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Special Private Foundations Bulletin

Limited Effects of Tax Cuts and Jobs Act on Most Private Foundations

Over the past few days, both the House and Senate voted to pass the *Tax Cuts and Jobs Act* (the “Act”). This highly anticipated vote came after the conclusion of deliberations by the tax reform conference committee, which reconciled the differences between separate bills passed by the House and Senate earlier this month. The Act is expected to be signed into law by year-end.

Specific Provisions Not Included in the Act

There had been speculation over the past few months that the Act would contain provisions simplifying tax rules and regulations in relation to private foundations. However, the final reconciled bill did **NOT** include the following provisions:

- The simplification of the federal excise tax rate for private foundations to a flat 1.4%
- Creation of a limited exception to the excess-business holdings rules for private foundations that own philanthropic businesses
- The repeal of the Johnson Amendment (political campaign involvement)
- Reporting requirements relating to donor advised funds sponsoring organizations
- The charitable mileage rate adjustment for inflation
- The change in the classification of income from the licensing of an organization’s name or logo from royalty income to unrelated business taxable income
- The exclusion of an organization operating an art museum from the definition of a private operating foundation, unless the museum was open to the public for at least 1,000 hours per year

Changes to Unrelated Business Taxable Income Computations

However, one provision that was included in the Act, which could affect private foundations that are subject to unrelated business income tax (“UBIT”) on more than one unrelated business, is that the income and deductions from these businesses will no longer be able to net against one another to arrive at total UBIT. Private foundations will now be required to compute each business’ UBIT on a standalone basis. Total UBIT would, therefore, be the sum of each individual business’ UBIT.

As the definition of what constitutes a business remains unclear for the purposes of this provision, we are in the process of seeking clarification.

In regard to net operating loss deductions, these losses will only be allowable against the business income from which they originated. However, net operating losses arising from tax years beginning before January 1, 2018 would not be subject to this new provision.

Excise Tax on Excessive Executive Compensation

Under current tax law, there is no tax on the amount of executive compensation paid. The Act, however, includes a provision for tax-exempt organizations regarding executive compensation. The Act provides for an

excise tax of 21% on compensation over \$1 million [including a parachute payment] that is paid during the private foundation's tax year to any covered employee (i.e., five most highly compensated).

Bottom Line

At this point, it is unclear why many of the specific private foundation provisions and excise tax simplifications were not included in the final version of the Act. Although the final Act did not include specific provisions relating to private foundations, the effects of the UBIT provisions in the Act could have ramifications for many private foundations.

Contact Us

Should you have any questions regarding the implications of this Act or any of the items in this bulletin, please contact the following experienced professionals in our Philanthropic and Private Foundation Services Practice:

Thomas F. Blaney, CPA, CFE
Partner, Co-Director of Foundation Services
tblaney@pkfod.com

Christopher D. Petermann, CPA
Partner, Co-Director of Foundation Services
cpetermann@pkfod.com

www.pkfod.com

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