



# Tax Cuts and Jobs Act Comparison for Colleges and Universities

## House Bill as Passed on November 16, 2017 Senate Bill as Passed on December 2, 2017

On November 13, 2017, we provided a comparison of the proposed House bill and the proposed Senate bill (as outlined in the Description of the Chairman's Mark of that bill dated November 9, 2017). The House passed its version of the bill on November 16, 2017. In the early morning hours of Saturday, December 2, 2017, the Senate passed a modified version of its bill.

Below is an updated comparison of the two bills in the forms in which they passed the House and Senate, respectively. Changes to the original Senate bill are in **bold**.

### Provisions in Both the House Bill and the Senate Bill

- **Excise tax on private university endowments:** Both bills would penalize private colleges and universities with large endowments by imposing a 1.4% excise tax on net investment income. Although state-run colleges and universities are exempt from the tax, private colleges and universities with at least 500 students (full-time equivalent) will have to pay the tax if their endowment assets equal **\$500,000 or more per student** (in the amended Senate bill), or \$250,000 or more per student (in the House bill). If a college or university meets this test, it will pay the tax on all of the net investment income from its endowment.
  - For example, a college with 5,000 full-time equivalent students would be subject to the tax if it has an endowment of \$1.25 billion or more under the House bill, or \$2.5 billion or more under the amended Senate bill.
  - Both bills would treat endowments held by certain controlled, controlling, supported, and supporting organizations as part of the college or university's endowment for purposes of determining whether the threshold is met and how much tax is due.
  - **The Senate bill (but not the House bill) would exempt private colleges and universities that do not participate in federal financial aid programs.**
- **Excise Tax on Executive Compensation for Exempt Organizations:** Both bills would impose a new 20% excise tax on compensation (excluding designated Roth contributions) in excess of \$1,000,000, and on all excess parachute





payments, paid to an employee of a tax-exempt organization who is (or was for certain previous years) one of the organization's five highest compensated employees.

- **Deductions for College Athletic Event Seating Rights:** Under both bills, contributions to funds which allow contributors the right to purchase tickets at athletic events would no longer be tax deductible. The current rules allow donors to deduct 80% of such contributions.
- **Changes to Personal Income Tax Rates and Deductions:**
  - Both the Senate bill and the House bill would increase the 50% limitation for cash contributions to public charities, including colleges and universities, to 60% (through 2025 only, in the amended Senate bill).
  - On the other hand, under both bills lower-income donors may receive less of a benefit due to increases in the standard deduction, which may effectively eliminate the tax benefit of many charitable contributions.
  - Both bills would eliminate various income tax deductions currently available for certain expenses incurred by employees.
- **Estate and GST Tax Changes:** Like the House bill, the Senate bill would double the base estate tax exemption amount (before accounting for inflation adjustments) to \$10 million starting in 2018, **although that base exemption amount would revert back to \$5 million after 2025.** The House bill would likewise double the base estate tax exemption amount starting in 2018, but would repeal the estate tax entirely by 2024.
- **Exclusion from Gross Income of Student Loans Discharged on Account of Death or Disability:** Both bills now include the provision by which discharge of student debt on death or total disability would no longer be treated as taxable income, **although the Senate bill would allow this exclusion only through 2025.**
- **Limited Rollovers of 529 Assets to ABLE accounts:** Under both bills, assets in 529 plans may be rolled over into ABLE accounts, up to certain limits (**this was originally in the House bill only, but was added to the Senate bill prior to passage on December 2).**
- **Elimination of Income Exclusion for Advance Refunding Bonds:** Both bills would eliminate the income tax exclusion for income from bonds issued to provide advance refunds on other bonds. As discussed below, the House bill





would go much further by broadly eliminating tax preferences for private activity bonds.

#### Provisions in the Senate Bill Only

- **Restrictions on Deductions Against Unrelated Business Taxable Income:** The Senate bill would no longer allow a deduction for one unrelated trade or business to offset income generated by another unrelated trade or business. This change could significantly increase the aggregate amount of unrelated business income tax payable by colleges and universities.
- **Provisions Removed from Senate Bill:** Several provisions affecting colleges and universities were in the initial draft of the Senate bill but were removed before the Senate passed the bill on December 2.
  - Changes to “Intermediate Sanctions” rules for excess business transactions (including a new excise tax on tax-exempt organizations for such transactions).
  - Consolidation of certain non-qualified deferred compensation rules (requiring income in nonqualified deferred compensation plans to be included in an employee’s gross income in the first taxable year in which there is no substantial risk of forfeiture).
  - Treatment of royalty income from license of the name and logo of a tax-exempt organization as unrelated business taxable income.
  - Increased taxation of tax-exempt organizations for certain fringe expenses for employees (this provision is still in the House bill, as described below, but no longer appears to be a part of the Senate bill).

#### Provisions in the House Bill Only

- **Removal of Certain Restrictions on Political Statements By 501(c)(3) Organizations:** Current law forbids 501(c)(3) organizations from making political statements or supporting particular political candidates. The House bill would provide that a 501(c)(3) organization would not risk its tax-exempt status solely because of the political nature of any statement made by the organization, 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.
  - The original House bill limited this provision to expressions of a political nature during religious observations by churches, their integrated





auxiliaries, and conventions of churches. By a subsequent amendment, however, this provision was extended more broadly to all 501(c)(3) organizations, which would include colleges and universities.

- As amended, this provision would not apply until 2019, and would sunset after 2023.
- **Increased Taxation of Tax-Exempt Organizations for Certain Fringe Expenses for Employees:** Under the House bill, the value of certain fringe benefits to employees of tax-exempt organizations (including colleges and universities) 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.
  - This provision was originally in both the House and Senate bills, but does not appear in the version of the bill passed by the Senate on December 2.
  - Because both the House bill and the Senate bill would (in different ways) limit the ability of for-profit companies to deduct certain fringe benefits that historically may have been deductible, if this provision is included in the final Act colleges and universities 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:** Under the House bill, employees of colleges and universities would be required to treat as taxable income the value of campus lodging or other 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 Tuition Reduction Benefits and Certain Deductions for Educational Expenses:**
  - The House bill would remove the exclusion from gross income of tuition reductions or remission. Students and others (including children of college and university employees) who receive tuition reductions would be required to treat those reductions as taxable income.





- The House bill would also eliminate the income tax deduction for qualified tuition and related expenses, the exclusion from income for benefits from employer education assistance programs, and the exclusion of interest on U.S. savings bonds used to pay higher education expenses.
- **Elimination of Tax Credits:** The House bill would repeal the Lifetime Learning Credit and the Hope Scholarship Credit, although it would temporarily extend the American Opportunity Tax Credit.
- **Elimination of Tax Preferences for Employer-Provided Child Care Benefits:** Like all employers, colleges and universities would no longer be able to take a credit for child care services provided to employees. In addition, employees would be required to treat as income amounts paid by employers for dependent care assistance programs (although exclusion from income of such payments would continue through 2022).
- **Elimination of Work Opportunity Tax Credit:** Colleges and universities (like all employers) 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:** While the House bill would retain the exclusion from taxation of income derived from research by a college, university, or hospital, it could expand taxation of income from research of certain affiliated organizations that do not make all of their research available to the general public.
- **Elimination of Income Exclusion for Private Activity Bonds and Elimination of Credits for Tax Credit Bonds:** The House bill 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. 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 House bill would eliminate the New Market Tax Credit, as well as the historic rehabilitation tax credit.
- **Expanded Donor-Advised Fund Reporting:** Under the House bill, organizations that sponsor donor-advised funds (which may include colleges, universities, or their affiliates) 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.

- **Expanded Requirements for Private Foundations Operating Art Museums:** Although art museums owned by public charities would be unaffected, an art museum that reports as a private operating foundation would have to ensure that it is open to the public for at least 1,000 hours per year to avoid the five percent minimum payout requirement applicable to private non-operating foundations.
- **Mileage Rates for Charitable Automobile Use:** The House bill would replace the current standard mileage rate of 14 cents per mile for charitable use of an automobile with a more flexible permitted rate.
- **Expanded Uses for 529 Plans:** Under the House bill, distributions from 529 plans would no longer be limited to use for higher education. Rather, under the Act 529 plans may make distributions for certain elementary and secondary school expenses as well as for certain apprenticeship programs.

The House may choose to adopt the Senate's bill in its entirety, or both chambers may seek to pass a consolidated version of the Tax Cuts and Jobs Act. Hemenway & Barnes will continue to monitor the Act and its potential effect on its college and university clients.

### Contact Us

For more information, please contact a member of our Nonprofit Group, or the author of this advisory:

Brad Bedingfield  
617.557.9704  
bbedingfield@hembar.com





### **Nonprofit Group**

Michael J. Puzo  
Stephen W. Kidder  
Arthur B. Page  
Joan Garrity Flynn  
Nancy B. Gardiner  
Teresa A. Belmonte  
Joseph L. Bierwirth  
Brian C. Broderick  
Charles Fayerweather  
Thomas L. Guidi  
Nancy E. Dempze  
Dennis R. Delaney  
John J. Siciliano  
Charles R. Platt  
Ryan P. McManus  
Brad Bedingfield  
M. Patrick Moore

### *Of Counsel*

Michael B. Elefante  
Susan Hughes Banning  
Frederic J. Marx

