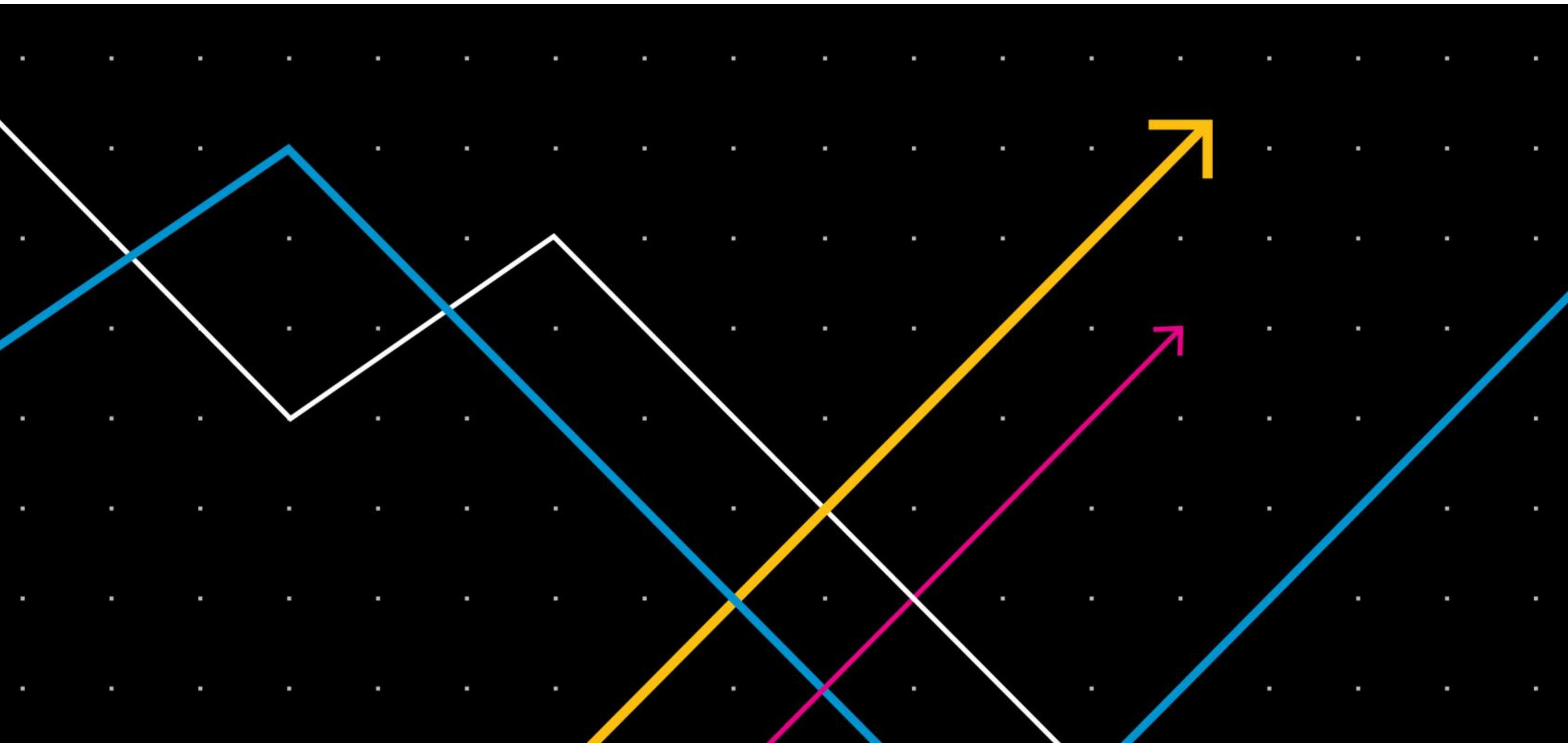

RESEARCH REPORT

How the TCJA's New UBIT Provisions Will Affect Nonprofits

A Tax on Transportation Fringe Benefits and Separate Reporting of Unrelated Business Income Streams

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January 2019

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Acknowledgments

This report was commissioned by Independent Sector and funded by the Charles Stewart Mott Foundation and the Fidelity Charitable Trustees' Initiative. We are grateful to them and to all our funders, who make it possible for Urban to advance its mission.

The views expressed are those of the authors and should not be attributed to the Urban Institute, its trustees, or its funders. Funders do not determine research findings or the insights and recommendations of Urban experts. Further information on the Urban Institute's funding principles is available at urban.org/fundingprinciples.

Special thanks to the Council on Foundations for providing data to inform the findings in this report.

Executive Summary

Changes in unrelated business income taxes (UBIT) mandated by the Tax Cuts and Jobs Act of 2017 will have significant costs for nonprofit organizations. A survey of Independent Sector members and partner organizations in November 2018 revealed the costs and other implications of those changes.

Costs of New Transportation Benefits UBIT

Over 200 nonprofit organizations estimate it will cost them more than $2.1 million dollars in UBIT on transportation fringe benefits they provide to employees. The 156 organizations that will report UBIT for the first time under that requirement will face estimated associated administrative expenses for filing IRS tax forms (Form 990-T) of more than $200,000.

Costs of New Reporting Rules for UBIT

Required separate reporting of multiple revenue streams for purposes of UBIT (referred to as "siloing") is estimated to cost affected organizations an additional $376,150.

Highlights of the Survey Findings

Respondents

- 723 organizations with $9.5 billion in revenues responded to the survey.
- Of those, 46 percent with $8.5 billion in revenues provided information related to new UBIT provisions affecting their transportation fringe benefits, unrelated business income, or both; one-half provided no transportation benefits and did not report unrelated business income.

UBIT on Transportation Fringe Benefits

- Among respondents, two-fifths of organizations provide transportation fringe benefits.

- » The largest group by size were those with revenues of $10 million or more (38 percent) followed by those with revenues of $1 million to $4.99 million (28 percent).
- » The highest share of organizations reporting transportation benefits were those focused on the arts, culture and humanities (31 percent), followed by those focused on public and social benefit (16 percent).
- » Sixty-one percent of organizations (202) reporting an estimated amount of UBIT owed over $2,112,208 million in transportation UBIT, an average of $10,456 per organization.
- » Three-fifths of those organizations based their UBIT estimates on the value of parking lots or spaces.
- » Just over three-quarters of those organizations estimated their administrative expenses for reporting UBIT on Form 990-T for transportation benefits would total about $210,048, an average of about $1,346 per organization.
- » Two-thirds of respondents that provide transportation benefits provide free parking, the most prevalent type of transportation benefit.
- » Two-fifths reported they owned parking lots or spaces; of those, almost half allow the public to use those facilities.

Changes in UBIT Reporting

- A total of $376,150 is the estimated cost of additional UBIT owed as a result of the new requirement for reporting unrelated income streams separately. This is an average of $15,046 per organization for the 25 organizations that offered estimates.
- Forty-three percent of the 330 organizations reporting information filed IRS Form 990-T to report unrelated business income in one of the past three fiscal years.
- Estimated aggregate administrative cost for filing Form 990-T was $248,145, and the average was $2,640, for the 28 percent of organizations that provided estimates.
- Fourteen percent of organizations providing information about UBIT reported multiple streams of unrelated business income. Most had two income streams.

Effects of the New UBIT Requirements

- Just over one-fifth of organizations reporting information (330) cited the high cost and administrative burden of reporting UBIT under one or both of the new requirements. Just under one-tenth reported that the law is unclear and the calculations too difficult; and just over 10 percent are considering dropping their transportation benefits.

Estimated Impact of UBIT Transportation Fringe Benefits Tax on Washington, DC, Nonprofits

- According to data from Nonprofit-Works,[1] 135,000 workers are employed by Washington, DC, nonprofits.
- If an employee of a DC nonprofit claimed the maximum amount of transportation-related fringe benefits allowed, the nonprofit employer would owe $655 in UBIT taxes.
- If all 135,000 employees of DC nonprofits each received the maximum amount of transportation-related fringe benefits, total UBIT taxes owed would equal $88.4 million, or $20,000 per each DC nonprofit.
- This estimate, however, is a maximum amount. Based on responses to the survey, 65 percent of employees receive transportation-related benefits. Further, the DC law exempts nonprofit organizations with fewer than 20 employees from providing such benefits. Applying these factors to the above estimates suggests that perhaps a more reasonable estimate would be that the added UBIT burden faced by DC nonprofits would be between one-half and three-fifths of these amounts, about $10,000 per nonprofit.

Implications for Nonprofits of the New UBIT Provisions of the TCJA

Introduction

Nonprofits that have never been subject to unrelated business income taxes (UBIT) will be paying millions of dollars in new taxes to the IRS under the Tax Cuts and Jobs Act of 2017 (TCJA). The TCJA requires nonprofit organizations, including churches, to pay 21 percent in UBIT on transportation benefits provided to employees and to calculate separately the taxes on each unrelated business income activity (Joint Committee on Taxation 2018, 188 and 291). To assess the consequences of these changes, Independent Sector asked members and partner organizations to complete a survey documenting how those provisions would affect them. The survey, conducted in November 2018, reveals the estimated taxes, administrative costs, and other implications of the changes for a diverse group of nonprofit organizations.

History

Through 1950, nonprofit organizations were able to use revenues from commercial enterprises to support their tax-exempt activities without paying taxes on those revenues. The Revenue Act of 1950 changed that. Starting in 1951, revenues derived from commercial activities unrelated to an organization's tax-exempt mission were subjected to UBIT, with a few exceptions (Arnsberger et al. 2008; Cordes and Brody 2017). The goal was to level the playing field between nonprofits and businesses by preventing unfair competitive advantages for nonprofits. Nonprofits aggregated the profits and losses of unrelated business activities and paid taxes only on the net profit, as commercial businesses do. Perhaps reflecting the rising visibility of enterprises among nonprofits, the search for new revenues in the TCJA changed how UBIT applies to nonprofits.

Taxation of Fringe Benefits

Assessing UBIT on transportation fringe benefits that nonprofits provide to employees is a new use of the provision. The tax covers direct subsidies as well as pretax savings plans that nonprofits provide to their employees. This is a departure from previous practice, which relied on the "relatedness test" to determine when nonprofits should pay UBIT. The stated rationale for levying UBIT on transportation fringe benefits is to create a level playing field with businesses that can no longer deduct transportation fringe benefits. However, this ignores that the tax code has historically treated nonprofits differently than for-profit enterprises. Moreover, the provision requires nonprofits that otherwise would not have to file IRS form 990-T because they do not have other forms of UBIT liability to incur the administrative expense of filing the IRS 990-T.

Separate Taxation of Multiple Unrelated Business Activities

Under the TCJA, nonprofits may no longer aggregate profits and losses on different unrelated business activities and pay UBIT on the net profits. Taxes must be paid separately for each activity, leading to a higher tax bill for many organizations. Again, this requirement does not apply to businesses.

For example, some unrelated business activities may provide services that are profitable, while others might lose money but still be useful to the constituents of the organization. Revenues from a hospital gift shop or coffee shop may both be taxable, but one might earn a profit while the other loses money. Clients may expect both types of amenities in a hospital, so up until the TCJA was enacted, a responsive organization might provide both if the organization did not lose money overall. That type of trade-off will no longer be possible.

BOX 1

Summary of UBIT Provisions of the Tax Cuts and Jobs Act of 2017

Nonprofits must pay UBIT of 21 percent on transportation fringe benefits provided to their employees. This applies to direct payments and to employee pretax deductions that cover transportation expenses.

The tax on each type of business activity unrelated to an organization's exempt purpose must be separately calculated. Under prior law, a nonprofit could aggregate income and deductions from multiple unrelated business activities so that a profit from one activity could offset losses on another activity.

Survey Respondents

A total of 723 organizations with $9.5 billion in revenues completed the survey; of those, 46 percent with $8.5 billion in revenues provided transportation benefits, reported unrelated business income to the IRS in the past three years, or both. Among respondents, one-half reported that they did not provide transportation benefits or did not report unrelated business income to the IRS in the past three years; they are omitted from the following results. Not all organizations answered each question, so totals may vary. (See the methodology section in the appendix for details.)

TABLE 1

Overview of Survey Respondents

Total survey respondents	723
Organizations providing revenue information	663 (92%), with total revenues of $9,554,431,268
Organizations with UBIT information	330 (46%), with total revenues of $8,504,370,459
Organizations providing transportation benefits	281 (39%), with total revenues of $7,986,246,929
Organizations reporting UBIT to the IRS	143 (20%), with total revenues of $3,247,804,361
Organizations providing transport benefits and reporting UBIT	99 (14%), with total revenues of $2,837,305,830
Organizations neither providing transportation benefits or reporting UBIT	361 (50%), with total revenues of $1,286,389,019

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: UBIT = unrelated business income taxes.

As might be expected, larger organizations provided the bulk of the responses on UBIT issues. Over three-quarters of the 330 organizations with UBIT responses had revenues of $1 million or more, and 36 percent had revenues of $10 million or more. More surprisingly, although all types of nonprofits responded, organizations focused on the arts, culture, and humanities outnumber others (42 percent), followed by those focused on human services (16 percent) and public and social benefit (15 percent). Respondents came from all regions, but the largest group was from the western United States. (See the appendix for information on respondents).

Among respondents were 20 percent that had reported UBIT in the past three years. They tended to be the largest organizations, and over one-third were organizations focused on the arts, culture, and humanities.

New UBIT on Transportation-Related Fringe Benefits

Those that estimated their UBIT liability reported over $2.1 million in new taxes; those that estimated the additional administrative cost of filing UBIT forms reported $210,000, an increase of more than $2.3 million in costs for nonprofits.

Organizations with revenues of over $1 million are most likely to provide transportation benefits to employees, as are arts organizations.

TABLE 2

Organizations Providing Transportation Benefits, by Type

280 organizations

Type of organization	Percentage
Arts, culture and humanities	38%
Environment and animals	4%
Higher education	4%
Human services	14%
International	0%
Other education organization	13%
Other health organization	4%
Public and social benefit	15%
Religion-related	6%
NA	2%
Total	**100%**

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: NA = type of organization not available.

Types of Transportation Fringe Benefits Provided

Organizations provide a variety of transportation fringe benefits, such as free parking, subsidies for parking and transportation, and pretax allowances (compensation reduction agreements) for both parking and public transportation. Among respondents, 39 percent of organizations provide transportation fringe benefits to 21,744 employees. Forty-two of those respondents were from cities that require the provision of transportation benefits—Washington, DC; San Francisco, CA; Seattle, WA; Berkley, CA; Richmond, CA; and New York, NY.

Free parking is the most common benefit, offered across the country by two-thirds of organizations that provide transportation benefits, although free parking is less common in large cities such as Los Angeles, New York, and San Francisco. Over half of organizations offered only one type of transportation benefit, 30 percent offered two types, and 13 percent offered three to six types. Subsidies for parking (23 percent) and for public transportation (26 percent) were somewhat more common than pretax allowances for parking (15 percent) and transportation (27 percent).

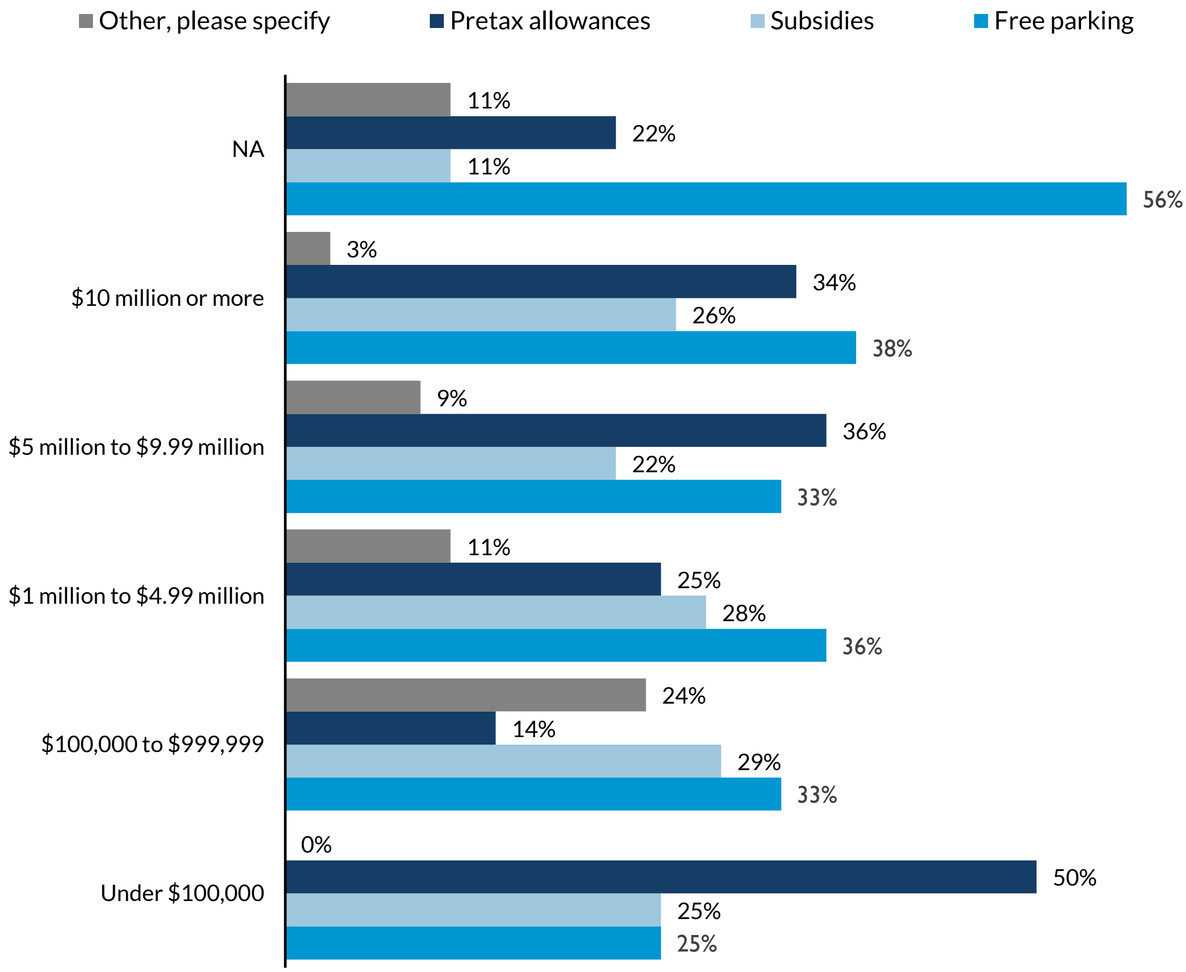
Subsidies for public transportation were more frequently provided in the large cities on the West Coast, such as Los Angeles, San Francisco, Portland, and Seattle, as well as in the Washington, DC, metropolitan area.

Pretax options were more likely to be offered by the largest organizations, those with $5 million or more in revenues. Only three organizations reported bicycle subsidies among their “other” types of transportation benefits.

FIGURE 1

Types of Transportation Benefits Provided

280 organizations



Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.

TABLE 3

Parking Lot and Spaces Usage

120 organizations

Parking lot and spaces usage	Percentage
Staff	95%
Members, clients, or beneficiaries	74%
Public	46%
Total organizations	**100%**

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.

Note: Some organizations responded to multiple answer options.

Among those providing transportation benefits, 38 percent reported that they owned parking lots or spaces. In addition to staff, three-quarters of organizations permitted members, clients, and beneficiaries to use their parking facilities, and almost half permitted the public to use them. These organizations tended to be among the largest and to be human services and religion-related nonprofits.

Estimating UBIT for Parking Lots or Spaces

For UBIT purposes, in December the IRS issued guidance on how organizations should estimate the tax for providing parking lots or spaces to their employees. To do so, organizations must estimate the cost of providing the benefit. Before this guidance was issued, three-quarters of the organizations responding to the survey used one factor, the actual value of the lot or spaces, to estimate their tax liability; 30 percent also considered maintenance and upkeep, and 20 percent factored in depreciation. There was, however, considerable uncertainty among nonprofits about whether these approaches to estimating costs would be acceptable to the IRS. The guidance issued by the IRS attempted to eliminate this uncertainty by stating any reasonable approach to estimating costs would be considered acceptable.

Nonprofits reported that discerning the value of parking benefits is difficult. Many are uncertain about how to go about it, especially if parking lots or spaces are used not only by staff but also by clients and the public, as the majority are. The IRS recently issued guidelines indicating that organizations will have considerable latitude in the method used to estimate taxable value.[2]

TABLE 4

Factors Used in Estimating UBIT Parking Costs

210 organizations

Estimates	Percentage
Value of parking lot or spaces	59%
Depreciation of the parking lot or spaces	20%
Maintenance or upkeep costs	30%
Other, please specify	33%
Total organizations	**210**

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: UBIT = unrelated business income taxes.

The tables below present the survey respondents' estimates of the additional tax owed because of the UBIT provisions. Tables 5 and 6 present the absolute dollar estimates by size of organization revenue and by the National Taxonomy of Exempt Entities (organizational type classification) category, respectively, and tables 7 and 8 show the burden of the UBIT transportation tax expressed as a percentage of organization revenue. The estimates show that although the impact of the added taxes may be modest for many nonprofits, it varies widely among nonprofits of different size and different type.

TABLE 5

Estimated Transportation-Related UBIT, by Revenue Size

186 total organizations

Revenue size	Percentage	Mean estimated UBIT	Maximum estimated UBIT
Under $100,000	2%	$90	$250
$100,000-$999,999	15%	$2,929	$40,000
$1 million to $4.99 million	27%	$3,451	$31,500
$5 million to $9.99 million	12%	$5,655	$25,000
$10 million or more	%	$19,514	$130,000
NA	2%	NA	NA
Total	**100%**		

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: NA = not available; UBIT = unrelated business income taxes.

TABLE 6

Estimated Transportation-Related UBIT, by Type of Organization (NTEE Category)

186 organizations

NTEE category	Percentage	Mean estimated UBIT	Maximum estimated UBIT
Arts, culture, and humanities	38%	$10,242	$100,000
Environment	4%	$1690	$5,000
Higher education	4%	$25107	$130,000
Human services	14%	$17,233	$100,000
International	0%	NA	NA
Other education	13%	$6,315	$35,000
Other health	4%	$14,319	$100,000
Public and societal benefit	15%	$9,105	$50,000
Religion-related	6%	$3,607	$24,000
NA	2%	NA	NA
Total	**100%**		

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: NA = not available; NTEE = National Taxonomy of Exempt Entities; UBIT = unrelated business income taxes.

TABLE 7

Estimated Transportation-Related UBIT as a Percentage of Revenue, by Revenue Size

181 organizations

Revenue Size	Percentage	Mean estimated UBIT as a % of revenue	Maximum estimated UBIT as a % of revenue
Under $100,000	2%	0.1%	0.2%
$100,000-$999,999	15%	0.4%	5.7%
$1 million to $4.99 million	27%	0.2%	1.3%
$5 million to $9.99 million	12%	0.08%	0.4%
$10 million or more	%	0.04%	0.2%
NA	2%	NA	NA
Total	**100%**		

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: NA = not available; UBIT = unrelated business income taxes.

TABLE 8

Estimated Transportation-Related UBIT as a Percent of Revenue, by NTEE Category

186 organizations

NTEE category	Percentage	Mean estimated UBIT as a % of revenue	Maximum estimated UBIT as a % of revenue
Arts	38%	0.2%	3.0%
Environment	4%	0.1%	0.6%
Higher Education	4%	0.6%	5.7%
Human Services	14%	0.1%	1.3%
Other Education	13%	0.09%	0.9%
Other Health	4%	0.06%	0.1%
Public and Societal Benefit	15%	0.1%	0.7%
Religion-Related	6%	0.06%	0.4%
NA	2%	NA	NA
Total	**100%**		

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: NA = not available; NTEE = National Taxonomy of Exempt Entities; UBIT = unrelated business income taxes.

New TCJA Requirements for Reporting Multiple UBIT Activities

The survey sought information from organizations that conducted unrelated business activities and reported to the IRS in previous years to assess the general costs of such reporting and the increased costs of complying with the new requirement to value each unrelated business activity separately as required by the TCJA.

TABLE 9

Reported UBIT in Past Three Years, by Revenues

143 organizations

Size	Percentage
Under $100,000	7%
$100,000-$999,999	11%
$1 million to $4.99 million	0.5%
$5 million to $9.99 million	13%
$10 million or more	69%
Total	**100%**

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: UBIT = unrelated business income taxes.

In each of the past three fiscal years, 43 percent of the 330 organizations reporting information filed Form 990-T reporting UBIT to the IRS. They tended to be the largest organizations. Just over four-fifths of the organizations had more than $1 million in revenues, and just under 70 percent had more than $10 million in revenues. The most numerous responding organizations were those focused on the arts, culture, and humanities (40 percent), followed by those focused on other education (13 percent), higher education (10 percent), and human services (8 percent). Although 23 percent of organizations had 50 or fewer staff members, the median staff size of these organizations was 83, with an average staff size of 193.

TABLE 10

Reported UBIT in Past Three Years, by Type

143 organizations

Type of organization	Percentage
Arts, culture, and humanities	40%
Environment and animals	2%
Higher education	10%
Human services	8 %
International	0%
Other education organization	13%
Other health organization	4%
Public and social benefit	16%
Religion-related	7%
Total	**100%**

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: UBIT = unrelated business income taxes.

For the 28 percent of organizations that estimated the cost of filing Form 990-T in their latest fiscal year, the total costs were $248,343, and the average was $2,670 per organization.

Multiple Unrelated Business Activities

Forty-six organizations reported that they had multiple streams of unrelated business income. Among the 74 percent that provided numbers of income streams, almost half had two income streams, 71 percent had one income stream, 21 percent had three income streams, and 9 percent had four to six income streams.

ADDITIONAL UBIT OWED

The total of new taxes estimated as a result of the new UBIT requirement to report unrelated income streams separately is $376,150, an average of $15,046 per organization and a median of $4,468 for those organizations that supplied that information. Additional taxes ranged from $1,000 to $200,000. Organizations focused on human services estimated among the greatest increases in their UBIT obligations (a total of $327,178).

Comments on the New UBIT Requirements

Most responses (41 percent) cited the high cost and administrative burden of reporting for the changes in UBIT; 26 percent reported that the law is unclear and the calculations too difficult; 10 percent are considering dropping their transportation benefits.

TABLE 11

Comments on the Effects of Changes in UBIT Requirements

145 organizations

Response grouping	Percentage
High cost or administrative burden	41%
Law is unclear or calculations are too difficult	26%
Law does not apply	11%
Organization is considering dropping benefits	10%
Negative impact on hiring or retention	7%
Other	12%

Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.

Note: UBIT = unrelated business income taxes.

UBIT Transportation Costs for Washington, DC

Nonprofits located in jurisdictions that do not require employers to provide transportation-related fringe benefits may react to the new transportation benefits tax by dropping such fringe benefits altogether or by shifting fringe benefit dollars from transportation-related to other fringe benefits.

Several large cities, notably, New York, San Francisco, and Washington, DC, require that employers with above a certain number of employees must provide the maximum tax-preferred transportation-related fringe benefits allowed by the IRS.[3]

Washington, DC has myriad nonprofit organizations, many of which are required to provide transportation-related fringe benefits. The city's law requires all employers, including nonprofits, with more than 20 employees to provide a commuter benefits program that allows (1) employees to pay for up to $260 a month in transportation expenses with pretax income; (2) employers to provide up to $260 in employer-paid transportation subsidies or $20 per month for bicycling; or (3) employers to provide free transportation to employees in the form of a van pool or shuttle.

Determining the precise value of transportation-related fringe benefits that would be subject to the new UBIT in Washington, DC, requires data on the value of such benefits provided by each DC nonprofit subject to tax. Such data are not readily available.

It is, however, possible to gauge the order of magnitude of potential taxes owed by DC nonprofits that provide transportation-related fringe benefits. Whether the benefit is provided in the form of a pretax deduction or a direct subsidy, the maximum tax that a nonprofit would owe on commuter fringe benefits would equal the maximum amount allowed by the IRS for such benefits, namely $260 a month for 12 months, or $3129 a year. Multiplying this amount by the UBIT tax rate of 0.21 yields a maximum tax per employee of $655.

Data available on the Nonprofit Works website indicates that in 2016, some 135,000 workers were employed in the nonprofit sector in Washington, DC.[4] Thus, if (1) each of these workers received commuter fringe benefits and (2) each received the maximum commuter fringe-benefit, the total amount of transportation-related fringe benefit subject to the UBIT tax would equal 135,000 × $655, approximately $88.4 million. Dividing this number by the total number of nonprofits located in the city in 2015 (4,538) yields a maximum UBIT tax of just under $20,000. Compared with the total expenses of DC nonprofits in 2015, $88.4 million of UBIT taxes would represent 0.4 percent of expenses.

This estimate is likely too high because it is unlikely that all 135,000 employees of DC nonprofits receive commuter-related fringe benefits, because not all employees of nonprofits participate in transportation-related fringe benefit. Among survey respondents, 65 percent of employees receive transportation-related fringe benefits. Further, DC nonprofits with fewer than 20 employees are exempt from the requirement to provide transportation-related fringe benefits. These two considerations suggest the number of nonprofit employees in the city receiving commuter benefits might reasonably be half as large as the total reported above. In that case, total commuter-related UBIT taxes would be one-half as large as the above-estimate, or about $10,000 per DC nonprofit.

Conclusion

Over the past 25 years, entrepreneurial ventures became widely touted as strategies for nonprofits to diversify their revenues and strengthen their financial health, leading to greater numbers of nonprofits reporting unrelated business activities to the IRS on Form 990-T (Arnsberger et al. 2008; Cordes and Steuerle 2009). Changes in UBIT under the TCJA will have financial implications and add administrative complexity for many of those nonprofits, as well as for others that choose to provide transportation benefits or are required by local regulations to provide such benefits. This survey reveals that nonprofits of different types and sizes will be affected, and although the amounts will not materially affect the federal deficit, they will affect the finances and missions of many nonprofits. In open-ended comments on the consequences of the new taxes, nonprofits shared their concerns; we share some of these comments in this section.

Confusion and Lack of Guidance

Some nonprofits are confused about whether taxes on transportation-related fringe benefits apply to them, and others question why they should be singled out for such taxes. Their confusion is evident:

> "We are unaware of the UBIT and are wondering if it applies to us, since our organization pays the costs of monthly/daily parking ourselves rather than giving that money to employees."

> "We assumed if it was a part of our facilities and grounds, that there would be no tax implications."

> "Guidance seems murky at best. Since we own the lot and it is free to everyone that works, volunteers, or visits, we are not going to file UBIT this year. If we get specific guidance to file UBIT for our situation, we will do so and consider all the above benefits and costs."

Administrative Burdens

The costs of learning about and changing reporting and accounting systems to report UBIT will be a burden to many nonprofits:

> "While our organization already files a 990 with a 990-T for a single [unrelated business income] revenue stream, the changes will impact our administrative team on a daily basis. In fact, in light of the limited guidance provided, our team has already had to spend an extraordinary [amount of] time in research in order to maximize our compliance efforts. We have had to modify existing operational processes and account classifications to align with the separate tracking of income and expenses that were previously considered in aggregate. Expenses for contract accounting support have increased, and we expect additional expenses over the coming year. Our membership includes nonprofit organizations with no experience with 990's, 990 T's or [unrelated business income], and we expect the financial impact on their operations to be significant."

Unsupportable Costs of Taxes

For some nonprofits, the added tax burden associated with the new UBIT provisions will be modest. However, responses to the survey also show a fairly wide range of burdens. Survey responses also indicate that some nonprofits may choose to discontinue transportation benefits, regarding them as unsupportable:

> "Reduce benefits, end option to elect pretax withholding, reduction in other expenses to make up the difference."

> "Our net margin, at an average of 2 percent, is not able to support the UBIT for parking spaces, and such a tax could have a very negative impact on our mission."

> "The new UBIT provisions will divert significant funding and resources that [we] would otherwise use to provide valuable legal services to low-income and underserved members of our community."

Similarly, some nonprofits fear their organizations will become less able to attract or retain staff if they charge for parking or cut those benefits.

Required Transportation Benefits Cannot Be Shed

A possible unanticipated consequence is that for nonprofits in certain jurisdictions, such as the District of Columbia, New York, San Francisco, Berkley, Richmond, Seattle, and possibly others, nonprofits are required to provide transportation benefits, so they will not have the option of terminating the benefits if they find the additional tax payments financially damaging.

Double UBIT

Additionally, in jurisdictions such as New York and Washington, DC, which automatically impose UBIT whenever the federal government does, transportation benefits will be subject to another level of UBIT.

> "The amount that I included as the projected 2018 UBIT does not include the additional taxes that will also have to be paid to the District of Columbia. Just by virtue of having to file the 990-T and pay taxes on these benefits, the [unrelated business income] also gets reported to the District and taxes must be paid. This is an additional $8,400 for a total of $25,600 due to this legislation. It is also important to state that this is a benefit that the District requires employers to provide to employees."

Possible Workaround

Another unanticipated consequence is that nonprofits that have several unrelated business income streams may create for-profit subsidiaries to conduct those activities, because for-profit entities are permitted to net gains and losses of different business activities for tax purposes.[5] The impacts of this strategy are not apparent, but it is clear that the new UBIT provisions will have ripple effects on the ways many nonprofits operate.

Summary

The UBIT provisions of the TCJA will have many obvious and unanticipated consequences for nonprofits. The most obvious effects will be financial, but there will also be staffing and mission costs. It is too soon to know the full extent of those impacts, but it is not too soon to begin documenting those effects.

Appendix: Methodology

To respond to legislative requests for data on the effects of the changes in unrelated business income taxation on nonprofits, Independent Sector contracted with the Urban Institute to develop that information. Elizabeth Boris and Joseph Cordes of George Washington University agreed to conduct a quick online survey and develop information on the new UBIT requirements in regions that require transportation benefits. The survey, a modification of one developed by the Council on Foundations for its members, was conducted online using Qualtrics software. Independent Sector sent an invitation letter and a survey link to its members and posted the link on its website on November 1, 2018. Respondents were promised that their information would be confidential and that no individual organizations would be identified. Other organizations were asked to provide a link to the survey and invite their members to complete it. The survey link was available from November 1 to November 26, 2018.

Survey responses were analyzed at the Urban Institute; case study analyses were conducted at George Washington University.

TABLE A.1

Total Respondents, by Type

723 total organizations

NTEE Code	Number of organizations	Percentage of organizations	Sum of revenue
Arts, culture, and humanities	177	24%	1,271,016,436
Environment and animals	43	6%	152,025,133
Higher education	23	3%	774,774,765
Human services	135	19%	1,736,944,643
International	4	1%	1,503,000
Other education organization	84	12%	918,133,925
Other health organization	39	5%	2,946,013,431
Public and social benefit	121	17%	1,066,916,914
Religion-related	62	9%	621082328
NA	35	4%	66020693
Total	**723**	**100%**	**$9,554,431,268**

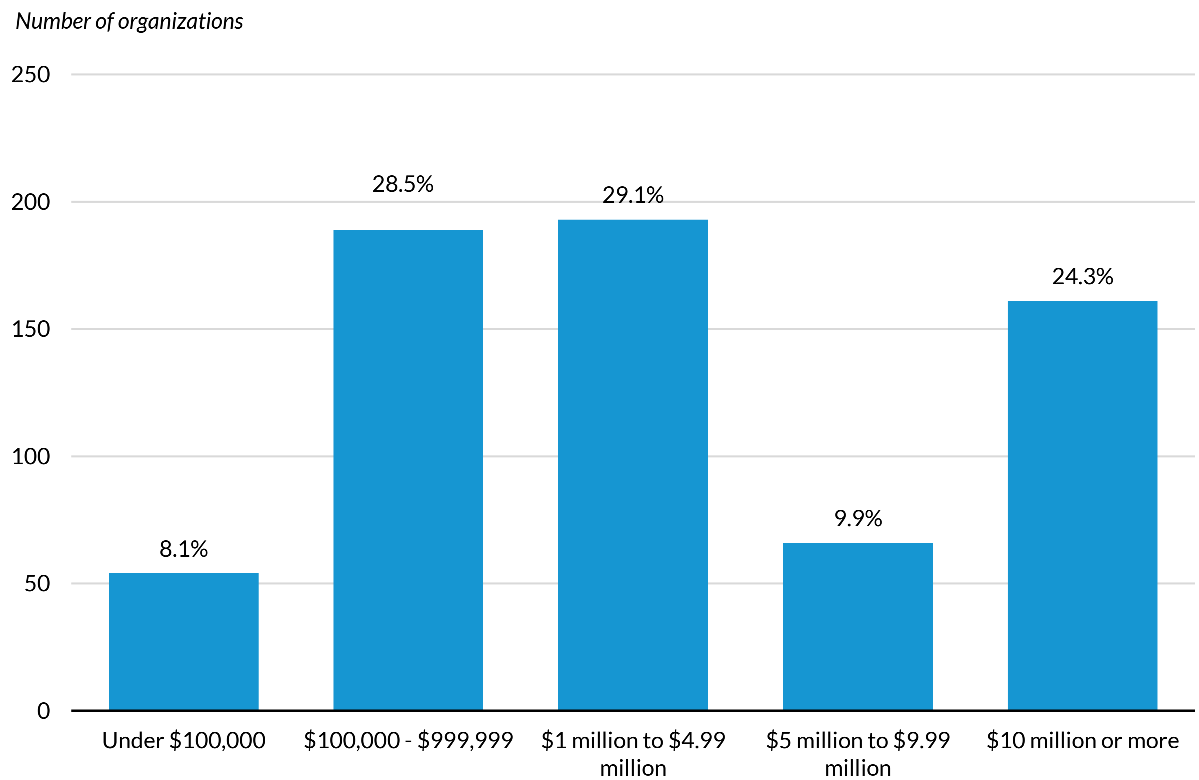
Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.
Note: NA = not available; NTEE = National Taxonomy of Exempt Entities; UBIT = unrelated business income taxes.

Organizations that provided information on the survey do not constitute a scientific sample that is representative of the nonprofit sector. Independent Sector invited its members to complete the survey and asked other nonprofit membership associations to invite their members to take the survey. It is a convenience sample of those organizations motivated to respond. About half of organizations that were contacted reported these issues did not affect them.

FIGURE A.1

Total Respondents by Revenues

663 organizations



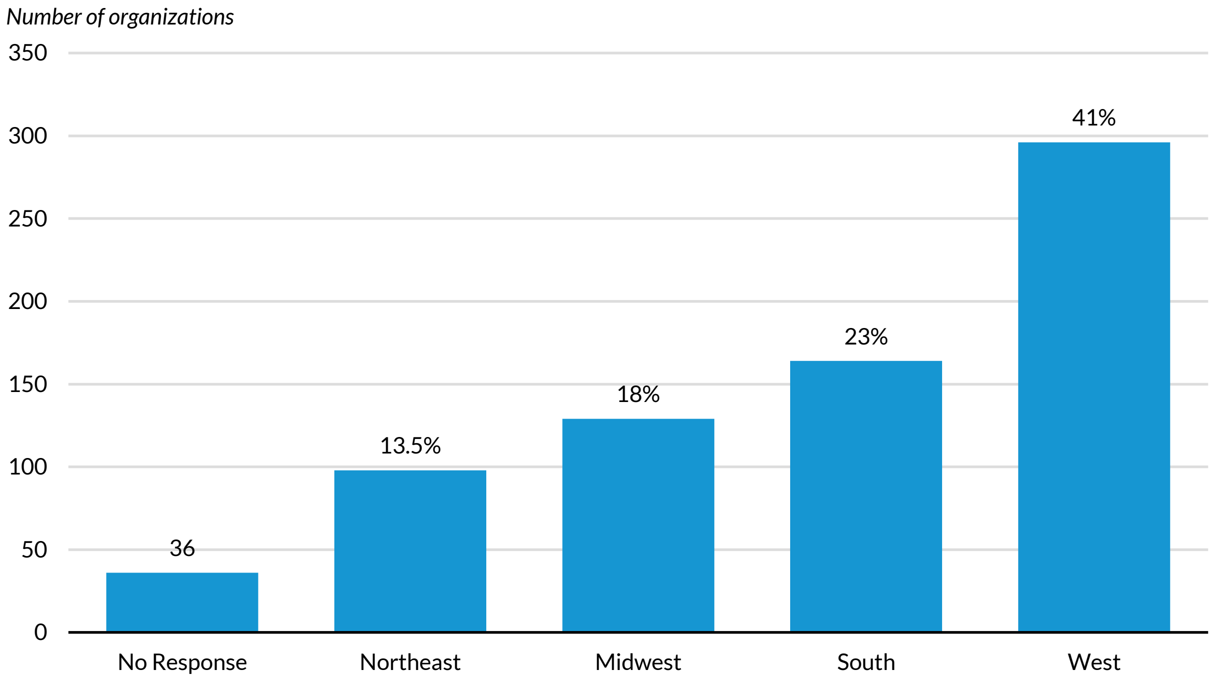
Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.

Respondents tended to be larger and more representative of organizations focused on arts, culture, and humanities than in the general nonprofit population. Although respondents came from all regions of the country, organizations in the West were disproportionately represented (at 41 percent of the total), and those in the Northeast were underrepresented (at 13.6 percent of the total), relative to the true geographical spread of nonprofits across the country (McKeever, forthcoming).

FIGURE A.2

Total Respondents by Region

723 organizations



Source: Urban Institute and George Washington University survey of TCJA 2017 UBIT provisions for nonprofit organizations.

Notes

[1] Generated using the data visualization tool at "Data Wizard," Nonprofit Works, accessed January 4, 2019, http://ccss.jhu.edu/nonprofit-works/.

[2] Internal Revenue Service, "IRS Issues Guidance for Determining Nondeductible Amount of Parking Fringe Expenses and Unrelated Business Taxable Income; Provides Penalty Relief to Tax-Exempt Organizations," news release, December 10, 2018.

[3] Luz Lazo, "More Washington Workers Will Get Commuter Benefits," *Washington Post*, November 4, 2015.

[4] Generated using the data visualization tool at "Data Wizard," Nonprofit Works, accessed January 4, 2019, http://ccss.jhu.edu/nonprofit-works/.

[5] American Society of Association Executives (ASAE), "Nonprofit Finance and Tax Reform Issues," accessed December 5, 2018, https://www.asaecenter.org/advocacy/association-issues/nonprofit-finance-and-tax-reform-issues.

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About the Authors

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Dr. Boris held the Waldemar A. Nielsen Chair of Philanthropy at Georgetown University from 2015 to 2017. From 1991 to 1996, Boris was founding director of the Aspen Institute's Nonprofit Sector Research Fund, the first grant-making program devoted to supporting research on the nonprofit sector and philanthropy. Before her tenure at the Aspen Institute, Boris was vice president for research at the Council on Foundations, where she developed the research program and directed it for 12 years.

Joseph Cordes is associate director of the George Washington University Trachtenberg School of Public Policy and Public Administration; professor of economics, public policy and public administration, and international affairs; and co-director of the George Washington University Regulatory Studies Center. He received his PhD in economics from the University of Wisconsin–Madison in 1977 and joined the George Washington University faculty in 1975. His academic specialization in economics is in public economics and tax policy.

Cordes was a Brookings economic policy fellow in the Office of Tax Policy in the US Department of the Treasury in 1980–81, and he served as a senior economist on the Treasury's tax reform project in 1984. From 1989 to 1991, he was deputy assistant director for tax analysis at the Congressional Budget Office. He was a visiting fellow at the Urban Institute in 1998–99, and he is currently an associate scholar in the Center on Nonprofits and Philanthropy.

Statement of Independence

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