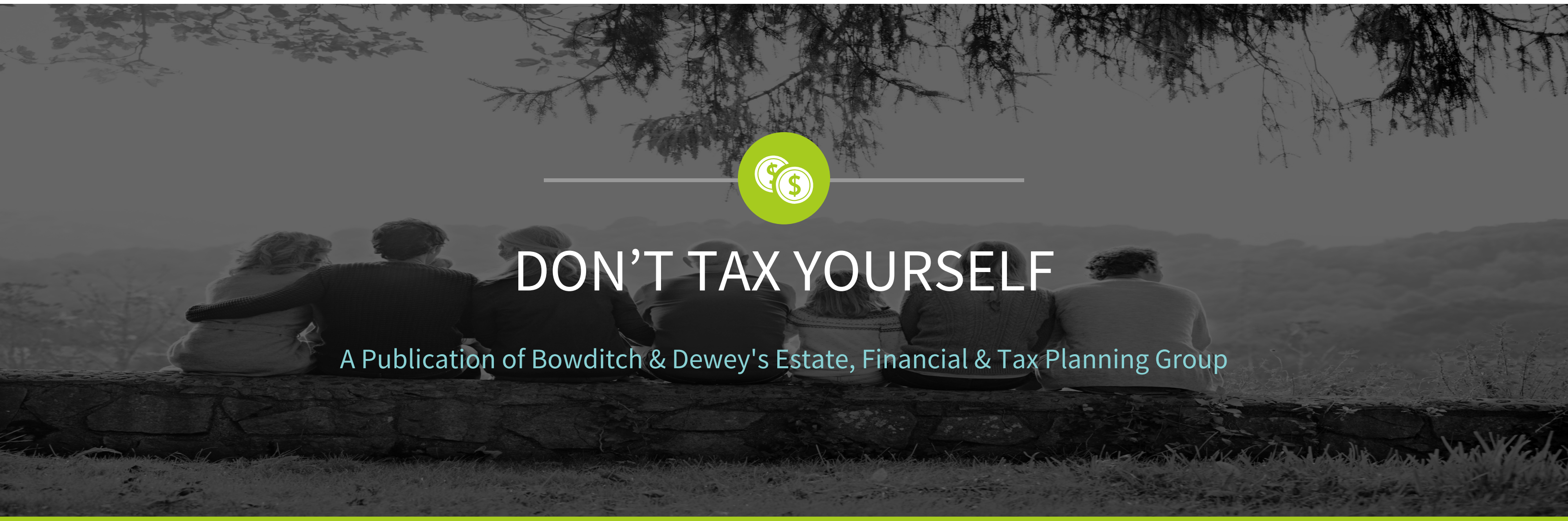

Trump's Tax Reform: Effect on Nonprofits

BY TERRENCE J. BRIGGS • MARCH 6, 2018

The Administration's frenzy to pass "tax reform" created tax breaks for some—I'm looking at you, the Trump family—increased taxes for others, and confusion for everyone, at least until the IRS is able to promulgate official and useful guidance.

Few taxpayers were left unaffected by these "reforms"—even tax-exempt organizations are now subject to new rules that seem intended to level the playing field between the tax payers and the tax exempt. Most of these rules have become effective after December 31, 2017.

Here is a summary of some of the new provisions:

- An "applicable tax-exempt organization" will pay a 21% excise tax on the "remuneration" paid to "covered employees" excess of $1 million. If you think this cannot apply to you because you have no one who makes that kind of money, be sure that you are not paying your CEO, President, or Executive Director a significant 457(f) plan distribution upon his or her retirement.
- Employment-related moving expenses are no longer deductible by the individual taxpayer, and if advanced or reimbursed by the employer, are taxable income. If an employer needs to support the moving costs of its employees and wishes to retain the same tax consequences as under prior law, the expense of grossing up the employee to cover the new taxes could be significant.
- Interest on advanced refunding bonds, bonds issued more than 90 days before the redemption of the refunded bond, will be subject to tax. This will probably raise the cost of borrowing for organizations such as 501(c)(3)s that have been able to advance refund.
- A number of fringe benefits that used to be deductible are no longer so, which, for nonprofits, will mean that the value of those benefits will either have to be paid by employees at the full value or the nonprofit will have to pay the 21% corporate tax rate on the value as unrelated business taxable income. Furthermore, each unrelated business (which, again, has not been defined) stands on its own, so if some make money and some lose money for the organization, taxes will be payable on the money makers and you get no offset from the money losers. Some of

©2025 Bowditch & Dewey LLP. All Rights Reserved.

these benefits are club memberships, on-premises meals, on-site athletic facilities used by staff, and formerly no-cost transportation fringe benefits.

These are just four of a number of provisions of this dog's breakfast of a law that directly affect nonprofits. There are a number of others that may indirectly have an effect. For example, changes in tax rates and rules may change the incentives for making charitable, tax-favored donations.

It is impossible right now to know whether any of these provisions will be revised or other provisions affecting nonprofits will be added to unrelated bills—as was done with the Budget Resolution which included a number of tax provisions that were not announced in advance.

What to do? Consult with an experienced tax lawyer or accountant about how these proposed tax reforms will affect you and how you might respond, given the uncertainty about their enforcement or final form.

Be conservative; be lucky. You could also play audit roulette. The IRS has suffered enormous reductions in budget and enforcement capability in recent years. There are those who would tell you that the likelihood of the IRS targeting you for an audit is vanishingly small and is, therefore, a reasonable business risk. I am not one of those.

Good luck.

©2025 Bowditch & Dewey LLP. All Rights Reserved.