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The Give (by donors) and Take (by taxes) of Nonprofit Funds

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The mere words “tax policy” may put some people to sleep, but small changes quickly add up to big impact on nonprofits’ bottom lines. Changes to income taxes can significantly influence charitable giving, leading to more or less. Changes to sales and property taxes can impact an organization’s sustainability for years to come. Nonprofit missions – and therefore nonprofit leaders – all have a stake in the outcomes of tax policy debates, as well as the responsibility to influence the decisions through individual and collective advocacy. Whether you view your role at the nonprofit as being governance or operations, your role also – for better or worse – means you have a vested interest in saying something about tax policy; it influences the financial sustainability of your organization.

We’ve [said it before](#) and we’ll say it again: 2019 is the busiest year EVER for state tax reforms. Most of the proposed changes can be traced to the federal [Tax Cuts and Jobs Act](#) (TCJA) passed in 2017 and the U.S. Supreme Court sales-tax case [South Dakota v. Wayfair](#) decided last summer. The federal changes create incentives and needs for states to open their tax laws to generate more revenues, protect their residents, and/or implement long-considered policies. Tax policy often plays out as a zero-sum game: a one-dollar tax break to one group means that one dollar must be

taken from others. Thus, a tax law open for legislative action on one issue is an inviting target for lobbyists on other issues to engage in creativity (mischief) for their clients, which can lead to catastrophe for others.

At least 200 bills under consideration in 42 states directly address nonprofit tax policies

Through the networks of the National Council of Nonprofits and various legislative tracking tools, we know that more than one hundred thousand bills have been filed in state legislatures so far this year. Nearly twenty thousand of them pertain to taxes. At least 200 bills in 42 states directly address nonprofit tax policies, ranging from provisions affecting charitable giving incentives to overhauls of sales taxes and outright attacks on nonprofit property tax exemptions. All of them can affect nonprofits providing services in their communities.

Income Taxes and Giving Incentives

Dozens of [state tax codes are linked \(“coupled”\)](#) to the federal tax law in some way, meaning that these states’ tax laws automatically changed with the passage of the federal tax law. Some states have seen an influx of new tax revenues, others saw a sharp decrease; both types of results have [caused state lawmakers to respond](#) by adjusting tax rates or moving funding streams. More than 80 of the bills pertaining to tax policy we’re tracking this year make changes to state tax rates and brackets and standard and itemized deductions, which may affect how donors prioritize giving at the end of the year.

A few states attempted last year to create statutorily new “government charities” to act as workarounds of the new \$10,000 cap on how much individuals may deduct for the state and local taxes (SALT) they paid. The U.S. Treasury and Internal Revenue Service responded by [proposing regulations](#) to limit not only the tax benefits under the new workarounds, but also – surprisingly to most practitioners – other [tax credits for charitable donations](#) to legitimate charitable purposes in 32 states and the District of Columbia. Despite the proposed regulations, some states this year have sought to create more state tax credits for donations to an [Education Excellence Fund](#), [public school foundations](#), [private schools](#), and [regenerative medicine research institutions](#).

Governments are parsing their tax codes to determine where they might find new sources of revenues; small, and seemingly insignificant, changes can have enormous impact. Shifting existing tax credits to tax deductions, for instance, could significantly reduce donor incentives to give to nonprofits, as [explained recently](#) by the North Dakota Association of Nonprofit Organizations. Under a [bill that did not pass](#), the **North Dakota** Legislature attempted to convert the endowment and planned gift tax credit into a deduction. A separate bill that also failed in **Montana** sought to [repeal several of Montana's tax credits](#), including one that promotes giving to nonprofit endowments and university and college foundations.

Tapping the Wayfair Windfall

Nearly a quarter of the state tax bills being tracked serve as legislative vehicles to tap into the estimated [\\$23 billion Wayfair windfall](#) per year from remote sellers. Twenty-two states are taking active steps to set thresholds so remote sellers, including charitable nonprofits, must collect and remit sales tax to the states. Charitable nonprofits conducting sales activities out of state via event ticket sales, online marketplaces, subscriptions, online auctions and raffle tickets, conference registrations, and more may now find themselves responsible for new expenses to comply with registration, calculation, collection, reporting, and payment of sales taxes to a multitude of tax jurisdictions they did not have to deal with in the past. We analyzed the case in [Weighing Wayfair for Nonprofits](#).

Property Tax Exemptions Under Attack

While property tax exemptions for nonprofits are always on the chopping block, states this year are looking to reduce or eliminate them in an attempt to replace tax revenues lost due to the TCJA. Nonprofit hospitals in particular have been the target of bills in [Florida](#), [Idaho](#), [Indiana](#), [Nebraska](#), [New Jersey](#), [Oregon](#), and [Rhode Island](#). Two bills in the **Montana** Legislature that threatened nonprofit property tax exemptions were tabled. One would have required charitable nonprofits to [pay property taxes for ten years](#) on any new real property purchased or donated. Another would have revoked property tax exemptions for [nonprofits that pay executives](#) more than \$250,000. A third bill, however, is still under consideration; it would allow local governments to [establish "Public Safety Districts"](#) and levy so-called "fees" on properties that are tax exempt, thereby attempting to evade the

state prohibition against imposing a “tax” on charitable properties. A bill in **New York** would [shift the burden of proof](#) from the state government to the nonprofit organization to show by “clear and convincing evidence” that it qualifies for property tax exemption annually, and the **Oregon** Legislature is also looking to force nonprofits to file additional [information returns that identify the basis](#) for exemption.

Opportunities for Improving Nonprofit Tax Policy

While some nonprofits may feel they do not have the capacity or expertise to enter this kind of fray – public policy, advocacy, and navigating the halls of the statehouse (both literally and figuratively)– [state associations of nonprofits](#) across the country welcome the opportunity to help nonprofits. They recognize the dire need for the nonprofit community to engage in advocacy – protecting missions, charitable donations, tax exemptions, and the nonprofit sector workforce. Whenever tax codes are opened, legislatures can – whether intentionally or inadvertently – disrupt the work of previously tax-exempt nonprofits.

Savvy nonprofits take advantage when tax codes are opened by seizing the opportunity to expand charitable giving incentives and clarify other provisions. Nonprofits in **Montana** not only played defense this session, but also seek passage of legislation to extend the Montana [Charitable Endowment Tax Credit](#) for another six years. Lawmakers in **Arizona** are considering expanding their state’s charitable tax credit for donations to charitable organizations that serve all individuals with a chronic illness or physical disability. Currently only charitable donations for children with a chronic illness or physical disability qualify for the tax credit.

State associations of nonprofits in the Grand Canyon State and the Garden State are seeing the value of advocating legislators to improve the state tax code by expanding incentives for charitable giving to nonprofits. A report by a state university estimates charitable giving in Arizona will [decrease by \\$272.7 million every year](#) because of the TCJA. That’s why the Alliance of Arizona Nonprofits, working with a coalition of nonprofits, is advocating to establish a [non-itemizer charitable deduction](#), retroactive to 2018. This provision would allow all taxpayers in the state, regardless of whether they itemize or take the standard deduction on tax filings, to claim a charitable deduction. The coalition is encouraging nonprofits and taxpayers to contact legislators to pass the bill – now.

New Jersey leaders are also advancing a bill that would allow taxpayers to deduct charitable contributions on their state income taxes. Citing barriers to charitable giving due to the TCJA, such as the increased standard deduction and SALT cap, lawmakers are calling the state charitable deduction “an emergent priority because there are individuals who can reduce their tax burdens and help out charities at all income levels.” The [Center for Non-Profits](#) has been [advocating](#) for this type of charitable giving incentive, pointing out, “Demand for the programs and services provided by charities continues to grow, while needed resources lag behind.”

The TCJA created a new provision of the federal tax code that imposes a 21-percent unrelated business *income* tax on nonprofits *expenses* they incur in providing their employees with transportation fringe benefits, such as parking and transit passes. In the past, some states had coupled their laws to federal laws imposing unrelated business income taxes (UBIT), meaning that whenever federal law changes, the state’s law automatically changes as well. Last year nonprofits in **New York** and **North Carolina**, led by state associations of nonprofits, successfully lobbied to [decouple their state laws from these federal provisions](#), saving nonprofits nine and three percent state tax, respectively.

This year, bills in [Georgia](#), [Hawai`i](#), and [Minnesota](#) have been introduced to decouple state UBIT from the federal tax code. The Georgia and Minnesota bills go further to also decouple a silo-ing provision created by the TCJA that would require nonprofits to calculate UBIT on each “separate” “trade or business,” which are not defined by federal law. At a Minnesota Senate tax committee hearing this session, Jon Pratt of the [Minnesota Council of Nonprofits](#) testified: “The two federal changes in UBIT laws from the 2017 federal tax bill do not ensure that money and resources are used for the right purposes. Instead, they divert money and resources away from each nonprofit’s mission. If Minnesota wants to maintain its strong and thriving charitable sector, the state should not conform to these two provisions.”

Nonprofit Mission Advancement (aka Nonprofit Advocacy Opportunities)

You can keep up with many of these developments by subscribing to our other newsletter, *Nonprofit Advocacy Matters*. And your state association of nonprofits can help you in many ways. In the policy realm, it can help you keep track of the policy proposals at the state and federal levels and identify the best time for you to

engage. Playing your part may mean the difference between tens of thousands of dollars in the bank from new charitable giving incentives or tens of thousands of dollars paid out as new taxes or fees.