

Key Tax-Exempt Organization Provisions

On December 20, 2017, Congress passed a statute originally named the Tax Cuts and Jobs Act (the "Act"), which enacts a broad range of tax changes. The Act was signed by the President on December 22. This alert briefly summarizes some of the key provisions of the Act affecting tax-exempt organizations.

Excise Tax on Private College and University Endowments

Private colleges and universities typically qualify as tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). As such, they generally are not subject to federal income tax except for income unrelated to their tax-exempt purposes. The Act imposes a new tax on certain private colleges and universities of 1.4% of net investment income. The tax is not imposed on state colleges and universities. An institution is subject to the tax if it has assets not directly used in carrying out its tax-exempt purpose of at least \$500,000 per student. The provision is effective for tax years beginning after December 31, 2017.

Excise Tax on Highly Compensated Employees of Tax-Exempt Organizations

The Act imposes an excise tax of 21% on certain tax-exempt organizations (generally those described in Section 501(a) of the Code, which includes Section 501(c)(3) organizations) for remuneration (as defined in the Act) in excess of \$1 million paid to "covered employees." A covered employee is generally one of the five highest-paid employees of the organization for the tax year. The tax also applies to payments to such individuals that are contingent on a separation from employment if they have an aggregate present value that equals or exceeds three times a "base amount," which generally is the individual's average annual compensation over a five-year period.

Computation of Unrelated Business Taxable Income From Multiple Unrelated Trade or Business Activities

For tax years beginning after December 31, 2017, tax-exempt organizations are no longer permitted to use a deduction from one unrelated trade or business to offset income from a different unrelated trade or business in calculating unrelated business taxable income. The Act requires unrelated business taxable

income to be computed separately with respect to each trade or business, and provides that a net operating loss deduction is allowed only with respect to a trade or business from which it arose. However, net operating losses arising in a tax year beginning before the effective date that are carried forward to tax years beginning on or after the effective date are not subject to the new rules.

Incentives for Charitable Contributions

The Act maintains the ability of donors to take charitable contribution deductions for gifts to Section 501(c)(3) organizations. However, since the standard deduction will now be substantially greater than it has been, many individuals will no longer itemize deductions, and therefore will have less of an incentive to make charitable contributions. For those who do itemize, the limit for deductible cash contributions to public charities and certain private foundations is increased under the Act from 50% to 60% of adjusted gross income.

Johnson Amendment Maintained

Section 501(c)(3) organizations are prohibited from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office. This prohibition is contained in the so-called Johnson Amendment. The original House bill would have repealed the Johnson Amendment. However, the Act does not contain the House provision, and the Johnson Amendment's prohibitions have been maintained.

This Alert provides only a simple overview of complex and nuanced tax provisions. Given the fluid fiscal and legislative environment, there may be additional changes coming. To learn more about the Act and its implications for you or your business, please contact one of the Lowenstein Sandler attorneys listed.

For more information about other provisions of the Act, please see the links below:

[KEY CORPORATE & BUSINESS TAX PROVISIONS](#)

[KEY PARTNERSHIP TAX PROVISIONS](#)

[KEY INDIVIDUAL TAX PROVISIONS](#)

[KEY FOREIGN TAX PROVISIONS](#)

[KEY TRUST & ESTATE TAX PROVISIONS](#)

[KEY TAX PROVISIONS AFFECTING HEDGE FUNDS, PRIVATE EQUITY FUNDS AND OTHER INVESTMENT VEHICLES](#)

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

Brian A. Silikovitz, Esq.

Partner, Chair, Tax

T 646.414.6888 | bsilikovitz@lowenstein.com

Lesley P. Adamo, Esq.

Counsel

T 646.414.6974 | ladamo@lowenstein.com

Kenneth J. Slutsky, Esq.

Partner

T 973.597.2510 | kslutsky@lowenstein.com

Sophia Mokotoff, Esq.

Associate

T 646.414.6909 | smokotoff@lowenstein.com

John L. Berger, Esq.

Partner

T 973.597.2314 | jberger@lowenstein.com

Kristin V. Taylor, Esq.

Associate

T 973.597.6134 | ktaylor@lowenstein.com

Michael N. Gooen, Esq.

Partner

T 973.597.2366 | mgooen@lowenstein.com

Min Xue, Esq.

Associate

T 973.422.6438 | mxue@lowenstein.com

Michael Walutes, Esq.

Partner

T 212.419.5859 | mwalutes@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.