Impact of the Tax Cuts and Jobs Act on Non-Profits

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Non-profit organizations are a vital part of the nation's and the City's communities and economies, providing key religious, cultural, medical and social services that would often go unfilled in their absence, or conducted at a higher cost. According to the most recent statistics, the non-profit sector provided nearly 1.3 million jobs across New York State, more jobs than in any other State, and representing nearly 15 percent of overall employment.[1] More than half of these jobs are estimated to be located in New York City.

While much of the focus on the federal Tax Cuts and Jobs Act (TCJA; PL 115-97), enacted last December, has been directed to its impact on individuals and for-profit corporations, the TCJA also contained several provisions that could adversely affect the finances of non-profits.

Key provisions of the TCJA impacting not-for-profits include:

- Reduced tax incentives for charitable giving;
- Increased taxation of businesses, such as shops and cafés, that non-profits commonly use as a source of revenue; and
- The imposition of an excise tax on certain university endowments.

The effects of these provisions are discussed in greater detail below, as well as legislative remedies that could be undertaken by New York State to mitigate these adverse impacts.

Reduced Charitable Giving

There are three ways in which the new tax law reduces tax incentives for charitable giving. While charitable giving is motivated by other factors than tax incentives, even a small reduction in giving due to diminished incentives could have significant consequences for many non-profit organizations.

First, under the TCJA, the standard deduction was doubled (from $12,000 to $24,000 for married couples filing jointly, for example). As a result, fewer filers will choose to itemize deductions, and thus no longer be able to deduct charitable contributions made to non-profits from their taxable income. The effect of this is to diminish the tax savings incentives of making charitable contributions for these filers.

Based on our analysis of taxpayer returns, the number of New York City filers who itemize their deductions is expected to drop from more than 30 percent in 2017 to less than 15 percent under the new law. The reduction is likely to have a significant impact on filers with incomes below $100,000. According to the latest filing statistics, New York City filers with incomes below $100,000 contributed more than $1.5 billion dollars to various charitable organizations.[2]

Second, the TJCA also doubled the exemption threshold for estates from $5.4 million to $11.2 million. Many high net-worth individuals plan bequests to charitable organizations as part of their estate planning, and it is a common focus of non-profit development offices. The effect of this provision is analogous to the standard deduction provision – by exempting a greater amount, the tax incentive to donate is potentially reduced. While the number of these estates may be small, charitable contributions from estates totaled more than $18 billion nationally in 2016.[3]

Finally the $10,000 limitation on the deductibility of state and local taxes (known as SALT) is another channel through which charitable contributions may be impacted by the TCJA. As a result of this limitation, many higher income filers will face higher federal tax liabilities and the resulting reduction in after-tax income could result in lower giving to non-profits. According to our analysis, approximately 50 percent of New York City filers with incomes above $250,000 are likely to face higher tax bills.

Higher Taxes on Unrelated Business Income

Many non-profits also engage in business that is ancillary to their core purpose, but provides an important source of income to help carry out their core mission. Examples of unrelated business income include the gift shops and cafés that museums operate or lease, or the sale of merchandise or donated items that provide essential funds to non-profits.

This unrelated business income was already subject to taxation under previous law. The TCJA, however, included new provisions that disallowed losses from one activity to offset gains from other activities. The result is that taxable income and taxes are likely to increase, and more non-profits will be required to file burdensome tax forms.

According to some estimates, this provision could impose an effective tax rate increase of as much as 40 percent on smaller non-profits with unrelated business income up to $50,000.[4]

Tax on University Endowments

The TCJA includes an annual 1.4 percent excise tax on private university endowments valued at $500,000 or more per full-time student and with at least 500 students. The policy or budgetary grounds for adopting this provision, which was modified at the last minute to carve out some institutions, are unclear. The Joint Committee on Taxation estimated the measure would raise only $1.8 billion over 10 years – in a package that increases the federal deficit by almost $1.5 trillion over the same period.

As Mark S. Wrighton, chancellor of Washington University in St. Louis, noted in a letter to U.S. Senator Roy Blunt in November:

"The measure is about taking money donated for charitable purposes and "redirecting it for no other reason but to meet unrelated government revenue needs… The endowment excise tax proposal also singles out a set of universities based on an arbitrary set of criteria," Wrighton wrote. "The number of enrolled students, size of the endowment and private nonprofit university status have absolutely nothing to do with the quality of an institution's education offerings and research, its efficiency in operations or other services provided."

This provision is estimated to impact about 35 institutions in 2018, including at least three located in New York City.[5] The number of universities impacted would grow considerably over time as endowments grow. Between 55 and 80 universities could have to pay the tax in 15 years according to estimates by Phillip B. Levine.[6]

Recommendations

At a time when for-profit businesses received one of the largest tax cuts in history, it seems incongruous that not-for-profits would be squeezed for money.

Some states have already passed legislation to mitigate some the adverse impacts of the TCJA. The following proposals should also be considered a starting point to continue to support non-profits in New York State and New York City. These measures would require legislative action to change current law or decouple from the pass-through effects of the TCJA.

- **Allow filers to claim deductions for charitable contributions even if they don't itemize.** This would help to preserve and maintain charitable giving at its current level.
- **Expand the charitable deduction allowance for high-income filers from its current level of 50 percent.** Under current law, high-income filers in New York State are subject to a 50 percent limitation on charitable deductions. This is one of the most severe limitations of any State.
- **Decouple from the TCJA unrelated business income provision**. By reverting to the law that existed prior to the enactment of the TJCA, losses could be accumulated across unrelated business income, maintaining taxes at lower levels.
- **Allow universities to deduct the endowment excise tax from any NYS unrelated business income.** This would help reduce the impact of the endowment tax and allow universities to continue to provide scholarships and services to their students.

Endnotes

[1] https://www.bls.gov/bdm/nonprofits/nonprofits.htm

[2] 2015 IRS Statistics of Income.

[3] According to the latest IRS Statistics of Income, there were 2,714 estates in the nation that claimed charitable contributions. Statistics for New York State are not available. New York City does not impose a separate estate tax.

[4] New UBIT Rules Could Harm Unaware EOs, Practitioner Warns, *Tax Notes* April 4, 2018.

[5] Based on estimates provided by the National Association of Independent Colleges and Universities in "Final GOP Deal Would Tax Large Endowments", *Inside Higher Ed*, December 18, 2017. Schools in New York City that would be affected include The Julliard School, Cooper Union, the Icahn School of Medicine at Mount Sinai, and possibly Weill-Cornell Medical College (although Cornell University says the College is part of the university's single endowment).

[6] "Estimating the Endowment Tax's Future", *Inside Higher Ed*, January 4, 2018.

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