

TAX-EXEMPT ORGANIZATIONS ON THE TAX BILL CHOPPING BLOCK

Since the Senate approved the Tax Cuts and Jobs Act last Saturday, December 2, the tax reform process has turned to the appointment of a conference committee. This committee must reconcile the Senate version of the bill ("Senate Bill") and the version that the House of Representatives passed in November ("House Bill"), with the goal of producing a version for both Houses to approve.

While much of the national dialogue to date has focused on issues like the corporate tax rate, state and local tax deductions and the repeal of the individual mandate, the bills also contain numerous less widely publicized provisions with substantial ramifications for tax-exempt organizations. Hospitals and other tax-exempt health care organizations should begin familiarizing themselves with these provisions now and, in some cases, may wish to consider joining the dialogue about which provisions should become law.

Here are some of the most significant issues for tax-exempt hospitals and health care organizations in the House and Senate versions of the bill.

- While both the House Bill and Senate Bill repeal tax-exempt advance refunding bonds, the House Bill (but not the Senate Bill) also eliminates all new private activity bonds, including all 501(c)(3) bonds. As noted in Hall Render's [This Week in Washington](#), it is not yet clear what the conference committee will do. Were the House Bill's provisions to be adopted, tax-exempt hospitals and health care organizations would no longer be able to finance capital projects with tax-exempt debt.
- Both bills would nearly double the standard deduction. This change will result in fewer taxpayers itemizing their deductions, which reduces an important incentive for charitable giving. Various nonprofit groups – including the Council on Foundations, the National Council on Nonprofits and Independent Sector – have expressed concern that this change, coupled with the reduction in the corporate tax rate, will lead to an overall decrease in charitable contributions. Due to the strong likelihood that this change will be included in the final legislation, some charities already have begun encouraging donors to modify their giving strategies, such as by making larger gifts in the current year while they still can benefit from a larger tax deduction.
- Both versions of the bill would impose a penalty tax on certain amounts paid by tax-exempt organizations to their highest compensated employees. Broadly stated, the tax would apply to wages exceeding \$1,000,000 that are paid to an organization's five highest compensated employees and to certain parachute payments to such employees. This tax could pose significant challenges for some hospitals and health care organizations in their arrangements with executives and physicians.
- The Senate Bill (but not the House Bill) would modify the unrelated business income tax to require tax-exempt organizations to compute their tax liability separately for each trade or business activity. This would prevent organizations from using net operating losses from one business activity to offset income from another. If this provision passes, tax-exempt organizations may wish to consider alternative structures for their unrelated business activities, such as transferring those activities to for-profit subsidiaries.
- The House Bill (but not the Senate Bill) would change the rules concerning political campaign activities by charitable organizations, including hospitals and health care organizations. Under current law, a Code Section 501(c)(3) organization may not participate or intervene in any political campaign for or against any candidate for public office. The House Bill would create a *de minimis* exception to this rule and would allow an organization to make statements against or in support of candidates in the ordinary course of the organization's regular and customary activities. If this provision passes, Code Section 501(c)(3) hospitals and other health care organizations would be prudent to develop policies governing what political activities they will, and will not, undertake. Careful messaging also will be necessary in explaining the new boundaries to executives, physicians and other employees.

Substantial work remains before the Tax Cuts and Jobs Act can advance to the president's desk for signature. Hospitals and other tax-exempt organizations can use this time to begin evaluating what steps will be necessary if the bill does become law. Such organizations may wish to coordinate their efforts with the American Hospital Association or other charities that are endeavoring to highlight particular concerns for congressional attention.

Hall Render will continue to provide updates regarding the bill and, in the event that it passes, will offer guidance for hospitals and other tax-

exempt organizations in their efforts to understand and comply with the new legal requirements.

If you have questions or would like additional information about this topic, please contact:

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