

Comparison of Key Provisions in House/Senate Tax Reform Bills

November 12, 2017

Issue	House Tax Reform Bill (H.R. 1) ¹	Senate Tax Reform Bill ²	Impact on Charitable Nonprofits
Johnson Amendment (Nonprofit Nonpartisanship)	<ul style="list-style-type: none"> • Would politicize the 501(c)(3) community by allowing charitable nonprofits, houses of worship, and foundations to engage in partisan electioneering for or against candidates if such action is “in the ordinary course of the organization’s regular and customary activities in carrying out its exempt purpose,” and it incurs no more than “de minimis” incremental expenses in doing so. • The provision would be effective from 2019 through 2023. • The nonpartisan Joint Committee on Taxation (JCT) estimates that the provision would cost the federal government \$2.1 billion in lost revenue over six years because donors would divert their currently nondeductible political donations to political churches and charitable nonprofits in order to claim charitable tax deductions. 	<ul style="list-style-type: none"> • Preserves nonprofit nonpartisanship by leaving current law intact. 	<ul style="list-style-type: none"> • The language in H.R. 1 would weaken the existing law which for 60+ years has protected charitable nonprofits, houses of worship, and foundations so they can work in communities free from partisan pressures, divisions, and interference. • Over 5,500 organizations nationwide, along with thousands of religious leaders, faith organizations, law enforcement, and the vast majority of the general public, oppose weakening the Johnson Amendment. • Go to www.GiveVoice.org for more information.
Standard Deduction and Incentives for Charitable Giving	<ul style="list-style-type: none"> • Would increase the standard deduction for individuals (to \$12,000), couples (to \$24,000), and heads of households (to \$18,000), resulting in a drop in the number of those who itemize from 30% of taxpayers to only 5% of taxpayers. • Would raise the limit on cash donations for those who itemize deductions to 60% of adjusted gross income (AGI), up from the current 50% of AGI. • Would repeal the “Pease limitation” on itemized deductions that limits deductions for upper-income individuals. 	<ul style="list-style-type: none"> • Would increase the standard deduction for individuals (to \$12,000), couples (to \$24,000), and heads of households (to \$18,000), resulting in a drop in the number of those who itemize from 30% of taxpayers to only 5% of taxpayers. • Would raise the limit on cash donations for those who itemize deductions to 60% of adjusted gross income (AGI), up from the current 50% of AGI. • Would repeal the “Pease limitation” on itemized deductions that limits deductions for upper-income individuals. 	<ul style="list-style-type: none"> • Under the House and Senate bills, the charitable deduction would be out of reach to 95% of taxpayers. The Joint Committee on Taxation (JCT) estimates that itemized deductions will drop by \$95 billion in 2018. Not all of this would disappear; the change is estimated to shrink giving to the work of charitable nonprofits by \$13 billion or more each year. • While the loosening of the AGI limitations for charitable deductions and the eliminating limits on itemized deductions for upper income taxpayers would be helpful, the impact would be limited to the few taxpayers (5%) who would continue to itemize deductions.

¹ House Ways and Means Chairman’s substitute, approved by the House Ways and Means Committee on 11/9/2017. Awaiting action by the full House.

² [Senate Finance Committee Chairman’s mark](#) summary released on 11/9/2017. Awaiting action by the full Senate Finance Committee.

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Universal Deduction for Charitable Contributions (also called non-itemizer or above-the-line deduction)	<ul style="list-style-type: none"> No provision to extend charitable giving incentives to non-itemizers was included in the bill. 	<ul style="list-style-type: none"> No provision to extend charitable giving incentives to non-itemizers has yet been included in the bill. 	<ul style="list-style-type: none"> Congress must correct the adverse unintended consequences on giving caused by increasing the standard deduction by extending a charitable giving incentive to all taxpayers. One such proposal is the Universal Charitable Giving Act (H.R. 3988) which would provide allow non-itemizers to deduct up to \$4,000/individual and \$8,000/couple each year.
State and Local Tax (SALT) Deductions	<ul style="list-style-type: none"> Would repeal the deductibility of state and local income taxes and would cap property tax deductions at \$10,000. 	<ul style="list-style-type: none"> Would repeal all state and local income tax deductions, as well as end all property tax deductions. 	<ul style="list-style-type: none"> Would pressure state and local governments to enact tax and spending cuts, leading to elimination of programs serving people in need and increasing burdens on charitable nonprofits and foundations to fill the gaps.
Estate Tax	<ul style="list-style-type: none"> Would double the exemption from the estate tax (to about \$11 million for individuals and about \$22 million for couples) for six years, and fully repeal the estate tax after 2024. The Joint Committee on Taxation estimates that the House change would cost the Treasury an estimated \$151 billion over 10 years. 	<ul style="list-style-type: none"> Would maintains the estate tax, but double the exemption to about \$11 million for individuals and about \$22 million for couples. The Joint Committee on Taxation estimates that the House change would cost the Treasury an estimated \$94 billion over 10 years. 	<ul style="list-style-type: none"> The estate tax is an important source of revenue for the work of charitable nonprofit as it encourages donors to address future needs in their communities through estate planning.
Private Activity Bonds	<ul style="list-style-type: none"> Would eliminate all tax-exempt private activity bonds, including qualified 501(c)(3) bonds. 	<ul style="list-style-type: none"> Makes no changes to current law. 	<ul style="list-style-type: none"> A variety of nonprofits, including schools, hospitals, museums, and affordable housing organizations, use these bonds to finance building and renovation projects. Eliminating these bonds would remove an important financing option for many 501(c)(3) nonprofits.
Unrelated Business Income Tax (UBIT)	<ul style="list-style-type: none"> Would limit the research exemption from unrelated business income tax (UBIT) to apply only to income from research that is made freely available to the public. Would require nonprofits to pay UBIT on transportation fringe benefits to employees and employee access to on-site gyms and athletic facilities. Some nonprofits with greater resources would pay a lower UBIT tax rate, since the House plan would lower the 	<ul style="list-style-type: none"> Would treat income from licensing a nonprofit's name or logo as unrelated business income that is subject to UBIT. Would treat each business activity of a nonprofit separately for UBIT purposes, which could result in more UBIT liability for some nonprofits because there would be less opportunity to offset income with similar losses. Some nonprofits with greater resources would pay a lower UBIT tax rate, since the House plan would lower the 	<ul style="list-style-type: none"> Only the first \$1,000 of unrelated business income is exempt from taxation under current law, so the proposed changes would affect many organizations of varying sizes. These changes to UBIT, particularly those in the Senate version, could result in increased taxes on nonprofits, taking revenue away from nonprofits' mission-related programs and services.

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Donor Advised Funds	<ul style="list-style-type: none"> • Would require nonprofits with donor advised funds (DAFs) to disclose annually their policies on inactive DAFs and the average amount of grants made from their DAFs. 	<ul style="list-style-type: none"> • Makes no changes to current law. 	<ul style="list-style-type: none"> • Neither bill includes new payout requirements for DAFs, which was a concern of some nonprofits and community foundations.
Private Foundation Excise Tax	<ul style="list-style-type: none"> • Would establish a streamlined private foundation excise tax of 1.4%, which is between the two current rates of 2% and 1%. 	<ul style="list-style-type: none"> • Makes no changes to current law. 	<ul style="list-style-type: none"> • The Joint Committee on Taxation estimates that this will raise about \$500 million in revenue over a decade, which means that it is a tax increase on private foundations, resulting in fewer or smaller grants to charitable nonprofits.
Nonprofit College and University Endowments	<ul style="list-style-type: none"> • Would create a new 1.4% excise tax on net investment income of nonprofit colleges and universities with assets of at least \$250,000 per full-time student and more than 500 full-time students. 	<ul style="list-style-type: none"> • Would create a new 1.4% excise tax on net investment income of nonprofit colleges and universities with assets of at least \$250,000 per full-time student and more than 500 full-time students. 	<ul style="list-style-type: none"> • The provision should be of concern to all charitable nonprofits because it represents an invasion of nonprofit independence, replacing the political will of elected officials with the fiduciary judgment of organizational trustees.
Volunteer Mileage Rate	<ul style="list-style-type: none"> • The rate that volunteers can claim for driving on behalf of nonprofits would be adjustable for inflation, rather than fixed in law at 14 cents per mile. 	<ul style="list-style-type: none"> • Makes no changes to current law. 	<ul style="list-style-type: none"> • For years, this rate has been fixed in statute at 14 cents per mile, which is far below the standard mileage rate for paid employees and the actual cost volunteers incur when they drive their vehicles on behalf of nonprofits. • Adjusting the rate for inflation could decrease the cost of volunteering at certain types of nonprofits and would prevent the further erosion of the value of the incentive over time.
Highly-Compensated Nonprofit Employees	<ul style="list-style-type: none"> • Would impose a new 20% excise tax on nonprofits that pay compensation of \$1 million or more to any of their five highest-paid employees. 	<ul style="list-style-type: none"> • Would impose a new 20% excise tax on nonprofits that pay compensation of \$1 million or more to any of their five highest-paid employees. 	<ul style="list-style-type: none"> • The excise tax is in lieu of denying tax deductions for salaries, according to JCT. The change is proposed to bring nonprofit pay rules in line with the for-profit cap on compensation.
Art Museums	<ul style="list-style-type: none"> • Would require art museums that are private operating foundations to be open to the public for at least 1,000 hours per year. 	<ul style="list-style-type: none"> • Makes no changes to current law. 	<ul style="list-style-type: none"> • The change would affect AGI restrictions on a donor’s contributions to art museum – 30% limit for foundations or the higher limit for donations to public charities.
Donor Acknowledgment Requirements	<ul style="list-style-type: none"> • Would repeal an unused provision in tax code that allows the IRS to create an optional tax return that nonprofits could file in lieu of providing donors with written acknowledgment of contributions. 	<ul style="list-style-type: none"> • Makes no changes to current law. 	<ul style="list-style-type: none"> • The House provision is a needed “cleanup” measure designed to block the IRS from requiring charities to collect and report donors’ Social Security numbers or other sensitive personal

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Intermediate Sanctions	<ul style="list-style-type: none"> Makes no changes. 	<ul style="list-style-type: none"> Excess Benefit Penalties: Would impose a 10% excise tax on nonprofits in some instances when a disqualified person (e.g. a board member or nonprofit executive) receives an excess benefit. Under current law, these penalties are only imposed on the disqualified person and/or on board members who approved the “excess benefit transaction.” Safe Harbors: Would downgrade the “rebuttable presumption of reasonableness” into “due diligence procedures” that must be followed, which may make it harder for nonprofits to confidently rely on comparability data in setting executive compensation and establishing the appropriate valuation for transactions with board members. Professional Advice: Would eliminate a provision that absolves nonprofit boards of liability for intermediate sanctions if they rely on professional advice. Would extend intermediate sanctions rules to investment advisers and athletic coaches. 	<p>information to substantiate charitable contributions.</p> <ul style="list-style-type: none"> Imposing the excise tax on the organization, rather than (or in addition to) its managers or the recipient of the excess benefit would effectively penalize the organization, which is the victim of the excess benefit transaction, as well as those who rely on the organization for services. Removing or weakening the safe harbors for determining compensation reasonableness would create confusion and increase the costs and administrative burdens of compliance for charitable nonprofits of all sizes, since comparability analyses may no longer be sufficient. Board recruitment and retention could suffer if boards can no longer rely on professional advice in determining reasonableness of compensation.

Adapted with permission from analyses prepared by the [North Carolina Center for Nonprofits](#) and the [Center for Non-Profits](#) in New Jersey.