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Effects of the OBBBA on Tax Exempt Entities & 990 Pitfalls and Opportunities

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OBBBA Update

OBBBA – Impacting Tax-Exempt Entities & Charitable Giving

What Didn't Make the Final Bill

- The unpopular “parking tax,” originally introduced under the TCJA and repealed in 2019, was not reinstated.
- There were no changes to unrelated business income tax (UBIT), so the definition was not expanded to cover revenue from names or logos.
- A proposed increase in the net investment tax for private foundations was not implemented, and the rate remains at 1.39%.
- A House proposal that would have allowed revocation of tax-exempt status for not-for-profits suspected of supporting terrorism, without due process, was excluded due to concerns over fairness.
- Two notable proposed changes to university endowment taxation were also left out: a 21% top-tier tax rate and a religious exemption for affiliated schools.

OBBBA – Impacting Tax-Exempt Entities & Charitable Giving

Excise Tax on University Endowments

Private universities pay excise taxes on endowment fund earnings. (This is similar to how a Private Foundation pays excise taxes on investment income.) The calculation underwent 3 major changes, which impacts about 30 institutions

- The definition of taxable income was expanded to include student loan interest and federally subsidized royalty income.
- The tax rate went from a flat rate of 1.4% to a tiered structure topping out at 8%.
- The threshold for applicability increased from 500 to 3,000 tuition-paying students. Some universities will have steep tax increases, while others may fall below the 3000 student threshold and no longer be subject to the tax.

| OBBBA – Impacting Tax-Exempt Entities & Charitable Giving

- Previously tax-exempt organizations had to pay an excise tax of 21% on the amount of compensation in excess of \$1 million for their top five paid employees only. The tax now applies to all covered employees who earn over \$1 million, not just the top five.
- Added a provision that allows people to take an additional charitable deduction of up to \$1,000 for single filers and \$2,000 for joint filers, when taking the standard deduction.
- Created a new non-refundable credit, up to \$1700, for donations to scholarship-granting organizations, which spend 90% of their income on scholarships for K-12 students from low-income households (effective 1/1/2027).

| OBBBA – Impacting Tax-Exempt Entities & Charitable Giving

Charitable Deductions for Itemizers

- Permanently retains the 60% limit on charitable contributions (prior to the TCJA the limit was 50%). Anything in excess carries forward for 5 years.
- A new charitable deduction floor was introduced, requiring individuals to donate more than 0.5% of their AGI before any of it becomes deductible. (A similar floor was placed on corporations-only contributions that exceed 1% of taxable income are deductible up to the 10% ceiling)
- New limitation for taxpayers in the highest 37% bracket - itemized deductions are limited to a benefit of \$.35 on the dollar vs. the current \$.37 on the dollar. Itemized deductions must be reduced by 2/37.

A woman with dark, wavy hair and a man with a beard are looking at a computer monitor in a modern office. The woman is smiling and looking at the screen, while the man is looking at the screen with a serious expression. The office has a high ceiling with exposed wooden beams and a large potted plant in the background. The monitor shows a blue screen with some green shapes. The overall lighting is warm and modern.

Form 990: An Informational Form

Form 990 Reporting Pitfalls and Opportunities

| **Ensure a complete, electronically filed return!**

- IRS views an incomplete return the same as never filing a return
- IRS sends back paper filed Forms 990 (treated as if never filed)
- Rejects electronically filed returns when materially incomplete or the wrong type of return
- An incomplete or unfiled return is subject to penalties
 - \$20 per day for each day the return is late, up to 5% of gross receipts, max of \$12,000
 - \$120 per day for gross receipts > \$1.2M, maximum of \$60,000

| **Form 990, 990-EZ, 990-T, 990-N, and 990-PF MUST be filed electronically**



| Form 990: An Informational Form



There is more to the 990 than just financial information. In fact, the most important sections of the 990 have nothing to do with the numbers reported on the return.



Sections of Part I through Part VII of the return have nothing to do with financial data, but serve an important role for the filing Organization.

| Form 990: An Informational Form

Part I- Summary

- This section should be a snapshot of the Organization
 - The mission statement should be concise and presented in one sentence on the front of the form. The financial information is pulled from the detailed financial information further broken out in Parts VIII-XI.

Common mistake

- Not having a concise mission

| Form 990: An Informational Form

Part III- Statement of Program Service Accomplishments

This is the section that provides the Organization an opportunity to boast about themselves.

Line 1

- This is where the Organization can expand upon their mission reported in Part I. This no longer needs to be condensed into one sentence, but can further detail the complete mission of the organization.

Line 2 & 3

- Any new, significantly changed or ceased programs

Line 4

- Program service accomplishments

| Form 990: An Informational Form

Part III- Statement of Program Service Accomplishments

- **Common Mistakes**
 - Failing to report new, changed, or ceased programs in Schedule O
 - IRS may be able to challenge any new programs as unrelated which could result in unrelated business income
 - Being too concise on the Program service accomplishments
 - Not reporting revenue, expenses and grants for all 501(c)(4) and 501(c)(3) organizations on line 4
 - Not accounting for all program service expenses from Part X

| Form 990: An Informational Form

Part IV- Checklist of Required Schedules

- Answer to the questions on pages 3 and 4 of the form will determine which of the additional schedules are needed
- Any “yes” answers will indicate a schedule or part of a schedule that needs to be added

Common Mistakes

- Not reading each question carefully ensuring a complete and accurate return

| Form 990: An Informational Form

Part V- Statements Regarding Other IRS Filings & Tax Compliance

- There is an IRS emphasis on this section as it alerts readers and the IRS to potential other filings
 - IRS filing and compliance
 - Number of W2s and 1099s issued
 - Common paymasters need to be considered
 - If the organization has any type of legal fees > \$600, there should be at least one 1099 listed
 - 6a: Did the organization solicit non-tax-deductible contributions?
 - 6b: Did the organization notify the donor?
 - There must be explicit language indicating that dues are not considered tax deductible
 - Must state “not deductible as a charitable contribution”

| Form 990: An Informational Form

Part V Cont'd

- 7a & 7b: Did the organization receive money in excess of \$75 partly for a contribution and partly for goods and services?
 - A fundraising event will typically require 7a to be yes

Common Mistakes

- Failure to file 1099s could result in 28% backup withholding
 - IRS uses automated system to match vendors and Form 1099s filed and reported on returns
 - Implementing more artificial intelligence measures to determine audit candidates
 - Penalties for not filing form 1099s vary and can be over \$600 each for intentional disregard
- Not having proper verbiage on dues statements indicating non-deductibility, penalties could be assessed
- Having 7a answered “yes” and 7b as “no”. If this occurs, the organization could have penalties assessed on each missed contribution letter up to a threshold amount

| Form 990: An Informational Form

Part VI- Governance, Management & Disclosure

- One of the most important parts for IRS purposes (Considered to be the “Crown Jewel”)
- This section tells the IRS about the organization’s governance
- Section A: Governing Body and Management
 - Number of independent voting members
 - If the organization has an executive committee that makes governing decisions
 - Family/business relationships among board members
 - If there are any board committees that can make decisions on the board’s behalf

| Form 990: An Informational Form

Part VI- Governance, Management & Disclosure Cont'd

- Section B: Policies and Procedures
 - Form 990 review process
 - COI, Whistleblower, Document Retention
 - Compensation, is it reasonable?
 - Is the organization involved in any joint ventures?

Section C: Disclosure

- In what states does the organization file its return?
- How does the organization make its return and governing documents public?

| Form 990: An Informational Form

Part VI- Governance, Management & Disclosure Cont'd

Common Mistakes

- Listing total number of board members at any given time instead of year-end
- Improperly reporting or neglecting to report family and business relationships
- Failing to completely describe the Conflict of Interest (COI) Policy on Sch. O.
- Indicating the organization provides a copy of the completed return to the board prior to filing, without doing so
- Indicating the COI Policy and other documents are available upon request when the organization may not want to be doing this



Form 990 – Schedule A Public Support Test

| Public Support Test

Organizations that are described in Internal Revenue Code Section 501(c)(3) and are public charities must complete Schedule A

The purpose of Schedule A is to provide information about:

- Public charity status and
- Public support of the tax-exempt entity
 - To distinguish itself as a public charity and not a private foundation

Organizations looking for new funding need to make sure it won't negatively impact their public support percentage!

| Public Support Test

Public support and total support have different definitions for each of 2 public support tests:

170(b)(1)(A)(iv) and 170(b)(1)(A)(vi) organizations (Completes Part II)

- (iv) Operated for the benefit of a college or university owned or operated by government unit
- (vi) Normally receives a substantial part of support from the general public or government

509(a)(2) organizations (Completes Part III)

- Primarily supported through income earned from performing its tax-exempt purpose (program service revenue)
- *Schedule A is complicated and is often completed incorrectly*

| Public Support Test

Unusual Grant Exception

- Exclude unusual grants at line 1 for each test (excluded from numerator and denominator)
 - Grant that is unusually large, unexpected, and adversely affects the public support test for the organization
 - Material contribution or bequest from a disinterested party

The public support test is computed over a five-year period, the current year and the four previous years

- Is a fraction: numerator is certain public support and denominator is total support received
- Form directs you to the Part II or Part III tests, but also allows you to compute support under the opposite method if the organization fails the first test
- 509(a)(1) status is looked upon more favorably than 509(a)(2) status

New public charities are given a five-year grace period:

- If passes first 5 years, then is a public charity in 6th year
- If fails in 1st 5 years and fails in 6th year, then a private foundation in the 6th year
 - If charity does not pass the test for 2 years in a row, it will be a private foundation for the 2nd year
 - Must file 990PF and subject to excise tax

| Public Support Test

Part II – Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)

- **Part II should be completed if under Part I, Box 5, 7 or 8 was selected on page 1 of Schedule A**
- Gifts, grants, and contributions are counted towards public support
 - Includes government grants (fee for service revenue)
 - Excludes:
 - Program service revenue
 - Capital gains
 - Unusual grants
 - Investment income
- **Must track large donations for purposes of Schedule A, Part II**
 - **Excess contributions must be calculated and excluded from public support at line 5**
 - Those that exceed 2% of total support for the five-year rolling period (this is because public support means a broad base of small donations)
 - **Exclude from the excess contribution calculation** - Contributions from governmental agencies and other 501(c)(3) non-profit organizations **(but only if they qualify as publicly supported under 170(b)(1)(A)(vi), government units, and others such as churches, educational intuitions, hospitals, etc. if they also qualify as publicly supported under 170(b)(1)(A)(vi) - typically these other organizations will also file Part II of Sch A)**

| Public Support Test

Part III – Support Schedule for Organizations Described in Section 509(a)(2)

- **Part III should be completed if under Part I, Box 10 was selected on page 1 of Schedule A**
- Gifts, grants, contributions, and **program service revenue** count toward public support
- Certain amounts must be backed out per the IRS guidelines including:
 - (7a) Gifts, grants, contributions, or program revenue from disqualified persons, which includes board members and substantial contributors (does not include an organization described in section 509(a)(1))
 - (7b) Program revenue that exceed the greater of \$5,000 or 1% of the total support (7b is different from 7a as it does not include contributions in the calculation)
- Must pass two tests (“greater than/less than tests”)
 1. Public support calculation must be **greater than** 33 1/3% **and**
 2. Investment income and certain UBI must be **equal to or less than** 33 1/3%

| Public Support Numerator

Schedule A - Part II 170(b)(1)(A)(iv) or 170(b)(1)(A)(vi) Organizations

- Gifts
- Grants (including govt)
- Contributions
- Membership fees

Exclude:

- **Program Service Revenue**
- Unusual Grants

Remove:

- ☐ Excess of 2% of total support (if over \$5k)
(line 5)

Schedule A - Part III 509(a)(2) Organizations

- Gifts
- Grants (including govt)
- Contributions
- Membership fees

Program Service Revenue

Exclude:

- Unusual Grants

Remove:

- ☐ Gifts from disqualified persons (line 7a)
- ☐ Excess over \$5k or 1% of total support (line 7b)

| Public Support Denominator

Schedule A - Part II 170(b)(1)(A)(iv) or 170(b)(1)(A)(vi) Organizations

All income items in numerator ... Gifts, Grants, Contributions, Membership fees

Add-in:

Excess over \$5k or 2% of total support (line 5)

- Investment income
- Unrelated business income
- Other income

➤ **Not included in numerator or denominator:**
Capital gain/loss

Schedule A - Part III 509(a)(2) Organizations

All income items in numerator ... **Program Service Revenue**, Gifts, Grants, Contributions, Membership fees

Add-in:

- **Excess over \$5k or 1% of total support**
- **Gifts from disqualified persons**
- Investment income
- Unrelated business income
- Other income

➤ **Not included in numerator or denominator:**
Capital gain/loss

| Result: Public Support Percentage

Schedule A - Part II 170(b)(1)(A)(iv) or 170(b)(1)(A)(vi) Organizations

Public support must be:

- 1) Greater than 33 1/3% of total support
- OR**
- 2) Greater than 10% for facts and circumstances test

AND

Should not receive almost all of its support from related activities and an insignificant amount of support from governmental units and contributions from the public. There is no “official” test on the schedule A for this piece. You **MUST** manually compare.

Schedule A - Part III 509(a)(2) Organizations

Public support must be:

- 1) Greater than 33 1/3% of total support
- AND**
- 2) Investment income is **less than or equal** to 33 1/3% of total support

PUBLIC SUPPORT

=

TOTAL SUPPORT

PUBLIC SUPPORT %

| Where to find 990s

It is important to check another organization's 990 to see which part of Schedule A they completed to see if the contributions count as public support.



GuideStar
Changed to Candid



**IRS Tax Exempt
Organization Search**
(FKA IRS Select check)



ProPublica
Appears to be very
user friendly and does not
require a log-in

A photograph of a person's hands interacting with a tablet computer. The person is wearing a blue long-sleeved shirt. In the background, another person's hands are visible, one holding a pen and the other a small object. The scene is set on a white table with a white cup and a black object. The image is overlaid with a white rectangular box containing text.

Lobbying, Advocacy & Political Activity: How to Spot the Differences

| Lobbying, Advocacy & Political Activity

Legislation

Refers to federal, state and local legislation. It also applies to referendum, initiative, or constitutional amendment.

Lobbying

Is the practice of trying to influence members of the legislature to impact specific legislation or regulations.

Advocacy

Is the practice of supporting or promoting a particular cause, idea or policy.

Political Activity

Activities that support or oppose any candidate for an elected federal, state or local office.

| Lobbying, Advocacy & Political Activity

- Lobbying
 - 2 Types
 1. **Direct**- Involves face-to-face interactions between lobbyists and lawmakers
 - Examples include meetings, briefings, and hearings
 2. **Grassroots**- Involves a call-to-action for public support to influence policymakers indirectly
 - Examples include organizing letter-writing campaigns, phone calls, and petitions to demonstrate public sentiment on an issue
 - Allowed for 501(c)(3)s but cannot be “substantial”
 - Substantial is not defined by the IRS
 - 501(c)(3)s that normally have lobbying expenditures may make a 501(h) election- this quantifies substantial

| Lobbying, Advocacy & Political Activity

Influencing legislation **does not include:**

- ✓ Providing analysis or research that is nonpartisan
 - ✓ Providing technical advice that was requested by a legislative body
 - ✓ Appearances before or communications with a legislative body regarding the existence of the organization
 - ✓ Communications with members about legislation
 - ✓ Routine communications with legislators
-
- These activities would not be considered lobbying but advocacy

| Lobbying, Advocacy & Political Activity

Political Activities

- Strictly prohibited for 501(c)(3) organizations



Questions?



Thank You!



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