NONPROFITS: INTERNAL REVENUE SERVICE

Tax Act Impact on Charities: New Report

05.08.19 | Linda J. Rosenthal, JD

In a number of posts in the last 18 months or so, we've reported on the fallout from the hastily adopted and not well-thought-out 2017 Tax Cuts & Jobs Act (TCJA). Most recently, in **The Fringe Benefits Tax: Hope for Repeal** (April 9, 2019), we told you about some possible (bipartisan) legislative action to repeal one of the provisions most disliked by the charitable sector: the new UBI tax on transportation fringe benefits.

Since then, there has been more movement by the Democratic members of the [Congressional] **Joint Economic Committee** (JEC). This group is a bipartisan, bicameral body founded in 1946 comprising ten members each from the Senate and the House of Representatives. It "hold hearings, performs research and advises Members of Congress." In the current Congress, the chair is Senator Mike Lee (R-UT); the vice chair is Representative Carolyn Maloney (D-NY).

There is a new **9-page report** on the impact of the tax act on charities as well as recently filed legislation to correct certain of the most disliked and burdensome aspects of the TCJA.

Democratic Report on Tax Act

The Democratic staff of the Joint Economic Committee wondered whether the 2017 tax act **helped or hurt** charities in the United States, and if it hurt, how much. They commented on this important issue in a new report: "**The Economic Impact on Charities of the 2017 Tax Act**."

"The 2017 Tax Act, passed by the Republican majority in Congress and signed into law by President Trump," these lawmakers wrote, "has had a number of unintended consequences as well as strongly negative effects that weren't clearly articulated at the time of passage."

The report highlights several key, problem provisions that have resulted in a "sector-wide blow" to the nation's nonprofits:

- The significant jump in the standard deduction that "significantly reduces the incentives for middle-income Americans to make charitable contributions";
- The new unrelated business income taxes (UBIT) on expenses for transportation fringe benefits;
- The new "siloing" provision in the UBIT rules that requires 501(c)(3)s to pay that tax on each separate trade or business;
- The omission of nonprofits from the benefits of the new family and medical leave tax credit; and
- The retention of an "obsolete" mileage rate for volunteers.

Lawmakers conclude that "if Congress does not undo these harms, many nonprofits will be forced to cut back staff and services, and some may have to cease operating."

"Some measures in the Tax Act that can be remedied at a cost that is tiny by the standards of corporate America but huge for struggling charitable organizations." One of these remedies, H.R. 1223 introduced by Rep. Clyburn, addresses the transportation subsidies. The other three remedies, for siloing, mileage and paid leave, are addressed by Rep. Maloney's bill.

Legislative Remedies for Tax Act Problems

Lawmakers announce the next steps that Democratic members propose to remedy "some of these measures in the Tax Act … at a cost that is tiny by the standards of corporate America but huge for struggling charitable organizations."

The first action addresses the transportation fringe-benefits UBIT issue. Legislation has previously been introduced by Rep. James Clyburn (D-SC): **H.R. 1223**, the Stop the Tax Hike on Charities and Places of Worship Act. [We have previously reported on this development in **The Fringe Benefits Tax: Hope for Repeal** (April 9, 2019)] These Democratic members of the JEC support H.R. 1223 that repeals the transportation-related fringe benefits tax, offsetting it with an increase in the corporate rate from 21 percent to 21.03 percent. (The corporate rate had been cut from 35 percent to 21 percent.)

In the Senate, this issue is addressed by the Lessen Impediments from Taxes for Charities Act (S. 632), introduced by Sen. James Lankford (R-OK) and co-sponsored by Sen. Chris Coons (D-DE).

To address **three of additional problems** cited in the Report – that is, siloing, mileage, and paid leave – Representative Maloney introduced the Nonprofit Relief Act of 2019 on March 29, 2019.

- **Siloing:** Proposes reversing the "siloing" of unrelated business income for nonprofit organizations; that is, eliminating the new requirement to calculate UBIT on each of a nonprofit's "separate" trades or businesses.
- **Mileage**: Proposes raising the volunteer mileage-reimbursement rate to the 58 cents per mile allowed for business travel, and also indexing it for inflation. The volunteer rate has been just 14 cents since 1998; volunteers must pay income tax on any additional reimbursement amount.

- **Paid Leave**: Proposes extending to nonprofit employers the newly created credit that partially reimburses certain business owners for wages paid to qualifying employees under the Family and Medical Leave Act (FMLA).

Conclusion

This new legislation does not include any fixes for the problems caused by the raise in the standard deduction. In the Report, a “suggested solution” is amending the tax law to include some limited amount of above-the-line deductions for charity.

There has been considerable discussion among charitable leaders as well as legislators from both parties about making this type of a change partially or fully under a new “universal charitable deduction” law.