



Tax Cuts and Jobs Act Colleges and Universities

House-Senate Conference Committee Bill as Released on December 15, 2017

On Friday, December 15, 2017, the House-Senate conference committee released its proposed combined Tax Cuts and Jobs Act. It is anticipated that Congress will seek to pass this version of the Act in the coming days.

The combined bill includes provisions taken from each of the prior House and Senate bills. Below is a summary of the key provisions of the combined bill that may affect colleges and universities, as well as a list of some provisions of note that appeared in either or both of the House and Senate bills but are not a part of the combined bill.

- **Excise tax on private college and university endowments:** The combined bill will impose a 1.4% excise tax on net investment income from endowments (including all assets not used directly in carrying on exempt purposes) held by certain private colleges and universities.
 - Although state-run colleges and universities are exempt from the tax, private colleges and universities with at least 500 tuition-paying students (more than 50% of whom are located in the United States) will have to pay the tax if their endowment assets equal \$500,000 or more per student (including all students for purposes of calculating this \$500,000 threshold, not just tuition-paying students, and taking part-time students into account on a full-time student equivalent basis). If a college or university meets this test, it will pay the tax on all of the net investment income from its endowments, not just on the excess over this threshold.
 - Endowment assets held by controlled and supporting organizations will be treated as part of the college or university's endowment for purposes of determining whether the threshold is met and how much tax is due. Endowment assets intended or available for the use or benefit of the college or university that are held by certain other related organizations (including organizations that control the college or university and organizations under common control) will also be included.
- **Excise Tax on Executive Compensation for Exempt Organizations:** The combined bill will impose a new 21% excise tax on tax-exempt organizations (including colleges and universities) for 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 years after 2016) one of the organization's five highest compensated employees.
- Compensation will be treated as paid (whether or not actually paid) whenever there is no substantial risk of forfeiture, and includes compensation from certain controlling, controlled, supporting and supported organizations.
 - Compensation paid to licensed medical professionals for performance of medical services is not subject to this tax.
 - The tax on parachute payments will not apply to employees who are not treated as "highly compensated employees" under the rules of Section 414(q) of the Code.
 - This provision is intended generally to put tax-exempt organizations on equal footing with taxable corporations for whom such excess compensation is non-deductible.
- **Restrictions on Deductions Against Unrelated Business Taxable Income:** The combined bill will 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 tax-exempt organizations.
 - **Increased Taxation of Tax-Exempt Organizations for Certain Fringe Expenses for Employees:** Under the combined bill, expenses paid to provide certain commuting, transportation and parking benefits to employees of tax-exempt organizations (including colleges and universities), as well as expenses connected with provision to employees of access to on-premises athletic facilities, will be treated as unrelated business taxable income to the employer.
 - In a related provision, the combined bill will limit the deductibility to for-profit companies of expenses paid to provide their employees with these (and certain other) benefits. The new rule for tax-exempt organizations is intended to put for-profit and tax-exempt organizations generally 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.
 - **Deductions for College Athletic Event Seating Rights:** Contributions to funds which allow contributors the right to purchase tickets at athletic events will no longer be tax deductible. The current rules allow donors to deduct 80% of such contributions.





- **Elimination of Credits for Tax Credit Bonds and Income Exclusion for Advance Refunding Bonds:** The combined bill would eliminate tax preferences for renewable energy bonds, energy conservation bonds, zone academy bonds and school construction bonds. It would also eliminate the income tax exclusion for income from bonds issued to provide advance refunds on other bonds.
- **Limitation of Rehabilitation Credit:** The combined bill would reduce or eliminate certain credits currently afforded for rehabilitation of historic buildings.
- **Expanded Uses for 529 Plans:** Under the combined bill, distributions from 529 plans will no longer be limited exclusively to use for higher education. Rather, 529 plans may (in the aggregate) distribute up to \$10,000 per student each year for tuition paid to public, private or religious elementary or secondary school, or for certain homeschooling expenses.
- **Exclusion from Gross Income of Student Loans Discharged on Account of Death or Disability:** Under the combined bill, discharge of student debt on death or total disability will no longer be treated as taxable income, although only through 2025.
- **Changes to Personal Income Tax Rates and Deductions:**
 - The combined bill will increase the 50% limitation for cash contributions to public charities, including colleges and universities, to 60% (through 2025 only).
 - On the other hand, under both bills lower-income donors may receive less of a benefit for charitable contributions due to increases in the standard deduction (to \$12,000, or \$24,000 for married taxpayers filing jointly). This increase likewise expires after 2025.
 - The combined bill will suspend through 2025 all miscellaneous itemized deductions that are subject to the two-percent floor under present law, including many deductions currently of benefit to employees of colleges and universities, such as deductions for dues to professional societies, research expenses of college professors, subscriptions to professional journals and trade magazines, work-related education expenses, and educator expenses (although the current \$250 above-the-line deduction for certain educator expenses would remain intact).
 - The combined bill will also suspend through 2025 the so-called Pease limitations on itemized deductions for higher-income taxpayers.





- **Estate and GST Tax Changes:** The combined bill will 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.

All of the provisions described above will have effect for tax years beginning after December 31, 2017.

Key Provisions No Longer in the Combined Bill

The following provisions of particular note were included in either or both of the House and Senate bills, but are not included in the combined bill:

- Removal of restrictions on political statements by 501(c)(3) entities (i.e., repeal of the "Johnson Amendment")
- Elimination of income exclusion for private activity bonds
- Expansion of unrelated business income tax to certain research income
- Repeal of deduction for student loan interest
- Repeal of deduction for qualified tuition and related expenses
- Repeal of exclusion for qualified tuition reductions
- Repeal of exclusion for interest on US savings bonds used for higher education
- Repeal of exclusion for employer-sponsored education assistance programs
- Limitation on exclusion for employer-provided housing
- Repeal of employer-provided child care credit
- Repeal of work opportunity tax credit
- Expanded donor-advised fund reporting
- Expanded requirements for private foundations operating art museums
- Changes to standard mileage rates for charitable automobile use

Hemenway & Barnes will continue to monitor the Act and its potential effect on its college and university clients.

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