

Tax-Exempt Highlights Comparison

“Tax Cuts and Jobs Act of 2017”

On December 22, President Trump signed into law the “Tax Cuts and Jobs Act” (P.L. 115-97), a sweeping tax reform law that will entirely change the tax landscape. The legislation reflects the largest major tax reform in over three decades. There were four main changes specifically for tax-exempt entities including excise tax on excessive compensation, excise tax on private college’s investment income, UBTI computation, and UBTI for disallowed fringe benefit costs. This comparison describes those four changes and a number of the Act’s other changes that could affect tax-exempt organizations.

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Compensation

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Excise Tax on Excessive Compensation

Effective for tax years beginning after December 31, 2017

Former covered employees beginning after December 31, 2016

Certain exceptions for written contracts in effect on November 2, 2017*

**under publicly traded corporation law changes*

Pre-Act law, there were requirements for reasonableness and prohibition against private inurement, but no excise tax.

Generally, Tax-exempt organizations, were not subject to limitation or taxation on the compensation amounts paid to executives, other than limitation on private inurement and potential sanctions under Section 4958 if considered excessive relative to the value provided to the exempt organization (unlike taxable businesses).

Publicly traded corporations were limited to \$1 million for business deduction for compensation paid or accrued with respect to a covered employee with exceptions for 1) commissions; 2) performance-based remuneration, including stock options; 3) payments to a tax-qualified retirement plan; and, 4) amounts that are excludable from the executive’s gross income.

21% excise tax on tax-exempt organizations of remuneration payments in excess of \$1 million and any excess parachute payments paid to a covered employee (includes payments from related organizations).

Covered employees: For tax-exempt organizations include employees (current or former) compensation as one of the five highest employees (does not specify officers) in the current tax year or preceding tax year.

**For publicly traded corporations, covered employee includes principal executive officer, principal financial officer, and the three other highest paid officers.*

Remuneration payments: All cash and other than cash payments, except for payment to any designated Roth contribution or other excludable wages from gross income Form W-2, Box 1. Payments are treated as paid when there is no substantial risk of forfeiture of the rights to such remuneration.

Exception for medical service = does not include portion of remuneration paid for licensed medical professional (including veterinarian) which is for the performance of medical or veterinary services by such professional.

Excess parachute payment: Amount paid to a covered employee upon the employee’s separation from employment in an amount with a present value that exceeds 3 times the employee’s base amount, except payments under qualified plans, payments under or to an annuity contract described in Section 403(b) or 457(b), or to a licensed medical professional (including a veterinarian) to the extent payment is for performance of medical or veterinary services, or to an individual who is not a highly compensated employee.

Exceptions Repealed*: For publicly traded corporations, amounts paid or accrued to a covered employee for commissions and performance-based compensation is repealed. It will be included in remuneration payments.

Compensation

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Fringe Benefit Expenses Limited

Effective on amounts paid or incurred after December 31, 2017

See UBI - Tax on fringe benefits

Employers can offer fringe benefits, such as qualified transportation, free from income tax at both the employer and employee level.

Housing and meals provided for the convenience of the employer on the business premises of the employer are excluded from the employee’s gross income.

50% of expenses related to meals and entertainment are deductible for the employer.

Parking and Mass Transit Expenses: Benefits for employees for parking and mass transit will continue to be excluded from employee income; however, employers can no longer deduct these as business expenses.

Entertainment Expenses: Employers can no longer deduct entertainment expense as business expenses.

See UBI - Tax on Fringe Benefits

Business Meal Expenses: Employers will continue to be allowed 50% of business meals as business expenses, but will now need to limit in-house cafeteria and “on the premises” meal expenses to the same limitation (50%)

After Dec 31, 2025, Employer will no longer be able to deduct meals provided for the convenience of the employer on the employer’s business premises or provided on or near the employer’s business premises through an employer-operated facility.

Transportation expenses: No business deduction is allowed for employees commuting between the employee’s home and workplace except for the safety of the employee.

See UBI - Tax on Fringe Benefits

Compensation

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Employee Achievement Awards Defined

Effective on amounts paid or incurred after December 31, 2017

Employee achievement awards are excludable to the extent the employer can deduct the cost of the award - generally limited to \$400 for any one employee, or \$1,600 for a qualified plan award (item of tangible personal property given to an employee in recognition of either length of service or safety achievement and presented as part of a meaningful presentation.)

Definition of Tangible personal property was provided and does not include cash, cash equivalents, gift cards, gift coupons, gift certificates, vacations, meals, lodging, tickets for theatre or sporting events, stock, bonds or similar items.

Form W-2 Additional Reporting

Effective for options exercised after December 31, 2017

Employer must furnish to each employee on a Form W-2 amounts of the employee’s wage and the amount of tax withheld on those wages.

Reporting on W-2: The employer will need to report includible gross income and deferrals related to new code section 83(i) which allows qualified employees to elect to defer recognition of income attributable to qualified stock received on exercise of an option or settlement of a restricted stock unit.

Unrelated Business Income

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Unrelated Business Income Activity

Effective for tax years beginning after December 31, 2017

Prior regulations allowed for aggregating all trade or business activities (even unrelated trades or businesses) when computing tax liability which allowed for use of one business’ deductions to offset another unrelated trade or business’ activities to determine unrelated business taxable income.

New UBTI Calculation Method: Losses from one unrelated trade or business may not be used to offset income derived from another unrelated trade or business. Gains and losses (including NOLs) have to be calculated and applied separately.

NOL Exception: Net operating losses arising in a tax year beginning before Jan 1, 2018 that is carried forward does not have to be applied separately.

Corporate Tax Rate

Effective for tax years beginning after December 31, 2017

Rates were graduated as follows:

15% for taxable income \$0-\$50,000

25% for taxable income \$50,001-\$75,000

34% for taxable income \$75,001-\$10,000,000

35% for taxable income over \$10 million

Flat Rate: Corporate tax rate changed to flat 21% rate.

Unrelated Business Income

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Employer-Paid Family and Medical Leave Credit

Effective on wages paid in tax years beginning after December 31, 2017 but not beginning after December 31, 2019.
(Years beginning January 1, 2018 - December 30, 2019)

No credit is provided to employers for compensation paid to employee while on leave.

New Credit: Employers can claim a new general business credit equal to 12.5% of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave (FMLA) if the rate of payment is 50% of the wages normally paid to an employee.

The credit is increased by .25 percentage points but not above 25% for each percentage point by which the rate of payment exceeds 50%.

To qualify for the credit, all qualifying full-time employees have to be given at least two weeks of annual paid FMLA (all less-than-full-time qualifying employees have to be given a commensurate amount of leave on a pro rata basis).

Unrelated Business Income

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Tax on Fringe Benefits

Effective on amounts paid or incurred after December 31, 2017

Employers can offer fringe benefits, such as on premises athletic facility and qualified transportation, free from income tax at both the employer and employee level.

Taxable Fringe Benefits: Include in unrelated business taxable income (UBTI) amounts which (1) a deduction is not allowed under Code Section 274, and (2) which is paid by the organization for any qualified transportation fringe benefit, any parking facility used in connection with qualified parking, or any on-premises athletic facility

UBTI excludes amounts listed above to the extent it is paid or incurred in direct connection with an unrelated trade or business regularly carried on.

Code Section 274 does not allow deductions for expenditures for goods, services, and facilities in connection with entertainment, amusement or recreation.

Qualified transportation fringe under Code Section 132(f) includes: commuter transportation, transit pass, qualified parking, and qualified bicycle commuting reimbursement.

On premises athletic facility is any gym or other athletic facility such as a swimming pool, tennis court or golf course which is located on the premises; operated by the employer; and, used mainly by employee’s and employee’s spouses and dependent children.

Net operating loss (NOL) Deduction

Effective for losses beginning after December 31, 2017

Taxpayers were allowed to carry back a net operating loss (NOL) in a tax year for two years, and carry forward the NOL for 20 years to offset taxable income.

- Repeals all carrybacks (Special exception for farming)
- Carry forward NOLs indefinitely
- NOL deduction is limited to 80% of taxable income
- NOL’s prior to January 1, 2018 can be applied to total UBIT; does not have to be applied separately.

Investments

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Colleges and Universities

Effective for tax years beginning after December 31, 2017

Private colleges and universities were generally not subject to private foundation excise tax on net investment income, but treated as public charities.

New Excise Tax: 1.4% excise tax imposed on net investment income for private colleges and universities (including related organization’s assets) with at least 500 tuition-paying students (50% or more in the U.S.) and with non-charitable assets of at least \$500,000 per student.

Student counted: Number of students is based on the daily average of full-time equivalent students.

Full-time equivalent: Full-time and part-time students on an equivalent basis.

Net investment income: Gross investment income (*included related organizations investment income*) minus expenses to produce the income but disallowing the use of accelerated depreciation methods or percentage depletion.

Political Activity

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Lobbying Expenses Deduction

Effective on amounts paid or incurred after December 22, 2017

Businesses were not allowed to deduct lobbying and political expenditures with respect to legislation and candidates for office.

Allowable Business Deduction: Business deductions for lobbying expenses with respect to legislation before local government bodies is allowed.

Charitable Contributions

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Charitable Contributions

Effective for tax years beginning after December 31, 2017 and before January 1, 2026

Itemized deduction allowed for taxpayer for charitable contributions made by the last day of the tax year for cash limited to 50% of the donation.

Payments to college or universities allowable as a charitable deduction, but provides for the right to buy seating tickets only 80% of the payment was considered a donation.

60% Limitation: Increased charitable deduction from 50% to 60% limitation for cash contributions to public charities and certain private foundations.

80% Rule Repealed: Payments to charities will not be considered charitable contributions if there is a right to purchase athletic event tickets.

Bonds

Pre-New Tax Law

“Tax Cuts and Jobs Act”

Tax-Exempt Advance Refunding Bonds Repealed

Effective for bonds issued after December 31, 2017

Interest on any state or local bond including qualified private activity bonds and interest on any bond issued to advance refund a tax-exempt bond is excluded from gross income.

Current refunding bond: A refunded bond is redeemed within 90 days of issuance.

Advanced refunding bond: A refunded bond is issued more than 90 days before the redemption. (Allowing for two sets of federally subsidized debt associated with the same activity.)

Repeals advance refunding bonds: Interest on advance refunding bonds to refund another bond will be included in gross income (no income-tax exemption for interest).

Current and Advanced refunding definitions stay the same. Current Refunding bonds continue to be tax-exempt.

Tax-Credit Bonds Repealed

Effective for bonds issued after December 31, 2017

Tax-credit bonds provided to investors/ bond holders a credit for a prescribed portion of interest cost which reduced regular income taxes and alternative minimum tax liability which included issues of:

- Qualified forestry conservation bonds
- New clean renewable energy bonds
- Qualified energy conservation bonds
- Qualified zone academy bonds
- Qualified school construction bonds

Repealed prospectively: Authority to issue tax-credit bonds and direct-pay bonds.

No new tax-credit bonds can be issued.