive which would expand the charitable deduction to all taxpayers and allow all to receive a tax benefit for giving. One such proposal is the <a href="#">Universal Charitable Giving Act</a> (H.R. 3988/ S.2123), which would provide a partial giving incentive for non-itemizers.</li> </ul>   |
| <b>Private activity bonds</b>                           | <ul style="list-style-type: none"> <li>Makes no changes to current law.</li> </ul>  | <ul style="list-style-type: none"> <li>The final law did not include House language that would have eliminated all tax-exempt private activity bonds, including 501(c)(3) bonds. A variety of non-profits, including schools, hospitals, museums, and affordable housing organizations, use these bonds to finance building and renovation projects. Eliminating these bonds would have removed an important financing option for many 501(c)(3) non-profits. The final statute leaves current law intact, thereby leaving this financing mechanism available.</li> </ul>  |
| <b>Donor advised funds (DAFs)</b>                       | <ul style="list-style-type: none"> <li>Makes no changes to current law.</li> </ul>  | <ul style="list-style-type: none"> <li>The law does not include new payout requirements for DAFs, which was a concern of some non-profits and community foundations.</li> </ul>  |
| <b>Private foundation excise tax</b>                    | <ul style="list-style-type: none"> <li>Makes no changes to current law.</li> </ul>  | <ul style="list-style-type: none"> <li>The statute does not include House language that would have created a single, streamlined foundation excise tax rate of 1.4% (between the two current rates of 2% and 1%). Although many foundations have long requested a simplification of the private foundation excise tax, there was concern that the House provision would result in higher tax levies against foundations, thus reducing overall private foundation assets and leading lead to fewer or smaller grants to charities.</li> </ul>  |
| <b>Volunteer mileage rate</b>                           | <ul style="list-style-type: none"> <li>Makes no changes to current law.</li> </ul>  | <ul style="list-style-type: none"> <li>The Center supports adjusting the volunteer mileage rate for inflation, which could decrease the cost of volunteering at certain types of non-profits and would prevent the further erosion of the value of the incentive over time. It also sends the message that volunteers' time and expenses are valued. The new law does not include House language that would have prospectively adjusted the current 14 cents/mile rate for inflation.</li> </ul>   |

Adapted with permission from analyses prepared by the [North Carolina Center for Nonprofits](#) and the [National Council of Nonprofits](#).