

# Nonprofits and The Tax Bills: A Half-Time Update

11.22.17 | Linda J. Rosenthal, JD



Since the first days of January 2017, the party in control of both the White House and Congress has promised a major overhaul of the federal tax code. Until the first week of November 2017, when the House GOP leadership unveiled the “[Tax Cuts and Jobs Act](#),” (H.R.1), there was little more than informed speculation about the particulars.

## *November Action on Tax Bills*

The sheer number and scope of proposals directly or indirectly affecting the nonprofit world and charitable donors is well beyond what the rumor mill has been tossing around for the past several months.

Initial reaction to the bill from the philanthropy world has been less than favorable. David L. Thompson, Vice President of Public Policy for the National Council of Nonprofits, is one of many who pull no punches: [The Good \(?\), the Bad, and the God-awful: Nonprofit Bottom Lines on the House Tax Bill](#).

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*To pay for [proposed] tax cuts, the entire Internal Revenue Code was picked up and shaken so that only the provisions with the strongest lobbying power remained stuck to the Code unchanged. Yet it comes up \$1.5 trillion short of balance—foreshadowing enormous spending cuts for at least the next decade.*

*A careful review from the nonprofit perspective finds that the proposed tax-law changes range from bad to awful.*

The House Ways and Means Committee began the “markup” of the bill immediately and, in a shocking deviation from usual legislative practice, concluded the process within days – without public hearings or input from the minority. The marked-up version of the House bill, approved on a party-line basis, produced substantial changes to the original lower-chamber bill. A key change in this markup involved the Johnson Amendment.

The newly amended House bill came to the floor on Thursday the 16th under a “closed rule”; that is, with no amendments being allowed and representatives being allowed to vote only for or against the Ways and Means Committee version. That same day, the full House of Representatives voted on its bill, as amended in committee. The measure passed: 227-205. Thirteen Republicans and all Democrats opposed it.

Back on November 9th, Senate Republican leaders had introduced their own – different – tax package, and proceeded without delay to start and finish the markup between November 14 – 16. Once again, changes were made and approved on a strict party-line vote. According to Ralph E. DeJong, Esq. of McDermott Will & Emery LLP, the Senate Tax Overhaul Bill Slaps Tax-Exempt Organizations:

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*If you were wondering how Congress feels about the tax-exempt sector, you need look no further than the Senate Chairman’s Mark of the Tax Cuts and Jobs Act (Senate Tax Bill) released late November 9, 2017. In what can only be described as a brutal attack on the nonprofit sector, the Senate has proposed sweeping changes that would have dramatic adverse effects on tax-exempt organizations.*

## What’s Next for the Tax Bills?

Congress is in recess for Thanksgiving week. During that festive time with family, friends, and constituents, senators will mull over the final version of their bill – with the already-passed version of the House bill at the backs of their minds. A full Senate vote will be held sometime after that break.

There may be limited floor amendments and debate allowed.

Already, there are rumblings of opposition from at least a few GOP members, a precarious position for Mitch McConnell who has just 52 Republican Senators (and the vice president, in case of a tie).

The prospect of a Democratic defector, or two or three, has reportedly evaporated.

When – and *if* – the Senate approves its legislation, the final phase of reconciling the House and Senate versions begins. It’s unclear whether the two chambers can agree on changes that will guarantee passage of the revised legislation. Sadly, it is a *numbers* – not a *policy* – game: which side can get and keep the requisite votes in both chambers.

The National Council of Nonprofits has posted a useful reference: a detailed [House-Senate Comparison Chart](#) which it will update regularly.

## Key Tax Measures for Nonprofits

“Given the great diversity of nonprofit missions, the provisions spread across hundreds of pages in the two tax reform bills would impact different nonprofits in different ways. That said, three issues would touch the work of almost all nonprofits,” according to NCN’s [Three Overarching Issues for Nonprofits](#):

### Any Change to the Johnson Amendment

Under the House bill, as introduced, churches and other religious organizations would be permitted to “[take a position](#) on behalf of, or in opposition to, a political candidate, as long as the speech was in the ordinary course of the organization’s business and its expenses were *de minimis*.” The Ways and Means Committee approved an even more dramatic change: namely, allowing *all* § 501(c)(3) organizations” to “make such statements in the ordinary course of their business if the expenses were *de minimis*. The Committee version has a curious sunset provision: it would be effective on January 1, 2019, but sunset on December 31, 2023.

The Senate bill contains no Johnson Amendment change at all, but it could be added either through floor amendments or at a conference committee.

The charitable community’s official stand has long been strong opposition to any weakening of the Johnson Amendment. But what if it happens? It may either be the end of the world as we know it or no big deal. Compare, for instance: Prof. Roger Colinvaux, [The House Tax Bill Could Be the End of Charities as We Know Them](#) with Forbes’ Peter J. Reilly, CPA, [Will Destruction Of Johnson Amendment Destroy Charity?](#)

### Losing Huge Chunks of Charitable Giving Every Year

The NCN’s second “overarching” issue with “both tax bills is the [adverse impact on giving](#) to the work of charitable nonprofits.” The trigger here is the proposed “doubling of the standard deduction. “Neither the House nor the Senate version provides any relief for the [projected loss of billions of dollars](#)

yearly in charitable giving that would result ....” from this landmark overhaul of the tax code.

### *Deep Cuts to Domestic Spending*

The third huge concern is the inevitability of “increased inequities and far-reaching suffering for the American people that would occur due to deep cuts in domestic spending as a result of the \$1.5 trillion more that the House bill would add to the deficit.” Massive cuts would “put unrealistic pressures on charitable nonprofits and foundations to fill the growing gaps.”

### *Conclusion*

Both House and Senate members return by Monday, November 27th to complete work by the (entirely artificial) deadline of the Christmas recess. If the full Senate votes down its own bill, that’s that. If the Senate bill passes, then begins the more difficult task of reconciling the Senate and House versions with enough votes to pass in each chamber.

Sadly, though, there may be little or no opportunity for any input by the charitable sector. This tax overhaul effort has proceeded at “lightning speed.” Fast may be good for pizza delivery, but not necessarily for a complete rewrite of the federal tax code.