



Tax Cuts and Jobs Act

The new proposed "Tax Cuts and Jobs Act" (H.R. 1) (the "Act") could have a significant impact on churches and other religious organizations. Should the bill become law, there are likely to be significant changes made to it, and we will keep you apprised of those as developments unfold.

Below is a brief summary of the provisions of the Act most directly affecting religious organizations:

- **Removal of Certain Restrictions on Political Statements By Churches:** Current law forbids churches, like most other tax-exempt organizations, from making political statements or supporting particular political candidates. The Act would provide that a church, an integrated auxiliary of a church, or a convention or association of churches would not risk its tax exempt status solely because of the content of any sermon, teaching, or other presentation made during religious services or gatherings, as long as the preparation and presentation of that political content is (1) in the ordinary course of the organization's regular and customary tax-exempt activities and (2) results in the organization incurring not more than de minimis incremental expenses.
 - This change would not generally allow churches, auxiliaries, or conventions to become involved in political activities. Political activities outside the context of statements made as part of religious services and gatherings would still be precluded, and churches still would not be allowed to make political donations or devote financial resources to making political statements.
 - Religious organizations that are not churches, integrated auxiliaries, or conventions or associations of churches would remain subject to all of the current prohibitions on political activity.
- **Increased Taxation of Tax-Exempt Organizations for Certain Fringe Expenses for Employees:** The value of certain fringe benefits to employees of tax-exempt organizations (including religious organizations), such as certain transportation and parking benefits and use of on-premises athletic facilities, would be treated as unrelated business taxable income and subject to tax.
 - This rule would apply to expenses that would not be deductible by for-profit corporations under Section 264 of the Code, and is intended to put for-profit and tax-exempt organizations on equal footing by requiring tax-exempt organizations to pay a tax (equal to the effect of a deduction denied to for-profit organizations) whenever they provide such benefits.





- Because the Act separately would limit the ability of for-profit companies to deduct certain fringe benefits that historically may have been deductible (in particular certain entertainment, amusement, and recreation expenses), religious organizations would need to review their fringe benefits carefully to ensure that they can substantiate the extent to which such benefits would be deductible under the newer, more restrictive rules of Section 264 of the Code.
- **Limitation on Income Exclusion for Employer-Provided Housing:** Employees of tax-exempt organizations, including religious organizations, would generally be required to treat as taxable income the value of housing provided in excess of \$50,000 (\$25,000 for married individuals filing separately). The excludable amount would phase out for highly compensated individuals.
- **Elimination of Employer-Provided Child Care Credit:** Like all employers, religious organizations would no longer be able to take a credit for child care services provided to employees.
- **Elimination of Work Opportunity Tax Credit:** Religious organizations would no longer receive tax credits for hiring individuals from groups that have consistently faced significant barriers to employment, including veterans.
- **Expansion of Unrelated Business Income Tax to Certain Research Income:** The Act could expand taxation of income from research by certain tax-exempt organizations (including religious organizations) that is not made available to the general public.
- **Consolidation of Certain Non-Qualified Deferred Compensation Rules:** The Act would consolidate the rules applicable to certain nonqualified deferred compensation plans, including some plans offered by tax-exempt organizations, under new Section 409B. Compensation from 409B plans would be included in an employee's gross income in the first taxable year in which there is no substantial risk of forfeiture.
- **Elimination of Income Exclusion for Private Activity Bonds and Elimination of Credits for Tax Credit Bonds:** The Act would eliminate the exclusion from income derived from any private activity bond, whether or not the bond would otherwise have qualified as an exempt facility bond, qualified small issue bond, qualified student loan bond, qualified redevelopment bond, or qualified 501(c)(3) bond under current rules. It would also eliminate tax preferences for renewable energy bonds, energy conservation bonds, forestry conservation bonds, zone academy bonds, school construction bonds, and Build America Bonds.





- **Elimination of Certain Community Development and Rehabilitation Tax Credits:** The Act would eliminate the New Market Tax Credit, as well as the historic rehabilitation tax credit.
- **Expanded Donor-Advised Fund Reporting:** Organizations that sponsor donor-advised funds (which may include religious organizations) would have to disclose on their annual returns the average amount of grants made from their donor advised funds, as well as their policies on frequency and minimum levels of distributions from those funds.
- **Mileage Rates for Charitable Automobile Use:** The Act would replace the current standard mileage rate of 14 cents per mile for charitable use of an automobile with a more flexible permitted rate.
- **Changes to Personal Income Tax Rates and Deductions:**
 - The Act would increase the 50% limitation for cash contributions to public charities, including churches and other religious institutions, to 60% (retaining the ability to carry forward unused deductions for up to 5 years). This increase may encourage high-income donors to give more.
 - On the other hand, lower income donors may receive less of a benefit due to increases in the standard deduction (from \$6,350 to \$12,000 for individuals and \$12,700 to \$24,000 for married couples), which may effectively eliminate the tax benefit of many charitable contributions.
- **Estate and GST Tax Repeal:** The Act would double the pre-indexed estate tax exemption amount to \$10 million starting in 2018, and would repeal the estate and GST taxes entirely by 2024.
 - Repeal would eliminate the estate tax incentives for legacy gifts. However, donors would still have strong incentives to make legacy gifts from certain retirement plans or other assets that would be subject to income tax upon or after death.

Hemenway & Barnes will continue to monitor the Tax Cuts and Jobs Act and its potential effects on religious organizations.

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