UPDATE FROM THE HILL

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Representing and Managing Tax-Exempt Organizations
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NEW LEADERSHIP IN HOUSE AND SENATE

• **Rep. Paul Ryan** (R-WI) replaces Rep. Dave Camp (R-MI) as chair of House Committee on Ways and Means. Rep. Ryan announced he is not running for President, which may signal an intent to focus on tax reform legislation.
  - **Rep. Sander Levin** (D-MI) remains Ranking Member of Ways and Means

• **Rep. Jason Chaffetz** (R-UT) replaces Rep. Darrell Issa (R-CA) as chair of House Committee on Oversight & Gov’t Reform
  - **Rep. Elijah Cummings** (D-MD) remains Ranking Member of the Oversight Committee

• **Sen. Orrin Hatch** (R-UT) assumes chairmanship of the Senate Finance Committee
  - **Sen. Ron Wyden** (D-OR) becomes Ranking Member
KEY CONGRESSIONAL STAFF

• Joint Committee on Taxation
  • Tom Barthold, Gordon Clay

• House Committee on Ways and Means
  • Majority staff: George Callas, Harold Hancock, Mark Warren
  • Minority staff: Aruna Kalyanam, Karen McAfee

• Senate Finance Committee
  • Majority staff: Jim Lyons, Preston Rutledge
  • Minority staff: Tiffany Smith, Kara Getz
CONGRESS CUTS IRS BUDGET

• Congress enacted a $1.01 trillion omnibus spending bill (Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235) on December 16, 2014 which cut the IRS’s budget by $346 million or 3%, to $10.95 billion.

• IRS must also must pay $250 million to cover its share of a 1% pay increase for government employees and for increased benefit costs.

• IRS Commissioner Koskinen said that the IRS will implement a hiring freeze, cut travel expenses, and cease overtime pay.

• Wait times expected to increase for telephone assistance to taxpayers.
**TAX INCREASE PREVENTION ACT OF 2014**
*(TAX EXTENDERS)*

  - They are now expired, again. (“This tax bill doesn't have the shelf life of a carton of eggs,” said Sen. Wyden).
- **EO provisions include:**
  - Deduction for contributions of capital gain real property made for conservation purposes;
  - Tax-free distributions from individual retirement accounts (IRAs) for charitable purposes;
  - The tax deduction for contributions of food inventory by taxpayers other than C corporations;
  - The basis adjustment rule for stock of an S corporation making charitable contributions of property;
  - Extension of modification of tax treatment of certain payments to controlling exempt organizations
ABLE ACT
(ENACTED AS PART OF TIPRA 2014)

• Creates tax-exempt savings accounts for individuals with disabilities under Code § 529A similar to college savings accounts

• Assets held in the account are not counted for purposes of determining eligibility for Medicaid and Supplemental Security Income (although SSI payments are suspended if the assets in an ABLE account reach $100,000).

• Eligible individuals include those diagnosed with blindness or disability under title II or XVI of the Social Security Act prior to age 26.

• Eligible expenses include education, housing, transportation, employment support, health/wellness, and miscellaneous expenses.
House passed the America Gives More Act (H.R. 644) by a vote of 279 to 137 on Feb. 12, 2015.

- 39 Democrats and all but one Republican voted for the bill.
- The legislation permanently extends the IRA charitable rollover (H.R. 637),
- Permanently extends and expands the enhanced deduction for donating excess food inventory (H.R. 644)
- Permanently extends the enhanced deduction for land conservation easements (H.R. 641)
- Simplifies the private foundation excise tax on investment income to a rate of 1% (H.R. 640)
WAYS AND MEANS COMMITTEE
MARKUP OF MARCH 25TH

• H.R. 709, Prevent Targeting at the IRS Act, providing for the termination of IRS employees who take official actions for political purposes, introduced by Rep. James B. Renacci (R-Ohio)

• H.R. 1026, the Taxpayer Knowledge of IRS Investigations Act, introduced by Rep. Mike Kelly (R-Pa.)

• H.R. 1058, the Taxpayer Bill of Rights Act, introduced by Roskam;

• H.R. 1104, the Fair Treatment for all Donations Act, introduced by Roskam;

• H.R. 1152, prohibiting IRS personnel from using personal e-mail for official business, introduced Rep. Kenny Marchant (R-Texas)

• H.R. 1295, revamping the process for determining 501(c)(4) eligibility, introduced by Rep. George Holding (R-N.C.)

• H.R. 1314, allowing the right to an administrative appeal after being denied tax-exempt status, introduced by Rep. Patrick Meehan (R-Pa.)
SENATE FINANCE COMMITTEE MARKUP

• Senate Finance Committee marked up 17 miscellaneous tax bills on February 11, including 3 relating to EOs:
  • Agricultural Research Organizations treated as *per se* public charities under § 170(b)(1)(A) regardless of source of support.
  • Exception to Excess Business Holdings rule for Certain Philanthropic Business Enterprises
  • Advance notice to nonprofit organizations whose 501(c)(3) status is in jeopardy

• Senator Orrin Hatch (R-UT) plans more markups on “noncontroversial” bills with “bipartisan support.”
TAX REFORM

• There is talk of splitting tax reform into two pieces, doing “business only” tax reform first and individual tax reform separately.

• Business only tax reform is unlikely to include charitable contribution deduction reforms, but may well include the other provisions discussed in the Tax Reform Act of 2014.

• Senator Hatch has outlined 7 broad principles for tax reform: economic growth, fairness, simplicity, revenue neutrality, permanence, competitiveness, and incentives for savings and investment.
  • Distributional neutrality is not among the principles, which suggests a departure from the principles underlying the 2014 House-led tax reform effort.
  • Senator Hatch announced that he will create five bipartisan working groups to examine various parts of the tax code, similar to the process the House undertook. Committees include: individuals, infrastructure, savings and investment, business, and international.
MACROECONOMIC SCORING (a/k/a “DYNAMIC” SCORING)

• House Resolution 5 amended the Rules to require Joint Committee on Taxation and the Congressional Budget Office to provide revenue estimates of major legislation that incorporates the budgetary effects of macroeconomic variables resulting from such legislation (e.g. changes in economic output, employment, capital stock). Major legislation “materially affects” the $17 trillion U.S. economy.
  • Proponents believe that macroeconomic analysis can be used to justify tax reform legislation that loses revenue under conventional analysis but is revenue neutral under a macroeconomic analysis.
  • Some critics believe that macroeconomics is too theoretical or simplistic to provide reliable information in an applied setting and may be used to politicize revenue estimates.
  • Others argue that macroeconomic analysis can be a two-edged sword that is as likely to reduce the economic impact of tax cuts as amplify it.
• The Senate has not followed the House in changing its rules.
## JCT REVENUE ESTIMATES OF CERTAIN PROPOSALS

<table>
<thead>
<tr>
<th>Provision</th>
<th>2015–2025 ($Billions)</th>
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<tbody>
<tr>
<td>Food Inventory Contributions</td>
<td>(1.915)</td>
</tr>
<tr>
<td>Charitable Distributions from IRAs</td>
<td>(8.415)</td>
</tr>
<tr>
<td>Qualified Conservation Contributions</td>
<td>(1.177)</td>
</tr>
<tr>
<td>Charitable Contributions Until April 15 Counted in Prior Year</td>
<td>(2.822)</td>
</tr>
<tr>
<td>Private Foundation Excise Tax Reduced to 1%</td>
<td>(1.909)</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>(16.238)</strong></td>
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</table>
• Rep. Jason Chaffetz (R-UT) introduced H.R. 547, the Properly Reducing Overexemptions for Sports Act, to preclude exempt status for professional sports organizations that have annual gross receipts in excess of $10 million.

• Rep. David Reichert (R-WA) introduced H.R. 630, the Permanent S Corporation Charitable Contributions Act of 2015, which makes permanent a provision that allows a shareholder to reduce S corporation stock basis by an amount equal to the shareholder’s pro rata share of the adjusted basis of property contributed to charity.
• Rep. Paul Ryan (R-WI) introduced H.R. 599, the Stop Targeting of Political Beliefs by the IRS Act of 2015, to prohibit the IRS from modifying its standard for determining whether an organization qualifies for tax-exempt status under § 501(c)(4). The prohibition would apply until December 31, 2017.

• Rep. Jones (R-NC) introduced H.R. 153, which would repeal the prohibition on campaign intervention by tax-exempt organizations (commonly known as the “Johnson Amendment”).
• H.R. 181, the Justice for Victims of Trafficking Act of 2015, would permit tax-exempt non-profit organizations to receive grants for combating human trafficking, provided that the organizations refrain from keeping money in offshore accounts to avoid taxation.

• Rep. David McKinley (R-WV) introduced H.R. 343, the Volunteer Emergency Responders Tax Deduction Act, which would provide a charitable deduction for services rendered by volunteer firefighters and emergency medical and rescue personnel.

• Rep. Todd Young (R-IN) introduced H.R. 811, the IRS NOTICE Act, which requires that the IRS provide organizations with notice prior to automatic revocation of exempt status.
• Rep. Morgan Griffith (R-VA) introduced H.R. 133, which would waive reinstatement application user fees for tax-exempt organizations’ small subsidiaries after automatic revocation of their exempt status.

• Rep. David Cicilline (D-RI) introduced H.R. 362, the Paying a Fair Share Act of 2015, which would require that high-income taxpayers—those whose adjusted gross income exceeds $1 million—pay a minimum tax rate of 30% on adjusted gross income less charitable deductions.
• Rep. Peter Roskam (R-IL) introduced H.R. 1104, the Fair Treatment of All Donations Act, to provide a gift tax deduction for gifts made to organizations exempt under §§ 501(c)(4), 501(c)(5), and 501(c)(6).
Sen. Ted Cruz (R-TX) introduced S. 274, which would prohibit the IRS from assigning tax status based on an organization’s political activities or beliefs.

Sen. Ted Cruz (R-TX) introduced S. 273, which imposes a criminal penalty on IRS employees who intentionally discriminate based on an organization’s political, economic, or social positions.

Sen. Jeff Flake (R-AZ) introduced S. 283, the Stop Targeting of Political Beliefs by the IRS Act of 2015, to prohibit the IRS from modifying its standard for determining whether an organization qualifies for tax-exempt status under § 501(c)(4). The prohibition would apply until February 28, 2017.
SENATE
2015 PROPOSED EO LEGISLATION (cont’d)

• Sen. David Vitter (R-LA) introduced S. 75, the Education Tax Fraud Prevention Act, which provides that a taxpayer who claims an education credit must provide the student’s social security number and the educational institution’s employer identification number.

• Sen. Dean Heller (R-NV) introduced S. 330, the Conservation Easement Incentive Act of 2015, which permanently extends the special deductibility rules for property contributed for conservation purposes.

• Sen. Jon Tester (D-MT) introduced S. 367, the Sunlight for Unaccountable Non-profits (SUN) Act, which requires that information returns from tax-exempt organizations are available in a searchable format and that such returns include the identities of contributors to certain organizations.
SENATE
2015 PROPOSED EO LEGISLATION (cont’d)

• Sen. Dan Coats (R-IN) and Ben Cardin (D-MD) introduced S.400, the Notice Act, which would require the IRS to timely notify non-profits prior to automatically revoking their tax exemptions. S. 400 also allows the IRS to retroactively reinstate exempt status if a non-profit does not receive the requisite notice and files an information return.

• Sen. Sheldon Whitehouse (D-RI) introduced S. 161, the Paying a Fair Share Act of 2015, which would require that high-income taxpayers pay a minimum tax rate of 30% on adjusted gross income less charitable deductions.
## PRESIDENT’S BUDGET PROPOSALS AFFECTING EXEMPT ORGANIZATIONS
### COMPARISON OF 10-YEAR REVENUE ESTIMATES

<table>
<thead>
<tr>
<th>Proposal</th>
<th>Treasury Estimate</th>
<th>JCT Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modifications to NMTC &amp; LIHTC</td>
<td>($14.08 billion)</td>
<td>($17.99 billion)</td>
</tr>
<tr>
<td>28% itemized deduction limitation</td>
<td>$603.22 billion</td>
<td>$525.07 billion</td>
</tr>
<tr>
<td>Modification of Form 1098-T reporting</td>
<td>$618 million</td>
<td>$520 million</td>
</tr>
<tr>
<td>Fair Share Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elimination of deduction for charitable contributions that are prerequisites for purchasing tickets to sporting events</td>
<td>$2.54 billion</td>
<td>$2.35 billion</td>
</tr>
<tr>
<td>Modification to conservation easement rules</td>
<td>$272 million</td>
<td>($414 million)</td>
</tr>
<tr>
<td>Electronic filing of 990</td>
<td>$10 million</td>
<td>Negligible</td>
</tr>
<tr>
<td>1.35% excise tax on private foundations</td>
<td>($53 million)</td>
<td>($146 million)</td>
</tr>
<tr>
<td>Change in contribution limitations &amp; carryover period</td>
<td>($5.99 billion)</td>
<td>($5.21 billion)</td>
</tr>
</tbody>
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PRESIDENT’S FY2016 BUDGET PROPOSALS AFFECTING EXEMPT ORGANIZATIONS

- Permanently extend the New Markets Tax Credit and allow New Market Tax Credit amounts to offset alternative minimum tax liability
- Reform and expand the Low-Income Housing Tax Credit
- Require institutions of higher education to report amounts received for qualified tuition and related expenses on Form 1098-T box 1, and eliminate the option to report amounts billed (currently box 2)
- Require any entity issuing a scholarship or grant in excess of $500 (indexed for inflation) that is not processed or administered by an institution of higher education to report on Form 1098-T box 5
• Limit itemized deductions to 28% for high-income taxpayers

• Impose a new minimum tax, the Fair Share Tax ("FST"), on high-income taxpayers. The FST is 30% of adjusted gross income less a charitable credit of up to 28% of itemized charitable contributions

• Eliminate the two-tiered excise tax on private foundations’ investment income by imposing a single tax rate of 1.35%
• Modify contribution base limits
  • The limit for contributions of **cash only** to public charities would remain 50%.
  • A 30% limit would apply to all other contributions, regardless of what type of property is donated and whether the organization is a private foundation or public charity.

• Deny charitable deductions for contributions to colleges and universities that give donors the right to purchase tickets to sporting events (Code § 170(l) modified)
• Make electronic filing mandatory for tax-exempt organizations
  • Require tax-exempt organizations to file Forms 8872 and 990 tax and information returns electronically
  • Mandate that the IRS make e-filed returns publicly available
  • Give Secretary authority to require taxpayers who prepare their forms electronically but file them on paper to include on their returns a bar code that the IRS can scan to convert the paper into an electronic format
  • Impose a monetary penalty of $25,000 for corporations and partnerships and $5,000 for tax-exempt organizations that fail to comply with electronic filing requirements (This penalty is waived if there is reasonable cause for failure to file electronically.)

• Increase the standard mileage rate for automobile use by volunteers
PRESIDENT’S FY2016 BUDGET PROPOSALS (cont’d)

• Modify and enhance the conservation easement deduction.
  • Make permanent the incentives for conservation easement contributions and modify the standards of qualification for the deduction
  • Propose a non-refundable credit for conservation easement contributions as an alternative to a deduction
  • Prohibit deductibility of any contribution of a conservative easement for use by a golf course and denies a deduction for any value of a historic preservation easement relating to foregone upward development above a historic building
  • Require all contributed easements to further a clearly delineated Federal, State, or tribal government conservation policy and yield significant public benefit
  • Require electronic reporting and public disclosure by donees regarding deductible contributions of easements