HOUSE AND SENATE BILLS CONTAIN TAX INCREASES FOR TAX-EXEMPT ORGANIZATIONS

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To offset proposed tax cuts, the Senate and House tax reform bills seek to raise revenue from tax-exempt organizations. The House passed its version of the Tax Cuts and Jobs Act on November 16, and the Senate passed its version on December 2. The final legislative outcome is not yet known, as both the House and Senate must first agree, and then vote, on a unified bill.

Listed below are some of the major changes now under consideration which could significantly impact tax-exempt organizations. Although the bills contain some of the same provisions, the differences are expected to be worked out in conference committee. All of the provisions noted below are generally effective for tax years beginning after December 31, 2017.

Tax-exempt organizations as employers. Under both bills, tax-exempt employers would incur a 20 percent excise tax on compensation of more than $1 million paid to any of its five highest-paid employees and on any "parachute" payments that exceed three times an employee's base salary. Notably, this tax is imposed on the tax-exempt organization itself and could significantly impact large organizations.

Under the House bill, tax-exempt employers would also pay unrelated business income tax on the value of transportation fringe benefits and on-premises gyms and other athletic facilities that employees generally exclude from taxable income.

Private foundations. The House bill would subject the net investment income of all private foundations to a uniform excise tax rate of 1.4 percent. The House bill also exempts certain private foundations from the excise tax on excess business holdings if certain requirements are met.

Financing for Hospitals, Colleges, Universities, and Others. Both bills would impose income tax on interest from advance refunding bonds issued after December 31, 2017. (An advance refunding bond is issued more than 90 days before the redemption date of the bonds to be refunded.)

The House bill would also repeal private activity bonds ("PABs"). State and local governments issue PABs to finance infrastructure, such as airports, seaports, nonprofit hospitals, colleges, universities, and other schools, low-income rental housing, and water and sewer projects. PABs are also issued to finance projects for tax-exempt organizations, like hospitals, senior living facilities, and private colleges and universities. Without the tax exemption, public costs will increase and could lead to project delays and downsizing.

Also under the House bill, state and local governments and other entities could no longer issue tax credit bonds, which generate federal tax credits fully or partially in lieu of interest payments.

Unrelated Business Income Tax (UBIT). The House bill would confirm all Internal Revenue Code section 501 exempt organizations are subject to tax on unrelated business income, including those that are also exempt under section 115 (state and local governments and pension funds). The bill would also tax all income from research not made available to the public for free.

The Senate bill would prohibit tax-exempt organizations from offsetting income from one unrelated business activity with losses from another unrelated business activity.

Colleges and Universities. Both bills would prohibit individual deductions for amounts paid for the right to purchase tickets to college athletic events. Both would also impose a 1.4 percent excise tax on net investment income from endowments maintained by private colleges or universities with at least 500 students and investment assets valued at $250,000 or more (House) or $500,000 or more (Senate) per full-time student. Notably, the net investment income and assets of related organizations, including supporting organizations, must be included in determining the applicability of the excise tax.

Congress is pushing to pass a final version of the bill before the end of the year. We will continue to monitor the legislation and the impact it will have on tax-exempt organizations. Please contact one of the members of Hodgson Russ' Tax-Exempt Organizations Practice Group for more information on the proposed Tax Cuts and Jobs Act or to discuss its specific effect on your organization.