RECENT TAX DEVELOPMENTS IMPACTING NONPROFIT ORGANIZATIONS

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THE TAX CUTS AND JOBS ACT*

*Officially: H.R. 1 – An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the on the budget for fiscal year 2018.

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WHERE DID THIS TAX LAW COME FROM?

- Trump’s campaign pledge to cut taxes and Republican congressional majority having no other major legislative achievements as the first year of Trump’s and the majority’s term drew to a close.
- Many major provisions of the Tax Cuts and Jobs Act (“TCJA”) have been discussed for a number of years.
- Deep partisan divide.
- Filibuster-proofing the bill in the Senate.
- The reconciliation procedures.
- The Byrd rule.
- The result.

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SOME GENERAL GUIDANCE

- Unless otherwise excepted, TCJA provisions affecting individuals are effective January 1, 2018 and expire (“sunset”) at the end of 2025. Some exceptions are shown in the presentation.
- Unless otherwise excepted, TCJA provisions affecting corporations are effective January 1, 2018 and are permanent. Special rules may apply to non-calendar year taxpayers.
- Generally, married filing separate return limitations and benefits are one-half of married filing limitations stated herein.

BROAD IMPACTS

H. R. 1

One Hundred Fifteenth Congress
of the
United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the third day of January, two thousand and seventeen

An Act

To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 11000. SHORT TITLE, ETC.

(a) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made

- Reduce Federal revenue by $1.456T between 2018-2027 (static scoring)
- $448B by dynamic scoring (Tax Foundation)
- Not a "tax cut" for everybody

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DIRECT IMPACTS

PART VIII – EXEMPT ORGANIZATIONS

PART VIII—EXEMPT ORGANIZATIONS

SEC. 13701. EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES.

(a) IN GENERAL.—Chapter 42 is amended by adding at the end the following new subchapter:

"Subchapter H—Excise Tax Based on Investment Income of Private Colleges and Universities

"Sec. 4968. Excise tax based on investment income of private colleges and universities.

"SEC. 4968. EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES.

"(a) TAX IMPOSED.—There is hereby imposed on each applicable educational institution for the taxable year a tax equal to 1.4 percent of the net investment income of such institution for the taxable year.

"(b) APPLICABLE EDUCATIONAL INSTITUTION.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'applicable educational institution' means an eligible educational institution (as defined in section 25A(f)(2))—

"(A) which had at least 500 students during the preceding taxable year,

"(B) more than 50 percent of the students of which are located in the United States,

"(C) which is not described in the first sentence of section 511(a)(2)(B) (relating to State colleges and universities), and

"(D) the aggregate fair market value 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 of the institution.

"(2) STUDENTS.—For purposes of paragraph (1), 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 number of full-time students attending such institution (with part-time students taken into account on a full-time student equivalent basis).

"(c) NET INVESTMENT INCOME.—For purposes of this section, net investment income shall be determined under rules similar to the rules of section 4940(c).

"(d) ASSETS AND NET INVESTMENT INCOME OF RELATED ORGANIZATIONS.—

"(1) IN GENERAL.—For purposes of subsections (b)(1)(C) and (c), assets and net investment income of any related organization with respect to an educational institution shall be treated as assets and net investment income, respectively, of the educational institution, except that—

"(A) no such amount shall be taken into account with respect to more than 1 educational institution, and

"(B) unless such organization is controlled by such institution or is described in section 509(a)(3) with respect to such institution for the taxable year, assets and net

investment income which are not intended or available for the use or benefit of the educational institution shall not be taken into account.

"(2) RELATED ORGANIZATION.—For purposes of this subsection, the term 'related organization' means, with respect to an educational institution, any organization which—

"(A) controls, or is controlled by, such institution,

"(B) is controlled by 1 or more persons which also control such institution, or

"(C) is a supported organization (as defined in section 509(f)(3)), or an organization described in section 509(a)(3), during the taxable year with respect to such institution.".

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 42 is amended by adding at the end the following new item:

"SUBCHAPTER H—EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 13702. UNRELATED BUSINESS TAXABLE INCOME SEPARATELY COMPUTED FOR EACH TRADE OR BUSINESS ACTIVITY.

(a) IN GENERAL.—Subsection (a) of section 512 is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR ORGANIZATION WITH MORE THAN 1 UNRELATED TRADE OR BUSINESS.—In the case of any organization with more than 1 unrelated trade or business—

"(A) unrelated business taxable income, including for purposes of determining any net operating loss deduction, shall be computed separately with respect to each such trade or business and without regard to subsection (b)(12),

"(B) the unrelated business taxable income of such organization shall be the sum of the unrelated business taxable income so computed with respect to each such trade or business, less a specific deduction under subsection (b)(12), and

"(C) for purposes of subparagraph (B), unrelated business taxable income with respect to any such trade or business shall not be less than zero.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except to the extent provided in paragraph (2), the amendment made by this section shall apply to taxable years beginning after December 31, 2017.

(2) CARRYOVERS OF NET OPERATING LOSSES.—If any net operating loss arising in a taxable year beginning before January 1, 2018, is carried over to a taxable year beginning on or after such date—

(A) subparagraph (A) of section 512(a)(6) of the Internal Revenue Code of 1986, as added by this Act, shall not apply to such net operating loss, and

(B) the unrelated business taxable income of the organization, after the application of subparagraph (B) of such section, shall be reduced by the amount of such net operating loss.

SEC. 13703. UNRELATED BUSINESS TAXABLE INCOME INCREASED BY AMOUNT OF CERTAIN FRINGE BENEFIT EXPENSES FOR WHICH DEDUCTION IS DISALLOWED.

(a) IN GENERAL.—Section 512(a), as amended by this Act, is further amended by adding at the end the following new paragraph:

"(7) INCREASE IN UNRELATED BUSINESS TAXABLE INCOME BY DISALLOWED FRINGE.—Unrelated business taxable income of an organization shall be increased by any amount for which a deduction is not allowable under this chapter by reason of section 274 and which is paid or incurred by such organization for any qualified transportation fringe (as defined in section 132(f)), any 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 section 132(j)(4)(B)). The preceding sentence shall not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business which is regularly carried on by the organization. The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking or for on-premises athletic facilities.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after December 31, 2017.

SEC. 13704. REPEAL OF DEDUCTION FOR AMOUNTS PAID IN EXCHANGE FOR COLLEGE ATHLETIC EVENT SEATING RIGHTS.

(a) IN GENERAL.—Section 170(l) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—No deduction shall be allowed under this section for any amount described in paragraph (2).", and

(2) in paragraph (2)(B), by striking "such amount would be allowable as a deduction under this section but for the fact that".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2017.

SEC. 13705. REPEAL OF SUBSTANTIATION EXCEPTION IN CASE OF CONTRIBUTIONS REPORTED BY DONEE.

(a) IN GENERAL.—Section 170(f)(8) is amended by striking subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2016.

PART IX—OTHER PROVISIONS

Subpart A—Craft Beverage Modernization and Tax Reform

SEC. 13801. PRODUCTION PERIOD FOR BEER, WINE, AND DISTILLED SPIRITS.

(a) IN GENERAL.—Section 263A(f) is amended—

(1) by redesignating paragraph (4) as paragraph (5), and

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SEC. 13705. REPEAL OF SUBSTANTIATION EXCEPTION

- Background:
  - All donations of $250 or more must be substantiated by a contemporaneous written acknowledgement by the donee organization that includes:
    - Amount of cash and description of any property other than cash
    - Amount of any goods and services provided for the donation
- Deleted: “(D) Substantiation not required for contributions reported by the donee organization. Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.”

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SUBSTANTIATION: RECENT HISTORY

- Proposed Regulations issued 10/13/15 addressing Section 170(f)(8)(D)
- Optional information return in lieu of contemporaneous acknowledgement
- Organizations would have been required to obtain name, address and taxpayer identification number (“TIN”) of donors

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SUBSTANTIATION: RECENT HISTORY

- Over 38,000 responses received; most of strong opposition (Journal of Accountancy)
  - Identity theft risk
  - Requirement to provide SSN may discourage donations
  - Belief that reporting would eventually become mandatory
- Proposed Regulations withdrawn 01/08/16
  - Made 170(f)(8)(D) unavailable
- TCJA Impact negligible

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SUBSTANTIATION: THE IRS IS SERIOUS

- Over and over again, the IRS throws out charitable deductions due to lack of contemporaneous acknowledgements
- Kim H. Barnes v. Commissioner, TC Memo 2007-141
  - “Deductions are a matter of legislative grace, and taxpayer bears the burden of proving that she is entitled to the deductions.”
  - Result: deduction disallowed
- David P. Durden, et ux. v. Commissioner, TC Memo 2012-140
  - Living in Texas, donated over $25,000 to their Church
  - Possessed their records of the contributions but no 170(f)(8)
  - Result: deduction disallowed

SEC. 13704. REPEAL OF DEDUCTION FOR AMOUNTS PAID IN EXCHANGE FOR COLLEGE ATHLETIC SEATING RIGHTS

- Background:
  - Under Section 170(l), a deduction was allowed for 80% of contributions made to a University in exchange for rights to purchase athletic event seating
- Forbes 12/22/17:
  - ND - $1,500 required of non-alum to enter ticket lottery
  - Duke - $4,000 required for right to buy a single basketball season ticket

Athletic dept revenue from Contributions			
Year	School	Percent	Total Rev
2017 (est)	Oklahoma	22%	?
2015-2016	Louisville	27%	$112M
2015-2016	Kansas	25%	$91.2M

- DMN 12/26/17:
  - $5,000 required to buy Centennial Suite seat at UT’s Darrell K Royal football stadium
- Estimated Federal budget effect $2B through 2027

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SEC. 13701. EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES

- Background:
  - Section 4940(a) imposes a 1% or 2% excise tax on the net investment income of private foundations
  - Section 1411 went into effect in 2013 imposing a 3.8% tax on net investment income above a threshold ($250K MFJ, $200K Single)

SEC. 13701. EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES

- Section 4986 imposes a 1.4% tax on the net investment income of ‘applicable educational institutions’
- Applicable educations institution
  - Has 500 *tuition paying* students (Senate Amendment)
  - More than 50% of students are located in the U.S.
  - Has an endowment of at least $500,000 per student as of the end of the preceding tax year (other than assets used directly in carrying out the institutions exempt purpose)
    - Includes assets of any related organization
- BDO: Only 30 to 60 institutions expected to be impacted
- Budget impact: $1.8B over 10 years

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SEC. 13701. EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES

- Washington Post: 12/20/17
  - Berea College in Kentucky
    - $1B endowment
    - Covers tuition for all of its roughly 1,600 students in addition to Federal and state grants
      - Students work up to 15 hours a week on campus or in the community
    - Draws ~45% of its revenue from endowment earnings
    - Estimated $1M tax
  - Principia College of Illinois
  - Princeton Theological Seminary

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UNRELATED BUSINESS TAXABLE INCOME

- Background: Unrelated business taxable income (“UBTI”) and the unrelated business income tax (“UBIT”)
  - UBTI – income from a trade or business regularly carried on that is not substantially related to the performance of the organization’s tax-exempt functions (Conference Report)
    - Section 513(c) - trade or business is any activity which is carried on for the production of income from the sale of goods or the performance of services
    - ‘related’ where the conduct of the business activities has causal relationship to the achievement of exempt purposes (Regulation 1.513-1(d)(2))
  - A 501(c)(3) charitable organization may only operate an ‘insubstantial’ unrelated trade or business in order to keep its exempt status

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UNRELATED BUSINESS TAXABLE INCOME

- Section 512 – Types of income excluded from UBTI
  - Interest
  - Dividends
  - Royalties
  - Rents from real property
    - Rents of great than 50% from personal property are UBTI
  - Organizations with $1,000 or more of gross UBTI must report that income on Form 990-T
  - Tax rate for the UBIT is the corporate tax rate

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SEC. 13702. UNRELATED BUSINESS TAXABLE INCOME SEPARATELY COMPUTED FOR EACH TRADE OR BUSINESS ACTIVITY

- Unrelated business taxable income shall be computed separately with respect to each such trade or business – Section 512(a)(6)
  - Deductions from one trade or business may not offset income from a different unrelated trade or business for the same taxable year
    - Including for purposes of computing Net Operating Losses (“NOL”)
    - Existing NOLs are grandfathered in
    - Losses can be carried forward
- Analogous to publicly traded partnerships with respect to each other and other passive activities of a regular taxpayer.
- Budget impact: $3.5B over 10 years

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SEC. 13702. UNRELATED BUSINESS TAXABLE INCOME SEPARATELY COMPUTED FOR EACH TRADE OR BUSINESS ACTIVITY

- Unanswered questions:
  - What constitutes “one unrelated trade or business”?
  - Are passive activities that generate unrelated business income one trade or business (e.g., are alternative investments considered one unrelated trade or business or is each investment a separate unrelated trade or business)?
  - Is trade or business grouped by geography, activity, or management?
  - On 3rd quarter IRS Priority Guidance Plan

SEC. 13702. UNRELATED BUSINESS TAXABLE INCOME SEPARATELY COMPUTED FOR EACH TRADE OR BUSINESS ACTIVITY

- Cost allocation important, with potentially costly accounting required
- Three baskets of expenses:
  - Directly connected to UBTI activity—deduct in full—Will need a basket for each unrelated activity
  - Directly related to Exempt activity—do not deduct at all (e.g., development officer, government affairs/lobbying, etc.)
  - Dual use expenses–allocate on a “reasonable” basis (current rule to allocate overhead and other dual-use expenses between related uses and all unrelated uses—Time, space, other)
  - Now will have to allocate multi-use expenses among related uses and each unrelated activity

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SEC. 13703. UBTI INCREASED BY AMOUNT OF CERTAIN FRINGE BENEFIT EXPENSES FOR WHICH DEDUCTION IS DISALLOWED

- A tax- exempt organization includes as UBTI any amount (i) for which a deduction is not allowed under IRC Sec. 274, and (ii) which is paid by the organization for any qualified transportation fringe, any parking facility used in connection with qualified parking, or any on-premises athletic facility.
  - UBTI does not include the amounts described above to the extent the amount paid or incurred is directly connected with an unrelated trade or business.
- “Qualified transportation fringe" for purposes of IRC Sec. 512(a)(7) is considered to be any of the following provided by an employer to an employee:
  - Commuter transportation
  - Transit passes
  - Qualified parking;
  - Qualified bicycle benefit (may not create UBI)
- Effective: For amounts paid or incurred after Dec. 31, 2017

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SEC. 13703. UBTI INCREASED BY AMOUNT OF CERTAIN FRINGE BENEFIT EXPENSES FOR WHICH DEDUCTION IS DISALLOWED

- Change to employees – taxable to employee for 2018-2025 while IRC Sec. 132(f)(1)(D) is suspended
  - $20 monthly benefit for qualified bicycle commuting reimbursement
- No change to employees - benefits still excludible from employee's income
  - Transportation to and from work in a commuter highway vehicle and passes for mass transit - $260 maximum monthly benefit in 2018 (as indexed for inflation)
  - Qualified parking - $260 maximum monthly benefit in 2018 (as indexed for inflation)
- Only UBTI if deduction excluded under IRC Sec. 274
- IRC Sec. 274 deduction unavailable for benefits provided or reimbursements made to employees as qualified transportation fringe benefits
  - Exceptions: Bicycle commuting reimbursements included in the employee's income
- No authority to support including the benefits in employee's compensation in order to obtain a deduction or to avoid UBIT inclusion

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SEC. 13703. UBTI INCREASED BY AMOUNT OF CERTAIN FRINGE BENEFIT EXPENSES FOR WHICH DEDUCTION IS DISALLOWED

- Under IRC Sec. 132(j)(4)(B), an "on premises athletic facility" is any gym or other athletic facility (such as a swimming pool, tennis court or golf course) which is:
  - Located on the premises of the employer;
  - Operated by the employer; and
  - Used, with substantial exclusivity, by the employer's employees, their spouses and their dependent children.

SEC. 13703. UBTI INCREASED BY AMOUNT OF CERTAIN FRINGE BENEFIT EXPENSES FOR WHICH DEDUCTION IS DISALLOWED

- Treasury may issue regulations or other guidance as may be necessary or appropriate to carry out the purposes of IRC Sec. 512(a)(7), including regulations or other guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking or for on-premises athletic facilities.
- Query - Can one look to the allocation regulations for “dual-use” facilities and use a “reasonable method” or whether the IRS will take the opportunity to specifically dictate a new method.
- Organizations will have to keep track of whether parking facilities and on-site athletic facilities are used by employees or students or patients or patrons or members or the general public.

SECTION 274: ARE ENTERTAINMENT & MEALS EXPENSES STILL DEDUCTIBLE?

- Entertainment expenses
  - Subject to limited exceptions, no deduction for entertainment, amusement, or recreation activities, facilities or membership dues related to such activities.
  - Repeals the “directly-related-to” and “associated-with” exceptions to the deduction disallowance.
- Meals expenses
  - No more 100% deductible meals for employees for the benefit of the employer; these expenses are subject to 50% limitation.
  - While reasonable people are currently disagreeing with one another, it appears that the kinds of business meals that were 50% deductible before TCJA are still deductible.
- Change chart of accounts and procedures to track changed categories of these kinds of expenses – see also next slide.

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SECTION 274: ARE ENTERTAINMENT & MEALS EXPENSES STILL DEDUCTIBLE?

- Exceptions to the repeal of entertainment and meals costs.
  - [De minimis] food and beverages for employees. (Note the 50% limitation above for food and beverages.)
  - Expenses treated as compensation. (100% deductible)
  - Reimbursed expenses. (100% deductible)
  - Expenses for recreational, social, or similar activities (including facilities therefor) primarily for the benefit of employees who are not “highly compensated employees.” (100% deductible.) Food and beverage - 50% limitation.
  - Employee, stockholder, agents or directors business meetings. (Note the 50% limitation above for food and beverages.)
  - Meetings of business leagues. (Note the 50% limitation above for food and beverages.)
  - Items available to public. (100% deductible)
  - Expenses for entertainment sold to customers. (100% deductible)
  - Expenses includable in income of persons who are not employees. (100% deductible.)

SEC. 13602. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

- IRC Sec. 4960, as added by 2017 Tax Cuts and Jobs Act §13602(a)
- For employer's tax years beginning after December 31, 2017
- "Applicable tax exempt organization" pays an excise tax equal to 21% (highest corporate rate) on:
  - Remuneration (other than excess parachute payments) over $1M during the taxable year; plus
  - Excess parachute payments (even if less than $1M)
- On 3rd quarter IRS Priority Guidance Plan

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SEC. 13602. "APPLICABLE TAX-EXEMPT ORGANIZATION"

- Organizations that are subject to the excise tax (IRC Sec. 4960(c)(1))
  - Organization exempt from tax under IRC Sec. 501(a);
    - Includes 501(c) organizations
  - A farmer's cooperative organization under IRC Sec. 521(b)(1);
  - Organization with income excluded from tax under IRC Sec. 115(1) (referring to income from states, municipalities, etc.); or
  - A political organization under IRC Sec. 527(e)(1)
  - Are state schools exempt under IRC Sec. 115(1)?

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SEC. 13602. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

- Covered Employees – Any current or former employee of an applicable tax-exempt organization if
  - One of the five highest compensated employees of the organization for the tax year, or
  - Was a covered employee of the organization, or any predecessor of the organization, for any tax year after Dec. 31, 2016. (IRC Sec. 4960(c)(2))
- Not required to be an officer, director, key employee or one of the “five highest compensated” for purposes of Form 990 reporting
- Once a covered employee always a covered employee, even after termination

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SEC. 13602. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

- GENERALLY "remuneration" is considered to be wages subject to federal income tax withholding as defined under IRC Sec. 3401(a)
  - LESS any designated Roth contribution
  - PLUS amounts required to be included in gross income under IRC Sec. 457(f) relating to vested ineligible deferred compensation plans
  - EXCEPT for payments to licensed medical professionals, including veterinarians, for the performance of medical or veterinary services

SEC. 13602. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

- Remuneration of a covered employee paid by an applicable tax-exempt organization includes amounts paid by a related person or government entity if the person or entity:
  - Controls, or is controlled by, the applicable tax-exempt organization;
  - Is controlled by a person, or persons, that control the organization;
  - Is a supported organization under IRC Sec. 509(f)(3);
  - Is a supporting organization under IRC Sec. 509(a)(3); or
  - If the organization is a VEBA under Code Sec. 509(c)(9), establishes,
- If remuneration from more than one employer is used to calculate the excise tax, then each employer will be liable for its proportionate share.

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SEC. 13602. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

- Mirrors IRC Sec. 280G
- Definition of excess parachute payment
  - Payment of compensation that is contingent on the employee's separation from employment, and
  - The aggregate present value of the payments equals or exceeds 3 times the employee's base amount
  - Does not include payments
    - From qualified retirement, 403(b) or 457(b) plans
    - To licensed medical professionals for medical services
    - To an individual who is not a highly compensated employee as defined in IRC Sec. 414(q) earning $120,000 for the year

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SEC. 13602. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

- Base amount equals
  - Average of Form W-2 (and Form 1099 compensation) in five (5) calendar years prior to the severance
- If the three (3) times threshold is met,
  - Excise tax rate is applied to payments in excess of one (1) times the base amount
  - Tax is due on a larger amount than the amount over the threshold

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SEC. 13602. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

- Review all existing documents and projected payouts
- Identify covered employees based on organization's 2017 tax year and keep cumulative list
- Perform preliminary excess compensation calculations
- Structure arrangements to be under $1M
  - Consider changes to avoid large vesting in a single year in order to avoid 457(f) inclusion in remuneration (no reduction from extended payouts of vested amounts)
- Excess parachute payments
  - Avoid separation as the only payout trigger (pay at specified age or separation)
  - Extend payout for modest reduction of the present value of parachute payments
  - Provide separation payments up to 2.99% of the base amount
  - Consider provisions to return amounts above the threshold to the employer
  - Increase base amount by recognizing Form W-2 compensation in years prior to termination
  - Fully utilize excludible compensation such as 457(b) and other qualified plans
- https://www.thetaxadviser.com/issues/2018/may/executive-compensation-planning-tax-exempt-organizations.html

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ADDITIONAL IMPACTS

UBTI: NET OPERATING LOSSES

- Background:
  - Generally - The excess of business deductions over gross income
  - Could be carried forward 20 years or carried back 2 years
  - Use of Net Operating Losses (“NOLs”) could eliminate tax by offsetting 100% of income and this could happen for multiple years as long as there remained carryover
  - Can be generated by the unrelated business of an Exempt Orgs

SEC. 13302. MODIFICATION OF NET OPERATING LOSS DEDUCTION

- Net Operating Losses are limited to 80% of taxable income computed without regard to the NOL deduction (Section 172(a)(2))
- Carryback is eliminated (except for certain types of NOLs)
- Carryforward is indefinite
- Applicable to NOLs generated in taxable years beginning after December 31, 2017
- Applicable to Exempt Organizations
- Budget impact: $201.1B over 10 years

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EXCESS BUSINESS LOSSES

- Business losses of taxpayers other than C corporations are only permitted in the current year to the extent that they do not exceed the sum of:
  - (i) Taxpayer's gross income and
  - (ii) $500,000 for joint filers or $250,000 for other taxpayers
    - Excess businesses losses will be disallowed and added to the taxpayer's net operating loss carryforward.
- Expansion of limitation on excess farm losses
- For pass-through entities, this limitation is applied at the partner/shareholder level.
- Sunsets 12/31/25

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UBTI: CORPORATE TAX CHANGES

- UBTI is taxed at the corporate tax rate
- Corporate income taxed at a single-rate of 21%.
  - Down from previous graduated rates with 35% maximum
  - Personal services corporations tax at 21%
  - Budget impact: revenue reduced $1.3485 Trillion
- Corporate dividends received deduction: 70% DRD reduced to 50%; 80% DRD reduced to 65%.
- Corporate AMT is repealed
  - Budget impact: revenue reduced $40.3M

DEPRECIATION AND EXPENSING

- Depreciation limitation amounts increased for passenger automobiles placed in service after 2017.
- Expensing of certain property (bonus depreciation)
  - Allows full (100%) expensing of new and used qualified property, acquired and placed in service after September 27, 2017 through 2022, then phases out the provision over the subsequent 4 years.
  - The law is not applicable to certain businesses, generally public utilities, not subject to limitation on interest expense.
  - Sunsets after 2026.

DEPRECIATION AND EXPENSING, CONTINUED

- Section 179 expensing
  - Raises Section 179 small business expensing cap to $1M, with a phase-out starting at $2.5M.
  - Expands definition of property eligible for Section 179 expensing – certain property used in furnishing lodging, and roofs, heating, ventilation, air-condition property, fire protection and alarm systems, and security systems for nonresidential real property that are placed in service after
    December 31, 2017.
- Shortens the 7-year recovery period to 5 years for equipment used in a farming business (as defined in Section 263A(e)(4)), the original use of which commences with the taxpayer and is placed in service after December 31, 2017
- Repeals the required use of the 150% defining balance depreciation method for 3, 5, 7 and 10-year property used in a farming business

BUSINESS INTEREST DEDUCTION LIMITATION

- The limitation does not apply to “small businesses”: business averaging $25M or less of gross receipts for the preceding three years.
- Caps net interest deduction at 30% of what can generally described as earnings before interest, taxes, depreciation, and amortization as adjusted (“EBITDA”) from 2018 through 2021, and 30% of what can generally be described as earnings before interest and taxes as adjusted (“EBIT”) thereafter.
- Indefinite carryforward of unused expense.
- Real estate properties and trades or businesses can elect to be exempt if they forgo bonus depreciation.

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BUSINESS INTEREST DEDUCTION LIMITATION, CONTINUED

- Limitation does not apply to regulated public utilities and electric cooperatives.
- Interest from “motor vehicle floor plan financing” exempt from limitation.

SECTION 199A DEDUCTION FOR QUALIFIED BUSINESS INCOME (THE "PASS-THROUGH DEDUCTION")

- Taxpayers other than corporations are generally eligible to claim a deduction equal to the sum of:
  - The lesser of (A) the taxpayer's "combined qualified business income amount" or (B) 20% of the excess of the taxpayer's taxable income over capital gain plus qualified cooperative dividends, plus
  - The lesser of (A) 20% of the aggregate amount of qualified cooperative dividends or (B) the taxpayer's taxable income (reduced by net capital gains)
- A taxpayer's combined qualified business income amount is equal to the sum of (1) 20% of the taxpayer qualified business income (QBI) with respect to each qualified trade or business plus (2) 20% of the aggregate amount of qualified real estate investment trust dividends and qualified publicly traded partnership income.

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SECTION 199A DEDUCTION, CONTINUED

- QBI includes the net amount of domestic qualified items of income, gain, deduction and loss with respect to the taxpayer’s qualified businesses
- Qualified trade or business includes any trades or businesses other than specified service trades or businesses
- A specified service trade or business means any trade or business involving the performance of services in the fields of:
  - Health, law, accounting, actuarial sciences, performing arts, consulting, athletics, financial services, brokerage services, any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, or
  - Which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interests, or commodities
  - Engineering and architecture are not included in the term “specified service trade or business.”
- Exception for specified service businesses where a taxpayer’s taxable income does not exceed $315,000 (joint filer) or $157,500 (other filers), subject to full phase-in at $415,000 and $207,500, respectively.

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SECTION 199A DEDUCTION, CONTINUED

- The deduction attributable to 20% of the taxpayer’s QBI cannot exceed the greater of (A) 50% of W-2 wages paid with respect to the QBI or (B) The sum of 25% of W-2 wages plus 2.5% of the unadjusted basis of qualified property.
- Qualified property includes depreciable tangible property that is (i) held by and available for use in the trade or business at the close of the taxable year, (ii) used during the year in the production of QBI, and (iii) has a remaining depreciable period.
- The term “depreciable period” means the later of 10 years from the original placed in-service date or the last day of the last full year in the applicable recovery period determined under section 168.
- The W-2 wages or W-2 wages plus capital limitation does not apply to taxpayers with taxable income not exceeding $315,000 (joint filers) or $157,500 (other filers). The limitation is phased-in for taxpayers with taxable income exceeding these amounts over ranges of $100,000 and $50,000.
- With respect to trusts and estates, rules similar to the rules under prior-law Section 199 apply for apportioning between fiduciaries and beneficiaries any W-2 wages and unadjusted basis of qualified property under the limitation based on W-2 wages and capital.
- Sunsets 12/31/25.
- Accuracy-related penalty under Section 6662(d) applies if understatement causes an understatement exceeding $5,000 or 5% of the tax required to be shown on the return, rather than the usual 10%.

A TRANSITION TO A TERRITORIAL TAXING SYSTEM

- Historically, the United States has taxed its citizens, permanent residents and U.S. corporations on their worldwide income.
- Most developed countries employ a territorial system of taxation, which exempts foreign profits of domestic multinational businesses from domestic taxation.

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A TRANSITION TO A TERRITORIAL TAXING SYSTEM, CONTINUED

- The TCJA transitions the U.S. to a form of territorial system by incorporating the following rules:
  - 100% dividend deduction for foreign-source portions of dividends received by a U.S. shareholder (a domestic C corporation that is not a RIC or REIT) for specified 10%-owned foreign corporations
  - A deemed repatriation of deferred foreign income subject to a transition tax
  - Current year taxation of Global Intangible Low-Taxed Income (“GILTI”) for U.S. shareholders of Controlled Foreign Corporations (“CFCs”)
  - Foreign-Derived Intangible Income of a Domestic Corporation (“FDII”)
  - The Base Erosion Anti-Abuse Tax (“BEAT”)
  - There are a number of other new laws and changes in existing laws generally enacted to conform with the new rules above, including the repeal of the indirect foreign tax credit
  - In most all cases, the new rules begin in 2018, some with respect to 2017 tax returns

PARTICIPATION EXEMPTION SYSTEM

- 100% dividend deduction for foreign-source portions of dividends received by U.S. shareholders (a domestic C corporation that is not a RIC or REIT) from “specified 10%-owned foreign corporations” – the Participation Exemption.
- There is a special 366-day holding period in order to get the deduction.
- The deduction is not available if the dividend is a “hybrid dividend” – a dividend for which the paying corporation received a deduction or credit in a foreign country.
- No credit or deduction is allowed for any foreign income taxes paid or accrued with respect to any portion of the dividend that qualifies for the deduction.
- The basis in foreign corporations with respect to the dividends received deduction applies is reduced by the amount of any such dividend, but only for purposes of computing loss on the sale or exchange of that stock.

A DEEMED REPATRIATION OF DEFERRED FOREIGN INCOME SUBJECT TO A TRANSITION TAX

- Generally, U.S. shareholders owning 10% of the voting power of CFCs or other specified foreign corporation must include in income, for the last taxable year of such foreign corporation beginning before January 1, 2018. such shareholder’s pro rata portion of the “deemed repatriation amount.”
- While the definition of the “deemed repatriation amount” is long and complicated, it is, for the most part, the foreign earnings and profits of the subject corporations that have not been subject to U.S. tax.
- The deemed repatriation will be taxed at 15.5% rate to the extent of the liquid assets portion of the E&P and an 8% rate for all other amounts. The taxpayer may elect to pay resulting liability over an 8-year period, backend loaded.

INDIVIDUAL IMPACTS

CHARITABLE GIVING

- Reduces incentives for charitable giving by:
  - Doubling estate tax exemptions
  - Doubling the standard deduction
  - Repealing the deduction for tickets to and seating rights for college athletic events
- Increases the incentives for charitable giving by:
  - Repealing the “Pease” limitation
  - Increasing the charitable contribution deduction limit

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ESTATE, GIFT AND GENERATION-SKIPPING TRANSFER TAXES

- Estate and Gift Taxes – Beginning in 2018, the exemption for estate and gift taxes is increased to $10M (and adjusted forward for inflation from 2011).
    - Inflation - There will be a roughly $11M estate and gift exemption starting in 2018.
- State thresholds are much lower, in some cases (MN: $2.4M).
- Generation-Skipping Transfer Tax – Beginning in 2018, the amount of the generation-skipping transfer tax exemption is increased to $10M (and adjusted forward for inflation from 2011).
    - Inflation - There will be a roughly $11M generation-skipping transfer tax exemption starting in 2018.
        - These increases are set to expire on December 31, 2025, and the exemption amounts will return to the pre-tax reform amounts.
            - This makes the current planning techniques still relevant, even for estates that do not exceed the increased exemption amount.

INDIVIDUAL TAX RATES

- Seven tax brackets: 10%, 12%, 22%, 24%, 32%, 35% and 37%
- Thresholds are adjusted
- Children that are subject to the “Kiddie Tax” will have two different tax regimes for their earned and unearned income:
    - Earned Income: Taxed at the rates applied to single filers.
    - Unearned Income: Taxed at ordinary income and preferential rates applied to trusts and estates.
        - Children will no longer be subject to their parents’ tax rate.

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ABOVE-THE-LINE DEDUCTIONS

- Moving Expenses – Suspended through tax year 2025; however, still available for members of the U.S. military who move pursuant to a military order.
- Alimony – Effective for divorce or separation agreements entered into after December 31, 2018*:
  - Deduction - The deduction for alimony or separate maintenance payments is repealed.
  - Inclusion - The inclusion of income by the recipient is repealed.
  - Existing alimony or separate maintenance agreements are grandfathered, as are modifications to existing agreements.
  - This is a permanent change. No sunset.
  - Also applies to divorce or separation agreements existing before January 1, 2019 and modified on or after January 1, 2019, if the modification expressly provides that the amendments by the TCJA apply to such modification.

*Please note the 1-year delay on the implementation of this provision

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STANDARD DEDUCTION & PERSONAL EXEMPTIONS

- The standard deduction is increased to the following amounts:
  - Married Filing Jointly: $24,000
  - Head-of-Household: $18,000
  - All Other Taxpayers: $12,000
    - The deduction is indexed for inflation in future years.
- The personal exemption is suspended through tax year 2025.
  - The personal exemption for estates and trusts remains at $100 (complex), $300 (simple), $600 (estates).

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CASE STUDY: FAMILY OF 4

	2017	2018	DIFFERENCE
Income	$200,000	$200,000	$ -
State & Local Taxes	-$7,000	-$7,000	$ -
Mortgage Interest	-$12,000	-$12,000	$ -
Charity	-$2,000	-$2,000	$ -
Exemptions	-$16,200	$ -	$16,2000
Standard Deduction	$ -	-$24,000	-$3,000 (net)
Itemized Deductions	-$21,000	$ -	
Taxable Income	$162,800	$176,000	$13,200
Child Tax Credit	$ -	-$4,000	$4,000
Tax Liability	$32,852	$27,577	-$5,275

CASE STUDY ANALYSIS

- How much more would the taxpayer have to donate to charity in 2018 to make a tax impact?
  - More than $3,000
- How much less could the taxpayer donate to charity in 2018 and maintain the same tax result?
  - $2,000
- What will they do?

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CASE STUDY: SINGLE WEALTHY PHILANTHROPIC DONOR

	2017	2018	DIFFERENCE
Interest & Dividends	$1,000,000	$1,000,000	$ -
State & Local Taxes	-$15,000	-$15,000	$ -
Charity*	-$750,000	-$750,000	$ -
Itemized Deductions	-$492,845	-$610,000	$117,155
Taxable Income	$507,155	$390,000	-$117,155
Tax Liability	$105,937	$83,110	-$22,827

*AGI Cash limitation deduction 50% in 2017, 60% in 2018

CASE STUDY ANALYSIS

- If taxpayer's estate is greater than $11M, double benefit
  - Reduce size of taxable estate
  - Reduce current income tax
- If taxpayer's estate is less than $11M
  - No estate tax benefit due to doubled exemption
  - Reduce current income tax
- What will they do?

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ITEMIZED DEDUCTIONS

- Medical Expenses – The AGI threshold is lowered to 7.5% for all taxpayers for tax years 2017 and 2018 and returns to 10% in 2019.
- State and Local Taxes – Taxpayers are permitted a maximum $10,000 deduction of the sum of:
    - (i) state and local real property taxes,
    - (ii) state and local personal property taxes, and
    - (iii) state and local income taxes (or sales tax, if elected).
    - This limitation does not apply to real property taxes and personal property taxes paid or accrued in carrying on a trade or business.
    - Nonbusiness foreign property taxes are no longer deductible.
- Mortgage Interest – Taxpayers are permitted to deduct the interest paid on acquisition indebtedness of up to $750,000.
    - Debt incurred on or before December 15, 2017, is grandfathered under the previous law of interest paid on acquisition indebtedness of up to $1M.
- Home Equity Interest – The deduction for interest paid on home equity indebtedness is suspended.

STATE AND LOCAL TAXES: NEW YORK

- Two new state-run charitable funds to support health care and education
  - Passed in April 2018
  - Cuomo on $10,000 limit, “It’s baloney. This hurts the state, it hurts the state economy”
- Donors receive a local property tax credit equal to a percentage of the donation
- "The IRS is highly unlikely to go along with this charade, as these so-called contributions bear none of the hallmarks of genuine charity,“
  – Jared Walczak, senior policy analyst at the Tax Foundation, from Business Insider

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ITEMIZED DEDUCTIONS, CONTINUED

- Charitable Contributions – Three modifications:
  - (1) Cash contributions to public charities now have a 60% of AGI limitation (previously it was 50%).
  - (2) Denial of charitable deduction for payments made in exchange for athletic seating rights (previously able to deduct 80% of amounts paid).
  - (3) Removal of substantiation exception for certain contributions reported by the charitable organization.
- Casualty Losses – Suspended through tax year 2025, unless the loss is attributable to a Federally declared disaster loss.
  - If a taxpayer has a personal casualty gain, he/she may deduct personal casualty losses not attributable to a Federal declared disaster loss in the amount equal to no more than the personal casualty gain.
- Wagering Transactions – In addition to the limitation on gambling losses, expenses incurred in carrying on any wagering transaction are also limited to the extent of gambling winnings.

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ITEMIZED DEDUCTIONS, CONTINUED

- Miscellaneous Itemized Deductions Subject to 2-% floor – These have been suspended and include investment fees and expenses, tax preparation fees, and unreimbursed business expenses, among others.
    - For fiduciary taxpayers, the wording of new Section 67(g) casts doubt on the deduction for any administrative cost (e.g., trustee fees, investment, management and custodial fees, and attorney/accounting fees). Further guidance is required.
- “Pease” Limitation – Suspends the overall limitation on itemized deductions.

CHILD CREDIT AND DEPENDENT CREDIT

- Increases the child tax credit to $2,000 per qualifying child; $1,400 per qualifying child refundable – indexed for inflation.
  - Requires SSN for each qualifying child.
- Provides a $500 nonrefundable credit for dependents other than qualifying children (generally retaining the current law definition of dependent).
- Phase-out threshold of $400,000 (for married taxpayers filing a joint return), and $200,000 (for all other taxpayers).

ALTERNATIVE MINIMUM TAX (AMT)

- The individual AMT has been retained.
- The exemption amounts have been increased to the following thresholds:
    - Joint Filers: $109,400 ($54,700 for MFS)
    - All other Filers: $70,300
- The exemption phase-out thresholds are increased to:
    - Joint Filers: $1,000,000
    - All other Filers: $500,000
    - Trusts and Estates – Remains unchanged.
- Many of the tax preference items that are AMT addbacks have been suspended.

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ACA SHARED RESPONSIBILITY PAYMENTS

- There are no individual shared responsibility payments beginning in 2019. The TCJA reduces the penalty for the individual mandate to $0.
- This repeal is permanent.
- The employer shared responsibility penalties and information reporting obligations remain in effect.

529 PLANS

- After-tax contributions to savings accounts to be used for higher education and, with TCJA, elementary and secondary school
- Earnings grow tax free in the account
- $10,000 per year can be withdrawn for elementary and secondary school
- Some states give income tax deduction for contributions

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GIVING IMPACTS

GIVING IMPACTS

- $390.05B given in 2016 (givinguse.org)
- “Itemizers” expected to drop 27.24M in 2018 – Tax Policy Center T-18-0001
  - 46.52M in 2017; 19.28M in 2018
- National Council of Nonprofits analysis updated 2/22/18
  - Drop in giving of $13B or more
  - $220,000 to $264,000 jobs threatened
- Tax Policy Center
  - $12.3B to $19.7B drop (House Bill Analysis) (4% to 6.5%)

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"BUNCHING" STRATEGY

- Make donations for two or three years in one year in order to maximize chance of itemizing deductions
- The sooner the "bunch," the better tax benefit realized
  - Be wary of inflation adjustments to the standard deduction
  - Be wary of declining itemized deductions, such as mortgage interest
- Combine with other "bunch" opportunities, such as SALT
- Requires discipline by the donor

CASE STUDY: BUNCHING FAMILY OF 4

	2018	2019	2020
Income	$200,000	$200,000	$200,000
State & Local Taxes	-$7,000	-$7,000	-$7,000
Mortgage Interest	-$12,000	-$12,000	-$12,000
Charity	$ -	-$6,000	$ -
Exemptions	$ -	$ -	$ -
Standard Deduction	-$24,000	$ -	-$25,400
Itemized Deductions	$ -	-$25,000	$ -
Taxable Income	$176,000	$175,000	$174,600
Child Tax Credit	-$4,000	-$4,000	-$4,000
Tax Liability	$27,577	$26,997	$26,566

CASE STUDY: BUNCHING FAMILY OF 4 PLUS SALT

	2018	2019*	2020
Income	$200,000	$200,000	$200,000
State & Local Taxes	-$7,000	-$10,000	-$4,000
Mortgage Interest	-$12,000	-$12,000	-$12,000
Charity	$ -	-$6,000	$ -
Exemptions	$ -	$ -	$ -
Standard Deduction	-$24,000	$ -	-$25,400
Itemized Deductions	$ -	-$28,000	$ -
Taxable Income	$176,000	$172,000	$174,600
Child Tax Credit	-$4,000	-$4,000	-$4,000
Tax Liability	$27,577	$26,277	$26,566

*Total tax savings of $792 versus 2019 with standard deduction ($27,069)

OTHER STRATEGIES

- Donor Advised Fund
  - Similar tax results as “bunch”
  - Allows more steady cash flow to exempt organizations
- Contributions of appreciated stock
  - 30% AGI limitation (public charities); 20% for Private Foundations
  - Donor avoids capital gains on the appreciated stock
- Qualified Charitable Distributions
  - Distributions directly to charity out of RMD for those 70 ½ or older
  - No income recognition nor charitable deduction

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EXEMPT ORGANIZATION OPTIONS

- Multi-year budgeting
  - Perform “what if” scenarios planning
    - Fundraising shortfalls (or surpluses)
    - Alternative level or services based on revenue outcomes
- Communicate with donors
  - Explain strategies such bunching and how they can be mutually beneficial
  - Use information to forecast and have comfort regarding donor behavior

EXEMPT ORGANIZATION OPTIONS

- Stratify data; try to predict behavior
  - Size of past donations
    - If small, likely less affected by tax considerations
    - If large, behavior change more likely
  - Consistency of donations
    - If frequent, likely donating due to commitment to the mission
  - Donor’s home state
    - If a high-tax, high-income state, more likely affect by SALT and more likely to “bunch”
- Sarah Lyon, Ph.D. in The Tax Advisor

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COULD HAVE BEEN WORSE?

- Bullets that Exempt Organizations dodged:
  - Taxation of royalties and certain research
  - Changes to deferred compensation
  - Changes to exclusion of housing provided for the “convenience of”
  - Expansion of the reach of Intermediate Sanctions to 501(c)(5) and (6) orgs
  - Elimination of the Rebuttable Presumption of Reasonableness
  - Elimination of the Estate Tax (estimated $4B impact)
  - Repeal of the Johnson Amendment
  - Elimination of Private Activity Tax Exempt Bonds

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OTHER MATTERS

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REV. PROC. 2018-32

- Announces the new single comprehensive search of Exempt Organizations
  - Tax Exempt Organization Search (Pub. 78 data)
  - Searches five IRS databases
- Modifies and supersedes Rev. Proc. 81-6, Rev. Proc. 81-7, Rev. Proc. 89-23, Rev. Proc. 2011-33
- Effective May 16, 2018

REV. PROC. 2018-32: FIVE DATABASES

- Three existing databases
- Eligible organization list.
  - Formerly Exempt Organizations Select Check
  - Select Check replaced the former paper Publication 78
- Automatic Revocation of Exemption List or Auto-Revocation List
  - Revocations under § 6033(j)
  - Failure to file a required annual return or notice for 3 consecutive years
- Information contained in Forms 990-N (“e-postcards”) for organizations too small to file Forms 990 or 990-EZ

REV. PROC. 2018-32: FIVE DATABASES

- Two new databases
- Images of Form 990 series returns filed on or after January 1, 2018 to the extent these must be publicly available under Section 6104
- Images of favorable determination letters
  - Issued by the IRS to organizations to recognize Tax-Exempt status
  - Issued letters on or after January 1, 2014 are available

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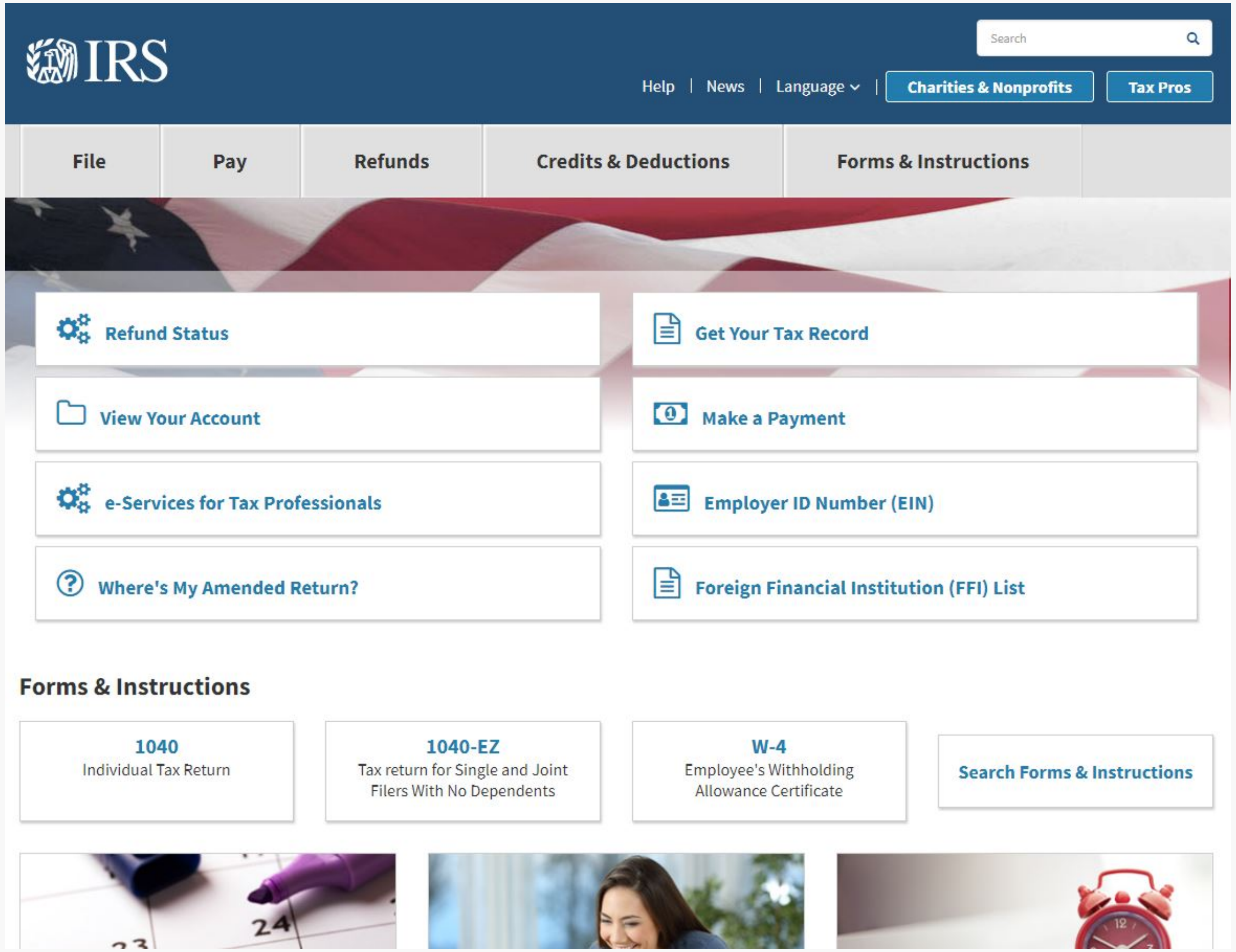
REV. PROC. 2018-32



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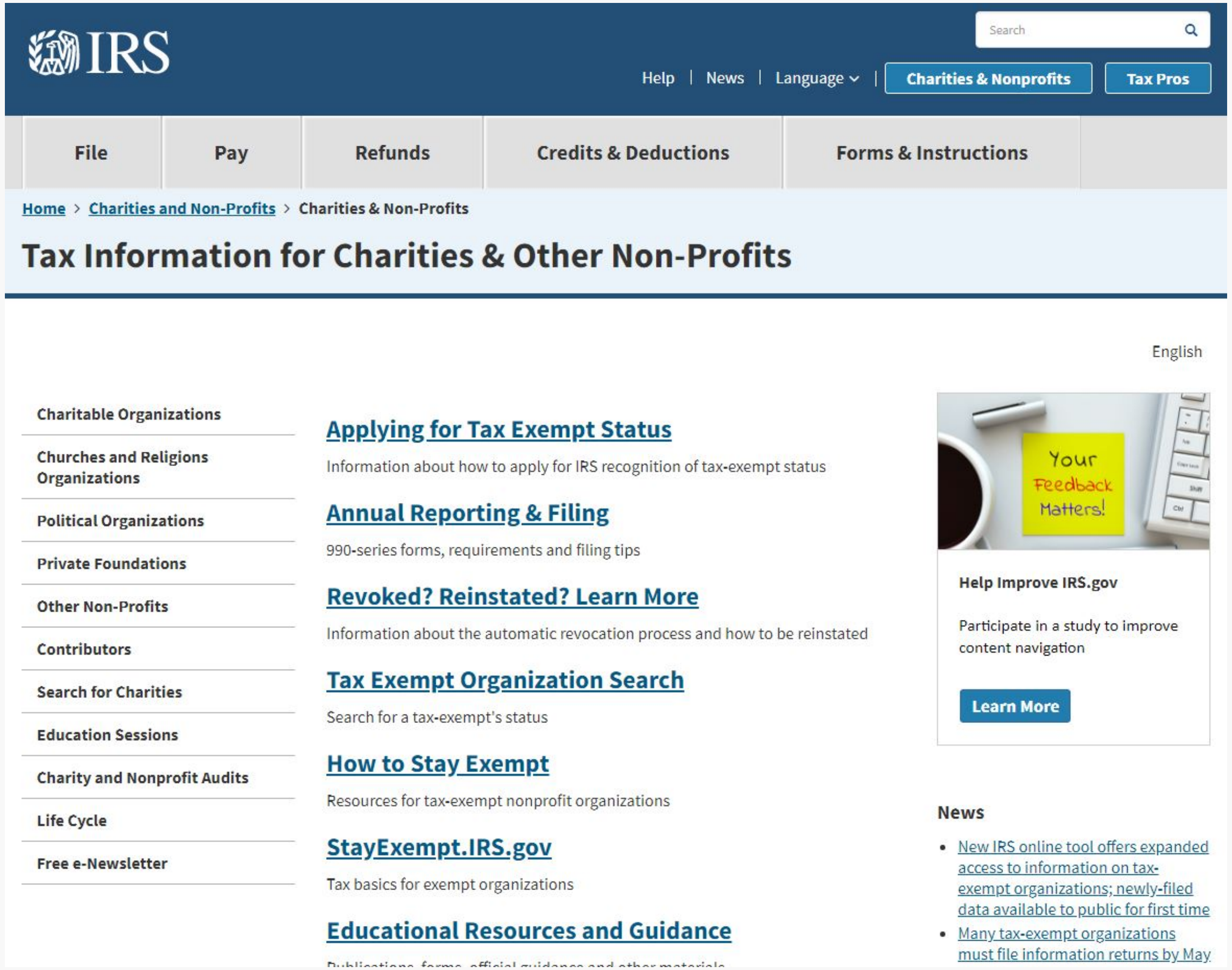
REV. PROC. 2018-32



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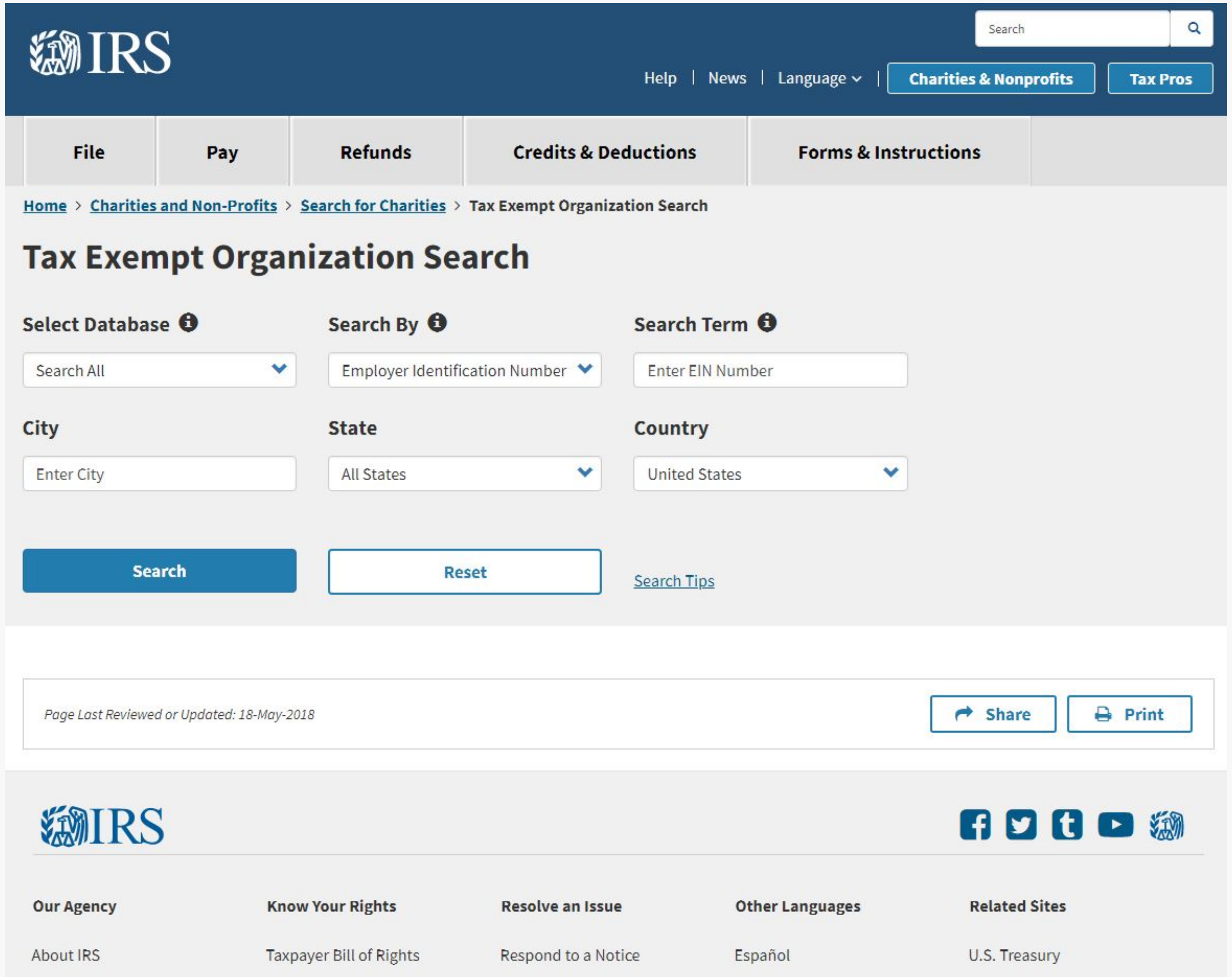
REV. PROC. 2018-32 : 3 CLICKS



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REV. PROC. 2018-32: IT WORKS!

Determination Letter

A favorable determination letter is issued by the IRS if an organization meets the requirements for tax-exempt status under the Code section the organization applied.

Determination Letter: Determination Letter

Publication 78 Data

Organizations eligible to receive tax-deductible charitable contributions. Users may rely on this list in determining deductibility of their contributions.

On Publication 78 Data List: Yes

Deductibility Code: PF

Auto-Revocation List

Organizations whose federal tax exempt status was automatically revoked for not filing a Form 990-series return or notice for three consecutive years. Important note: Just because an organization appears on this list, it does not mean the organization is currently revoked, as they may have been reinstated.

Exemption Type: 501(c)(3)

Exemption Reinstatement Date: 05-15-2010

Revocation Date: 05-15-2010

Revocation Posting Date: 06-09-2011

Page Last Reviewed or Updated: 18-May-2018

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REV. PROC. 2018-32: ELIGIBLE ORGANIZATION LIST

- Deductibility codes
  - Indicates the foundation classification under 509(a)
  - Assists grantors and contributors determine the deductibility percentage
  - Assists PFs and DAFs determine if they are required to exercise expenditure responsibility
- Deductibility percentages
  - PCs & POFs: 60% cash, 50% property, 30% LTCG property (2018)
  - Private foundations: 30% cash, 20% LTCG property
  - Several other types with varying amounts

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REV. PROC. 2018-32: EO BMF

- CSV export with more information that the eligible organization list
  - Name, EIN, address
  - Subsection code (“3” for 501(c)(3))
  - Ruling date
  - Affiliation code
  - Deductibility code
  - Foundation code
  - Tax period
  - Asset & income code
  - Asset & income amounts from las filed tax return
- Includes most tax-exempt organizations (beyond that that can receive Section 170 tax-deductible contributions)
- Download the information sheet as a guide

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REV. PROC. 2018-32: ELIGIBLE ORGANIZATION LIST: EO BMF

IRS

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File | Pay | Refunds | Credits & Deductions | Forms & Instructions

Home > Charities and Non-Profits > Exempt Organizations Business Master File Extract EO BMF

Exempt Organizations Business Master File Extract (EO BMF)

English

- Charitable Organizations
- Churches and Religions Organizations
- Political Organizations
- Private Foundations
- Other Non-Profits
- Contributors
- Search for Charities
- Education Sessions
- Charity and Nonprofit Audits
- Life Cycle
- Free e-Newsletter

The Exempt Organization Business Master File Extract (EO BMF) includes cumulative information on exempt organizations. The data are extracted monthly and are available by state and region. The files are in comma separated value (CSV) format and can be opened by most computer applications including Excel.

- Download the Excel Viewer.
- For detailed information on the files, including available fields, please review the EO BMF information sheet.
- Questions about tax-exempt organizations or the content of the files? Call TE/GE Customer Account Services at 1-877-829-5500.
- Publication 557, Tax-Exempt Status for Your Organization, has information on rules and procedures for exempt organizations.

Exempt Organizations Business Master File Extracts

Updated data posting date: 05/14/2018 Record Count is 1,675,248

CSV Files by State

Charitable Topics

- SOI Tax Stats Charitable and Exempt Organizations Statistics
- Exempt Organizations Business Master File Extract EO BMF
- SOI Tax Stats IRS Data Book

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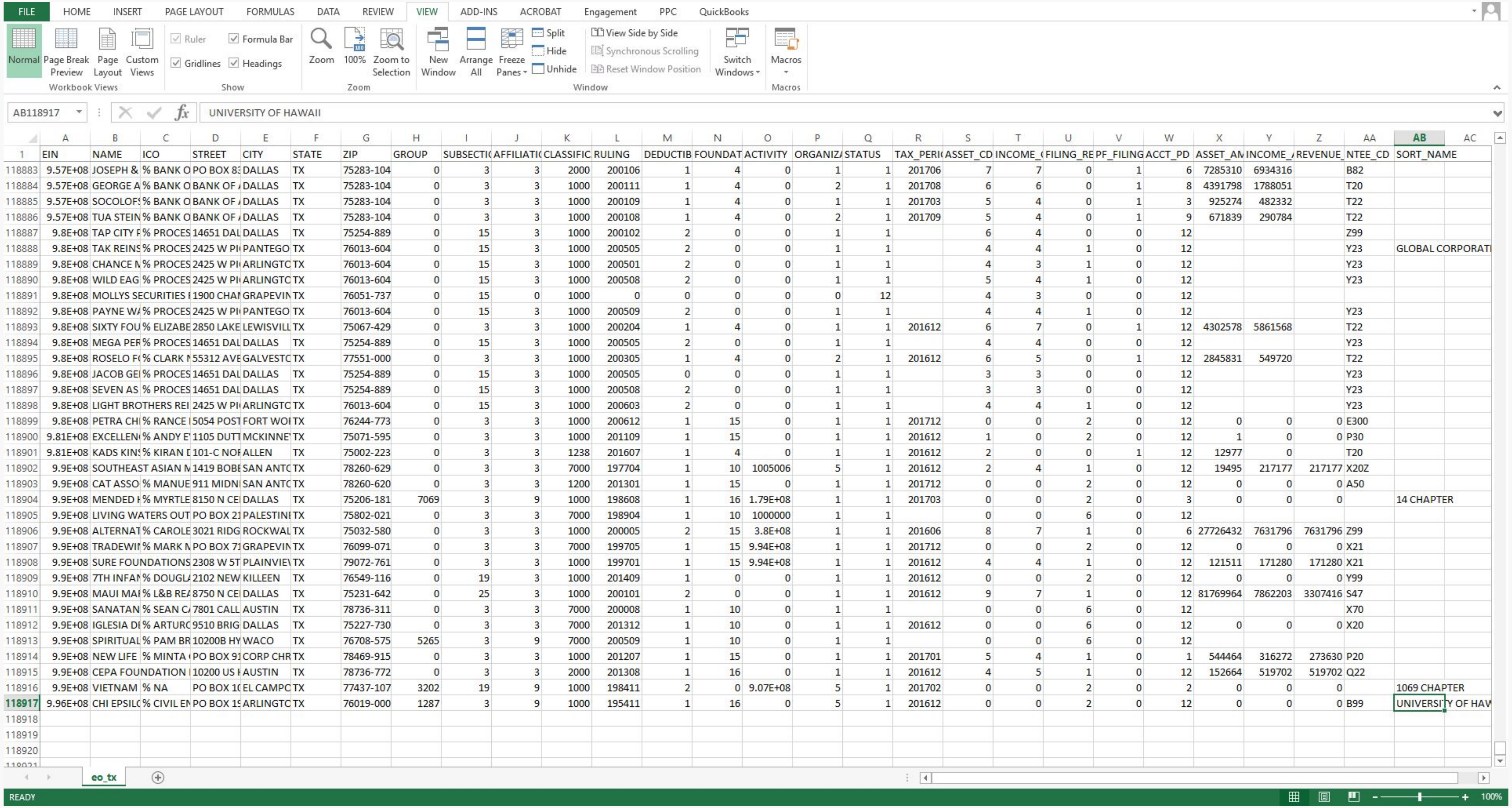
REV. PROC. 2018-32: EO BMF



	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC
1	EIN	NAME	ICO	STREET	CITY	STATE	ZIP	GROUP	SUBSECTI(	AFFILIATI(	CLASSIFIC	RULING	DEDUCTIB	FOUNDAT	ACTIVITY	ORGANIZ/	STATUS	TAX_PERI(	ASSET_CD	INCOME_(	FILING_RE	PF_FILING	ACCT_PD	ASSET_AN	INCOME_/	REVENUE_	NTEE_CD	SORT_NAME	
118883	9.57E+08	JOSEPH &	% BANK O	PO BOX 83	DALLAS	TX	75283-104	0	3	3	2000	200106	1	4	0	1	1	201706	7	7	0	1	6	7285310	6934316		B82		
118884	9.57E+08	GEORGE A	% BANK O	BANK OF /	DALLAS	TX	75283-104	0	3	3	1000	200111	1	4	0	2	1	201708	6	6	0	1	8	4391798	1788051		T20		
118885	9.57E+08	SOCOLOF!	% BANK O	BANK OF /	DALLAS	TX	75283-104	0	3	3	1000	200109	1	4	0	1	1	201703	5	4	0	1	3	925274	482332		T22		
118886	9.57E+08	TUA STEIN	% BANK O	BANK OF /	DALLAS	TX	75283-104	0	3	3	1000	200108	1	4	0	2	1	201709	5	4	0	1	9	671839	290784		T22		
118887	9.8E+08	TAP CITY F	% PROCES	14651 DAL	DALLAS	TX	75254-889	0	15	3	1000	200102	2	0	0	1	1		6	4	0	0	12				Z99		
118888	9.8E+08	TAK REINS	% PROCES	2425 W PI	PANTEGO	TX	76013-604	0	15	3	1000	200505	2	0	0	1	1		4	4	1	0	12				Y23	GLOBAL CORPORATI	
118889	9.8E+08	CHANCE N	% PROCES	2425 W PI	ARLINGTC	TX	76013-604	0	15	3	1000	200501	2	0	0	1	1		4	3	1	0	12				Y23		
118890	9.8E+08	WILD EAG	% PROCES	2425 W PI	ARLINGTC	TX	76013-604	0	15	3	1000	200508	2	0	0	1	1		5	4	1	0	12				Y23		
118891	9.8E+08	MOLLYS SECURITIES I		1900 CHAI	GRAPEVIN	TX	76051-737	0	15	0	1000	0	0	0	0	0	12		4	3	0	0	12						
118892	9.8E+08	PAYNE W/	% PROCES	2425 W PI	PANTEGO	TX	76013-604	0	15	3	1000	200509	2	0	0	1	1		4	4	1	0	12				Y23		
118893	9.8E+08	SIXTY FOU	% ELIZABE	2850 LAKE	LEWISVILL	TX	75067-429	0	3	3	1000	200204	1	4	0	1	1	201612	6	7	0	1	12	4302578	5861568		T22		
118894	9.8E+08	MEGA PER	% PROCES	14651 DAL	DALLAS	TX	75254-889	0	15	3	1000	200505	2	0	0	1	1		4	4	0	0	12				Y23		
118895	9.8E+08	ROSELO F(	% CLARK N	55312 AVE	GALVESTC	TX	77551-000	0	3	3	1000	200305	1	4	0	2	1	201612	6	5	0	1	12	2845831	549720		T22		
118896	9.8E+08	JACOB GEI	% PROCES	14651 DAL	DALLAS	TX	75254-889	0	15	3	1000	200505	0	0	0	1	1		3	3	0	0	12				Y23		
118897	9.8E+08	SEVEN AS	% PROCES	14651 DAL	DALLAS	TX	75254-889	0	15	3	1000	200508	2	0	0	1	1		3	3	0	0	12				Y23		
118898	9.8E+08	LIGHT BROTHERS REI		2425 W PI	ARLINGTC	TX	76013-604	0	15	3	1000	200603	2	0	0	1	1		4	4	1	0	12				Y23		
118899	9.8E+08	PETRA CHI	% RANCE I	5054 POST	FORT WOI	TX	76244-773	0	3	3	1000	200612	1	15	0	1	1	201712	0	0	2	0	12	0	0	0	E300		
118900	9.81E+08	EXCELLEN(	% ANDY E'	1105 DUTI	MCKINNE'	TX	75071-595	0	3	3	1000	201109	1	15	0	1	1	201612	1	0	2	0	12	1	0	0	P30		
118901	9.81E+08	KADS KIN!	% KIRAN D	101-C NOF	ALLEN	TX	75002-223	0	3	3	1238	201607	1	4	0	1	1	201612	2	0	0	1	12	12977	0		T20		
118902	9.9E+08	SOUTHEAST ASIAN M		1419 BOBE	SAN ANTC	TX	78260-629	0	3	3	7000	197704	1	10	1005006	5	1	201612	2	4	1	0	12	19495	217177	217177	X20Z		
118903	9.9E+08	CAT ASSO	% MANUE	911 MIDNI	SAN ANTC	TX	78260-620	0	3	3	1200	201301	1	15	0	1	1	201712	0	0	2	0	12	0	0	0	A50		
118904	9.9E+08	MENDED I	% MYRTLE	8150 N CEI	DALLAS	TX	75206-181	7069	3	9	1000	198608	1	16	1.79E+08	1	1	201703	0	0	2	0	3	0	0	0		14 CHAPTER	
118905	9.9E+08	LIVING WATERS OUT		PO BOX 21	PALESTINI	TX	75802-021	0	3	3	7000	198904	1	10	1000000	1	1		0	0	6	0	12						
118906	9.9E+08	ALTERNAT	% CAROLE	3021 RIDG	ROCKWAL	TX	75032-580	0	3	3	1000	200005	2	15	3.8E+08	1	1	201606	8	7	1	0	6	27726432	7631796	7631796	Z99		
118907	9.9E+08	TRADEWII	% MARK N	PO BOX 71	GRAPEVIN	TX	76099-071	0	3	3	7000	199705	1	15	9.94E+08	1	1	201712	0	0	2	0	12	0	0	0	X21		
118908	9.9E+08	SURE FOUNDATIONS		2308 W 5T	PLAINVIE\	TX	79072-761	0	3	3	1000	199701	1	15	9.94E+08	1	1	201612	4	4	1	0	12	121511	171280	171280	X21		
118909	9.9E+08	7TH INFAI	% DOUGL/	2102 NEW	KILLEEN	TX	76549-116	0	19	3	1000	201409	1	0	0	1	1	201612	0	0	2	0	12	0	0	0	Y99		
118910	9.9E+08	MAUI MAI	% L&B RE/	8750 N CEI	DALLAS	TX	75231-642	0	25	3	1000	200101	2	0	0	1	1	201612	9	7	1	0	12	81769964	7862203	3307416	S47		
118911	9.9E+08	SANATAN	% SEAN C/	7801 CALL	AUSTIN	TX	78736-311	0	3	3	7000	200008	1	10	0	1	1		0	0	6	0	12				X70		
118912	9.9E+08	IGLESIA DI	% ARTURC	9510 BRIG	DALLAS	TX	75227-730	0	3	3	7000	201312	1	10	0	1	1	201612	0	0	6	0	12	0	0	0	X20		
118913	9.9E+08	SPIRITUAL	% PAM BR	10200B HY	WACO	TX	76708-575	5265	3	9	7000	200509	1	10	0	1	1		0	0	6	0	12						
118914	9.9E+08	NEW LIFE	% MINTA (	PO BOX 91	CORP CHR	TX	78469-915	0	3	3	1000	201207	1	15	0	1	1	201701	5	4	1	0	1	544464	316272	273630	P20		
118915	9.9E+08	CEPA FOUNDATION I		10200 US I	AUSTIN	TX	78736-772	0	3	3	2000	201308	1	16	0	1	1	201612	4	5	1	0	12	152664	519702	519702	Q22		
118916	9.9E+08	VIETNAM	% NA	PO BOX 1(	EL CAMPC	TX	77437-107	3202	19	9	1000	198411	2	0	9.07E+08	5	1	201702	0	0	2	0	2	0	0	0		1069 CHAPTER	
118917	9.96E+08	CHI EPSILC	% CIVIL EN	PO BOX 1S	ARLINGTC	TX	76019-000	1287	3	9	1000	195411	1	16	0	5	1	201612	0	0	2	0	12	0	0	0	B99	UNIVERSITY OF HAW	
118918																													
118919																													
118920																													

REV. PROC. 2018-32: AUTO-REVOCATION LIST

- Generally updated monthly
- Organizations re-instated after § 6033(j) revocation will appear in the Tax Exempt Organization Search (Pub. 78 data)
- Name will remain on the Auto-Revocation List ("List")
  - By statute, IRS must maintain and publish a list of auto-revoked orgs
  - Reinstatement date listed
  - Organizations appearing in error will be removed

REV. PROC. 2018-32: RELIANCE

- Grants and contributions made to an organization generally will be considered deductible if an organization is not on the List
  - If organization appears on the List, amounts generally will be deductible if made on or before the date the name is posted on the List
    - Exception if donor:
      - Had knowledge of revocation prior to public announcement
      - Was aware of the imminent revocation
      - Was in part responsible or aware of causes that gave rise to loss of qualification
- Similar reliance rules for donations after dates of
  - Re-appearing in the Tax Exempt Organization Search (Pub. 78)
  - Determination letter, ruling, or affirmation letter

REV. PROC. 2018-32: RELIANCE

- Similar reliance rules for status as Public Charities
- Limitations on reliance
  - Only organization’s official name, popular name or widely known contraction of the two
  - Not available if donation is to a listed organization on the understanding the donation will made available to a non-listed organization
  - Subordinate organizations not covered if they are non-listed

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REV. PROC. 2018-32

- Affirmation letters will be issued
  - confirming that an organization is currently recognized as tax-exempt
  - reflecting a name or address change
- Safe harbor for grantors and contributors:
  - Will not be considered responsible for, or aware of, an act that results in the loss of classification due to a change in financial support if the aggregate of grants or contributions received from such grantor or contributor for the taxable year of the recipient organization in which the grant is received is 25% or less of the total support received for the preceding four years
  - Not available to those:
    - In a position of authority with respect to the recipient organization
    - Who obtain a position of authority as a result of the grant or contribution

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FORM 1023-EZ: STREAMLINED APPLICATION PROCEDURES

Part III. Your Specific Activities

Consider your past, present, and planned activities when responding to these questions.

Line 1. Briefly describe your mission or most significant activities (limit 255 characters). Provide a brief summary of your tax-exempt 501(c)(3) purposes and the activities you engage in to further those purposes (see below for examples and a description of various 501(c)(3) purposes). Don't refer to or repeat purposes in your organizing document or speculate about potential future programs. You should describe either actual or planned mission or activities. For example, an organization that

- Less the $50,000 revenue
- Less than $250,000 assets
- 2 ½ pages long
- Apply online pay.gov
- Introduced in 2014
- Form 1023 is 26 pages

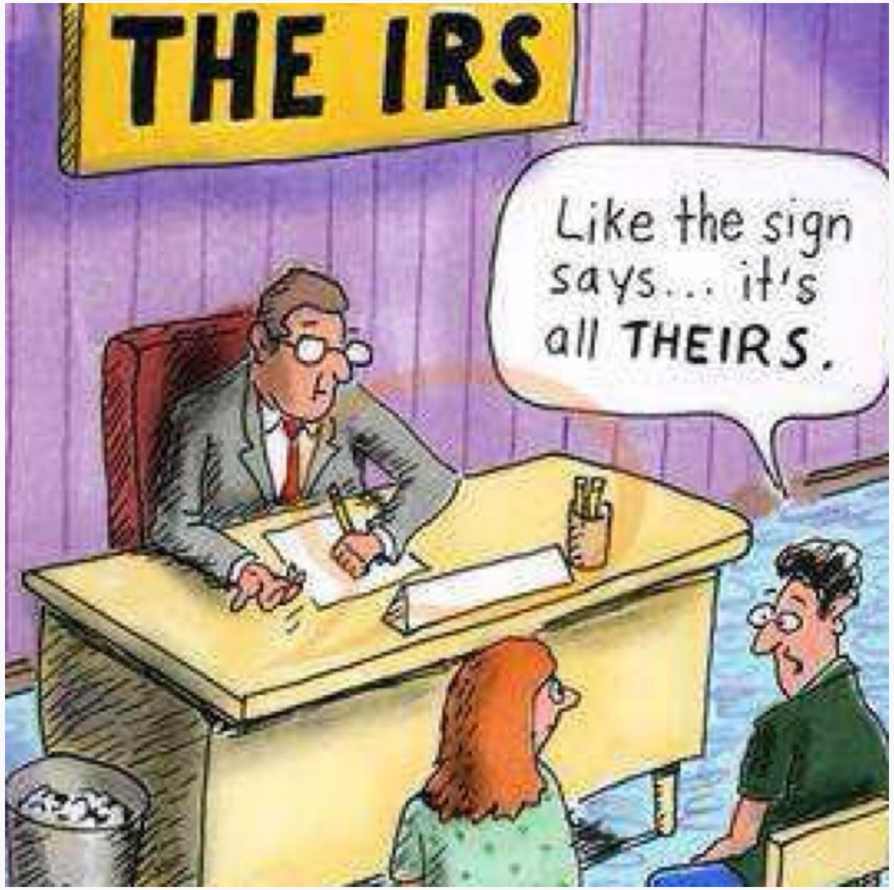
IRS – TEA PARTY SETTLEMENT

- In 2013, a report from the Treasury Inspector General for Tax Administration (“TIGTA”) found improper scrutiny by the IRS towards certain groups applying for tax-exempt status
  - “Tea party” or “patriot” in organization’s name were targeted
  - Applications delayed months or years
  - Improper questions asked about donors & religious preferences
- $3.5M settlement preliminarily agreed-upon on October 2017
- No criminal charges expected for Lois Lerner or others
- 2017 TIGTA report found additional scrutiny on “liberal” groups
  - “Occupy” and “progressive”

BIPARTISAN BUDGET ACT OF 2018: CALIFORNIA WILDFIRE RELIEF

- Law passed & signed 2/9/18
- Contribution relief for “qualified contributions” of cash made between 10/8/17 and 12/31/18 to an organization for relief efforts of the California wildfire disaster area
- Suspends the 50% (2017) and 60% (2018) limitations on contributions and carryover rules
- Provides exception to overall limitation on itemized deductions
- Qualified contributions
  - Written contemporaneous acknowledgement
  - Not to a 509(a)(3) organization (supporting organization)
  - Not to donor advised funds

THANK YOU



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