

Comparison of Key Provisions in House/Senate Tax Reform Bills for NJ Non-Profits

Updated December 16, 2017

| Issue | House Tax Reform Plan (H.R. 1) ¹ | Senate Tax Reform Plan ² | Final House/Senate Conference Report ³ | Comment |
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| Johnson Amendment (non-profit nonpartisanship) | <ul style="list-style-type: none"> • Would allow all 501(c)(3) non-profits to endorse candidates and engage in partisan political speech as long as such speech 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” expenses in doing so. • The provision would be effective from 2019 through 2023. • The nonpartisan Joint Committee on Taxation (JCT) estimated that this provision would cost the federal government \$2.1 billion over six years because donors that would otherwise give to political organizations would instead give to political 501(c)(3)s (churches and charities), and the gifts would be tax deductible. | <ul style="list-style-type: none"> • Preserves non-profit nonpartisanship by leaving current law intact. | <ul style="list-style-type: none"> • Preserves non-profit nonpartisanship by leaving current law intact. | <ul style="list-style-type: none"> • The language in H.R. 1 would weaken the existing laws which have for 60+ years allowed charities and houses of worship to work in communities free from partisan pressures, divisions and interference. • Over 5,500 organizations nationwide, along with thousands of religious leaders, faith organizations, charity regulators and the vast majority of the general public, oppose weakening the Johnson Amendment. • H.R. 1 would for the first time allow tax-deductible contributions to political causes and would exacerbate existing problems of “dark money” in electoral politics. |
| State and Local Tax (SALT) Deductions | <ul style="list-style-type: none"> • Would end the deductibility of state and local income taxes and would cap property tax deductions at \$10,000. | <ul style="list-style-type: none"> • Would end the deductibility of state and local income taxes and would cap property tax deductions at \$10,000. (Amended from earlier version that did not provide for property tax deductions) | <ul style="list-style-type: none"> • Would provide a \$10,000 aggregate cap on the deductions of state and local income taxes or property taxes. | <ul style="list-style-type: none"> • All versions are especially harmful to high cost of living states such as New Jersey. Even a \$10,000 deduction would only be available to itemizers, and with the increase in standard deduction, fewer taxpayers would be able to take it. As New Jersey Policy Perspective reports, this change would hurt thousands of New Jersey families across a wide range of income levels. The Center on Budget and |

¹ H.R. 1, the “[Tax Cuts and Jobs Act](#),” as passed by the House of Representatives 11/16/2017. The House and Senate must reconcile the differences between their two bills and vote to pass identical versions to send to the President.

² [Senate bill](#) as passed on 12/2/2017. Text that is ~~crossed out~~ in our summary reflects changes in the final Senate version vs. the one passed by the Senate Finance Committee in late November. (Note: The Senate adopted one amendment, removing a special endowment tax exemption for one college, which is not reflected in the [bill text](#).)

³ House-Senate [Conference Report](#) on the Tax Cuts and Jobs Act, H.R. 1 (approved in committee 12/15/2017). The main provisions in this final version are in the shaded column in this summary.

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| | | <ul style="list-style-type: none"> The property tax deduction would sunset after 2025. | | <p>Policy Priorities has identified a number of ways in which state and local governments nationwide, and disproportionately in states like New Jersey, would be negatively affected.</p> |
| <p>Standard Deduction and Incentives for charitable giving</p> | <ul style="list-style-type: none"> Would increase the standard deduction for individuals (to \$12,000), couples (to \$24,000), and heads of households (to \$18,000), 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 would double under the bill, only 5% of taxpayers would itemize, compared with 30% now. This change could cost charities \$13 billion or more each year in lost giving. Limits on cash donations would be increased from 50% of adjusted gross income (AGI) to 60% of AGI. “Pease limitation” on itemized deductions that limits deductions for high-income individuals would be repealed. | <ul style="list-style-type: none"> Would increase the standard deduction for individuals (to \$12,000), couples (to \$24,000), and heads of households (to \$18,000), 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 would double under the bill, only 5% of taxpayers would itemize, compared with 30% now. This change could cost charities \$13 billion or more each year in lost giving. Limits on cash donations would be increased from 50% of adjusted gross income (AGI) to 60% of AGI. “Pease limitation” on itemized deductions that limits deductions for high-income individuals would be repealed. Would sunset after 2025. | <ul style="list-style-type: none"> Would increase the standard deduction for individuals (to \$12,000), couples (to \$24,000), and heads of households (to \$18,000), 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 would double under the bill, only 5% of taxpayers would itemize, compared with 30% now. This change could cost charities \$13 billion or more each year in lost giving and result in the loss of 220,000 to 264,000 non-profit jobs. Limits on cash donations would be increased from 50% of adjusted gross income (AGI) to 60% of AGI. “Pease limitation” on itemized deductions that limits deductions for high-income individuals would be repealed. Would sunset after 2025. | <ul style="list-style-type: none"> Under the House and Senate bills, the charitable deduction would be out of reach to 95% of taxpayers. 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. The overall impact of these changes would be a devastating loss of contributions that charities desperately need to serve our communities. |
| <p>Universal deduction for charitable contributions</p> | <ul style="list-style-type: none"> Provisions to extend charitable giving incentives to nonitemizers were not included in the bill. | <ul style="list-style-type: none"> Provisions to extend charitable giving incentives to nonitemizers were not included in the bill. | <ul style="list-style-type: none"> Provisions to extend charitable giving incentives to | <ul style="list-style-type: none"> 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 |

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| | | | nonitemizers were not included in the bill. | taxpayers and allow all to receive a tax benefit for giving. One such proposal is the Universal Charitable Giving Act (H.R. 3988/ S.2123), which would provide a partial giving incentive for non-itemizers. |
| Private activity bonds | <ul style="list-style-type: none"> Eliminates all tax-exempt private activity bonds, including qualified 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. | <ul style="list-style-type: none"> Makes no changes to current law. | <ul style="list-style-type: none"> Makes no changes to current law. | <ul style="list-style-type: none"> Eliminating these bonds would have removed an important financing option for many 501(c)(3) non-profits. The final conference bill leaves current law intact, thereby leaving this financing mechanism available. |
| Estate tax | <ul style="list-style-type: none"> Doubles the exemption from the estate tax (to about \$11 million for individuals and about \$22 million for couples) for six years, and fully repeals the estate tax in 2023. The Committee for a Responsible Federal Budget reports this change would cost the Treasury an estimated \$200 billion over 10 years. | <ul style="list-style-type: none"> Maintains the estate tax, but doubles the exemption to about \$11 million for individuals and about \$22 million for couples. | <ul style="list-style-type: none"> Maintains the estate tax, but doubles the exemption to about \$11 million for individuals and about \$22 million for couples. 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. | <ul style="list-style-type: none"> Even under current law, only the wealthiest 0.2% of estates are 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 would reduce the incentive to make planned legacy gifts to charities and would adversely affect charitable bequests. In New Jersey alone, bequests could drop by \$139 million over the next seven years. |
| Unrelated business income tax (UBIT) | <ul style="list-style-type: none"> Limits the research exemption from unrelated business income tax (UBIT) to apply only to income from research that is made freely available to the public. Requires non-profits to pay UBIT on transportation fringe benefits to employees and employee access to on-site gyms and athletic facilities. Some larger non-profits would also pay a lower UBIT tax rate, since the House plan would lower the maximum corporate income tax rate from 35% to 20%; but the smallest small organizations could see their tax rate rise from 15% to 20%. | <ul style="list-style-type: none"> Treats income from licensing a non-profit's name or logo as unrelated business income that is subject to UBIT. 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. Some larger non-profits would pay a lower UBIT tax rate, since the Senate bill would lower the | <ul style="list-style-type: none"> 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. Some larger non-profits would pay a lower UBIT tax rate, since the Senate bill would lower the maximum corporate income tax rate from 35% to 20%; but the smallest small | <ul style="list-style-type: none"> It's worth noting that only the first \$1,000 of unrelated business income is exempt from taxation, so the changes proposed 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. Language that would have subjected income from licensing and royalties to UBIT was deleted from 12/2 Senate bill – a favorable change. |

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| | | maximum corporate income tax rate from 35% to 20%; but the smallest small organizations could see their tax rate rise from 15% to 20%. | organizations could see their tax rate rise from 15% to 20%. | |
| Affordable Care Act Individual Mandate | <ul style="list-style-type: none"> • Makes no changes to current law. | <ul style="list-style-type: none"> • Repeals the individual mandate by reducing the penalties to \$0. | <ul style="list-style-type: none"> • Repeals the individual mandate by reducing the penalties to \$0, effective 2019. | <ul style="list-style-type: none"> • 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 Congressional Budget Office (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. |
| Donor advised funds | <ul style="list-style-type: none"> • Requires non-profits with donor advised funds (DAFs) to disclose annually their policies on inactive DAFs and the average amount of grants made from their DAFs. • Does not include new payout requirements for DAFs, which was a concern of some non-profits and community foundations. | <ul style="list-style-type: none"> • Makes no changes to current law. | <ul style="list-style-type: none"> • Makes no changes to current law. | <ul style="list-style-type: none"> • The final version does not include new payout requirements for DAFs, which was a concern of some non-profits and community foundations. |
| Private foundation excise tax | <ul style="list-style-type: none"> • Establishes a streamlined private foundation excise tax of 1.4%, which is between the two current rates of 2% and 1%. • The Joint Committee on Taxation estimates that this will raise about \$500 million in revenue over a decade, which means that it is an overall tax increase on private foundations. | <ul style="list-style-type: none"> • Makes no changes to current law. | <ul style="list-style-type: none"> • Makes no changes to current law. | <ul style="list-style-type: none"> • Although many foundations have previously requested a simplification of the private foundation excise tax, there is concern that the House provision could reduce overall private foundation assets, leading lead to fewer or smaller grants to charities. |
| Non-profit colleges and universities | <ul style="list-style-type: none"> • Creates new 1.4% excise tax on net investment income of non-profit colleges and universities with assets of at least \$250,000 per full-time student and more than 500 full-time students. | <ul style="list-style-type: none"> • Creates new 1.4% excise tax on net investment income of non-profit colleges and universities with assets of at least \$250,000 \$500,000 per full-time student and more than 500 full-time students. | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • 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. |

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| | | | <ul style="list-style-type: none"> Limited to institutions with more than 50% of students in U.S. | |
| Volunteer mileage rate | <ul style="list-style-type: none"> The rate that volunteers can claim for driving on behalf of non-profits would be adjusted for inflation. For years, this rate has been fixed in statute at 14 cents per mile, which is far below the standard mileage rate and the actual cost volunteers incur when they drive their vehicles on behalf of non-profits. | <ul style="list-style-type: none"> Makes no changes to current law. | <ul style="list-style-type: none"> Makes no changes to current law. | <ul style="list-style-type: none"> 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. |
| Highly-compensated non-profit employees | <ul style="list-style-type: none"> Imposes a new 20% excise tax on non-profits that provide compensation of \$1 million or more to any of their five highest-paid employees. | <ul style="list-style-type: none"> Imposes a new 20% excise tax on non-profits that provide compensation of \$1 million or more to any of their five highest-paid employees. | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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. |
| Art museums | <ul style="list-style-type: none"> Requires art museums that are private operating foundations to be open to the public for at least 1,000 hours per year. | <ul style="list-style-type: none"> Makes no changes to current law. | <ul style="list-style-type: none"> Makes no changes to current law. | <ul style="list-style-type: none"> Converting museums to private foundations would subject them to payout requirements and affect AGI restrictions on a donor's contributions to art museum – 30% limit for foundations or the higher limit for donations to public charities. |
| Donor acknowledgment requirements | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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. |

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| <p>Intermediate sanctions</p> | <ul style="list-style-type: none"> • Makes no changes to current law. | <ul style="list-style-type: none"> • Imposes a 10% excise tax on non-profits in some instances when a disqualified person (e.g. a board member or non-profit executive) receives an excess benefit transaction. Under current law, these penalties are only imposed on the disqualified person and/or on board members who approved of the transaction. • Replaces the “rebuttable presumption of reasonableness” with “due diligence procedures,” which may make it harder for non-profits to confidently rely on comparability data in setting executive compensation and establishing the appropriate valuation for transactions with board members. • Eliminates a law that absolves boards of liability for intermediate sanctions if they rely on professional advice. • Applies intermediate sanctions rules to investment advisers and athletic coaches. | <ul style="list-style-type: none"> • Makes no changes to current law. | <ul style="list-style-type: none"> • Imposing the excise tax on the organization, rather than (or in addition to) its managers or the recipient of the excess benefit transactions, could effectively penalize those who rely on the organization for services. • Removing or weakening the safe harbors for determining compensation reasonableness will create confusion and increase the costs and administrative burdens of compliance for charities of all sizes, since comparability analyses will no longer be acceptable. • Board recruitment and retention could suffer if boards can no longer rely on professional advice in determining reasonableness of compensation. <p>Troublesome intermediate sanctions language was removed from the final Senate bill. As of 12/15/2017, current law remains in place in the final bill.</p> |
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Adapted with permission from analyses prepared by the [North Carolina Center for Nonprofits](#) and the [National Council of Nonprofits](#).