

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 91st 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 113th Congress on May 22nd, 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 extends the date to claim a charitable contribution for a given tax year to April 15th (*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 113th 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 114th 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, it was used as the vehicle to pass unrelated trade legislation, becoming the *Trade Facilitation and Trade Enforcement Act of 2015*.

S. 2750, CHARiTY Act (Charities Helping Americans Regularly Throughout the Year). This bill, introduced by Senators John Thune (R-SD) and Ron Wyden (D-OR) in April of 2016, contained a provision to simplify the private foundation excise tax to a flat rate of 1%.

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