



PROVISIONS OF H.R. 1, THE TAX CUTS AND JOBS ACT  
**AND**  
PROVISIONS OF THE SENATE TAX CUTS AND JOBS ACT  
IMPACTING HIGHER EDUCATION  
(NOTE: ALL PROVISIONS WOULD BECOME EFFECTIVE  
JANUARY 1, 2018 UNLESS OTHERWISE NOTED)

**LAST UPDATED JANUARY 5, 2018 WITH  
FINAL CONFERENCE AGREEMENT**

## Education Incentives

**American Opportunity Tax Credit (AOTC).** In H.R. 1, the AOTC and Lifetime Learning Credit would be consolidated into an enhanced AOTC. The new AOTC, like the current AOTC, would provide a 100-percent tax credit for the first \$2,000 of certain higher education expenses and a 25-percent tax credit for the next \$2,000 of such expenses. Like the current AOTC, expenses covered under the credit include tuition, fees, and course materials. The AOTC would also be available for a fifth year of postsecondary education at half the rate as the first four years, with up to \$500 of such credit being refundable. The Lifetime Learning Credit would be repealed, leaving part-time students unable to claim an education tax credit.

➤ **The Senate does not offer any changes to the current AOTC.**

➤ **FINAL: No changes will be made to the current AOTC.**

**Coverdell Education Savings Accounts.** In H.R. 1, new contributions to Coverdell education savings accounts after 2017 (except rollover contributions) would be prohibited, but tax-free rollovers from Coverdell accounts into Section 529 plans would be allowed.

➤ **The Senate does not offer any changes to Coverdell Education Savings Accounts but would allow 529 savings plans to be used for public, private and religious elementary and secondary schools and home schooling.**

➤ **FINAL: No changes to Coverdell Education Savings Accounts and 529 plans would be expanded to be used for public, private and religious elementary and secondary schools.**

**Discharge of certain student loan indebtedness.** In H.R. 1, any income resulting from the discharge of student debt because of death or total disability of the student would be excluded from taxable income.

- **The Senate includes the same proposal.**
- **FINAL: Provides that student loan debt forgiveness—before December 31, 2025—on account or death or disability would be excludable from income.**

**Student Loan Interest Deduction.** In H.R. 1, the deduction would be repealed.

- **The Senate does not offer any changes to Student Loan Interest Deduction.**
- **FINAL: The Student Loan Interest Deduction remains. It is not eliminated.**

**Above-the-Line Deduction for Qualified Tuition and Related Expenses.** In H.R. 1, individuals would no longer be able to claim an above-the-line deduction for qualified tuition and related expenses incurred.

- **The Senate does not offer any changes to this deduction.**
- **FINAL: No changes will be made to the above-the-line deduction for qualified tuition and related expenses.**

**Section 117d: Qualified Tuition Reductions.** In H.R. 1, qualified tuition reductions or tuition remission provided by educational institutions to employees and their spouses or dependents would no longer be excluded from income. Currently Section 117(d)5 allows institutions to offer graduate research and teaching assistants a reduced or waived tuition without tax consequences. The House bill would eliminate Section 117(d), which includes 117(d)5.

- **The Senate does not change current law.**
- **FINAL: No changes will be made to Section 117(d).**

**Section 127: Employer-Provided Education Assistance.** In H.R. 1, employer-provided education assistance would no longer be excluded from income. The exclusion is currently limited to \$5,250 per year and applies to both graduate and undergraduate courses.

- **The Senate does not change current law.**
- **FINAL: No changes will be made to Section 127.**

## Section 529

- As noted above, the Senate would allow 529 savings plans to be used for public, private and religious elementary and secondary schools and home schooling.
- **FINAL: As noted above, 529 plans would be expanded to be used for public, private and religious elementary and secondary schools.**

## Endowments Excise Tax

**Excise tax based on investment income of private colleges and universities.** In H.R. 1, Certain private colleges and universities would be subject to a 1.4 percent excise tax on net investment income. The provision would only apply to private colleges and universities that have at least 500 students and assets (other than those used directly in carrying out the institution's educational purposes) valued at the close of the preceding tax year of at least \$250,000 per full-time student. State colleges and universities would not be subject to the provision.

The House legislation defines net investment income using the rules of [section 4940 \(c\)](#).

- **The Senate also includes an excise tax proposal.** The Senate provision would only apply to private colleges and universities that:
  - have at least 500 students and
  - assets (other than those used directly in carrying out the institution's educational purposes) valued at the close of the preceding tax year of at least \$500,000 per full-time student. The Joint Committee on Taxation summary explains that "assets used directly in carrying out the institution's exempt purpose" include, for example, classroom buildings and physical facilities used for educational activities and office equipment or other administrative assets used by employees of the institution in carrying out exempt activities, among other assets, and are excluded from the assets-per-FTE calculation.

- **FINAL: The conference agreement states:**

**The conference agreement follows the Senate amendment with the following modification. The provision modifies the definition of "applicable educational institution" to include only institutions more than 50 percent of the students of which are located in the United States. For this purpose, the number of students at a location is based on the daily average number of full-time students attending the institution, with part-time students being taken into account on a full-time student equivalent basis.**

**It is intended that the Secretary promulgate regulations to carry out the intent of the provision, including regulations that describe: (1) assets that are used directly in carrying out the educational institution's exempt purpose; (2) the computation of net investment income; and (3) assets that are intended or available for the use or benefit of the educational institution.**

**Effective date.**—The provision is effective for taxable years beginning after December 31, 2017.

## Charitable Giving

**Charitable Deduction.** The standard deduction would be increased to \$24,000 for joint filers and \$12,000 for individuals. The bill estimates that that this would reduce the number of taxpayers who itemize deductions from approximately one-third under current law to fewer than 10 percent. The Joint Committee on Taxation has estimated that H.R. 1 would spur a dramatic drop in the amount of charitable giving in the U.S. with 32 million fewer people eligible to claim the deduction.

- **The Senate proposal is similar although though the thresholds are slightly higher in the Senate version (\$12,200 for individuals/\$24,400 for couples).**
- **FINAL: The conference agreement accepts the House proposal; the provision expires after 2025.**

**Estate Tax.** The estate tax threshold would be doubled from \$5.49 million to \$10.98 million, then repealed entirely after 2024. (An amendment delayed this one year beyond what was originally proposed.)

- **The Senate proposal preserves the estate tax but doubles the exemption level. Fewer individuals will pay the tax, and they will pay less.**
- **FINAL: The conference agreement accepts the Senate proposal; the provision expires after 2025.**

**Limitations for Cash Gifts.** The 50-percent limitation for cash contributions to charitable organizations would be increased to 60 percent of adjusted gross income (AGI). The provision would retain the five-year carryover period to the extent that the contribution amount exceeds 60 percent of the donor's AGI.

- **The Senate includes the same provision.**
- **FINAL: The conference agreement accepts the Senate proposal; the provision expires after 2025.**

**College Athletic Event Seating Rights.** The special rule that provides a charitable deduction of 80 percent of the amount paid for the right to purchase tickets for athletic events would be repealed.

- **The Senate also eliminates this special rule.**
- **FINAL: The conference agreement accepts the Senate proposal.**

**Additional reporting requirements for donor-advised fund sponsoring organizations.** Donor-advised funds would be required to disclose annually their policies on inactive donor-advised funds as well as the average amount of grants made from their donor-advised funds.

➤ **The Senate does not include this provision.**

➤ **FINAL: The conference agreement does not include the House bill provision. No change to current law.**

## **Other Exempt Organizations Provisions/UBIT**

**Exclusion of research income limited to publicly available research.** Exempt organizations could exclude from UBTI only income from fundamental research where the results are freely available to the public.

➤ **The Senate draft does not include this provision.**

➤ **FINAL: The conference agreement does not include the House bill provision. No change to current law.**

**Unrelated business taxable income separately computed for each trade or business (aka “basketing”).** The Senate includes a UBIT provision that does not appear in H.R. 1:

For an organization with more than one unrelated trade or business, the proposal requires that unrelated business taxable income (UBTI) first be computed separately with respect to each trade or business and without regard to the specific deduction generally allowed under section 512(b)(12). The organization’s unrelated business taxable income for a taxable year is the sum of the amounts (not less than zero) computed for each separate unrelated trade or business, less the specific deduction allowed under section 512(b)(12). A net operating loss (NOL) deduction is allowed only with respect to a trade or business from which the loss arose. A recent modification to the Senate bill tightens the proposed NOL deduction limitation of 90% of taxable income for losses arising in tax years beginning after 2017 to 80% of taxable income for taxable years after 2022.

➤ **FINAL: The conference agreement accepts a modified version of the Senate provision as described below.**

**Net Operating Losses.** The bill passed by the House provides that prior year NOLs may offset up to 90% of current year income.

➤ **The Senate includes the same provision.**

If the Senate provision regarding separately computed UBTI is passed, it is likely that most schools will incur a tax liability in spite of overwhelming NOLs, because of both the new “basketing” provision and the new NOL carryback provision.

- **FINAL: The rule permitting NOLs to be “carried back” for two years has been repealed. The ability to carry forward NOLs under current law has not been changed. The final conference agreement limits the NOL deduction to 80 percent of taxable income (determined without regard to the deduction) for losses arising in taxable years beginning after December 31, 2017.**

**Note:** An earlier version of the Senate bill included a provision to modify the UBIT treatment of the licensing of an organization’s name or logo generally to subject royalty income derived from such a license to UBIT. The provision was not included in the legislation that the Senate approved on December 2 and it does not appear in the House bill, H.R. 1.

- **FINAL: The conference agreement does not include any provision to modify the UBIT treatment of the licensing of an organization’s name or logo generally to subject royalty income. There is no change to current law.**

**Unrelated business taxable income (UBI) increased by amount of certain fringe expenses for which deduction is disallowed.** Tax-exempt entities would be taxed on the value of providing their employees with transportation fringe benefits, and on-premises gyms and other athletic facilities, by treating the funds used to pay for such benefits as UBI, thus subjecting the values of those employee benefits to a tax equal to the corporate tax rate.

- **The Senate does not include this provision.**

- **FINAL: The conference agreement accepts the House proposal.**

**Excise tax on excess tax-exempt organization executive compensation.** A tax-exempt organization—generally including most public entities— would be subject to a 20-percent excise tax on compensation in excess of \$1 million paid to any of its five highest-paid employees for the tax year. The excise tax would apply to all remuneration paid to a covered person for services, including cash and the cash value of all remuneration (including benefits) paid in a medium other than cash, except for payments to a tax-qualified retirement plan, and amounts that are excludable from the executive’s gross income.

Once an employee qualifies as a covered person, the excise tax would apply to compensation in excess of \$1 million paid to that person as long as the organization pays them remuneration. The excise tax also would apply to excess parachute payments paid by the organization to such individuals. Under the provision, an excess parachute payment generally would be a payment contingent on the employee’s separation from employment with an aggregate present value of three times the employee’s base compensation or more.

- **The Senate includes the same provision.**

**Note:** An earlier version of the Senate bill included provisions modifying the intermediate sanctions rules. The provisions were not included in the legislation that the Senate approved on December 2.

- **FINAL: The conference agreement accepts the proposal with some modifications:**

Under the conference agreement, the tax rate is equal to corporate tax rate, which is 21 percent under the conference agreement. In addition, for purposes of the requirement to treat remuneration as paid when the rights to the remuneration are no longer subject to a substantial risk of forfeiture, the conference agreement clarifies that “substantial risk of forfeiture” is based on the definition under section 457(f)(3)(B) which applies to ineligible deferred compensation subject to section 457(f). Accordingly, the tax imposed by this provision can apply to the value of remuneration that is vested (and any increases in such value or vested remuneration) under this definition, even if it is not yet received.

The conference agreement exempts compensation paid to employees who are not highly compensated employees (within the meaning of section 414(q)) from the definition of parachute payment, and also exempts compensation attributable to medical services of certain qualified medical professionals from the definitions of remuneration and parachute payment. For purposes of determining a covered employee, remuneration paid to a licensed medical professional which is directly related to the performance of medical or veterinary services by such professional is not taken into account, whereas remuneration paid to such a professional in any other capacity is taken into account. A medical professional for this purpose includes a doctor, nurse, or veterinarian.

**Housing.** The exclusion for housing provided for the convenience of the employer and for employees of educational institutions would be limited to \$50,000 (\$25,000 for a married individual filing a joint return) and would phase out for highly compensated individuals (income of \$120,000 for 2017, as adjusted for inflation) at a rate of one dollar for every two dollars of AGI earned by the individual beyond the statutory threshold of being highly compensated. The exclusion also would be limited to one residence. The provision would be effective for tax years beginning after 2017.

- **There is no similar provision in the Senate draft.**
- **FINAL: The conference agreement does not include the House bill provision. No change to current law.**

**State Pensions.** All entities exempt from tax under section 501(a), notwithstanding the entity’s exemption under any other provision of the Code, would be subject to the UBIT rules. Previously, State and local entities (such as public pension plans) may not have been subject to the UBIT rules.

- **There is no similar provision in the Senate draft.**
- **FINAL: The conference agreement accepts the House proposal.**

## Bond Reforms

**Termination of private activity bonds (PABs).** Interest on newly issued PABs, including those for all 501(c)(3) organizations, would be included in income and thus subject to tax, effectively eliminating tax-exempt bond financing for private colleges and universities. The provisions would be effective for bonds issued after 2017. This provisions also impacts any public universities that utilize private activity bonds.

- **The Senate does not terminate private activity bonds.**
- **FINAL: The conference agreement does not include the House bill provision. No change to current law.**

**Repeal of advance refunding bonds.** Interest on advance refunding bonds (i.e., refunding bonds issued more than 90 days before the redemption of the refunded bonds) would become taxable. Interest on refunding bonds issued prior to the change would continue to be tax-exempt. The change impacts any institution, public or private, that might wish to advance refunding bonds.

- **The Senate includes the same provision and would eliminate advance refunding.**
- **FINAL: The conference agreement accepts the proposal. Advance refunding bonds are effectively eliminated beginning after December 31, 2017. Technically, the provision disallows exclusion from gross income interest on a bond issued to advance refund another bond.**

## Deductibility of State and Local Taxes

**State and Local Tax (SALT) Deduction.** The deduction for state and local income and sales taxes would be repealed, and the deduction for state and local property taxes would be capped at \$10,000.

- **The Senate includes the same provision.**
- **FINAL: The conference agreement limits itemized deduction for all state and local taxes (i.e., property taxes and income tax (or sales tax in lieu of income tax) to \$10,000.**

## The Johnson Amendment

**Removal of Johnson Amendment requirements for all nonprofit entities.** In a second amendment to H.R. 1 offered by Ways and Means Chairman, Kevin Brady, a change to Section 5201 was included that would mean that every 501(c)(3) organization – including colleges and universities—would no longer be prohibited from endorsing or opposing political candidates. This provision is generally opposed by the broader nonprofit community as bringing nonprofit entities into a political sphere they would not wish to be part of for numerous reasons.

➤ **FINAL: The Johnson Amendment remains in law. The conference agreement does not accept the House provision.**