



Tax Cuts and Jobs Act: Tax-Exempt Organizations

Repeal Advanced Refunding Bonds

An advanced refunding of a municipal bond occurs when refunding proceeds are held at least 90 days before then being used to pay off previously issued bonds. These new bonds are generally issued at a lower rate. The Tax Cuts and Jobs Act (TCJA) repeals the exclusion from gross income for interest on a bond issued to advance refund another bond.

Repeal Tax Credit Bonds

A tax credit bond is a bond that offers the bond holder a federal tax credit instead of interest. The TCJA repeals the authority to issue tax credit bonds.

Excise Tax on Private Colleges and Universities

Internal Revenue Code (IRC) section 4968, imposes an excise tax of 1.4% of net investment income each taxable year on “applicable educational institutions” effective for tax years beginning after December 31, 2017.

Definition of Applicable Educational Institution:

- Eligible educational institution defined in section 254a(f)(2)
- Had at least 500 tuition-paying students during the preceding taxable year
- More than 50% of the tuition-paying students are located in the U.S.
- Is not a state college or university, and
- The aggregate fair market value (FMV) of the assets of which at the end of the preceding taxable year (other than those assets which are used directly in carrying out the institution’s exempt purpose) is at least \$500,000 per student.

Definition of Students:

- The number of students of an institution (including for purposes of determining the number of students at a particular location) shall be based on the daily average of full-time students attending such institution (with part-time students taken into account on a full-time student equivalent basis).

Assets and Net Investment Income of Related Organizations:

- Shall be treated as the assets and net investment income of the educational institution, except that
 - No such amount shall be taken into account with respect to more than one educational institution, and
 - Assets which are not intended or available for the use or benefit of the educational institution shall not be taken into account.

Definition of Related Organization:

- Controls, or is controlled, by the institution
- Controlled by one or more persons which also controls the institution, or
- Is a supported organization defined in section 509(f)(3) or 509(a)(3) during the taxable year

Definition of Net Investment Income:

- Defined under IRC section 4940
- Includes gross investment income and capital gain net income
- Deductions allowed for ordinary and necessary expenses for the production or collection of gross investment income or for the management, conservation, or maintenance of property (ex. investment management expenses)



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Separately Compute Unrelated Business Income Tax

Effective for tax years beginning after December 31, 2017, amended IRC section 512 requires tax-exempt organizations to calculate unrelated business income tax (UBIT) separately for each trade or business. This provision prohibits net losses from one unrelated business from offsetting income derived from another unrelated business. Net operating losses (NOLs) from prior years will still continue to be available to offset income, regardless of the source of the loss.

Increase Unrelated Business Taxable Income by Certain Fringe Benefits

Pursuant to IRC section 512(a)(7), unrelated business taxable income (UBTI) will now include any expenses paid or incurred by a tax-exempt organization for qualified transportation fringe benefits (as defined in section 132(f)), a parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)), or any on-premises athletic facility (as defined in 132(j)(4)(B)), provided such amounts are not deductible under section 274.

Qualified Transportation Fringe Benefits under Section 132(f):

- Transportation in a commuter highway vehicle, if such transportation is in connection with travel between the employee's residence and place of employment
- Any transit pass
- Qualified parking
- Any qualified bicycle commuting reimbursement

Definition of Qualified Parking:

- Parking that is provided to an employee on or near the business premises of the employer, or on or near a location from which the employee commutes to work for transportation in a commuter highway vehicle or by carpool.
- Such term shall not include parking on or near property used by the employee for residential purposes.

On Premise Athletic Facility – Gym or Athletic Facility:

- Located on or near the organization's premises
- Operated by the organization
- Substantially all the use is by employees, their spouses, and dependent children

Limitation on Exclusion from Employee's Gross Income:

Transportation fringe benefits (value) provided to an employee may be excluded from the employee's gross income, not to exceed \$255 (2017 amount; subject to inflation) per month.

Deductions under IRC Section 274:

- Pursuant to IRC section 274(a)(4), no deduction is allowed for qualified transportation benefits (as defined in section 132(f)) provided to employees.

Transportation benefits up to \$255 (2017 amount) per employee, per month must be picked up in UBTI on Form 990-T. If the organization does not own the parking facility, then the cost would be determined by the amount paid for each employee's parking spot. However, if the organization owns the parking lot, the amount would be calculated by determining each employee's share of the cost of the parking spot (annual depreciation, R&M, cleaning, etc on the parking facility).





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Excise Tax on Compensation in Excess of \$1M

Effective for tax years beginning after December 31, 2017, IRC section 4960 imposes an excise tax of 21% on remuneration in excess of \$1 million, other than any excess parachute payment) with respect to employment of a covered employee of an “applicable tax-exempt organization”, plus any excess parachute payment paid by such organization.

- Remuneration shall be treated as paid when there is no substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)).
- The organization (employer) is liable for the tax.

Definition of Applicable Tax-Exempt Organization:

- Exempt from tax under section 501(a)
- Farmers’ cooperative organization described in section 521(b)(1)
- Has income excluded from taxation under section 115(1), or
- Is a political organization described in section 527(e)(1)

Definition of Covered Employee:

- Employee or former employee
- One of the five highest compensated employees of the organization for the taxable year, or
- Was a covered employee of the organization (or any predecessor) for any preceding taxable year beginning after December 31, 2016

Covered Employee Example:

- CY (2018) 5 Highest Paid Employees – A, B, C, D, E
 - PY (2017) 5 Highest Paid Employees – A, B, C, D, F
- *Excise tax for current year will be applied to A, B, C, D, E, F

Definition of Remuneration:

- Wages, except for designated ROTH contributions, and amounts included in gross income under section 457(f)
- Exception for medical services – shall not include any remuneration paid to a licensed medical professional (including veterinarian) which is for the performance of medical or vet services by the professional.
- Includes remuneration from related organizations

Definition of Related Organization:

- Controls, or is controlled by, the organization
- Is controlled by one or more persons which control the organization
- Is a supported organization (as defined in section 509(f)(3)) during the taxable year
- Is a supporting organization (as described in section 509(a)(3)) during the taxable year
- Is a voluntary employee benefit association described in 501(c)(9)
 - VEBA establishes, maintains, or makes contributions to such voluntary employees’ beneficiary association

Definition of Excess Parachute Payment:

- Amount equal to the excess of any parachute payment over the portion of the base amount allocated to each payment
- Any payment in the nature of compensation if
 - Such payment is contingent on the employee’s separation from employment, and
 - The aggregate present value of the payments in the nature of compensation to the individual which are contingent on such separation equals or exceeds an amount equal to 3 times the base amount

Excess Parachute Payment Exceptions:

- Does not include any payment
 - Described in section 280G(b)(6) (relating to exemption for payments under qualified plans)
 - Made under or to an annuity contract described in section 403(b) or a plan described in section 457(b)
 - To a licensed medical professional (including veterinarian) to the extent such payment is for performance of medical or veterinary services, or
 - To an individual who is not a highly compensated employee as defined in section 414(q)



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