



*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **The “Tax Cuts and Jobs Act of 2017”**

### **What it means for our small §501(c)(3) nonprofit clients**

*Pro Bono Partnership of Atlanta represents small, community-based §501(c)(3) nonprofit corporations that serve low-income or disadvantaged individuals. We don’t represent universities, large nonprofits that pay their executives large salaries or nonprofits that have tax-exempt bonds. The Act does include changes for these types of entities and activities, but those provisions are not addressed here.*

There were many proposals in the House and Senate tax reform bills that could have affected small §501(c)(3) nonprofit clients, and now that the dust has cleared and the bill has become law, here are the main changes that could affect Pro Bono Partnership of Atlanta clients.

- **Charitable Contribution Deduction:** It is generally believed that people donate more to charity if they can take an itemized deduction for the donation. The good news is that the annual limit on aggregate deductions for gifts to public charities will increase from 50% to 60% of income. However, many other itemized deductions are being limited or eliminated including deductions for state and local taxes, mortgage interest on new loans, uncompensated employee expenses, casualty losses, and home equity loans and other miscellaneous itemized deductions. This may reduce the overall amount of a filer’s itemized deductions. In addition, the standard deduction will almost double from \$6,350 to \$12,000 for single individuals and from \$12,700 to \$24,000 for married couples. The likely result is that more people will choose the standard deduction, making itemized deductions for donating to §501(c)(3)s less important and possibly leading to fewer donations.
- **Estate and Generation-Skipping Transfer Taxes:** Many wealthier donors use planned giving options (e.g., charitable remainder trusts) and include charitable giving in their wills and estates to avoid the high estate transfer taxes. The new law doubles the federal estate, gift and generation skipping transfer tax exemption from \$5.6 million to \$11.2 million per individual for people dying in years 2018 through 2025 and for gifts made during that period. This increase allows a married couple to protect \$22.4 million or more from transfer taxes. As a result of this increase, wealthier older donors may not choose to give as much to charity in their wills or trusts or through planned giving options.

- **Unrelated Business Income Tax (UBIT):**

- **More Than One Unrelated Trade or Business:** Some §501(c)(3) organizations have more than one trade or business that generate unrelated business income for the organization, and some of these trades/businesses have so many expenses that they generate a loss for the organization. In the past, a §501(c)(3) organization could put all of its UBI-generating activities together, and expenses for all such activities would reduce the taxable income generated from all of these activities. The new law requires tax-exempt organizations to calculate income from each unrelated trade or business separately and does not allow offsetting taxable income from one such activity with losses from another. However, with the change in the corporate tax rate from 35% to 21%, the overall amount of UBIT may be reduced.
- **Transportation Fringe Benefits Become UBIT:** Some §501(c)(3) organizations provide certain transportation fringe benefits (parking, public transit passes, and bicycling expenses) free of tax to their employees. Under the new law, any transportation fringe benefits provided by a §501(c)(3) organization to its employees will be considered unrelated business taxable income (UBTI). This change even applies to: (1) free employee parking at the §501(c)(3) organization's office building if the organization's lease includes use of the parking lot and (2) transportation benefits funded exclusively by pre-tax employee contributions. The UBTI calculation for the free parking at the building will require individual analysis by an accountant. The UBTI for pre-tax contributions will work as follows: Sue's salary each paycheck is \$1,800, and \$100 a month of that salary is contributed by Sue to her pre-tax parking benefit. Sue's §501(c)(3) organization employer will have generated \$100 in UBTI for the pre-tax parking benefit each pay period. While employees will still receive the benefits free of tax (except bicycling reimbursements), §501(c)(3) organizations will need to evaluate whether to continue these fringe benefits now that they will have to pay UBIT on these benefits.

- **Items in Initial Bills that ARE NOT in final law:**

- The repeal of the Johnson Amendment did not happen, so §501(c)(3) organizations continue to be prohibited from participation in political activities including supporting or opposing candidates for office.
- The deduction for the charitable use of a personal vehicle remains 14 cents-per-mile. The amount is not set to increase based on inflation.
- Passive royalty income generated from the sale or licensing of a §501(c)(3) organization's name or logo remains an exclusion from unrelated business income.
- There are no changes to the safe harbors under the Intermediate Sanctions rules.