



PROVISIONS OF H.R. 1, THE TAX CUTS AND JOBS ACT
AND
PROVISIONS OF THE SENATE TAX CUTS AND JOBS ACT
IMPACTING HIGHER EDUCATION
(NOTE: ALL PROVISIONS WOULD BECOME EFFECTIVE
JANUARY 1, 2018 UNLESS OTHERWISE NOTED)

LAST UPDATED DECEMBER 5, 2017

Education Incentives

American Opportunity Tax Credit (AOTC). In H.R. 1, the AOTC and Lifetime Learning Credit would be consolidated into an enhanced AOTC. The new AOTC, like the current AOTC, would provide a 100-percent tax credit for the first \$2,000 of certain higher education expenses and a 25-percent tax credit for the next \$2,000 of such expenses. Like the current AOTC, expenses covered under the credit include tuition, fees, and course materials. The AOTC would also be available for a fifth year of postsecondary education at half the rate as the first four years, with up to \$500 of such credit being refundable. The Lifetime Learning Credit would be repealed, leaving part-time students unable to claim an education tax credit.

- **The Senate does not offer any changes to the current AOTC.**

Coverdell Education Savings Accounts. In H.R. 1, new contributions to Coverdell education savings accounts after 2017 (except rollover contributions) would be prohibited, but tax-free rollovers from Coverdell accounts into Section 529 plans would be allowed.

- **The Senate does not offer any changes to Coverdell Education Savings Accounts but would allow 529 savings plans to be used for public, private and religious elementary and secondary schools and home schooling.**

Discharge of certain student loan indebtedness. In H.R. 1, any income resulting from the discharge of student debt because of death or total disability of the student would be excluded from taxable income.

- **The Senate includes the same proposal.**

Student Loan Interest Deduction. In H.R. 1, the deduction would be repealed.

- **The Senate does not offer any changes to Student Loan Interest Deduction.**

Above-the-Line Deduction for Qualified Tuition and Related Expenses. In H.R. 1, individuals would no longer be able to claim an above-the-line deduction for qualified tuition and related expenses incurred.

- **The Senate does not offer any changes to this deduction.**

Section 117d: Qualified Tuition Reductions. In H.R. 1, qualified tuition reductions or tuition remission provided by educational institutions to employees and their spouses or dependents would no longer be excluded from income. Currently Section 117(d)5 allows institutions to offer graduate research and teaching assistants a reduced or waived tuition without tax consequences. The House bill would eliminate Section 117(d), which includes 117(d)5.

- **The Senate does not change current law.**

Section 127: Employer-Provided Education Assistance. In H.R. 1, employer-provided education assistance would no longer be excluded from income. The exclusion is currently limited to \$5,250 per year and applies to both graduate and undergraduate courses.

- **The Senate does not change current law.**

Section 529.

- **As noted above, the Senate would allow 529 savings plans to be used for public, private and religious elementary and secondary schools and home schooling.**

Endowments Excise Tax

Excise tax based on investment income of private colleges and universities. Certain private colleges and universities would be subject to a 1.4 percent excise tax on net investment income. The provision would only apply to private colleges and universities that have at least 500 students and assets (other than those used directly in carrying out the institution's educational purposes) valued at the close of the preceding tax year of at least \$250,000 per full-time student. State colleges and universities would not be subject to the provision.

The House legislation defines net investment income using the rules of [section 4940 \(c\)](#).

- **The Senate also includes an excise tax proposal.** The Senate provision would only apply to private colleges and universities that:
 - have at least 500 students and
 - assets (other than those used directly in carrying out the institution's educational purposes) valued at the close of the preceding tax year of at least \$500,000 per full-time student. The Joint Committee on Taxation summary explains that "assets used directly in carrying out the institution's exempt purpose" include, for example, classroom buildings and physical facilities used for educational activities and office equipment or other administrative assets used by employees of the institution in carrying out exempt activities, among other assets, and are excluded from the assets-per-FTE calculation.

Charitable Giving

Charitable Deduction. The standard deduction would be increased to \$24,000 for joint filers and \$12,000 for individuals. The bill estimates that that this would reduce the number of taxpayers who

itemize deductions from approximately one-third under current law to fewer than 10 percent. The Joint Committee on Taxation has estimated that H.R. 1 would spur a dramatic drop in the amount of charitable giving in the U.S. with 32 million fewer people eligible to claim the deduction.

- **The Senate proposal is similar although though the thresholds are slightly higher in the Senate version (\$12,200 for individuals/\$24,400 for couples).**

Estate Tax. The estate tax threshold would be doubled from \$5.49 million to \$10.98 million, then repealed entirely after 2024. (An amendment delayed this one year beyond what was originally proposed.)

- **The Senate proposal preserves the estate tax but doubles the exemption level. Fewer individuals will pay the tax, and they will pay less.**

Limitations for Cash Gifts. The 50-percent limitation for cash contributions to charitable organizations would be increased to 60 percent of adjusted gross income (AGI). The provision would retain the five-year carryover period to the extent that the contribution amount exceeds 60 percent of the donor's AGI.

- **The Senate includes the same provision.**

College Athletic Event Seating Rights. The special rule that provides a charitable deduction of 80 percent of the amount paid for the right to purchase tickets for athletic events would be repealed.

- **The Senate also eliminates this special rule.**

Additional reporting requirements for donor-advised fund sponsoring organizations. Donor-advised funds would be required to disclose annually their policies on inactive donor-advised funds as well as the average amount of grants made from their donor-advised funds.

- **The Senate does not include this provision.**

Other Exempt Organizations Provisions/UBIT

Exclusion of research income limited to publicly available research. Exempt organizations could exclude from UBTI only income from fundamental research where the results are freely available to the public.

- **The Senate draft does not include this provision.**

Unrelated business taxable income separately computed for each trade or business (aka "basketing"). The Senate includes a UBIT provision that does not appear in H.R. 1:

For an organization with more than one unrelated trade or business, the proposal requires that unrelated business taxable income (UBTI) first be computed separately with respect to each trade or business and without regard to the specific deduction generally allowed under section 512(b)(12). The organization's unrelated business taxable income for a taxable year is the sum of the amounts (not less

than zero) computed for each separate unrelated trade or business, less the specific deduction allowed under section 512(b)(12). A net operating loss (NOL) deduction is allowed only with respect to a trade or business from which the loss arose. A recent modification to the Senate bill tightens the proposed NOL deduction limitation of 90% of taxable income for losses arising in tax years beginning after 2017 to 80% of taxable income for taxable years after 2022.

NOL Carrybacks. The bill passed by the House provides that prior year NOLs may offset up to 90% of current year income.

➤ The Senate includes the same provision.

If the Senate provision regarding separately computed UBTI is passed, it is likely that most schools will incur a tax liability in spite of overwhelming NOLs, because of both the new “basketing” provision and the new NOL carryback provision.

Note: An earlier version of the Senate bill included a provision to modify the UBIT treatment of the licensing of an organization’s name or logo generally to subject royalty income derived from such a license to UBIT. The provision was not included in the legislation that the Senate approved on December 2 and it does not appear in the House bill, H.R. 1.

Unrelated business taxable income (UBI) increased by amount of certain fringe expenses for which deduction is disallowed. Tax-exempt entities would be taxed on the value of providing their employees with transportation fringe benefits, and on-premises gyms and other athletic facilities, by treating the funds used to pay for such benefits as UBI, thus subjecting the values of those employee benefits to a tax equal to the corporate tax rate.

➤ The Senate does not include this provision.

Excise tax on excess tax-exempt organization executive compensation. A tax-exempt organization—generally including most public entities— would be subject to a 20-percent excise tax on compensation in excess of \$1 million paid to any of its five highest-paid employees for the tax year. The excise tax would apply to all remuneration paid to a covered person for services, including cash and the cash value of all remuneration (including benefits) paid in a medium other than cash, except for payments to a tax-qualified retirement plan, and amounts that are excludable from the executive’s gross income.

Once an employee qualifies as a covered person, the excise tax would apply to compensation in excess of \$1 million paid to that person as long as the organization pays them remuneration. The excise tax also would apply to excess parachute payments paid by the organization to such individuals. Under the provision, an excess parachute payment generally would be a payment contingent on the employee’s separation from employment with an aggregate present value of three times the employee’s base compensation or more.

➤ The Senate includes the same provision.

Note: An earlier version of the Senate bill included provisions modifying the intermediate sanctions rules. The provisions were not included in the legislation that the Senate approved on December 2.

Housing. The exclusion for housing provided for the convenience of the employer and for employees of educational institutions would be limited to \$50,000 (\$25,000 for a married individual filing a joint return) and would phase out for highly compensated individuals (income of \$120,000 for 2017, as adjusted for inflation) at a rate of one dollar for every two dollars of AGI earned by the individual beyond the statutory threshold of being highly compensated. The exclusion also would be limited to one residence. The provision would be effective for tax years beginning after 2017.

- **There is no similar provision in the Senate draft.**

State Pensions. All entities exempt from tax under section 501(a), notwithstanding the entity's exemption under any other provision of the Code, would be subject to the UBIT rules. Previously, State and local entities (such as public pension plans) may not have been subject to the UBIT rules.

- **There is no similar provision in the Senate draft.**

Bond Reforms

Termination of private activity bonds (PABs). Interest on newly issued PABs, including those for all 501(c)(3) organizations, would be included in income and thus subject to tax, effectively eliminating tax-exempt bond financing for private colleges and universities. The provisions would be effective for bonds issued after 2017. This provisions also impacts any public universities that utilize private activity bonds.

- **The Senate does not terminate private activity bonds.**

Repeal of advance refunding bonds. Interest on advance refunding bonds (i.e., refunding bonds issued more than 90 days before the redemption of the refunded bonds) would become taxable. Interest on refunding bonds issued prior to the change would continue to be tax-exempt. The change impacts any institution, public or private, that might wish to advance refunding bonds.

- **The Senate includes the same provision and would eliminate advance refunding.**

Deductibility of State and Local Taxes

State and Local Tax (SALT) Deduction. The deduction for state and local income and sales taxes would be repealed, and the deduction for state and local property taxes would be capped at \$10,000.

- **The Senate includes the same provision.**

The Johnson Amendment

Removal of Johnson Amendment requirements for all nonprofit entities. In a second amendment to H.R. 1 offered by Ways and Means Chairman, Kevin Brady, a change to Section 5201 was included that would mean that every 501(c)(3) organization – including colleges and universities–would no longer be prohibited from endorsing or opposing political candidates. This provision is generally opposed by the broader nonprofit community as bringing nonprofit entities into a political sphere they would not wish to be part of for numerous reasons.