

# ***TAX REFORM:***

## **What Does It Mean for My Nonprofit**

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**BPM CONNECTING COMMUNITIES CONFERENCE**

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### **Presented by:**

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# Tax Reform Legislation Adopted and Signed in Late 2017

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- House bill H.R. 1 “Tax Cuts and Jobs Act” passed November 16, 2017
- Senate bill approved on December 2, 2017
- After conference committee, sent back to House and Senate for final vote on December 19, 2017
- Signed into law by President Donald Trump on December 22, 2017

# Tax Reform Legislation Adopted and Signed in Late 2017 (*cont'd*)

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- Most provisions effective January 1, 2018
  - Numerous provisions sunset on December 31, 2025
- Prior omnibus tax legislation in 1986 involved 30 House hearings and 36 Senate hearings
  - This bill had no hearings

# Provisions Affecting Nonprofits

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- Charitable Giving
- Executive Compensation and Employee Benefits
- Unrelated Business Income Tax (UBIT)
- Colleges and Universities
- Tax-Exempt Bond Financing
- New Developments: Charitable Contributions instead of State and Local Tax Deduction (SALT)?
- Also, many provisions didn't make it (but could re-appear in future legislation . . .)

# Charitable Giving

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- Lowering of Individual Income Tax brackets
- Doubling of Standard Deduction
- Doubling of Estate Tax Exemption
- Increasing annual limit for gifts of cash to public charities from 50% to 60% of AGI
- Elimination of Substantiation Exception

# Executive Compensation

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- **New 21% Excise Tax on Executive Comp over \$1 million and Parachute Payments**
  - New Code Section 4960
  - Tax imposed on nonprofit, not on covered employee
  - Tax imposed on any “remuneration” paid to a “covered employee” exceeding \$1 million (whether or not reasonable)
  - Also tax on “Excess parachute payments” = severance payments to covered person that exceed 3x person’s annual compensation over the past 5 years

# Executive Compensation (*cont'd*)

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- **New 21% Excise Tax on Executive Comp over \$1 million and Parachute Payments (cont'd.)**
  - “Covered employees” = “Top 5” most highly-compensated employees (or former employees) from the tax year
  - “Remuneration” = all “wages” paid by the TEO or a related party for employment of covered person
  - **Extends beyond 501(c)(3) and 501(c)(4):** includes all exempts under Section 501(a), including 501(c)(5), business leagues (501(c)(6)), Section 115(1) governmental units, and political organizations
  - Special carve out for licensed medical professionals performing medical services



- **New UBI Tax on Transportation, Parking and On-Site Gym Fringes**
    - Deductions for these fringe benefits have now been eliminated for taxable organizations
    - To provide for equal treatment of TEOs, **TEOs must now pay UBIT on any expenses associated with:**
      - Qualified transportation fringe benefits,
      - Qualified parking, or
      - On-premises athletic facilities to employees
    - Still excluded from taxable income for employees
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# Unrelated Business Income Tax

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- **Elimination of Ability to Offset Losses Across Different Unrelated Activities:** No longer permitted to use Net Operating Losses (NOLs) from one activity to offset income from another unrelated activity
  - TEOs will have to calculate and pay tax on UBI separately for each unrelated trade or business activity
- **Single Flat UBI Rate:** UBI now taxed at the flat corporate rate of 21%

# Colleges and Universities

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- **New 1.4% excise tax on net investment income of private colleges and universities**
    - Only if institution has:
      - At least 500 tuition-paying students
      - Over 50% of students in the U.S.
      - Investment assets of at least \$500,000 per full-time student
    - Includes related organizations
  
  - **Denial of Deduction for College Athletic Booster Seats**
    - Eliminates special rule; provides no deduction allowed for any payment to colleges and universities in exchange for the right to purchase college athletic event seating / season tickets
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# Tax-Exempt Bond Financing

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- Private Activity Bonds generally preserved
  
- **Repeal of Advance Refunding Bonds:**
  - Bonds issued to advance refund another bond beyond 90 days of its call date
  
  - Eliminates opportunity to refinance at a lower rate

# Provisions That Didn't Make It in the Bill (but that could come back . . .)

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- Creating a flat private foundation excise tax on investment income set at 1.4%
- Eliminating the estate tax
- Eliminating the Johnson Amendment: would permit Section 501(c)(3) organizations to engage in “political speech”
- Eliminating the UBIT royalty exclusion for license of name and logo
- Eliminating the rebuttable presumption of reasonableness for excess benefit transactions
- Eliminating Employer-Provided Education Assistance Exclusion from Taxable Income

# Provisions That Didn't Make It in the Bill (but that could come back . . .) (*cont'd*)

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- **Numerous provisions affecting Colleges and Universities:**
    - Repealing the UBIT exemption for public pension plan income of government-sponsored entities and treating certain investment income as subject to UBIT
    - Eliminate exemption from UBIT for income derived from research performed at universities unless results of research freely made available to the public
    - Treating qualified tuition reductions as taxable income (graduate students)
    - Student loan interest deduction
    - Limitation on exclusion for employer-provided housing
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# Questions?

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# Contact Information

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