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Private Foundations Bulletin

House Bill Proposes Increase in Excise Tax for Certain Foundations, Among Other Provisions

By the Private Foundation Services Team at PKF O'Connor Davies

On Monday, May 12, the House Ways and Means Committee released a fuller version of "The One, Big, Beautiful Bill" (the tax bill). If passed in its entirety or in part, the tax bill could have sweeping effects on the philanthropic sector. It includes a proposed tax increase and other measures specifically targeting private foundations, which could significantly impact charitable giving across the United States.

Increase in Tax Rate on Net Investment Income of Certain Foundations

The proposed tax bill outlines a new graduated excise tax on net investment income based on a foundation's assets. Assets would be defined for this purpose as "the aggregate fair market value of all assets of such private foundation, as determined as of the close of such taxable year," without a reduction for any liabilities. Regarding aggregation for the purposes of determining the fair value of all assets, the assets of any related organization "shall be treated as assets of the private foundation."

The graduated tax rates would be structured as follows:

Aggregate Fair Market Value of All Assets	Tax Rate
Less than $50 million	1.39%
$50 million to less than $250 million	2.78%
$250 million to less than $5 billion	5.00%
At least $5 billion	10.00%

The tax rates would apply for taxable years beginning after the date the bill is enacted. Therefore, if enacted in 2025, the new rates would take effect for the 2026 tax year for a private foundation with a calendar year-end (i.e., December 31).

Brief History of the Excise Tax on Net Investment Income

The proposed graduated tax rate structure outlined above would be a significant change from historical norms. The federal excise tax on private foundations was first introduced as a result of the Tax Reform Act of 1969 at a flat rate of 4%. In 1978, the flat tax was reduced to 2%. Then, Congress instituted a graduated tax in 1984 where the 2% could be reduced to 1% if certain distribution requirements were met. Most recently, Congress simplified the tax rate in 2020 by reverting to a flat tax, but this time at a rate of 1.39%.

Other Items Included in the Bill

The tax bill also includes other measures that may impact private foundations based on activities. These provisions include:

- Expanding the application of the tax on excess compensation within tax-exempt organizations.
    - The definition of covered employees that would be considered for the 21% excess compensation tax would be expanded to mean "any employee (including any former employee) of an applicable tax-exempt organization or any related person or governmental entity." The excess compensation threshold remains unchanged at $1 million or more in remuneration.

- Termination of tax-exempt status of terrorist-supporting organizations.
    - The tax bill gives the Secretary of the Treasury the ability to designate an organization as a “terrorist-supporting organization” and rescind tax-exempt status.

- Unrelated business taxable income increased by amount of certain fringe benefit expenses for which deduction is disallowed.

- Certain purchases of employee-owned stock are disregarded for purposes of foundation tax on excess business holdings.

Ongoing Developments

We continue to monitor developments out of Washington, D.C. and will keep you informed as updates become available.

Contact Us

We welcome the opportunity to answer any questions you may have related to this topic or any other accounting, audit, tax or advisory matters relative to private foundations. Please call 212.286.2600 or email any of the Private Foundation Services team members below:

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