



# PRIVATE FOUNDATION EXCISE TAX

## Issue Paper

### *We Urge You to Demonstrate Your Support for Philanthropy by:*

- Supporting the simplification of the private foundation excise tax to a flat rate of one percent.

### ISSUE

Each year, private foundations are required to pay an annual excise tax equal to 2 percent of their net investment income (known as the private foundation excise tax). If a foundation’s distributions (measured as a percentage of assets) in a given year exceed the average payout rate of the foundation over the preceding five years—by an amount at least as much as the 1 percent tax savings the foundation will enjoy—then this tax is reduced to 1 percent. This “maintenance of effort test” was intended to ensure that the tax savings be used for additional charitable expenditures and not just “pocketed” by the foundation. By congressional directive, revenues from the excise tax are meant to fund IRS oversight of the nonprofit sector.

### POSITION

The Council strongly supports simplification of the private foundation excise tax on net investment income to a flat rate of one percent.

### RATIONALE

The current private foundation excise tax is difficult to administer and, because of its overly-complicated, two-tier structure, it often creates a disincentive when foundations consider increasing giving for unanticipated grants, such as natural disaster relief efforts or grants to help communities facing other tragedies or crises.

Under the current tax system, foundations can actually be penalized with higher taxes when they give more during times of unexpected but extraordinary need (i.e. natural disasters). The tax is also complicated and unpredictable, requiring foundation staff to constantly monitor and adjust their investments and spending—time that would be better spent serving their communities.

### RELEVANT POLICY & LEGISLATION

***Tax Reform Act of 1969.*** This piece of legislation—passed by the 91<sup>st</sup> Congress and signed into law by President Richard Nixon—provided the first legal classification of a “private foundation,” and established the excise tax requirement for investment income.

***H.R. 4719, America Gives More Act of 2014.*** This bill was introduced in the 113<sup>th</sup> Congress on May 22, 2014, by Representative Tom Reed (R-NY-23). It presented a package of charitable tax provisions—including a simplification of the private foundation excise tax to a flat rate of 1% (*H.R. 4691, Private Foundation Excise Tax Simplification Act of 2014*); a permanent extension of the IRA charitable rollover (*H.R. 4619, Permanent IRA Charitable Contribution Act of 2014*), deduction for contributions of conservation easements (*H.R. 2807, Conservation Easement Incentive Act of 2013*), and enhanced deductions for contributions for food inventory (*H.R. 2945*); and extended the date to claim a charitable contribution for a given tax year to April 15<sup>th</sup> (*H.R. 3134, Charitable Giving Extension Act*).

This bill passed the House, but was never put to a vote in the Senate—and therefore, never proceeded to become law.

***H.R. 1, Tax Reform Act of 2014.*** This bill, introduced in December of 2014 by then Chairman of the House Ways & Means Committee Dave Camp (R-MI-4), was the culmination of tax reform discussions during Camp’s tenure as Chairman and was intended for use as a discussion draft for sparking momentum toward comprehensive tax reform.

This bill proposed a simplification of the private foundation excise tax to a flat rate of 1%. The introduction of this bill was intended to be symbolic, and did not move to a vote before the 113<sup>th</sup> Congress concluded.

***H.R. 644, America Gives More Act of 2015.*** This bill was a reintroduction of *H.R. 4719, America Gives More Act of 2014* by Representative Tom Reed (R-NY-23) in February 2015 of the 114<sup>th</sup> Congress. It presented the same package of charitable tax provisions—including the simplification of the private foundation excise tax to a flat rate of 1%, which was also reintroduced as a stand-alone bill by Representatives Erik Paulsen (R-MN-3) and Danny Davis (D-IL-7) as *H.R. 640, Private Foundation Excise Tax Simplification Act of 2015*.

This bill again passed the House—but once it reached the Senate, the substance of the bill was stripped it was used as the vehicle to pass unrelated trade legislation, becoming the *Trade Facilitation and Trade Enforcement Act of 2015*.

***H.R. 2386, Private Foundation Excise Tax Simplification***

***Act of 2017.*** This bill was introduced by Representative Erik Paulsen (R-MN-3) together with Representatives Danny Davis (D-IL-7), Pat Tiberi (R-OH-12), George Holding (R-NC-2), and Rick Nolan (D-MN-8), on May 4, 2017.

The bill proposes a simplification of the private foundation excise tax from the current two-tiered structure to a flat rate of 1%.

***S. 1343/H.R. 2916 CHARITY Act of 2017 (Charities Helping Americans Regularly Throughout the Year).***

Senators John Thune (R-SD) and Bob Casey (D-PA), with Pat Roberts (R-KS) and Ron Wyden (D-OR), introduced the Charities Helping Americans Regularly Throughout the Year (CHARITY) Act in the Senate on June 13, 2017. On June 15, 2017, Reps. Mike Kelly (R-PA) and Earl Blumenauer (D-OR) an identical version of this bill in the House.

The bill includes sense of the Senate language stating that “Congress should ensure that the value and scope of the deduction for charitable contributions is not diminished during a comprehensive reform of the tax code.” Additionally, this bill would expand the IRA charitable rollover to allow for distributions to donor advised funds (DAFs), **as well as simplifying the private foundation excise tax from the current two-tiered structure to a flat rate of one percent.**

***H.R. 1, Tax Cuts and Jobs Act 2017***

Speaker Paul Ryan (R-WI) and Ways and Means Committee Chairman Kevin Brady (R-TX) introduced this bill to reform the Internal Revenue Code on November 2, 2017. The version introduced in the House would have consolidated the rate at which private foundations are taxed on net investment income from the current two rates to a flat rate of 1.4%. However, this provision was removed prior to the bill being signed into law by President Donald Trump on December 22, 2017.

**RESOURCES**

*Council on Foundations Statement on House Tax Reform Legislation:*  
<https://www.cof.org/news/council-foundations-statement-house-tax-reform-legislation>

For more information, contact the  
Council’s Government Relations team at  
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Or, visit our website at: [www.cof.org/public-policy/issues](http://www.cof.org/public-policy/issues).