JOINT ECONOMIC COMMITTEE
CONGRESSWOMAN CAROLYN MALONEY, VICE CHAIR

THE ECONOMIC IMPACT ON CHARITIES OF THE 2017 TAX ACT

The 2017 Tax Act, passed by the Republican majority in Congress and signed into law by President Trump, has had a number of unintended consequences as well as strongly negative effects that weren't clearly articulated at the time of passage. In particular, the nonprofit sector has been hit hard by financial and administrative burdens that have interfered with the ability of the charities to pursue their missions in the fields of health care, education and other human, religious and cultural services.

The Tax Act decreased incentives to donate to nonprofits because of the large increase in the standard deduction, while increasing administrative costs, imposing new taxes on nonprofit employee fringe benefits and excluding nonprofits from the new family and medical leave tax credit.

While the stated intent of some recent legislation has been to level the playing field between nonprofits and for-profit entities, the outcome of the Tax Act is that new burdens are placed on resource-strapped service providers. If Congress does not undo these harms, many nonprofits will be forced to cut back staff and services, and some may have to cease operating. The full effect on the sick, disabled, young and disadvantaged who depend on nonprofit services is incalculable, but this report outlines the dimensions of the new obstacles that have been placed in the way of Americans devoting their lives to keeping their neighbors healthy and whole.

Nonprofits Play a Vital Role in the U.S. Economy

Nonprofits are a substantial part of the overall economy, with 1.62 million of them registered with the Internal Revenue Service as of 2016.[1] They accounted for almost $985 billion in gross product, 5.5 percent of GDP, in 2014.[2]

In 2017, U.S. tax-exempt 501(c)(3) nonprofits accounted for almost 12.5 million jobs, more than 10 percent of the private-sector workforce.[3] Health care and social assistance accounted for two-thirds of nonprofit employment. The $670 billion wages they paid that year were almost 10

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[1] U.S. Bureau of Labor Statistics (BLS), https://www.bls.gov/bdm/nonprofits/nonprofits.htm.
[2] Gross Domestic Product. Foundation Center. 2018. *Foundation Stats (2014)*. New York: Foundation Center. http://data.foundationcenter.org/#/foundations/all/nationwide/total/list/2014.
[3] Section 501(c)(3) of the Internal Revenue Code defines which nonprofits are public charities that are exempt from paying taxes on their income. Gifts to these charities are deductible from the federally taxable income of donors, under certain conditions. https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations;
BLS, Employment and Wage Estimates for 501(c)(3) nonprofit establishments for 2013–15 and 2017, https://www.bls.gov/bdm/nonprofits/nonprofits.htm.

percent of private sector wages. The average annual wage for employees in the nonprofit sector in 2017 was $53,667, which was 97 percent of the average wage of all private-sector employers.[4]

Reporting nonprofits had $2.9 trillion revenue and $3.8 trillion assets in 2015.[5] Of these reporting nonprofits, public charities accounted for three-fifths. Public charities account for two-thirds of the nonprofit sector's total assets. The data on nonprofits excludes some religious institutions, because they are not required to report to the IRS, although most do. The data also exclude small organizations with little or no staff on payroll, because they are also not required to report. As a result, the official figures understate the full importance of charitable institutions in the life of the nation.[6]

Nonprofit revenues are concentrated in health care charities, which in 2015 accounted for 58.7 percent of reported public charity revenues and 42.9 percent of assets. Of 6,210 U.S. hospitals, of which the largest group, 47.8 percent, is composed of nonprofit charities (the remainder are private, 21.3 percent; state/local, 15.7 percent; or federal, 3.3 percent).[7]

Add in tax-exempt educational institutions, and the combined share of health care and educational charities soars to 76.6 percent of charities' revenue and 73.7 percent of their assets.[8]

Table 1. Reported Revenues and Assets of U.S. Public Charities, 2015[9]

Entities		Dollars			Percentage	
	2015	Revenues $ bil.	Rank	Assets $ bil.	Revenues	Assets
All public charities	314,744	1,979		3,669	100	100
Health	38,861	1,161	1	1,574	58.7	42.9
Education	54,214	354	2	1,129	17.9	30.8
Human services	110,801	234	3	357	11.8	9.7
Other public, social benefit	37,478	111	4	347	5.6	9.5
Arts	31,429	41	5	128	2.1	3.5
International	6,927	39	6	43	1.9	1.2
Environment and animals	14,591	20	7	48	1.0	1.3
Religious institutions	20,443	20	8	43	1.0	1.2

Assets within the nonprofit sector, as in the rest of the American economy, are highly concentrated among a small percentage of nonprofit entities. The slightly more than 5 percent of

[4] BLS, Employment and Wage Estimates.
[5] IRS data show 298,440 reporting (on Forms 990 and 990 EZ) charity nonprofits with revenue of $2.9 trillion and assets of $3.8 trillion, https://www.irs.gov/pub/irs-pdf/p5331.pdf.
[6] Urban Institute, National Center for Charitable Statistics, https://nccs.urban.org/publication/nonprofit-sector-brief-2018#type.
[7] American Hospital Association, https://www.aha.org/statistics/fast-facts-us-hospitals.
[8] Urban Institute, National Center for Charitable Statistics, https://nccs.urban.org/publication/nonprofit-sector-brief-2018#highlights, abbreviated by JEC from Table 2. Reminder—religious institutions are not required to report to the IRS, although most do.
[9] Urban Institute, National Center for Charitable Statistics, https://nccs.urban.org/publication/nonprofit-sector-brief-2018#type.

reporting nonprofits with $10 million or more in gross receipts accounted for more than 87 percent of nonprofit expenditures.[10]

Charitable Giving

Nonprofits are highly dependent on charitable giving. In 2017, individuals, foundations and businesses gave $410 billion to charitable institutions, of which total household giving was $287 billion, 2.4 times what it was 40 years ago, after adjusting for inflation.[11] Household giving has not kept pace with total giving, falling to from 84 percent to 70 percent. Giving by corporations, bequests and foundations have grown collectively more than three times as fast as household giving.[12]

Nonprofits are also highly reliant on volunteers. An estimated 25.1 percent of U.S. adults in 2017 volunteered 8.8 billion hours, a 1 percent increase from 2016 and a value of approximately $195 billion.[13] As in the private sector, many nonprofits partly compensate volunteers by paying for their related expenses such as transit benefits, mileage, parking and some meals.[14]

Between 2012 and 2017, giving to health care institutions rose 1.3 percent, education held constant, and reporting religious institutions suffered the most from the loss of gifts, declining 1.4 percent.[15] Religious institutions are doubly affected, by the relative decline in personal contributions and by a relative shift away from giving to these charities.

Table 2. Change in Giving by Charitable Mission, 2012-2017[16]

Charity Type	% Gifts, 2012	% Gifts, 2017	% age-Pt Change, 2012–17	Rank
Health	8.0	9.3	**1.3**	**1**
International affairs	4.9	5.6	**0.7**	**2**
Arts, culture, humanities	4.2	4.7	0.5	3
Environment and animals	2.7	2.9	0.2	4

[10] Urban Institute, NCCS, https://nccs.urban.org/publication/nonprofit-sector-brief-2018#highlights. Fig. 1. The IRS summary of 2015 data for the 298,440 charities that filed 990 returns for tax year 2015 presents similar data: The top 10 percent of nonprofit filers with assets above $10 million accounted for 93 percent of the assets of $3.8 trillion. https://www.irs.gov/pub/irs-pdf/p5331.pdf.
[11] Giving USA Foundation. 2018. *Giving USA 2018: The Annual Report on Philanthropy for the Year 2017*. Bloomington, IN: Giving USA Foundation, https://givingusa.org/giving-usa-2018-americans-gave-410-02-billion-to-charity-in-2017-crossing-the-400-billion-mark-for-the-first-time/.
[12] Nonprofit Quarterly, https://nonprofitquarterly.org/2018/11/21/total-household-growth-decline-small-medium-donors/.
[13] Urban Institute, National Center for Charitable Statistics, https://nccs.urban.org/publication/nonprofit-sector-brief-2018#highlights, Table 6.
[14] Nonprofits may also provide tuition reimbursement as a nontaxable benefit if the course maintains or improves job skills, is required by the nonprofit, or is required by law. (Volunteers for some local government fire departments or EMS units are also offered training and tuition, and in addition, once they are trained, can qualify for pensions and property tax rebates. See Prince George's County, https://www.pgvolunteers.org/benefits-for-volunteering/; or South Bay Fire Department, http://southbayfire.com/volunteering/volunteer-benefits/).
[15] Urban Institute, National Center for Charitable Statistics, https://nccs.urban.org/publication/nonprofit-sector-brief-2018#highlights, Table 5.
[16] Urban Institute, National Center for Charitable Statistics, https://nccs.urban.org/publication/nonprofit-sector-brief-2018#type.

Public, society benefit	7.0	7.2	0.2	5
Aid to individuals	1.8	1.9	0.1	6
Education	14.3	14.3	0.0	7
Human services	12.6	12.1	-0.5	8
Foundations	12.2	11.1	**-1.1**	**9**
Religious institutions	32.3	30.9	**-1.4**	**10**

Economic Impact of the 2017 Tax Act on U.S. Nonprofits

Nonprofits have suffered a sector-wide blow from the Tax Act of 2017. It significantly reduces the incentives for middle-income Americans to make charitable contributions. It is feared that few middle-income taxpayers will itemize their tax-deductible expenses.

In addition to raising fears among nonprofits about their future, the 2017 Tax Act contained multiple provisions that increase costs and taxes on nonprofits, while excluding them from new tax benefits. These provisions include the following:

- ***Higher costs from UBIT and "siloing"***
- ***New taxes on transportation subsidies and parking***
- ***Inequitable treatment of paid leave***
- ***Obsolete mileage rate***

An indication of the complexity of the siloing law and its implementation is that IRS guidance on how to interpret the law did not appear for more than half a year after the 2017 Tax Act was signed. Nonprofits had to guess how to comply, making it difficult to file accurate reports or ensure that tax payments were sufficient, risking penalties.[17] Nonprofits also continue to be harmed by an obsolete rate for mileage reimbursement that should be updated to equal the rate of 58 cents per mile offered to for-profit entities.[18]

1. *Lost Donations from the Higher Standard Deduction*

A general issue for nonprofits is that the near doubling of the standard deduction, to $12,000 for single filers and $24,000 for joint filers, will reduce itemization of deductions and starting in 2019, as middle-income taxpayers observe that the standard deduction does not allow them to deduct their charitable contributions, the number of smaller contributions to the work of charitable organizations will decline.[19] The proportion of taxpayers who will now receive a tax benefit

[17] Internal Revenue Service, https://www.irs.gov/pub/irs-drop/n-18-67.pdf.
[18] Internal Revenue Service, https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2019.
[19] Tax Foundation, https://taxfoundation.org/90-percent-taxpayers-projected-tcja-expanded-standard-deduction/.

from a charitable contribution is estimated at under 10 percent.[20] If this fear is borne out, a suggested solution is some limited amount of above-the-line deductions for charity.[21]

*2. **Higher Taxes and Costs from UBIT and "Siloing"***

The Tax Act of 2017 requires nonprofit organizations, including churches, to pay a 21 percent tax on transportation benefits provided to employees. Until 1950, nonprofits could use revenues from unrelated business activities to support their tax-exempt missions. However, the Revenue Act of 1950 subjected unrelated business income broadly to the corporate income tax.[22] Commonly referred to as Unrelated Business Income Tax (UBIT), this new tax was announced as a way to level the playing field between nonprofits and businesses.[23] Nonprofits were required to do what for-profit businesses do, and aggregate the profits and losses of their unrelated business activities and pay taxes on the net profit.

The Tax Act of 2017 requires enterprise nonprofits to separately calculate the taxes on each "separate" unrelated business income "trade or business."[24] Unlike the UBIT for the 2017 Form 990, the Tax Act requires that UBIT be calculated on the 2018 Form 990 for each trade or business independently, i.e., not aggregated. This is commonly referred to as "siloing."[25]

Siloing means a deficit on one business cannot be applied to a profit on another. This can be very costly for large nonprofits like hospitals and universities, which must pay the 21 percent corporate tax on each unrelated activity and cannot offset it by a loss on another. Some nonprofits with large unrelated business income benefit from paying a lower UBIT rate, since the maximum corporate income tax rate was lowered from 35 percent to 21 percent. However, only the first $1,000 of unrelated business income is exempt from taxation under pre-existing law, so the proposed changes adversely affect many organizations of varying sizes.[26] The change in the UBIT rules could result in substantial increased taxes on and administrative costs for nonprofits—taking revenue away from their mission-related programs and services.

The average extra tax for complying with the siloing requirements is, according to estimates from a survey by Urban Institute authors Elizabeth Boris and Joseph Cordes published in 2019, $15,000 per responding nonprofit.[27] For large institutions, the costs can be in the millions of dollars.

Independent Sector surveyed nonprofits in November 2018 to estimate average taxes and administrative costs of the changes. Responses were returned by 723 organizations with $9.5 billion in revenue. Of them, 46 percent with $8.5 billion in revenue provide transportation benefits. The aggregate administrative cost for filing an unrelated business tax return (Form 990-

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[20] Nonprofit Law Blog, http://www.nonprofitlawblog.com/tax-cuts-and-jobs-act-new-tax-law-impact-on-nonprofits-fundraising/.
[21] The Universal Charitable Giving Act (H.R. 3988/S.2123) would allow non-itemizers of SALT deductions to deduct up to $4,000 per individual and $8,000 per couple each year. https://nonprofitquarterly.org/2018/09/27/our-burning-platform-for-a-universal-charitable-deduction/.
[22] P. Arnsberger et al., https://www.irs.gov/pub/irs-soi/tehistory.pdf, 107.
[23] Nonprofits refer to this as UBIT; the IRS calls it UBTI (Unrelated Business Taxable Income).
[24] U.S. Congress, Joint Committee on Taxation 2018, 188 and 291.
[25] The referencing is to farm silos, which are distinct entities containing different liquids or grains.
[26] Internal Revenue Service, https://www.irs.gov/charities-non-profits/unrelated-business-income-tax.
[27] Elizabeth T. Boris and Joseph J. Cordes, Urban Institute, "How the TCJA's New UBIT Provisions Will Affect Nonprofits." Washington, D.C.: Urban Institute, January 24, 2019, vii. Based on the referenced survey of Independent Sector members, under the umbrella of the Council on Foundations. https://www.urban.org/research/publication/how-tcjas-new-ubit-provisions-will-affect-nonprofits.

T) is more than $200,000 for 156 organizations that will report UBIT for the first time. For the more than 300,000 public charities, the cumulative administrative cost is distressing to imagine. An average of $15,046 in additional UBIT tax was paid on separate trades or businesses for the organizations that provided estimates.[28]

The siloing of each separate unrelated trade or business will also require special accounting for many nonprofits, as the Form 990 will have to be re-filed as a Form 990-T. The minimum charge for this service in a middle-sized accounting firm in New York City is $1,500.[29]

3. ***New Taxes on Transportation Subsidies and Parking***

Transportation benefits are payments that employers make to help employees who commute to work via public transportation and to enable more people to volunteer their services to help the young, the aging, the sick and the needy. Nonprofits are required by New York City, Washington, D.C. and other municipalities to pay these subsidies if they have 20 or more employees.[30] Under the 2017 Tax Act, a nonprofit making commuter-subsidy payments for its employees or volunteers must now pay a 21 percent income tax.[31]

Under the 2017 Tax Act, as interpreted by the IRS, charitable nonprofits, including houses of worship, must pay the new tax not only on the amount of direct expenditures they make, but also on the amount that their employees ask to have withheld from their paychecks on a pretax basis, i.e., voluntary salary reduction agreements made pursuant to federal law.

On the new taxation of transportation benefits, 200 nonprofits in the D.C. area responded to the Independent Sector survey. As previously mentioned, an Urban Institute survey concludes that the average cost is more than $10,000 per nonprofit. Forty percent of survey respondents provide transportation benefits. Ten percent are considering dropping their benefits.[32]

Additionally, many nonprofits are filing the 990-T for the first time in 2018, solely because of the new tax on commuter benefits, at an average cost of $1,346.[33] The average new administrative cost per nonprofit in the Washington, D.C. area has been estimated at about $1,500, but in New York City the average total cost is likely to be more like $2,600, with larger organizations paying far more.[34]

4. ***Inequitable Treatment of Paid Leave***

The 2017 Tax Act provides tax cuts and related tax changes to assist for-profit employers in providing paid leave benefits to their employees. This helps both children and parents.

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[28] Boris and Cordes.
[29] Warren Ruppel, Lead Partner for the nonprofit practice of a New York City accounting firm, interview with JEC staff March 7, 2019.
[30] NYC Admin. Code Sec. 20-926.
[31] That would be any amount a nonprofit employer has "paid or incurred" for commuter benefits such as a Buffalo NFTA Metro Pass, NYC Metrocard, Rochester RTS Pass or employee parking.
[32] Boris and Cordes.
[33] Boris and Cordes.
[34] Boris and Cordes; Sharon Stapel, CEO of the Nonprofit Coordinating Committee of NY, meeting with JEC staff, March 4, 2019.

However, the 2017 Tax Act does not extend this benefit to nonprofits. This is contrary to the stated purpose of treating for-profit and nonprofit organizations equitably by subjecting them to the UBIT provisions. That purpose should be applied here, as well as to transportation benefits. It is the least that can be done for nonprofit workers, who lack profit-sharing and equity participation that boost the compensation of for-profit workers.

5. ***Obsolete Mileage Rate***

The current Charitable Mileage Rate for nonprofit volunteers is 14 cents per mile. This rate has been unchanged since 1998, when it was raised by two cents per mile.[35] This compares poorly with the paid employee Standard Business Mileage Rate of 58 cents in 2019.[36] Since the nonprofit mileage rate was established by Congress, volunteers who receive a mileage reimbursement from nonprofits above 14 cents must pay income taxes on the additional reimbursement amount. The National Council of Foundations is strongly on the record urging the raising of this outdated mileage rate.[37]

Impact of the Tax Act on New York City and New York State

Organizations representing the thousands of nonprofits in New York City and New York State have expressed deep concern about the effects of the tax law. These include the Nonprofit Coordinating Committee of New York (NPCC), which represents 1,600 nonprofits in New York City, Long Island and Westchester.[38] Its sister organization is the NY Council of Nonprofits (NYCON), which represents nonprofits statewide. Other organizations in New York City working actively on this problem include the Human Services Council and the Lawyers Alliance. The representatives of these organizations and others report specific ways in which the tax law will hurt the ability of nonprofits to deliver services to the public.

Thanks to the 21 percent tax on fringe benefits, nonprofits are now faced with an unanticipated tax. If New York State were to follow the IRS rules, then New York State business taxes would be imposed on top of federal taxes. On this provision alone, the 2017 Tax Law would have forced nonprofits to pay nearly $365 million more in unrelated business taxes on commuter benefits. To avoid imposing these taxes, New York Governor Andrew Cuomo signed a bill to "decouple" federal and state tax laws on this tax.[39]

New York nonprofits paying Federal UBIT tax on commuter benefits at a flat 21 percent can expect to pay up to $655 per employee per year. With 1.3 million employees, nonprofits will

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[35] Internal Revenue Service, https://www.irs.gov/tax-professionals/standard-mileage-rates.
[36] Internal Revenue Service, https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2019.
[37] National Council of Nonprofits, https://www.councilofnonprofits.org/trends-policy-issues/volunteer-mileage.
[38] Sharon Stapel, March 4, 2019.
[39] Gov. Cuomo is attempting to reduce the impact of the 2017 Tax Act by "decoupling" New York State from the provisions of the Tax Act. "Decoupling" is contrasted, apparently, with "conformance," which is the word used in states that wish to conform their state laws to follow changes in the federal law. New York State was the first state to begin "decoupling," but Utah was the first to pass a law, with New York State second. Iowa will not conform for several years, so that large landowners can continue to deduct their property taxes from income taxable by the state. Decoupling means that states treat property taxes differently from federal law, i.e., they ignore the cap on deductions from taxable income. It means that large residential landowners can add back the amount of their tax payments as deductions for purposes of calculating their taxable income. https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-protect-non-profits-federal-tax-hike; https://www.nydailynews.com/opinion/ny-oped-end-the-commuter-tax-on-nonprofit-workers-20180920-story.html.

have to pay up to $852 million per year for this federal tax alone. This money will not be used to carry out the public services offered by the nonprofits.

Legislative Remedies

Rep. Carolyn Maloney supports a bill by Rep. James Clyburn (D-SC-06) that addresses transportation benefits and is introducing a new bill that addresses the three other issues: siloing, mileage and paid leave.

Transportation Benefits Tax. Rep. Maloney supports the *Stop the Tax Hike on Charities and Places of Worship Act* (H.R.1223), introduced by Rep. Clyburn. It repeals the transportation benefits and parking tax. It provides revenue offsets with an increase in the corporate tax from 21 percent to 21.03 percent, showing that this burdensome increase in the accounting and taxes of nonprofits is tiny in relation to the huge tax cut from 35 percent to 21 percent that was given to corporations. In the Senate, this issue was addressed in the *Lessen Impediments from Taxes for Charities Act* (S. 632), introduced by Senator James Lankford (R-OK) and co-sponsored by Senator Christopher Coons (D-DE).[40] Senators Lankford and Coons have urged ending the commuter-and-parking tax, which was a burden for religious institutions.

Three Other Problems of Nonprofits. Rep. Maloney's bill addresses the siloing-UBIT, mileage and paid leave issues.

- **Siloing.** The bill proposes to reverse both the commuter benefits tax and the "siloing" of unrelated business income.
- **Mileage.** The second provision of Rep. Maloney's bill proposes to raise the mileage rate for volunteers and would index the rate to inflation.[41] It amends the Internal Revenue Code to provide that volunteers who use their automobiles for the benefit of a charitable organization may exclude from their gross income reimbursements for their automobile operating expenses at the same level as business employees (i.e., 58 cents per mile in 2019).[42]
- **Paid Leave.** To lift the burdens on charitable nonprofit institutions imposed by the Tax Act of 2017, the bill includes a new provision for paid leave. It amends Section 45S(a) of the U.S. Code Title 26 to read: For purposes of section 38, in the case of an eligible employer, the paid family and medical leave credit is an amount equal to the applicable percentage of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave. Tax-exempt organizations, as defined by Section 501(c) of the Internal Revenue Code, are permitted to apply the paid family and medical leave credit to payroll and other taxes accrued by the tax-exempt organization.

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[40] LIFT for Charities Act, https://www.congress.gov/bill/116th-congress/senate-bill/632.
[41] The Charitable Driving Tax Relief, https://www.congress.gov/bill/113th-congress/house-bill/1212.
[42] Internal Revenue Service, https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2019.

Conclusion

In sum, nonprofits are a major sector of the economy, employing more the 10 percent of the private-sector workforce. They provide a range of basic human services, including health care, education, cultural and spiritual services and assistance to families and neighborhoods. Their work is extended by a large pool of volunteers who collectively help provide a safety net those who are ill, disabled and otherwise defenseless.

The Tax Act of 2017 has damaged this sector in large and small ways. By removing the incentive for charitable giving, it may undermine financial support for nonprofits from all but the wealthy. This does not bode well for the future of human services.

However, some measures in the Tax Act that can be remedied at a cost that is tiny by the standards of corporate America but huge for struggling charitable organizations. One of these remedies, H.R. 1223 introduced by Rep. Clyburn, addresses the transportation subsidies. The other three remedies, for siloing, mileage and paid leave, are addressed by Rep. Maloney’s bill.