



June 19, 2019

The Honorable Richard Neal
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

Dear Chairman Neal and Ranking Member Brady,

Independent Sector—a national coalition of nonprofits, foundations, and corporations whose members represent tens of thousands of organizations and individuals committed to advancing the common good—strongly supports Section 401 of H.R. 3300, the *Economic Mobility Act of 2019*, which would repeal the transportation fringe benefits tax on nonprofit organizations enacted in 2017. Every day, charitable nonprofit organizations, among many other contributions to society, provide educational and economic opportunities for families in need; work to alleviate poverty and suffering at home and abroad; assist victims of disaster; enhance the cultural and spiritual development of individuals and communities; facilitate scientific advances; and foster worldwide appreciation for the democratic values of justice and individual liberty that are part of the American character.

We have a wide range of concerns with this onerous tax, some of which are detailed below. But, it is important first to note that there already is bipartisan consensus for repeal, as indicated by this legislation today, other bills introduced this year, and the manager's amendment to H.R. 88, (115th Congress) which passed the House of Representatives last December. It also is encouraging that this legislation would repeal the tax retroactively. While retroactive repeal cannot undo the considerable administrative burden that the charitable sector has already borne to understand and comply with this tax, it is welcome recognition that an income tax on nonprofit employee transportation fringe benefits was a clear mistake that should never have been enacted in the first place.

A massive diversion of charitable resources

Even though the text of the 2017 tax legislation made the new tax on transportation fringe benefits effective less than two weeks after its enactment, policymakers and the charitable nonprofit sector struggled for quite some time to understand its true impact and scope. After hearing from many in the policymaking community as well as members and partners around the country, Independent Sector commissioned research with Urban Institute and the George Washington University to quantify this impact.

While the resulting survey data cannot be assumed to be nationally representative, it did include responses from over 700 nonprofit organizations. The full report and its key findings were alarming:

- The new tax on transportation fringe benefits will divert an average of about \$12,000 away from each nonprofit organization's mission per year. This is a combination of both increased tax burden (an average of \$10,456 per organization) and significant administrative burden (\$1,346 per organization).
- As a percentage of budget size, this tax is a bigger burden to smaller nonprofits.
- About 10 percent of nonprofits are considering dropping these benefits entirely, while many are required to maintain the benefits by local law.

Unlike many for-profit organizations, nonprofits cannot simply pass along these increased costs to the communities they serve. They instead are being forced to curtail their services. One organization responding

to the survey noted, “*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.*”

It is an outrage to see financial resources on such a grand scale being directed away from charitable missions, but it also is extremely concerning to note what some organizations are being forced to resort to in order to avoid these taxes. Nonprofit organizations already struggle to compete for talented employees with for-profit companies, and a charitable sector that stops offering employee benefits will be at an even greater disadvantage.

A gross misapplication of UBIT’s purpose

In the wake of its passage, there were attempts to justify this provision by arguing that it creates a level of parity between the for-profit and nonprofit sectors because an analogous deduction was repealed for corporations. The charitable sector rejects the concept of parity. There are numerous differences between for-profit and nonprofit organizations, and they do not operate under identical rules for good reason. Tax-exempt organizations have a special designation in the tax code precisely because they are held to a different standard and should be viewed differently under law. In addition, for-profit corporations will not be forced to pay taxes on transportation fringe benefits if they do not owe taxes, whereas tax-exempt organizations will be forced to pay taxes on fringe benefits regardless of their overall tax liability.

For over 60 years, UBIT has been a tax on certain *income* brought in by charities when they operate outside the scope of their charitable purpose. However, applying this tax burden to an *expenditure*, like transportation benefits, is a gross misapplication of the law’s purpose. We also believe it is a source of significant confusion, as many organizations that have not historically engaged in activity beyond their charitable purpose are unaware of the arcane rules and language surrounding the UBIT regime.

Among those organizations not historically familiar with UBIT rules are houses of worship and some other religious institutions, which have generally been exempt from filing an annual information return (Form 990) with the Internal Revenue Service. Because of this new tax burden, many houses of worship are now required to file with the IRS for the first time. We share the alarm of many in the faith community—including the Faith and Giving Coalition and the Church Alliance—about the impact of this financial and administrative burden.

Charitable organizations are not the only victims of this administrative burden. The chronically understaffed Internal Revenue Service (IRS) will now be forced to process thousands more information returns annually. As we work with policymakers toward effective oversight of the charitable sector, this new diversion of very limited federal resources will only hamper those efforts.

Undercutting the TCJA’s stated purpose of job growth

The organizations and people that serve in America’s charitable sector do not do so primarily for reasons of economic impact. Yet, as it pursues these charitable missions, our sector is in fact a critical component of the nation’s economy. Over 10 percent of the private workforce in the United States is employed by a nonprofit organization, and with 12.3 million paid workers, we employ more people than the finance and real estate sectors combined. Further, these organizations pay \$638 billion annually in wages, which support families in communities across America.¹ Despite its “tax exempt” moniker, our sector pays a significant amount of taxes; in 2010, 501(c)(3) organizations paid \$35.2 billion in payroll taxes.²

¹ Lester M. Salamon and Chelsea L. Newhouse, “The 2019 Nonprofit Employment Report,” Nonprofit Economic Data Bulletin no. 47. (Baltimore: Johns Hopkins Center for Civil Society Studies, January 2019).

² National Center for Charitable Statistics (NCCS), the Urban Institute, the Nonprofit Almanac 2012.

Because of this profound economic impact, it is troubling that legislation titled the *Tax Cuts and Jobs Act* actually would increase taxes on our nation's third-largest employment sector. In the context of a bill that significantly reduced federal revenue from both corporations and individuals, this tax increase is even more vexing. When combined with other tax increases on nonprofit organizations and changes that research indicates are having a negative impact on charitable giving, the TCJA has the potential to severely limit the charitable sector's contributions to our economy.

Imposing mandatory taxes due to local requirements

It is alarming that 10 percent of nonprofit organizations are considering dropping employee transportation benefits as a result of this tax, but many organizations are located in jurisdictions where that is not an option. Because of local requirements to offer such benefits, nonprofit organizations in those jurisdictions face a mandatory tax increase. These local benefit mandates vary by jurisdiction, but they are growing in number with recently enacted laws in Seattle and New Jersey set to go into effect next year.

Independent Sector appreciates the opportunity to provide this input and we are grateful to the Committee for its work on this issue. While we are heartened by the consensus that this provision was a mistake, it is no consolation to the charitable sector until this misguided tax is repealed once and for all. I urge you in the strongest possible terms to repeal it immediately, so that nonprofit organizations can continue to invest in improving their communities. For additional information on this matter, please contact Ben Kershaw at benk@independentsector.org.

Thank you for your consideration.

Sincerely,

Daniel J. Cardinali
President and CEO
Independent Sector