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Tax Issues Relating to Charitable Contributions and Organizations

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SUMMARY

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Tax Issues Relating to Charitable Contributions and Organizations

The federal government supports the charitable sector by providing charitable organizations and donors with favorable tax treatment. Individuals itemizing deductions may claim a tax deduction for charitable contributions. Estates can make charitable bequests. Corporations can deduct charitable contributions before computing income taxes. Further, earnings on funds held by charitable organizations and used for a related charitable purpose are exempt from tax. In FY2019, projected tax subsidies for charities, not including the value of the tax exemption on earnings of charities or the estate tax deduction, totaled $51.8 billion. If investment income of nonprofits were taxed at the 35% corporate tax rate in 2015, revenue collected is estimated at $26.7 billion (this amount excludes religious organizations). The cost of deducting bequests on estates is estimated at $4 billion to $5 billion.

Charitable organizations include both operating charities (including religious institutions) and organizations that tend to hold assets and make grants to operating charities, most notably private foundations, but also donor-advised funds (DAFs) and supporting organizations. The tax code treats different types of organizations differently. For example, foundations and certain supporting organizations have minimum payout requirements, while DAFs do not. Limits on charitable giving also differ across gifts to different types of organizations.

Changes in the tax revision enacted in late 2017, popularly known as the Tax Cut and Jobs Act (TCJA; P.L. 115-97), while not generally aimed at charitable deductions, reduced the scope of the tax benefit for charitable giving. A higher standard deduction and the limit on the deduction for state and local taxes caused more individuals to take the standard deduction, as opposed to itemizing deductions. As a result, many individuals who were able to deduct charitable contributions no longer claim this itemized deduction. Other changes exempted more estates from the estate tax, eliminating the benefit of deducting charitable contributions in these cases. Concerns have arisen that these changes are expected to lead to a reduction in charitable contributions.

In 2018, charitable contributions were estimated at $427.7 billion, or 2.1% of gross domestic product (GDP). Charitable gifts come from four sources: individual contributions (accounting for 68%), foundations (accounting for 18%), bequests (accounting for 9%), and corporations (accounting for 5%). In 2018, estimates suggest approximately 54% of individual contributions are expected to have received a tax subsidy.

Comparing giving levels in 2017 and 2018 provides some insight into the possible impacts of the 2017 tax revision on charitable giving and the charitable sector. Compared to 2017, 2018 contributions from individuals and bequests declined as a percentage of GDP (by 6% and 5%, respectively), while corporate contributions were virtually unchanged and foundation contributions rose by 2%. In 2017, an estimated 80% of individual contributions benefited from the tax subsidy for itemized deductions. Surveying the literature can also provide some insight regarding the effect of tax subsidies on charitable giving. Based on statistical estimates of the responsiveness of individual giving to tax subsidies, a decrease in individual giving of around 3% to 4% might be expected from the 2017 tax revision. Limitations in the data make the effect on estates difficult to estimate, but it could be a decrease of up to 8%; the small share of bequests in total giving, however, would lead even that effect to reduce overall charitable giving by less than 1%.

A number of policy options could be considered with respect to the tax treatment of charitable giving or the tax treatment of charitable entities. The charitable deduction could be modified in ways that could extend charitable giving incentives to taxpayers not itemizing deductions, or with the intent of making charitable giving tax incentives more effective (inducing more giving for each dollar of lost federal tax revenue). There are also options related to the type of treatment of certain types of gifts, such as appreciated property or charitable miles driven. Some proposals have also been made to address concerns about aspects of certain charitable organizations, such as payouts by DAFs and university endowments. Some proposals would reverse certain changes made by the 2017 tax revision to the unrelated business income tax (UBIT) or impose administrative reforms.

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Introduction

The federal government supports the charitable sector by providing charitable organizations and donors with favorable tax treatment. A primary source of support is allowing a tax deduction for charitable contributions made by individuals who itemize deductions, by estates, and by corporations. For charitable organizations, earnings on funds held by such organizations are exempt from the federal income tax.

The tax revision enacted in late 2017, popularly known as the Tax Cuts and Jobs Act (P.L. 115-97), made some temporary changes that, while not specifically aimed at charitable deductions, reduced the scope of the tax benefit for charitable giving. These changes have caused more individuals to take the standard deduction, rather than itemizing deductions, and exempted more estates from the estate tax, eliminating the benefit of deducting charitable contributions in these cases. These changes are expected to lead to a reduction in charitable giving. There were other more minor changes, some enhancing the charitable deduction and some imposing more taxes on charitable organizations.

The report begins with a description of the charitable sector and tax provisions affecting the sector. The following sections discuss the magnitude of charitable deductions, including sources and beneficiaries, with historical data. The report then discusses the incentive effects of the deductions and the consequences for charitable giving, including potential effects of the 2017 tax revision. The report concludes with a discussion of policy options.

The Charitable Sector

Definitions and Overview

The focus of this report is the *charitable sector*. Charities are one type of tax-exempt organization. Specifically, they are organizations with 501(c)(3) public charity status.[1] As illustrated in **Figure 1**, most 501(c) organizations are 501(c)(3) "religious, charitable, and similar organizations." Charitable organizations fall within the broader *nonprofit sector*. In public policy discussions, the term *nonprofit sector* is often intended to include all organizations with federal tax-exempt status.[2]

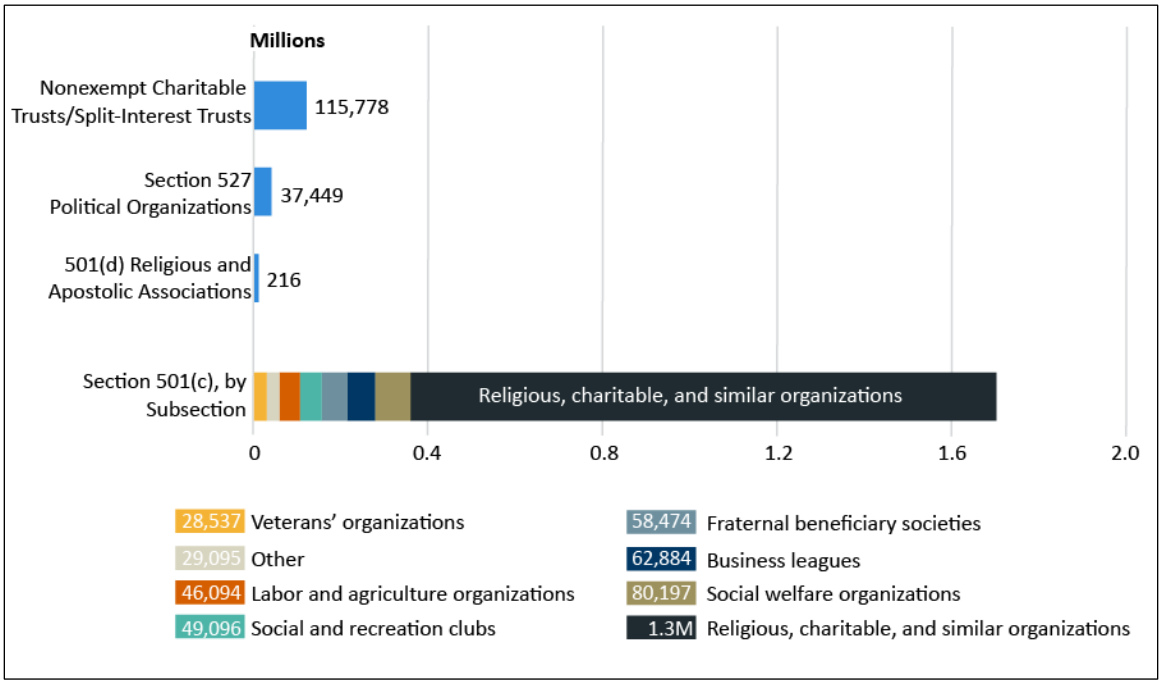
The Internal Revenue Code (IRC) describes approximately 30 types of tax-exempt organizations. Other types of tax-exempt organizations, in addition to charities, include social welfare organizations, labor unions, trade associations, chambers of commerce, fraternal societies, and

[1] IRC §501(c)(3) describes organizations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition … or for the prevention of cruelty to children or animals." Among other requirements, "no part of the net earnings of" the organization may "inure to the benefit of any private shareholder or individual." In the United States, 501(c)(3) organizations are commonly understood to comprise the charitable sector.

[2] While the terms *tax-exempt organization* and *nonprofit organization* are often used interchangeably, it might not be appropriate in certain contexts. The term *tax-exempt organization* refers to organizations with federal tax-exempt status. The term *nonprofit organization* is often used to refer to an entity that is not intended to be a profit-making corporation. The term can be more precisely understood to mean an entity organized under the laws of a state, with its status and privileges determined under state law. Because the qualifications for nonprofit status vary among states, it is possible for the term *nonprofit organization* to be broader than, narrower than, or identical to the term *tax-exempt organization*. For a nonprofit organization to be exempt from federal income taxes, it must meet the statutory requirements found in the Internal Revenue Code and usually must file an application with the IRS. Some organizations, including small 501(c)(3) organizations and qualifying religious organizations, are exempt from the application requirement.

political organizations. Within the nonprofit tax-exempt sector, the bulk of organizations are exempt from tax under IRC Section 501(c)(3) (they are "religious, charitable, or similar organizations"). Most of the tax-exempt sector's financial activity also takes place in 501(c)(3) organizations.

Figure 1. Tax-Exempt Organizations by Type, 2018



Source: Internal Revenue Service, IRS Data Book Table 25, at https://www.irs.gov/statistics/soi-tax-stats-tax-exempt-organizations-and-nonexempt-charitable-trusts-irs-data-book-table-25.

Notes: Religious, charitable, and similar organizations are exempt from federal income tax under IRC §501(c)(3). The "Religious, charitable, and similar organizations" category includes private foundations. Social welfare organizations are exempt under IRC §501(c)(4). Labor and agriculture organizations are exempt under §501(c)(5). Business leagues are exempt under §501(c)(6). Social and recreation clubs are exempt under §501(c)(7). Fraternal beneficiary societies are exempt under §501(c)(8). Veterans' organizations are exempt under §501(c)(19).

Every 501(c)(3) organization is classified as either a "public charity" or "private foundation." Public charities have broad public support and tend to provide charitable services directly to the intended beneficiaries. Private foundations often are tightly controlled, receive significant portions of their funds from a small number of donors or a single source, and make grants to other organizations rather than directly carry out charitable activities. 501(c)(3) organizations are presumed to be private foundations unless they qualify for public charity status based on support and control tests.

IRS Filing Requirements for 501(c)(3) Charities and Foundations

In 2015, there were 1,088,447 registered 501(c)(3) public charities.[3] Of this total, 314,744 were reporting public charities, and filed a Form 990.[4] Form 990 collects information about the organization's finances, assets, and activities. Organizations with gross receipts of $50,000 or more are generally required to file a Form 990 or Form 990-EZ. Private foundations file a Form 990-PF. Smaller organizations are not required to file an annual return, but may be required to file an annual electronic notice, the "e-postcard."[5] Churches and other qualifying religious organizations are exempt from the annual information-reporting requirements.[6] The informational returns (i.e., Form 990s) of exempt organizations are public, unlike individual and corporate income tax returns.[7]

In addition to the information return, there are situations when tax-exempt organizations must file an income tax return. For example, tax-exempt organizations are subject to tax on income from business activities unrelated to their exempt purpose.[8] Organizations subject to this tax, known as the unrelated business income tax (UBIT), must file a tax return using the Form 990-T. Two recent changes to UBIT became effective in 2018 (see the shaded box "UBIT Changes for 2018" below). Additionally, tax-exempt organizations must generally pay the same employment taxes (i.e., withhold income and payroll taxes of their employees) as for-profit employers. Finally, an organization's activities might require it to file other returns, such as an excise tax return.

[3] Brice S. McKeever, *The Nonprofit Sector in Brief, 2018*, Urban Institute: National Center for Charitable Statistics, December 13, 2018, at https://nccs.urban.org/publication/nonprofit-sector-brief-2018#the-nonprofit-sector-in-brief-2018-public-charites-giving-and-volunteering. This group does not include organizations that had their tax-exempt status revoked for failing to file a return for three consecutive years. The Pension Protection Act of 2006 (P.L. 109-280) added automatic revocation of tax-exempt status for organizations that repeatedly fail to file information returns. Before P.L. 109-280, small tax-exempt organizations were exempt from filing altogether. A goal of requiring information returns from all organizations was to identify active organizations, as it was unclear how many registered organizations had ceased operations.

[4] Brice S. McKeever, *The Nonprofit Sector in Brief, 2018*, Urban Institute: National Center for Charitable Statistics, December 13, 2018, at https://nccs.urban.org/publication/nonprofit-sector-brief-2018#the-nonprofit-sector-in-brief-2018-public-charites-giving-and-volunteering.

[5] The "e-postcard," also called the Form 990-N, requires eight pieces of information: (1) the employer identification number (EIN) or taxpayer information number (TIN); (2) the tax year; (3) legal name and mailing address; (4) other names used by the organization; (5) name and address of the principal officer; (6) web address (if applicable); (7) confirmation that gross receipts are $50,000 or less; and (8) if applicable, a statement that the organization has or intends to terminate operations.

[6] For more information on organizations not required to file a Form 990, see Internal Revenue Service, *Instructions for Form 990 Return of Organization Exempt From Income Tax (2018)*, at https://www.irs.gov/instructions/i990.

[7] Some information, such as the names and addresses of contributors to organizations other than a private foundation, is not subject to public disclosure.

[8] For example, if an exempt organization operates a bakery in a commercial district, where business activity is regularly carried on, the income from this bakery may be considered unrelated business taxable income (UBTI). Specifically, income from this type of activity is UBTI if it is substantially unrelated to the exempt organization's exempt purpose.

UBIT Changes Effective for 2018

The 2017 tax revision (P.L. 115-97), commonly called the Tax Cuts and Jobs Act (TCJA), made two permanent changes to UBIT. Both changes were effective for the 2018 tax year.

- **Tax-exempt organizations are required to compute unrelated trade or business income for each trade or business separately.** The rules were designed to prevent losses from one unrelated trade or business from offsetting income from another unrelated trade or business. Net operating loss (NOL) deductions and carryovers are permitted, but only within each specific trade or business. This treatment differs from for-profit businesses, as for-profits can generally aggregate income and expenses across different trades or businesses.
- **Unrelated business taxable income increased by amount of certain fringe benefit expenses.** For for-profit businesses, the TCJA disallows deductions for certain fringe benefits, including transportation-related benefits and parking benefits. Since for-profit businesses are no longer allowed to deduct these expenses as a result of other changes in the TCJA, in an effort to create parity, tax-exempt organizations are required to add the value of these fringe benefits provided to employees to their unrelated business taxable income. Increasing unrelated business taxable income by the amount of fringe benefits effectively requires tax-exempt entities to pay the corporate tax rate of 21% on the value of these benefits as provided. For some organizations that did not previously file Form 990s, particularly churches, this change could require that information returns be filed.

Current Tax Treatment

Federal statute includes multiple tax preferences for nonprofit and charitable organizations. Donations to charitable organizations may be tax deductible, which subsidizes charitable giving. Additionally, nonprofit and charitable organizations are generally exempt from tax on most income, including investment income.

Some of the tax benefits are considered "tax expenditures" by the Joint Committee on Taxation (JCT), meaning the JCT provides an estimate of the amount of forgone revenue associated with the provision.[9] Other tax benefits confer financial benefits to the sector, although the value of those benefits is not regularly estimated by the JCT.

In addition to the federal tax benefits discussed here, there may also be state and local tax benefits associated with nonprofit or charitable status. For example, in addition to income tax benefits that mirror federal income tax benefits, state and local governments may provide property or sales tax exemptions.

The Tax Deduction for Charitable Contributions

The primary tax expenditure for charities is the charitable deduction.[10] Individual taxpayers who itemize their deductions can—subject to certain limitations—deduct charitable donations to

[9] Tax expenditures are revenue losses resulting from tax provisions that grant special tax relief designed to encourage certain kinds of behavior or aid taxpayers in special circumstances.

[10] To be deductible as a charitable contribution, the gift must generally meet the following requirements. First, the gift must be made to a qualifying organization. Second, the gift must be made without the expectation of a benefit in return. Third, the donor is generally required to transfer their entire interest in the contributed property. Forth, a deduction can be claimed only for gifts of money and property—services are not deductible (because the value of forgone earnings is not included in income, which is equivalent to a deduction for the value of labor). There are a number of substantiation and recordkeeping requirements associated with the charitable deduction.

qualifying organizations.[11] The JCT estimated that in 2019, approximately 13% of taxpayers will itemize deductions.[12] Corporations may also be able to deduct charitable contributions.

Organizations qualified to receive tax-deductible charitable contributions include public charities and private foundations; federal, state, or local governments; and other less common types of qualifying organizations.[13] Contributions to civic leagues, labor unions, most foreign organizations, lobbying organizations, political contributions, and contributions directly made to individuals are not deductible as charitable contributions.

There are limits on the deduction for charitable contributions for both individuals and corporations. For individuals, the deduction for gifts of cash or short-term capital gain property given to a public charity; private operating foundation; or federal, state, or local government is 60% of the taxpayer's adjusted gross income (AGI) (these limitations are summarized in **Table 1**).[14] Gifts of cash or short-term capital gain property to private nonoperating foundations or certain other qualifying organizations are generally limited to 30% of AGI.

Table 1. Limitations on Individual Charitable Contributions

Type of Donation	Recipient	Valuation Rules for Property	Limitation
Cash or short-term capital gain property	Public charity; private operating foundation; federal, state, local government	Basis of the property	60% of AGI[a]
	Private nonoperating foundation; other[b]	Basis of the property	30% of AGI
Long-term capital gain property	Public charity; private operating foundation; federal, state, local government	Fair market value	30% of AGI
	Private nonoperating foundation; other[b]	Basis of the property	20% of AGI

Source: Internal Revenue Code (IRC) §170.

Note: These are general rules, and there are exceptions.

a. Temporarily increased from 50% to 60% through 2025.

b. Includes qualifying contributions to veterans organizations, fraternal societies, and nonprofit cemeteries. Not all nonoperating foundations are subject to the 30% limit.

The contribution of appreciated assets has particularly beneficial treatment, as the value of most appreciated assets can be deducted without including the capital gains in income that would be subject to tax. Thus, gifts of appreciated property are generally subject to lower deduction limits. Donations of long-term capital gain property to public charities; private operating foundations; or federal, state, or local government are limited to 30% of AGI, while contributions to private nonoperating foundations or certain other qualifying organizations are generally limited to 20% of AGI. Individuals are allowed to carry forward charitable contributions that exceed the percentage limits for up to five years.

Corporate charitable contributions are generally limited to 10% of a corporation's taxable income. For a corporation, transfer of property to a charity might qualify as a deductible charitable contribution or a deductible business expense, but cannot be both. Like individuals,

[11] For more on how individuals claim a deduction for charitable contributions, and the rules associated with claiming the deduction, see IRS Publication 526, *Charitable Contributions*, March 12, 2019, at https://www.irs.gov/forms-pubs/about-publication-526.

[12] Joint Committee on Taxation, *Overview of the Federal Tax System as in Effect for 2019*, JCX-9-19, March 20, 2019.

[13] Less common organizations are veterans' organizations, domestic fraternal societies, and cemetery companies.

[14] P.L. 115-97 temporarily increased this limit from 50% to 60% from 2018 through 2025.

corporations are allowed to carry forward charitable contributions that exceed the percentage limits for up to five years.

Valuation Rules for Charitable Contributions

There are several rules related to the valuation of charitable contributions (also summarized in **Table 1**). For cash contributions, the value is simply the amount donated. However, when property is donated, the charitable deduction may be limited to the fair market value of the property, the taxpayer's tax basis in the property, or some other amount. Generally, as noted above, taxpayers can deduct the full fair market value of long-term capital gain property. Taxpayers may also be able to deduct the full fair market value of tangible personal property donated to a charity whose use of the property is related to their tax-exempt purpose.

In some cases, the amount that can be deducted is limited to the donor's tax basis in the property. Specifically, deductions for contributions of property may be limited to basis for contributions of inventory or short-term capital gain property, contributions of tangible personal property that are used by a recipient organization for a purpose unrelated to the recipient's exempt purpose, or contributions to private foundations (other than certain private operating foundations).[15] Donations of appreciated stock to private nonoperating foundations are not subject to this limit, and may be deducted using fair market value. Contributions of patents or other intellectual property may also be limited to the donor's basis in the property. Deductions are generally limited to the fair market value of the donated property, if the fair market value is less than the tax basis.

Special Rules for Certain Types of Contributions

There are a number of special rules related to donations of certain types of property, not all of which are discussed here. Special rules provide an enhanced deduction for C corporations contributing inventory to 501(c)(3) organizations for the care of the ill, the needy, or infants. There is also an enhanced deduction for businesses' contributions of food inventory.[16] There are special rules associated with donations of vehicles,[17] intellectual property,[18] and clothing and household items.[19] Another special provision allows for tax-free distributions from individual retirement accounts (IRAs) for charitable purposes.[20] The IRA distribution provision is especially

[15] Short-term capital gain property is a property that, if sold at its fair market value on the day it was donated, would have generated a short-term capital gain. Short-term capital gains are realized when an asset has been held for less than 12 months.

[16] This provision was enacted in the Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73), extended multiple times as part of "tax extenders," and made permanent in the Protecting Americans from Tax Hikes Act of 2015, enacted as Division Q in the Consolidated Appropriations Act, 2016 (P.L. 114-113). See CRS Report R43517, *Recently Expired Charitable Tax Provisions ("Tax Extenders"): In Brief*, by Jane G. Gravelle and Molly F. Sherlock.

[17] If a recipient charity sells the donated vehicle, a donor's deduction is generally limited to the gross proceeds from the sale. A deduction may be claimed at fair market value if the charity uses the vehicle or gives (or sells at a significant discount) the vehicle to a needy individual. See IRS Publication 4303, *A Donor's Guide to Vehicle Donations*, at https://www.irs.gov/pub/irs-pdf/p4303.pdf; and IRS Publication 4302, *A Charity's Guide to Vehicle Donations*, at https://www.irs.gov/pub/irs-pdf/p4302.pdf.

[18] While contributions of patents and intellectual property are generally limited to a taxpayer's basis at the time of the contribution, additional deductions may be claimed for income allocable to the intellectual property.

[19] Clothing and household items are required to be in good used or better condition for a charitable deduction to be claimed.

[20] This provision was enacted in the Pension Protection Act of 2006 (P.L. 109-280), extended multiple times as part of "tax extenders," and made permanent in the Protecting Americans from Tax Hikes Act of 2015, enacted as Division Q in the Consolidated Appropriations Act, 2016 (P.L. 114-113). See CRS Report R43517, *Recently Expired Charitable*

beneficial to nonitemizers because it excludes the distribution from income, which is equivalent to receiving the distribution and making a charitable deduction.

Generally, a charitable deduction can be claimed only if the donor transfers their full interest in the property to a qualified recipient organization. This *partial interest rule* generally prohibits charitable deductions for contributions of income interests, remainder interest, or rights to use property. There is an exception to the partial interest rule for conservation contributions. Conservation contributions allow for charitable donations of conservation easements, where land, natural habitats, open space, or historically important sites are protected from development without the owner having to give up ownership of the property. Additionally, special rules increase the limit for appreciated property contributed for conservation purposes to 50% of AGI for individuals.[21] For farmers and ranchers, including individuals and corporations that are not publicly traded, the limit is increased to 100% of income. Conservation contributions that exceed the 50% or 100% of income giving limits can be carried forward for 15 years, instead of the usual 5 years.

Individuals can take a deduction for donations of property in the future with rights to the income stream for themselves or others, through a charitable remainder trust. In a charitable remainder trust, assets are transferred to a trust and a deduction taken for the present value of the future donation. The donor or other designated individual can receive a stream of income from the trust, for example, until death. Appreciated assets can be donated to the trust, which is tax exempt and pays no tax on the gain from the sale of assets.

Recent Changes to Charitable Giving Tax Incentives

Due to the 2017 tax revision (TCJA), the tax expenditure associated with the charitable deduction has fallen. Under TCJA, however, there were limited direct changes in tax policies affecting charities. The one change to the charitable deduction expanded the deduction, raising the AGI limit for individual cash contributions to public charities from 50% to 60% through 2025. However, other changes that reduced the number of itemizers, such as the expanded standard deduction and the limit on state and local tax deductions, reduced the number of itemizers and reduced the marginal incentive to give to charity for many taxpayers.[22]

At times, Congress had passed legislation eliminating the percentage of AGI limit for charitable contributions made for disaster relief purposes. Recently, the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (P.L. 115-63) eliminated the limit for charitable contributions of cash for Hurricane Harvey, Irma, or Maria disaster relief. The Bipartisan Budget Act of 2018 (P.L. 115-123) eliminated the limit for charitable contributions of cash associated with the 2017 California wildfires.[23]

Tax Provisions ("Tax Extenders"): In Brief, by Jane G. Gravelle and Molly F. Sherlock; and CRS Report RS22766, *Qualified Charitable Distributions from Individual Retirement Accounts: Features and Legislative History*, by John J. Topoleski and Gary Sidor.

[21] This provision was enacted in the Pension Protection Act of 2006 (P.L. 109-280), extended multiple times as part of "tax extenders," and made permanent in the Protecting Americans from Tax Hikes Act of 2015, enacted as Division Q in the Consolidated Appropriations Act, 2016 (P.L. 114-113). See CRS Report R43517, *Recently Expired Charitable Tax Provisions ("Tax Extenders"): In Brief*, by Jane G. Gravelle and Molly F. Sherlock.

[22] For more on the $10,000 limit on state and local tax deductions, see CRS In Focus IF11098, *2019 Tax Filing Season (2018 Tax Year): The State and Local Tax Deduction*, by Grant A. Driessen and Joseph S. Hughes.

[23] For additional background on tax incentives for charitable giving to support disaster relief, see CRS Report R45864, *Tax Policy and Disaster Recovery*, by Molly F. Sherlock and Jennifer Teefy.

Charitable Tax Expenditures

JCT's tax expenditure budget includes several charitable tax expenditures: the deduction for charitable giving, tax expenditures for certain tax-exempt bonds, and the exclusion for ministers housing allowance. The JCT provides charitable deduction tax expenditure estimates separately for contributions to 501(c)(3) educational institutions and health organizations. In FY2019, the tax expenditure for charitable deductions associated with giving to organizations other than education institutions or health organizations was $32.6 billion, while the tax expenditures for giving to educational institutions and health organizations were $8.2 billion and $4.3 billion, respectively (see **Table 2**).

Table 2. Charitable Tax Expenditures, FY2019

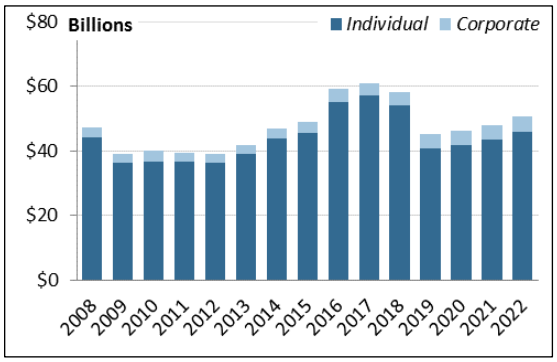
(in billions of dollars)

Provision	Individual	Corporate	Total
Deduction for Charitable Contributions (total)	40.9	4.2	45.1
Educational Institutions	*7.2*	*1.0*	*8.2*
Health Organizations	*3.2*	*1.1*	*4.3*
Other than Education and Health	*30.5*	*2.1*	*32.6*
Tax-Exempt Bonds (total for educational facilities and hospitals)	4.7	1.3	6.0
Private Nonprofit and Qualified Public Educational Facilities	*2.8*	*0.8*	*3.6*
Private Nonprofit Hospitals	*1.9*	*0.5*	*2.4*
Ministers Housing Allowance Exclusion	0.7	—	0.7

Source: Joint Committee on Taxation, *Estimates of Federal Tax Expenditures, FY2018-FY2022*, JCX-81-18, October 4, 2018.

Tax expenditures for the charitable deduction have recently declined. For FY2019, it is estimated that the charitable deduction will be associated with $45.1 billion in forgone revenue (see **Figure 2**).[24] This is down from the estimated $61.0 billion in forgone revenue for FY2017, and $58.1 billion for FY2018.[25] The decline in the charitable deduction tax expenditure is the result of (1) fewer taxpayers itemizing deductions following the 2017 tax revision (P.L. 115-97); and (2) lower tax rates following the 2017 tax revision.

Figure 2. Charitable Deduction Tax Expenditures, FY2008–FY2022



Source: Joint Committee on Taxation.

Notes: All tax expenditure estimates are projections.

Most of the forgone revenue associated with the charitable deduction is from individual giving, as opposed to corporate giving. The

[24] Tax expenditure estimates are projections for each fiscal year, as published in JCT's annual tax expenditure publication. These annual publications are available at https://www.jct.gov/publications.html?func=select&id=5. Tax expenditure estimates are forgone revenue associated with a tax provision, and may be viewed as the budgetary cost of the provision.

[25] FY2018 includes the end of calendar year 2017. Thus, changes in the value of the charitable deduction tax expenditure resulting from the 2017 tax revision (TCJA) are not fully realized until FY2019.

charitable deduction does not reflect forgone revenue associated with giving from bequests (which is discussed further below).

There are also revenue effects associated with allowing nonprofit educational institutions and hospitals to issue tax-exempt bonds, and for the provision exempting the housing allowance of ministers from tax. Tax expenditures for charities in FY2019 are reported in **Table 2**.

The Tax Treatment of Investment Income

For charities, most investment income is exempt from tax (there is a tax on the investment income of certain endowments, which is discussed below). The JCT does not consider the exemption of charities' investment income from tax a tax expenditure, and thus does not provide an estimate of the forgone revenue associated with this tax treatment.

Data from IRS Form 990 informational returns can be used to understand the magnitude of 501(c)(3)s' exemption for investment income. In 2015, charities had $32.6 billion in investment income, $35.8 billion in net capital gains (mostly from the sale of securities), $4.0 billion in net rental income, and $3.9 billion in royalties.[26] If this income had been subject to a 35% income tax (the corporate income tax rate in 2015), $26.7 billion in revenue would have been raised.[27] This number does not include religious organizations.[28]

IRS data for 2015 reported assets of $3.8 trillion held by charities, with about $1 trillion of that amount in land, buildings, and equipment.[29] Private foundations had $0.8 trillion in assets, with $0.7 trillion in investment assets.[30] A significant share of investment assets held in charities is held in university endowments, with an estimated value of $0.6 trillion in FY2018.[31] Assets do not include assets of nonreporting religious organizations.

[26] See IRS, Statistics of Income Tax Stats—Charities & Other Tax-Exempt Organization Statistics, Form 990—Balance Sheet and Income Statement Items for 501(c)(3) Organizations, at https://www.irs.gov/statistics/soi-tax-stats-charities-and-other-tax-exempt-organizations-statistics.

[27] Looking at other types of tax-exempt organizations (those exempt from tax under IRC §§501(c)(4) through 501(c)(9)), investment income was $11.3 billion, net capital gains were $5.5 billion, royalties $1.9 billion, and net rental income $0.5 billion. If this income had been taxed at a rate of 35%, an additional $6.7 billion would have been raised in tax revenue. See IRS, Statistics of Income Tax Stats—Charities & Other Tax-Exempt Organization Statistics, Form 990—Balance Sheet and Income Statement Items for 501(c)(3) Through 501(c)(9) Organizations, at https://www.irs.gov/statistics/soi-tax-stats-charities-and-other-tax-exempt-organizations-statistics. More revenue would have been raised had this investment income been subject to the top individual income tax rate of 39.6% in 2015. Less revenue would be raised if the tax rate were lower, like the 21% corporate tax rate that applied in 2018.

[28] One estimate suggests that religious organizations have a substantial benefit from tax exemption, at $35.3 billion in 2012. Ryan T. Cragun et al. "How Secular Humanists (and Everyone Else) Subsidize Religion in the United States," *Free Inquiry*, June/July 2012, pp. 39-46, at https://www.ryantcragun.com/how-secular-humanists-and-everyone-else-subsidize-religion-in-the-united-states/.

[29] Internal Revenue Service, Statistics of Income Tax Stats—Charities & Other Tax-Exempt Organizations Statistics, Form 990 Balance Sheet and Income Statement, Table 1, at https://www.irs.gov/statistics/soi-tax-stats-charities-and-other-tax-exempt-organizations-statistics.

[30] Internal Revenue Service, Statistics of Income Tax Stats—Charities & Other Tax-Exempt Organizations Statistics, Domestic Private Foundations, Table 1, at https://www.irs.gov/statistics/soi-tax-stats-domestic-private-foundation-and-charitable-trust-statistics.

[31] National Association of College and University Business Officers (NACUBO), *2018 NACUBO-TIAA Study of Endowments*, Number of U.S. Institutional Respondents to the 2018 NTSE and Respondents' Total Endowment Market Value, by Endowment Size and Institution Type, at https://www.nacubo.org/Research/2019/Public-NTSE-Tables.

Private Foundations

Most private foundations differ from operating charities in that they often have a single donor or small group of donors. In addition, while a gift to a foundation is deductible for income (and estate and gift) tax purposes, the donated funds are not immediately used for active charitable purposes. Rather, funds are invested and donations are often made to charitable organizations from earnings that may allow the corpus of the foundation to be maintained and grow. Contributions to foundations benefit from both the charitable deduction, when the contribution is made, as well as the exemption on investment earnings, as earnings accrue on invested contributions over time.

To address concerns that foundations could retain earnings and grow indefinitely, and because foundations are often closely tied to a family or specific group of donors, tax laws require a minimum payout rate (5% of assets) and restrict activities that may benefit donors. The tax code imposes taxes and/or penalties for self-dealing, for failure to distribute income on excess business holdings, for investments that jeopardize the charitable purposes, and for taxable expenditures (such as lobbying or making open-ended grants to institutions other than charities).

Private foundations are subject to a 2% excise tax on their net investment income.[32] However, the rate is reduced to 1% if qualifying charitable distributions are increased.[33] In FY2017, excise taxes on private foundations generated $643.6 million in revenue.[34]

Donor-Advised Funds (DAFs) and Supporting Organizations

Donor-advised funds (DAFs) allow individuals to make a gift to a fund in a sponsoring organization. Sponsoring organizations are charities that are allowed to receive tax-deductible donations. The gift is irrevocable, as in the case of a gift to a foundation or any other charity. The donor does not legally oversee the payment of grants to charities from the fund, which is determined by the sponsoring organizations. Donors make recommendations for grants (hence donor advised), and there is general agreement that these recommendations determine, with few exceptions, the contributions.[35] DAFs, like private foundations, can accumulate assets and earn a return tax free, but they are not subject to many of the restrictions on foundations, including the minimum payout rate.

These funds have been growing rapidly, in part through funds set up by major financial institutions.[36] According to the National Philanthropic Trust, in 2017 there were 463,622 individual DAFs, with contributions of $29.2 billion, assets of $110.0 billion, and recommended grants of $19.1 billion. The DAFs were managed by 53 national charities, 604 community foundations, and 345 single-issue charities.[37] In 2018, more than 200,000 donors had accounts at Fidelity Charity, with grants of over $5.2 billion.[38]

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[32] Certain operating foundations are exempt from the tax.

[33] Specifically, to qualify for the reduced excise tax rate, a foundation must pay out (1) an amount equal to its assets times the average payout rate during the base period (usually the past five years), plus (2) 1% of net investment income.

[34] See IRS, Statistics of Income Tax Stats, Historical Table 20, at https://www.irs.gov/statistics/soi-tax-stats-historical-table-20.

[35] See CRS Report R42595, *An Analysis of Charitable Giving and Donor Advised Funds*, by Molly F. Sherlock and Jane G. Gravelle, for an analysis of some of the issues surrounding DAFs.

[36] Large donor-advised fund sponsors include Fidelity Charitable, Vanguard Charitable, and Schwab Charitable.

[37] National Philanthropic Trust, *The 2018 DAF Report*, at https://www.nptrust.org/reports/daf-report/.

[38] Fidelity Charitable, *2019 Giving Report*, at https://www.fidelitycharitable.org/giving-report/2019/overview.shtml.

Supporting organizations are organized for the benefit of public charities, and they provide grants to these charities. There are several types of supporting organizations (DAFs are themselves supporting organizations). Type I and Type II organizations support a single charity and are supervised or controlled by the supported charity (with Type I similar to a parent-subsidiary relationship and Type II similar to a brother-sister relationship). A Type III organization supports more than one charity and falls into the category of a functionally integrated supporting organization, or FISO (either through performing certain activities directly or exercising governance and direction) and nonfunctionally integrated (non-FISO). A Type III non-FISO has a number of additional restrictions, including a requirement to distribute the greater of 85% of net income or 3.5% of nonexempt-use assets.[39]

College and University Endowments

A college or university endowment fund—often referred to simply as an endowment—is an investment fund maintained for the benefit of the educational institution. University endowments have been the subject of some scrutiny, in part because of the juxtaposition of growing endowment sizes with increasing tuition at private universities.[40] The 2017 tax revision, P.L. 115-97, added a 1.4% excise tax on net investment income of nonprofit colleges and universities with assets of at least $500,000 per full-time student and more than 500 full-time students. The revenue gain was projected to be $0.2 billion per year.[41]

Tax-Exempt Hospitals

For private nonprofit hospitals to be eligible for tax-exempt status, to be able to receive tax-deductible charitable contributions, and to be eligible for tax-exempt bond financing, they must meet a *community benefit standard*. Health care is not by itself a stated objective in the tax provisions determining charitable (501(c)(3)) status. Generally, the community benefit standard requires the hospital to show that it has provided benefits that promote the health of a broad class of persons in the community. One way hospitals may demonstrate that they have met the community benefit standard is by providing charity care (free or discounted services to charity patients). Other types of community benefit include participation in means-tested programs such as Medicaid; providing health professions education, conducting health services research, providing subsidized health services, funding community health improvement, and donating cash or in-kind contributions to other health-related community groups.[42] Community-building activities (such as for housing and the environment) may qualify if a link to community health can be shown. The IRS does not count shortfalls associated with Medicare or bad debts from those not qualifying for charity care as part of the community benefit standard.

The Patient Protection and Affordable Care Act (PPACA; P.L. 111-148) added additional requirements for 501(c)(3) tax-exempt hospitals. Specifically, 501(r) requires these hospitals to conduct community health needs assessments, establishing a written financial assistance policy, limit charges to financial-assistance-eligible patients to amounts billed to insured patients, and not

[39] Restrictions on Type III supporting organizations were adopted in the Pension Protection Act of 2006 (P.L. 109-280).

[40] See CRS Report R44293, *College and University Endowments: Overview and Tax Policy Options*, by Molly F. Sherlock et al., for a further discussion.

[41] Joint Committee on Taxation, *Estimated Budget Effects of the Conference Agreement for H.R. 1, The "Tax Cuts and Jobs Act*," JCX-67-17, December 18, 2017, at https://www.jct.gov/publications.html?func=startdown&id=5053.

[42] See IRS Revenue Ruling 69-545, at https://www.irs.gov/pub/irs-tege/rr69-545.pdf. See also CRS Report RL34605, *501(c)(3) Hospitals and the Community Benefit Standard*, by Edward C. Liu.

engage in extraordinary billing collections until an effort is made to determine eligibility for financial assistance. Tax-exempt hospitals report their community benefit actions on their Form 990.[43] In 2014, total net community benefit expenses were $63.0 billion (8.84% of expenses); of that amount, $12.7 billion was for charity care (1.78% of expenses) and $26.3 billion for unreimbursed means-tested costs (3.7%, almost entirely Medicaid).[44] One study estimated the cost of all federal, state, and local subsidies for tax-exempt hospitals (income, sales, and property tax benefits) to be $24.6 billion in 2011.[45] Another study using 2012 data found that nonprofit hospitals' community benefit expenses were 7.63% of total expenses, while the value of nonprofit hospitals' tax exemption was 5.87% of total expenses.[46] The study also evaluated incremental community benefits, or community benefits beyond those provided by for-profit hospitals. Incremental community benefits provided by nonprofit hospitals were estimated to be 5.71% of expenses in 2012.

Tax Treatment of Charitable Bequests

Charitable donations made by an estate are generally referred to as *charitable bequests*. Decedents potentially subject to the estate tax can deduct charitable contributions.[47] Estates are effectively subject to a 40% rate on amounts above the statutorily exempted value, which was set at $11.18 million per decedent for 2018. The estate tax exemption was doubled temporarily through 2025 by the 2017 tax revision, P.L. 115-97.

Transfers to a spouse at death are also excluded from the estate tax, and any unused exemption can be added to the exemption of the second spouse. Because of the large exemption, a small share of estates are subject to the estate tax, although a significant share of charitable contributions made by bequests appear on estate tax returns. The increase in the exemption decreased the amount of bequests that receive a benefit from the charitable deduction.

The data from decedents dying in 2013 showed $18.1 billion of bequests reported on all estate tax returns, with $10.2 billion reported on taxable returns.[48] Some of the bequests reported on nontaxable returns may benefit from the tax deduction, indicating a range of revenue costs from $4.0 billion to $7.2 billion.[49] While there are no data available for the effects after the 2017 tax revision, estimates suggest a revenue cost of around $4 billion to $5 billion.[50]

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[43] See CRS Report RL34605, *501(c)(3) Hospitals and the Community Benefit Standard*, by Edward C. Liu, for further discussion and a history of the evolution of this standard. See CRS In Focus IF10918, *Hospital Charity Care and Related Reporting Requirements Under Medicare and the Internal Revenue Code*, by Marco A. Villagrana et al., for a description of reporting requirements.

[44] See Internal Revenue Service, Department of the Treasury, *Report to Congress on Private Tax-Exempt, Taxable and Government-Owned Hospitals*, May 2018, at https://www.grassley.senate.gov/sites/default/files/IRS%20report%20on%20Hospitals%2C%20May%202018.pdf.

[45] Sara Rosenbaum et al., "The Value of the Nonprofit Hospital Tax Exemption Was $24.6 Billion in 2011," *Health Affairs*, vol. 24, no. 7 (July 2015), at https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.1424.

[46] This included income, sales, and property tax benefits. Bradley Herring et al., "Comparing the Value of Nonprofit Hospitals' Tax Exemption to Their Community Benefits," *INQUIRY: The Journal of Health Care Organization, Provision, and Financing*, vol. 55 (January 2018), pp. 1-11.

[47] See CRS Report R42959, *Recent Changes in the Estate and Gift Tax Provisions*, by Jane G. Gravelle, for a more detailed discussion of the estate tax.

[48] IRS, Statistics of Income Tax Stats—Estate Tax Data, by Year of Death, Estate Tax Returns for 2013, at https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics-year-of-death-table-1.

[49] Estates may be made nontaxable through making charitable bequests.

[50] Assuming that the share with an estate of less than $20 million would no longer be subject to the estate tax, 92% of taxable returns and 74% of all returns fall below that measure in 2013. Applying those ratios to the range of $4.0 billion

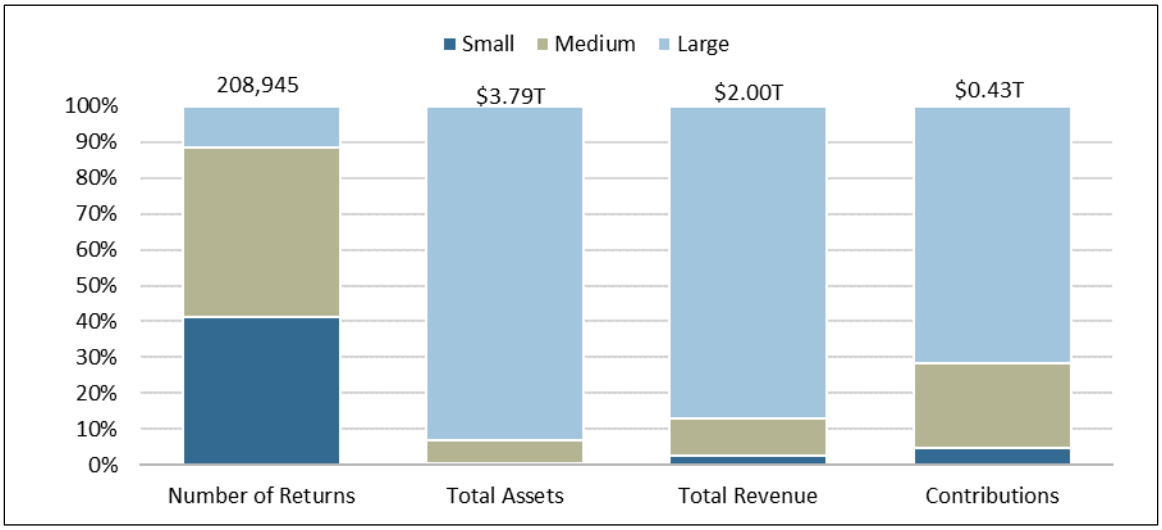
Data Describing the Charitable Sector

The following sections describe the charitable sector. Specifically, data are presented on the size of the sector and the sector's revenues (including charitable contributions). Since the potential effect of the 2017 tax revision on charitable giving is a policy issue of interest, changes in charitable giving between 2017 and 2018 are examined in more detail.

The Size of the Charitable Sector

For 2015, 501(c)(3) organizations reported $3.8 trillion in total assets ($2.3 trillion in net assets) and total revenues of $2.0 trillion (or approximately 11% of GDP).[51] Most of IRS Form 990 filers are small (assets of less than $500,000) or medium-sized (assets of $500,000 up to $10 million) charities (41.2% and 47.2%, respectively). Large organizations, those with at least $10 million in assets, were 11.6% of Form 990 filers. Assets and revenues, and to a lesser extent contributions, are concentrated in these larger organizations. While large organizations are 11.6% of charitable organizations filing Form 990s, 93.1% of assets are held by, 87.1% of revenues are received by, and 71.5% of contributions are made to these large organizations.

Figure 3. 501(c)(3) Organizations: Returns, Assets, and Revenue by Organization Size, 2015



Source: IRS Statistics of Income, Charities & Other Tax-Exempt Organization Statistics, Table 1. Form 990 Returns of 501(c)(3) Organizations: Balance Sheet and Income Statement Items, by Asset Size, Tax Year 2015, at https://www.irs.gov/statistics/soi-tax-stats-charities-and-other-tax-exempt-organizations-statistics.

Notes: Large organizations include those with assets over $10 million. Small organizations are those with assets under $500,000. Contributions includes all forms of gifts and grants, including charitable contributions, government grants, as well as contributions from related organizations and funds raised from fundraising events, through membership dues, or from federated campaigns.

Charitable contributions are a small share of revenues of 501(c)(3) organizations reporting to the IRS, accounting for 12.9% of revenue in 2015 (**Figure 4**). The primary source of revenue (73.1%)

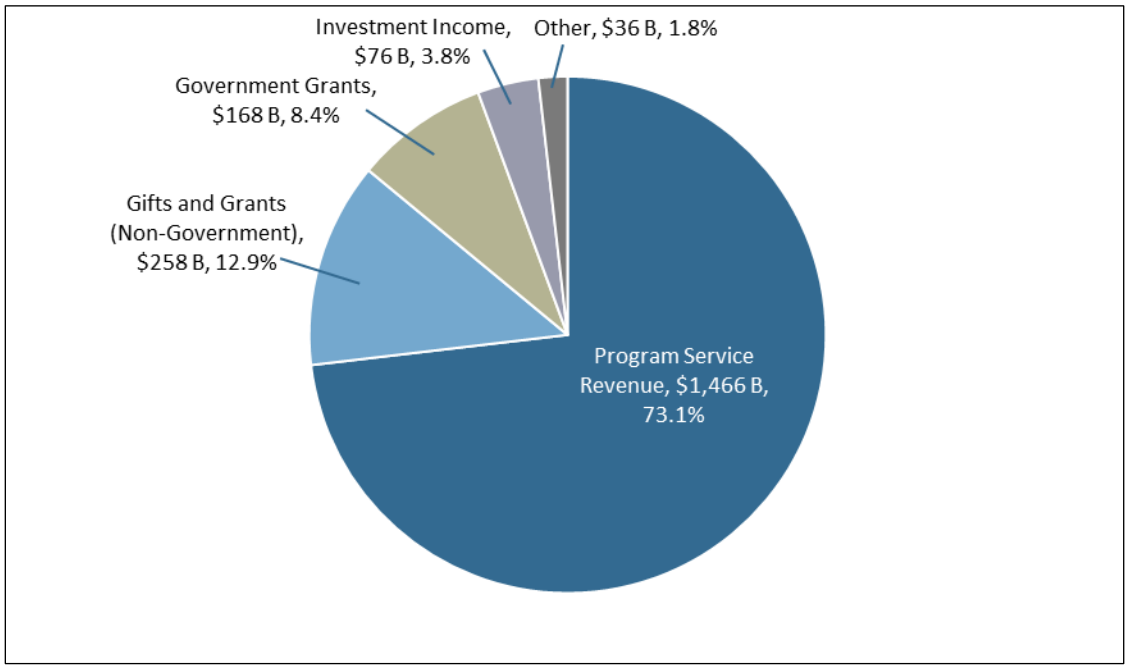
to $7.2 billion yields $3.7 billion to $5.3 billion.

[51] Internal Revenue Service, SOI Tax Stats - Charities & Other Tax-Exempt Organizations Statistics, Form 990 - Balance Sheet and Income Statement Items, at https://www.irs.gov/statistics/soi-tax-stats-charities-and-other-tax-exempt-organizations-statistics.

is program services, such as tuition paid by college and university students, payments for hospital stays, and entry fees. Charitable organizations' revenue sources depend on the type of charity, with charitable giving, for example, being much less important for fee-for-service organizations such as educational institutions and hospitals. (These data represent those filing Form 990 returns. This excludes nonfiling religious organizations, which are likely to rely more on contributions.)

Figure 4. Sources of 501(c)(3) Organization Revenue, 2015

(in billions of dollars)



Source: IRS Statistics of Income, Charities & Other Tax-Exempt Organization Statistics, Table 1. Form 990 Returns of 501(c)(3) Organizations: Balance Sheet and Income Statement Items, by Asset Size, Tax Year 2015, at https://www.irs.gov/statistics/soi-tax-stats-charities-and-other-tax-exempt-organizations-statistics.

Notes: Program service revenue includes fee-for-service revenue, such as tuition payments or hospital service revenue. Hospital service revenue may come from private or public sources. Gifts and grants include private contributions, as well as contributions from related organizations.

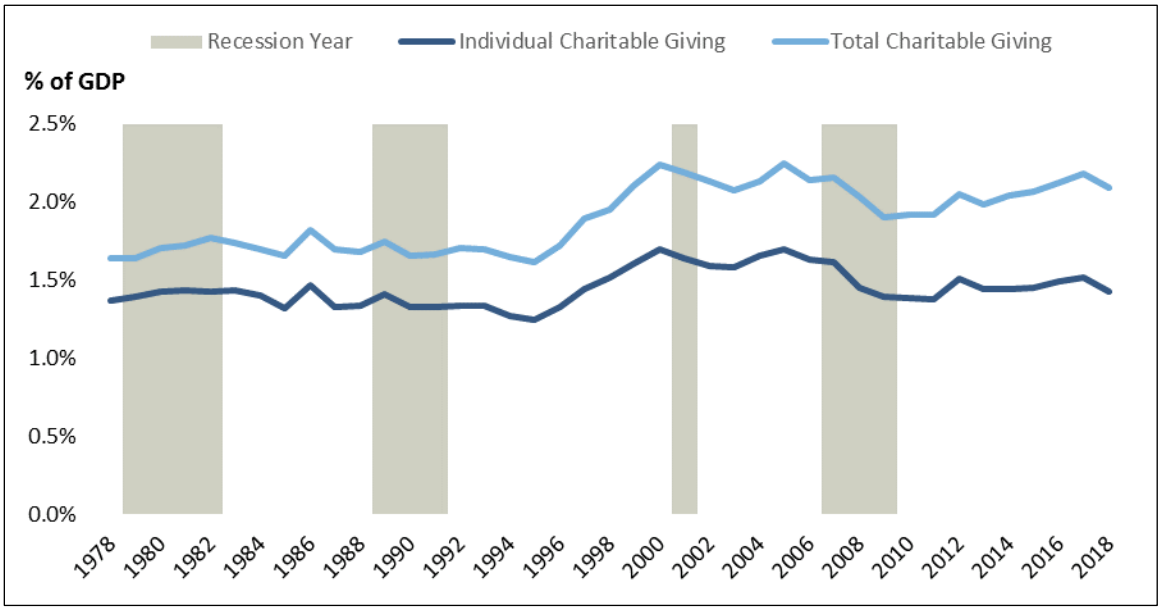
Magnitude, Sources, and Beneficiaries of Charitable Giving

In absolute terms, charitable giving has increased over time. In 2015, total giving was $375.9 billion, including data not represented in the IRS data (primarily gifts to religious organizations). When considering the magnitude of the charitable sector in the economy, one metric is charitable giving as a share of GDP. In 2018, estimated total giving was $427.7 billion, or 2.1% of GDP.[52]

Charitable giving since 1978 has averaged 1.9% of GDP. However, as seen in **Figure 5**, this average obscures variation over time and across business cycles. The smallest share of charitable giving occurred in 1995 (1.6% of GDP) while the largest share occurred five years later in 2000 (2.2% of GDP).

[52] Data on giving are from The Center on Philanthropy at Indiana University, *Giving USA 2019*; GDP from National Income and Product Accounts, Table 1.1.5, at https://www.bea.gov/.

Figure 5. Charitable Giving as a Percentage of GDP, 1978-2018

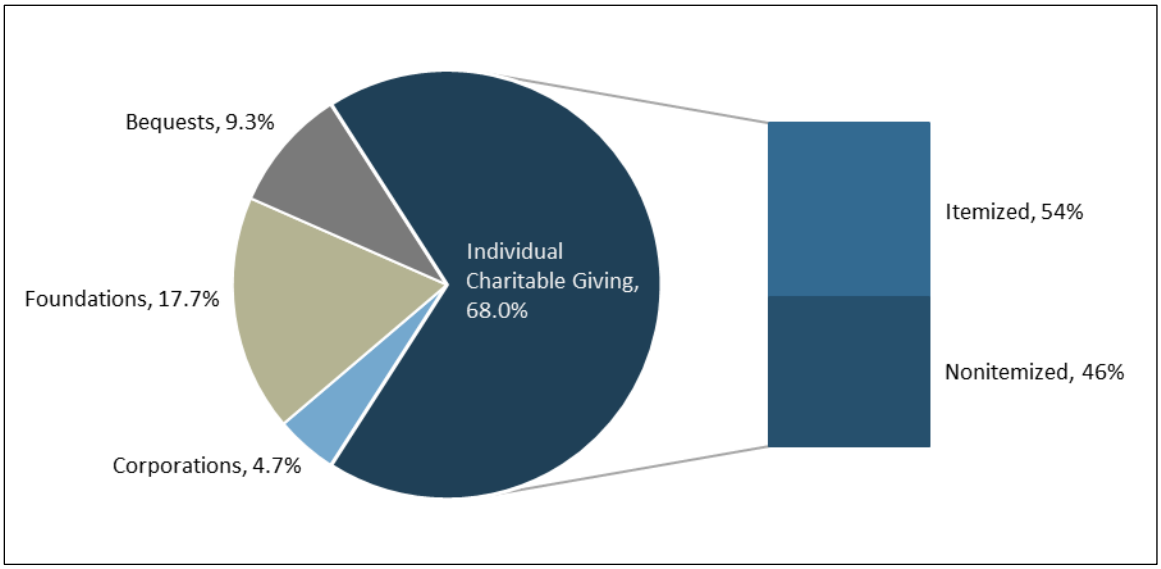


Source: The Center on Philanthropy at Indiana University, *Giving USA 2019*.

Note: The difference between the individual and total charitable giving is the sum of charitable giving from corporations, foundations, and bequests.

Private contributions to charitable organizations come from four different sources: individuals, foundations, bequests, and corporate giving. As shown in **Figure 6**, individuals were the largest source of charitable giving in 2018 and totaled $292.1 billion, or 68.0%. As estimated subsequently in this report, 54% of that giving received a tax benefit from itemized deductions. Grants from foundations were the second-largest source of charitable contributions in 2018 at ($75.9 billion, or 17.7%), followed by charitable bequests ($39.7 billion, or 9.3%) and corporate giving ($20.1 billion, or 4.7%).

Figure 6. Shares of Charitable Giving by Source, 2018

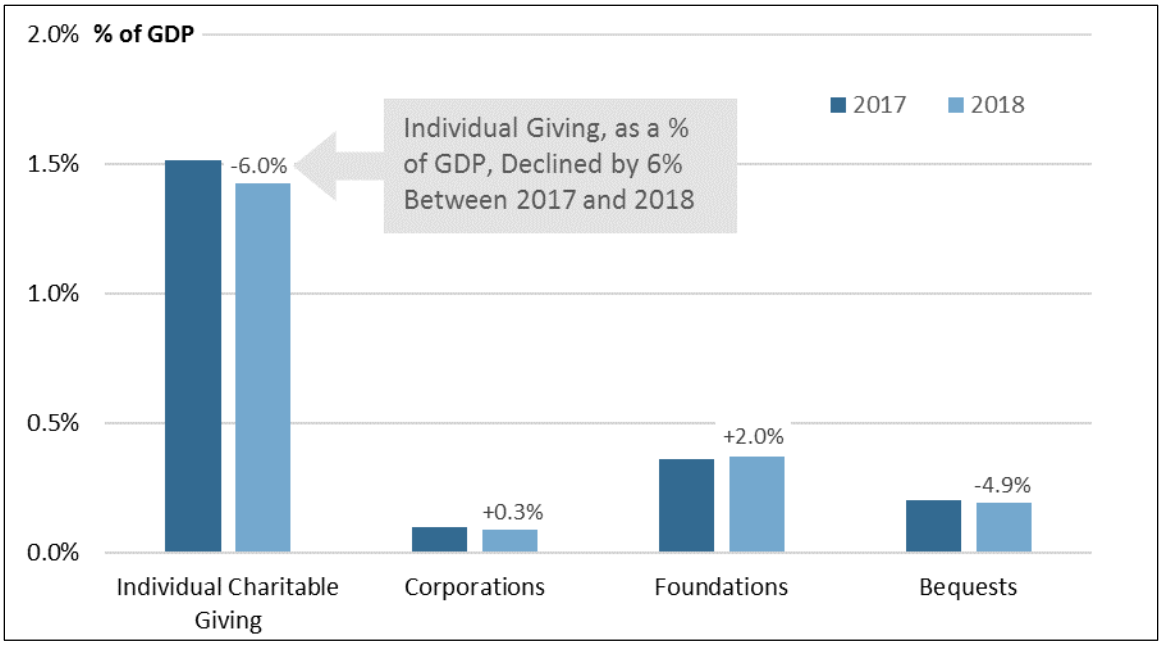


Source: The Center on Philanthropy at Indiana University, *Giving USA 2019*; with CRS calculations for share of itemized and nonitemized giving.

Changes in giving from different sources are consistent with expectations following the changes in incentives for giving resulting from the 2017 tax revision. As illustrated in **Figure 7**, individual giving as a percentage of GDP fell by 6.0% between 2017 and 2018. Individual giving was expected to fall as (1) fewer taxpayers itemized deductions; and (2) lower marginal tax rates reduced the incentive to give. Taxpayers may also have shifted the timing of gifts, making gifts late in 2017 instead of 2018 to take advantage of larger deductions in 2017, when tax rates were higher and more taxpayers itemized deductions.

Giving from bequests as a percentage of GDP fell by 4.9% between 2017 and 2018. The share of bequests on taxable estate tax returns declined following the tax law changes. In contrast, there was little change in corporate charitable giving as a percentage of GDP (an increase of 0.3%). For corporations, the large change in the corporate tax rate might have reduced the incentive to give. Giving from foundations as a percentage of GDP increased by 2.0% between 2017 and 2018. Foundation giving was less likely to be directly affected by the tax policy changes between 2017 and 2018 (although contributions to foundations and future foundation giving might be affected).

Figure 7. Charitable Giving by Source as a Percentage of GDP, 2017 and 2018

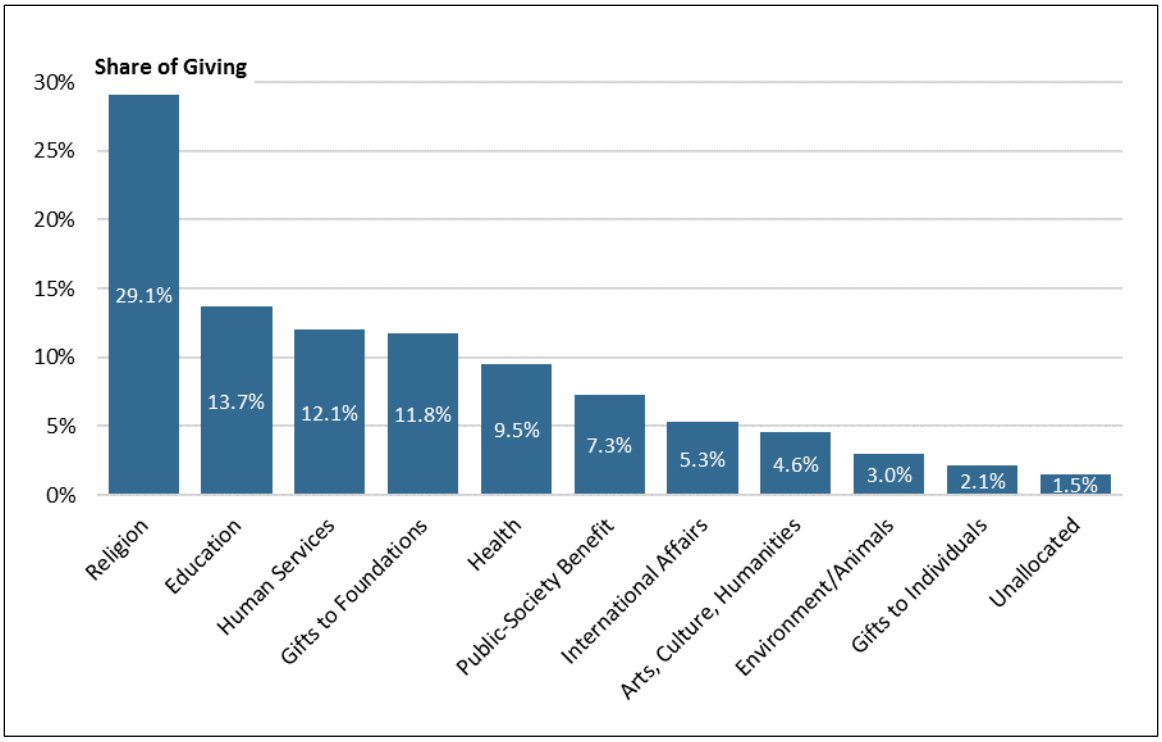


Source: The Center on Philanthropy at Indiana University, *Giving USA 2019*; and CRS.

Religious charities receive the largest share of charitable giving, receiving 29.1% of total giving in 2018 (**Figure 8**). Education ranked next, at 13.7%, with human services 12.1%, gifts to foundations 11.8%, and health 9.5%. Other beneficiaries each accounted for less than 9.5%.[53]

[53] Public society benefit includes civil rights, social action, and advocacy; community improvement and capacity building; philanthropy, voluntarism, and grantmaking foundations (including donor advised funds); science and technology; social science; and public and societal benefit such as public policy research, government and public administration, transportation systems, public utilities (including telecommunications), consumer rights/education/protection, military and veterans organizations, and financial institutions.

Figure 8. Shares of Charitable Giving by Type of Recipient, 2018

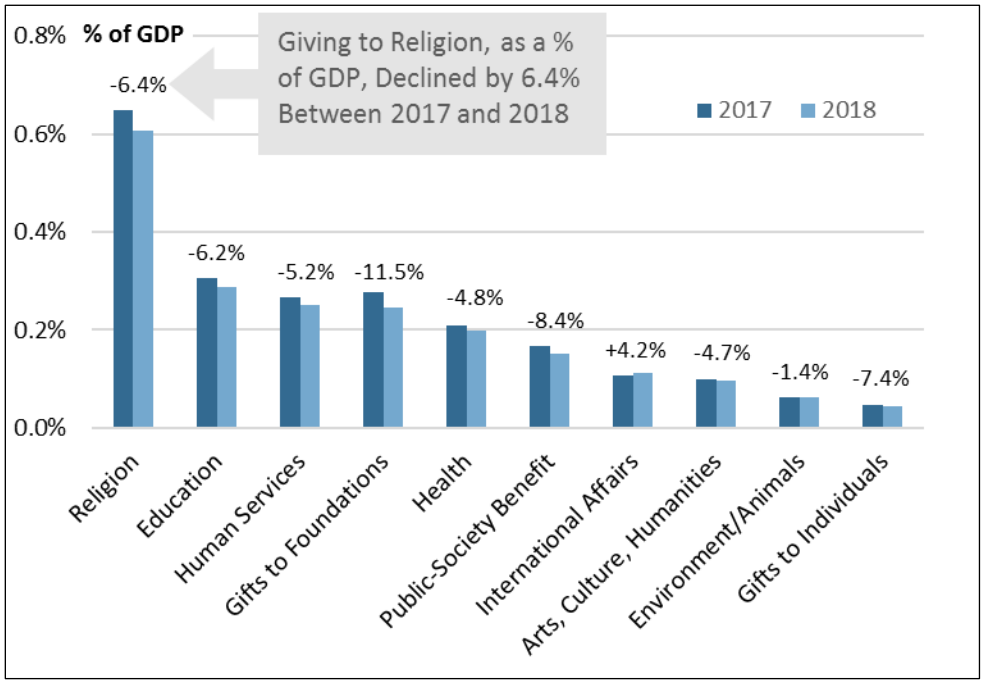


Source: The Center on Philanthropy at Indiana University, *Giving USA 2019*.

Giving to most beneficiaries as a percentage of GDP fell between 2017 and 2018, as shown in **Figure 9**, with the exception of gifts to international affairs.[54] Giving to public-society benefit organizations as a percentage of GDP fell by 8.4%. Giving to religious organizations as a percentage of GDP fell by 6.4%, while giving to education as a percentage of GDP fell by 6.2%. Gifts to foundations as a share of GDP experienced a larger decline that other categories, falling by 11.5%.

[54] The increase in giving to international affairs follows two years of negative growth.

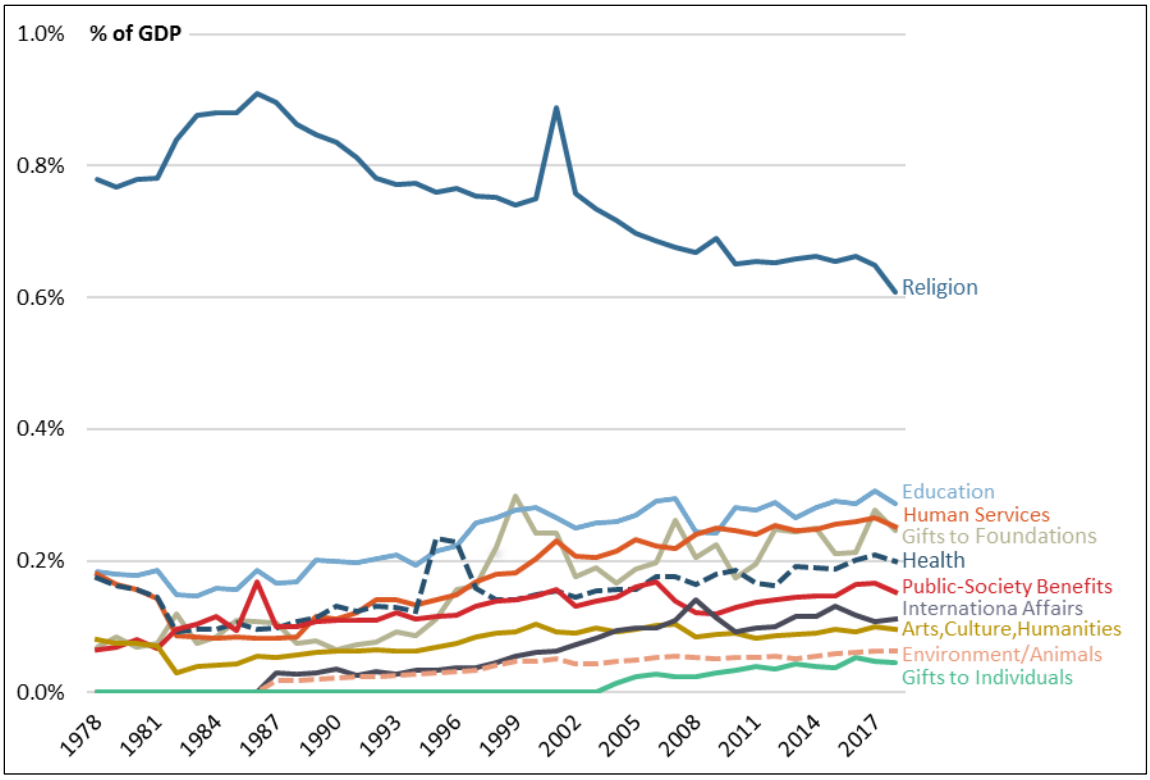
Figure 9. Charitable Giving by Type of Recipient as a Percentage of GDP, 2017 and 2018



Source: The Center on Philanthropy at Indiana University, *Giving USA 2019*; and CRS.

Giving to religion as a percentage of GDP and as a share of total giving has declined over time, as shown in **Figure 10**. Giving to most other beneficiaries has increased as a share of GDP, with the largest increases (in absolute terms) in giving to foundations and education. The decline in giving to religion from 2017 to 2018 may have just been part of a continuing trend, while the decline in giving to foundations may have reflected effects of the estate tax, or have been part of regular fluctuations in giving to foundations.

Figure 10. Trends in Charitable Giving by Type of Recipient, 1978-2018



Source: The Center on Philanthropy at Indiana University, *Giving USA 2019*.

The Incentive Effects of Tax Benefits for Charitable Contributions and Organizations

To understand how much charitable giving is induced by tax incentives, it is important to understand how donors respond to tax incentives. Individuals give for a variety of reasons (e.g., altruism); research indicates that tax benefits may also influence charitable giving. Tax benefits encourage charitable giving by reducing the cost of giving, with the federal government effectively subsidizing charitable giving.

For ordinary donations during donors' lifetimes (inter-vivos giving) and for donors not claiming the standard deduction, their marginal income tax rate determines the incentive effect by lowering the cost of giving. Donors who do not claim itemized deductions do not receive an incentive effect from the tax code. For gifts of appreciated property, subsidies are affected by the capital gains tax rate as well, regardless of whether itemized deductions are used. For bequests, the tax rate is the estate tax rate, but only a small fraction of estates are subject to tax. Corporate giving is potentially affected by the corporate tax rate.

Taxes also have income effects, which may be important for wealthy donors who donate large shares of income or leave large shares of their estates to charity; taxes reduce charitable giving by reducing disposable income. Deductions for charitable contributions not only provide a tax incentive for donating or leaving bequests, but also have an income effect that increases giving.

Tax Subsidies for Charitable Giving, Inter-Vivos Giving

Taxpayers who itemize their deductions face a lower cost of giving than other taxpayers. Prior to the 2017 tax revision, the majority of individuals' charitable giving was deducted. For the most recent year of tax data available, 2016, charitable deductions of $233.9 billion were reported on tax returns, although $12.3 billion of that number was on returns with no ultimate tax liability.[55] According to *Giving USA*, in that same year individuals donated $279.4 billion,[56] indicating that approximately 80% of charitable deductions benefited from some subsidy in that year. Taxpayers with $500,000 of adjusted gross income or more, representing slightly under 1% of returns, accounted for 38% of charitable contributions. Taxpayers with $100,000 to $500,000 of income, slightly over 16% of returns, accounted for 38% of itemized charitable contributions as well.

The amount of giving that benefits from tax reductions through itemized deductions is expected to have declined substantially in 2018 due to provisions of the 2017 tax revision.[57] (Actual data on charitable deductions claimed from the IRS based on 2018 tax returns are not yet available.) This legislation is expected to decrease the share of itemizers due to a significant increase in the standard deduction[58] and restrictions on itemized deductions, most importantly a $10,000 cap on deductions for state and local taxes. The Tax Policy Center (TPC) estimated the share of households reporting a benefit from deducting charitable contributions would fall from 21% to 9.1%.[59] (This share reflects the share of the entire population, including nonfilers.)

Data from the TPC that estimate itemized charitable contributions can be used to estimate the share of individual charitable contributions that would be claimed as itemized deductions. For 2018, TPC estimates that itemized charitable deductions would have been $212.1 billion without the 2017 tax revision, with itemized deductions for charitable giving being an estimated $143.1 billion as a result of the 2017 tax revision.[60] In other words, charitable contributions itemized on individual income tax returns are estimated to have fallen by about one-third as a result of the 2017 tax revision. Assuming a similar level of itemized deductions in 2018 under prior law as reflected in actual data for 2016 (80%), the share of charitable contributions itemized would be projected at 54%.[61]

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[55] Data on charitable contributions is IRS, Statistics of Income Tax Stats—Individual Statistical Tables by Size of Adjusted Gross Income, Table 2.1, at https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-size-of-adjusted-gross-income. Distribution of returns is taken from Table 1.1.

[56] The Center on Philanthropy at Indiana University, *Giving USA 2019*.

[57] Calculations based on IRS filing season statistics document the decline in the number of taxpayers claiming the charitable deduction. For a discussion, see James Andreoni and Jon Durnford, "Effects of the TCJA on Itemization Status and Charitable Deduction," *Tax Notes Federal*, August 26, 2019, pp. 1399-1403.

[58] The tax revision eliminated the personal exemption, and the standard deduction increase slightly more than offset the loss for personal exemptions for the taxpayer and spouse (dependent exemptions were offset by increased credits). While these effects were largely offsetting for those already taking the standard deduction, they increased the benefit of taking the standard deduction for those who were itemizing, who lost personal exemptions in any case.

[59] See Urban Brookings Tax Policy Center, Table T18-0010, at https://www.taxpolicycenter.org/model-estimates/impact-itemized-deductions-tax-cuts-and-jobs-act-jan-2018/t18-0010-impact-tax.

[60] Based on the average benefit times number of tax filing units as reported in Urban Brookings Tax Policy Center, Table T18-0010, at https://www.taxpolicycenter.org/model-estimates/impact-itemized-deductions-tax-cuts-and-jobs-act-jan-2018/t18-0010-impact-tax, and the marginal income tax rates reported in Table T17-0324, at https://www.taxpolicycenter.org/model-estimates/conference-agreement-tax-cuts-and-jobs-act-dec-2017/t17-0324-effective-marginal.

[61] The calculation is ($143.1 billion / $212.1 billion) times 80%, or 54%. Note that the data on total individual charitable contributions were not available to TPC when it prepared its projection, so that using actual giving levels would likely lead to a less reliable estimate.

The tax savings from charitable contributions reflecting both the decline in itemizing and the small decline in tax rates also fell by about a third. The steepest declines were in the middle and upper middle of the income distribution (the benefit fell by 62% in the fourth quintile, while the benefit fell by 1.4% in top 0.1%). The TPC reported that taking into account all returns (including those not itemizing before the tax change), the average marginal tax rate across all donations fell from 20.7% to 15.2%.[62]

Gifts of Cash

About two-thirds of charitable contributions in 2016 were in cash, and high-income taxpayers have a smaller share of cash contributions (47% in 2016 for taxpayers with income greater than $1 million).[63] The price of charitable contributions for itemizers is (1-t), where t is the taxpayer's tax rate at which contributions are deducted.[64] For example, if the individual is in a 25% tax bracket, every dollar the taxpayer donates and deducts from their income reduces their taxes by 25 cents. Hence, the tax price is 0.75, indicating that a taxpayer has to give up 75 cents for each dollar of charitable contributions. That is, if the taxpayer in that bracket contributes a dollar, he or she saves 25 cents in taxes and loses 75 cents that could have been used for other purposes.

Charitable giving is concentrated at higher income levels, and the effect of the incentive depends on the tax rate. Consider the top tax rate (applicable for taxpayers with very high income levels), which has fluctuated substantially since the income tax was introduced in 1913, beginning at rates as low as 7% and rising as high as 92%. Starting in the mid-1960s, the top rate was 70% for many years (although it rose slightly with the Vietnam War surcharge). Beginning with legislation in 1981, the top tax rate has been reduced substantially. Effective in 1982, it was reduced from 70% to 50%. In 1986, it was further reduced to 28%. Rate increases occurred in 1990 and 1993, decreases in 2001, increases in 2013, and decreases in 2017. **Table 3** compares the magnitude of those past changes in tax price. Importantly, as marginal tax rates fall, the tax price of giving increases—in effect, the subsidy from the charitable deduction is reduced. Conversely, when marginal rates increase, the tax price of giving falls, and the subsidy of the charitable deduction increases. There were very large percentage changes in the 1981 and 1986 tax cuts, with much smaller changes subsequently. The effect of the top rate change in 2017 is relatively small compared to these earlier changes.

The TPC estimated that across all taxpayers the tax price rose by 6.9%, to reflect the change in itemized deductions as well as the small change in tax brackets.

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[62] Urban Brookings Tax Policy Center, "How Did the TCJA Affect Incentives for Charitable Giving?" at https://www.taxpolicycenter.org/briefing-book/how-did-tcja-affect-incentives-charitable-giving.

[63] Deductions for charitable contributions in a given tax year exceed the sum of cash and noncash contributions, as some of the deduction is a carryover of deductions for contributions that were made in previous tax years. Limitations on charitable deductions make it such that, for some donors, the full value of the deduction cannot be claimed in the year the contribution is made. The share of cash contributions computed here is cash contributions as a share of total contributions, excluding carryovers from previous tax years.

[64] One provision that is not considered in calculating tax price changes is the now-repealed phase-out of itemized deductions. Despite the term used to describe it, the phase-out of itemized deductions did not reduce the value of itemized deductions at the margin. It was triggered by an increase in adjusted gross income, and, if itemized deductions grow with income, as is commonly the case, its effect is to increase the effective marginal tax rate by 3% in a way that does not affect the subsidy. A simple model with the phase-out, $L = t(y+.003(Y-Yb)–D)$, where L is liability, t is the tax rate, Y is income, Yb is the point at which the phase-out begins, and D is deductions, illustrates that the change in taxes with a change in D is t. Generally, state income taxes are enough to cause deductions to grow by 3% of income, but there may be occasional circumstances where deductions do not grow fast enough. In that case the itemized deduction phase-out would reduce the value of charitable deductions. No data are available on the size of this effect, but it is likely to be small.

Table 3. Percentage Change in Tax Price, Top Tax Rate, Gifts of Cash

	Original Tax Rate (%)	Enacted Tax Rate (%)	Percentage Change in Tax Price
2017 Tax Cut	39.6	37.0	4.3
2013 Tax Increase	35.0	39.6	-7.1
2001 Tax Cut (Effective 2003)	39.6	35.0	7.6
1993 Tax Increase	31.0	39.6	-12.5
1990 Tax Increase	28.0	31.0	-4.1
1986 Tax Cut	50.0	28.0	44.0
1981 Tax Cut	70.0	50.0	66.7

Source: CRS calculations.

Gifts of Appreciated Property

The value of donating property differs from the value of cash donations; most property is appreciated property such as stocks and other property gaining value. Taxpayers with incomes of $500,000 or more account for 69% of these contributions. Currently, taxpayers are allowed to deduct the entire cost of donated property, without paying the capital gains tax. Since the cost of a dollar of consumption from sale of an appreciated asset is $1/(1-at_g)$, where t_g is the capital gains tax rate and a is the share of value that would be taxed as a gain, the tax price of charitable giving of appreciated property is $(1-t)/(1-at_g)$. The tax price effects in **Table 3** reflect tax prices of assets with no appreciation. **Table 4** shows the effects at the top rates for cases with appreciation of 50% of the value and 100% of the value. An appreciation approaching the full value would occur with assets that have been held for a long time and had a faster growth rate.

Although changes in capital gains tax rates in isolation can affect the price of giving (for example, causing an increase in the price of giving by up to 10% in 1997), they sometimes offset the effects of a change in ordinary rates (as in 1986) and at other times exacerbate the effects. As with cash gifts, however, the largest changes to the tax price of appreciated property occurred in 1981 followed by 1986, where the price of charitable giving increased; the largest price decrease remains in 1993.

Table 4. Percentage Change in Tax Price, Top Tax Rate, Gifts of Appreciated Property

Year	Prior-Year Ordinary Tax Rate (%)	Enacted Ordinary Tax Rate (%)	Prior-Year Capital Gains Tax Rate (%)	Enacted Capital Gains Tax Rate (%)	Price Change with 50% of Value in Appreciation (%)	Price Change with 100% of Value in Appreciation (%)
2017	39.6	37.0	23.8	23.8	4.3	4.3
2013	35.0	39.6	15.0	23.8	-2.4	3.6
2003	35.0	35.0	20.0	15.0	-2.7	-5.9
2001	39.6	35.0	20.0	20.0	7.6	7.6
1997	39.6	39.6	28.0	20.0	-4.4	-10.0
1993	31.0	39.6	28.0	28.0	-12.5	-12.5
1990	28.0	31.0	28.0	28.0	-4.2	-4.2
1986	50.0	28.0	20.0	28.0	37.8	29.6
1981	70.0	50.0	28.0	20.0	74.4	85.2
1978	70.0	70.0	35.0	28.0	-4.1	-9.7

Source: CRS calculations.

Tax Incentives for Bequests

A small share of estates are subject to the estate tax, and that share has been further reduced by the 2017 tax revision, which doubled the estate tax exemption. According to the TPC, 0.2% of deaths were subject to the estate tax before the change, which fell to 0.1% after the increase in the exemption.[65]

The latest IRS estate tax data are for decedents dying in 2013, before enactment of the 2017 tax revision. These data showed $18.1 billion of bequests reported on all estate tax returns, with $10.2 billion reported on taxable returns.[66] The amount potentially benefiting from the estate tax deduction presumably fell between those two values, as the charitable deduction could have resulted in some estates not being taxable. Giving USA reported bequests of $26.3 billion in 2013 and $28.1 billion in 2014;[67] thus, between 30% and 53% of bequests received the benefits of estate tax deductions.

The tax price of a bequest is $(1-t_e)$, where t_e is the estate tax rate. The capital gains tax rate does not apply because the capital gain on assets passed on at death is not recognized. The current estate tax rate is 40%. The estate tax rate has fluctuated over time. From the post-World War II period to 1976, the top rate was 77%, when it was reduced to 70%. In 1981, the rate was reduced over a three-year period to 55% from 1982 to 1984, an increase in tax price of 50%. The estate tax rate was lowered from 55% to 45% over the period from 2002 to 2007, a 22% price increase. The estate tax was repealed for 2010, an 82% increase in the tax price (although individuals were retroactively allowed to pay an estate tax at 2011 rates of 35% to avoid a provision that would

[65] Urban-Brookings Tax Policy Center, Table T18-0134, at https://www.taxpolicycenter.org/model-estimates/baseline-estate-tax-tables-sep-2018/t18-0134-estate-tax-returns-and-liability-under.

[66] IRS, Statistics of Income Tax Stats—Estate Tax Data, by Year of Death, Estate Tax Returns for 2013, at https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics-year-of-death-table-1.

[67] The Center on Philanthropy at Indiana University, Giving USA.

have required future capital gains to be recognized on sale by heirs, called *carryover basis*). For those electing the 2011 tax rate, the price increase was 18%. The tax rate was reduced to 35% temporarily for 2011 and 2012; in 2013, the rate was set at 40%, a decrease in the tax price compared to the temporary rates of 8%. Aside from the year of repeal in 2010, the largest price increase was 50%, and significant price changes were fewer than for inter-vivos gifts.

The benefits of the subsidy for bequests are also affected by the exemption, and the recent increases in exemptions make the tax subsidy less applicable—reducing the tax incentive for charitable bequests. Nevertheless, for bequests reported on estate tax returns, these bequests are concentrated in large estates. The 2013 estate tax data report only estates of $5 million or more, since smaller estates would be exempt, but 57% of contributions on these estates were in estates of $50 million or more, and 74% were reported for estates of $20 million or more. For taxable estates, 78% were reported on estates of $50 million or more, and 92% were reported on estates of $20 million or more. Thus, it appears that most charitable contributions that benefited from the tax subsidy would continue to do so under the new exemption level.

Incentives for Corporate Giving

Corporate giving is a relatively small share of total giving. In 2013, the last year for which tax data were available, tax statistics indicated total contributions of $15.9 billion, while Giving USA reported $20.05 billion in 2018.[68]

The incentive effects for corporate giving depend on the motivation. If charitable contributions are an expenditure for purposes of advertising and public relations, the deduction is like any other cost, and the corporate tax rate does not matter. If the contribution increases the welfare of managers, the donation reduces profit, and the corporate tax matters.[69]

To the extent that the corporate tax price affects charitable giving, the tax price has changed infrequently. In 1981, the corporate tax rate was 46%. The 1986 legislation phased the rate down over two years to 34%, increasing the tax price by 22%. In 1993, the corporate tax rate increased to 35%, for a small tax price reduction of less than 2%. The corporate tax rate stayed at that level, until 2018, when the rate was reduced to 21%, for a tax price increase of 25%.

Accumulating Earnings Tax Free

Numerous opportunities are available for adding to the tax benefit of a charitable contribution by accumulating earnings that are not subject to tax. In effect, the deduction for the charitable contribution is provided before it is actually spent on charitable activity. An example illustrates this point. If the interest rate is 10%, a dollar donated today and spent a year later by a tax-exempt charity will provide $1.10 in resources. If a taxpayer is subject to the 37% top tax rate on the earnings, the amount available to give to charity after paying taxes is $1.063. In the tax-exempt case, the tax price of giving is $0.61, while the tax price of giving in the taxable case is $0.63.[70]

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[68] IRS, Statistics of Income Tax Stats—Table 16, Returns of Active Corporations, Form 1120, at https://www.irs.gov/statistics/soi-tax-stats-table-16-returns-of-active-corporations-form-1120; The Center on Philanthropy at Indiana University, *Giving USA 2019*.

[69] If the charitable contribution benefits shareholders (a rationale apparently viewed less likely by most theories about why corporations make charitable contributions), the combined corporate and individual rate matters.

[70] This assumes that the taxpayer discounts future charitable giving at the after-tax interest rate (the after-tax interest rate is 6.3%). Thus, the value of his gift rises from $1 to $1.10/1.063. The taxpayer's cost to give $1.10 in future benefits in the tax-free case is $0.63. Thus, the tax price of giving is $0.63 / [$1.10 / 1.063], or $0.61. In the case where investment earnings are taxable, the taxpayer gives $1.063 in the future, so the tax price of giving is $0.63 / [$1.063 / 1.063], or $0.63.

The longer the asset is held by a tax-exempt entity, the greater the benefit to the charitable organizations: after 10 years tax-exempt accumulation leads to $2.69, while the amount available after paying tax is $1.84.

There are a number of ways to accumulate funds without paying taxes on earnings, most notably through foundations, although they are required to pay out a minimum amount each year in charitable purposes. Other methods of delaying the payment of taxes is through private charities' endowment funds and supporting organizations, and well as DAFs, none of which is subject to payout restrictions. A DAF can act, in many ways, as a private foundation but without many of the restrictions of a private foundation. Taxing these earnings directly at the corporate rate would reduce the tax incentive for those subject to high individual marginal tax rates, but not eliminate it, given the lower corporate rate now in place.

The Aggregate Effect of Tax Incentives on Giving

As previously discussed, the effect of changes in tax incentives on giving depends on the behavioral response to changes in tax rates. The measure is a price elasticity, which is the percentage change in charitable contributions divided by the percentage change in the tax price (in the case of individual cash giving, the tax price is one minus the tax rate).

Given the large changes in tax price that have occurred over time, it is useful to examine some historical data. **Figure 5** above shows the pattern of giving as a percentage of GDP over the period 1978-2018. There is little indication of significant shifts in giving due to tax rate changes. Contributions after 1981, despite pronounced tax price increases at higher incomes, remained relatively stable as a percentage of GDP. The small peak around 1986 is generally attributed by most researchers to a temporary rise in deductions reflecting a timing shift as tax cuts for 1987 and 1988 were preannounced in the Tax Reform Act of 1986 (TRA86; P.L. 99-514), but by 1989 contributions had returned to their previous levels. Contributions following enactment of the 1993 tax increase fell rather than increased. Thus, there is little in the historical record to suggest a significant response to changes in tax incentives.

Economists have employed a variety of statistical methods to try to formally estimate the effects of tax incentives on charitable giving. The effects can be measured by estimating a price elasticity, which is the percentage change in charitable contributions divided by the percentage change in tax price. Since increasing the price of giving will reduce the amount of giving (and vice versa), the price elasticity is a negative number. For example, if the elasticity is -0.7, a 10% increase in the tax price (1-t) will result in a 7% decrease in the amount of charitable contributions.

Individual Charitable Contributions

Some early statistical estimates indicated that giving was very responsive to the tax rate. The temporary increase in individual charitable contributions following the 1986 tax revision, where lower tax rates were announced in advance, caused researchers to suspect that some of these estimated effects were due to transitory changes. The most common instance of this transitory effect would be when income fluctuated: the periods when income rises and individuals are in higher tax brackets would be the best time to concentrate charitable giving. Thus, some of the relationship between high tax rates and higher contributions reflected timing and would overstate the response (i.e., the elasticity) to a permanent tax change. Statistical estimates are also made more difficult because charitable giving responds to income, so that higher incomes lead both to higher charitable contributions and, in a progressive tax rate system, to higher tax rates.

Appendix A contains a review of studies of the price elasticity of charitable giving that control for transitory effects. The elasticities in those studies range from close to 0 to -1.2. The review of that evidence points to an elasticity of around -0.5. That elasticity would imply that the percentage change in individual charitable contributions due to the 2017 tax revision (where the price rose by 7%) was a 3.5% decline in individual charitable contributions. For 2017, individual giving was $302.5 billion,[71] suggesting a decline in charitable contributions of around $11 billion as a result of the 2017 tax revision. With a current average tax rate for individual contributions of 15.2%, the tax price would rise by 9% if all charitable deductions were eliminated. These effects would be twice as large with an elasticity of -1.0. The National Council on Nonprofits has estimated a similar effect of the 2017 tax change for individual contributions, a decline in charitable giving of $13 billion or more.[72]

As a percentage of GDP, individual giving declined by about 6% from 2017 to 2018. Some of that decline might reflect a shift in giving from 2018 to later in 2017, to take advantage of the higher tax rates or the expectation of taking the standard deduction in the following year. Contributions as a percentage of GDP grew about 1.4% from 2016 to 2017.[73] Many other factors, however, influence giving as a percentage of GDP, and individual giving as a share of GDP in 2018 was about the same as in 2015.

A Note on Beneficiaries of Charitable Tax Incentives

The 2017 tax revision eliminated many charitable deductions taken for the middle and upper-middle-income taxpayers, leaving a charitable tax incentive mostly claimed by high-income individuals. The TPC estimates that in 2018 91.5% of the benefit for charity accrues to the top quintile (taxpayers with incomes of $153,300 or more), 83.5% is received by the top 10% (taxpayers with incomes of $222,900 or more), 56.4% is received by the top 1% (taxpayers with incomes of $754,800 or more), and 35% accrues to the top 0.1% (taxpayers with income of $3,318,600).[74]

The 2017 Panel Study of Income Dynamics (PSID) can be used to examine the patterns of giving by income class to different types of charitable organizations and also to examine the share of contributions likely to benefit low-income individuals (i.e., that go to charities and foundations that serve the poor).[75] According to CRS's analysis of the PSID data, higher-income individuals give a larger share of their contributions to organizations that focused on health, education, arts, the environment, and international aid relative to contributions by lower-income individuals, while giving a smaller share to organizations focused on religion, youth and family services, community improvement, and directly providing basic necessities. For example, nearly two-thirds of contributions of those with incomes under $200,000 went to religious organizations, compared to roughly 47% for those with incomes over $200,000. In contrast, just over 5% of giving from

[71] The Center on Philanthropy at Indiana University, *Giving USA 2019*.

[72] National Council of Nonprofits, "Tax Cuts and Jobs Act, H.R. 1: Nonprofit Analysis of the Final Tax Law," April 5, 2018, at https://www.councilofnonprofits.org/sites/default/files/documents/tax-bill-summary-chart.pdf.

[73] The Center on Philanthropy at Indiana University, *Giving USA 2019*.

[74] Urban Brookings Tax Policy Center, Tax Benefit of the Itemized Deduction for Charitable Contributions, Table T18-0179, October 16, 2018, at https://www.taxpolicycenter.org/model-estimates/individual-income-tax-expenditures-october-2018/t18-0179-tax-benefit-itemized.

[75] The PSID is a nationally representative household panel survey that has followed families and their descendants since 1968. The 2017 data release collected information from 9,607 families and 26,445 individuals on a variety of topics, including income and philanthropy.

families with income under $200,000 was directed to education purposes, compared to almost 19% for those with income over $200,000.

The PSID data can also be used to estimate the share of various charitable benefits focused on the needs of the poor.[76] Nearly 36% of charitable giving made by families with income under $200,000 was focused on the poor, compared to nearly 33% for families with income over $200,000. While the PSID sample sizes limit the ability to draw conclusions about charitable giving at very high income levels (greater than $1,000,000), they are suggestive that the share focused on the poor may further decline as income levels increase.

As the changes from the TCJA resulted in a further concentration of charitable incentives toward high-income taxpayers, they also focused incentives on charitable giving less likely to benefit the poor and more likely to benefit organizations that focus on health, education, arts, the environment, and international aid.

Although it is difficult to separate various causal factors, the recipient organizations that experienced the largest decline in giving in 2018 were foundations, although there was also extraordinary growth in giving to foundations in 2017. Foundations may be the most likely beneficiary of transitory giving (in this instance, making of gifts that otherwise might be made in 2018 into 2017). Other recipient organizations that saw larger declines in donations were public society benefit (an umbrella for many types of organizations),[77] religious organizations, and educational organizations. Beneficiary organizations that saw an increase in donations or smaller declines were international affairs, environment and animals, arts, and health.[78] Again, it is difficult to determine any causal relationships; for example, religious giving has been declining as a share of total giving for many years.

Bequests

Empirical estimates of the price elasticities for bequests are also reported in **Appendix A**. These estimates also vary significantly, although the evidence suggests they are more responsive to taxes than inter-vivos contributions. In the following calculations, an elasticity of -2.0 is used.

It is difficult to determine the effect of the recent changes in the exemption in the 2017 act because the share of bequests reported on estate tax returns differs substantially from the share represented by taxable returns (30%) and the share represented by all returns (53%). Some returns that would have been taxable without the charitable deduction but are not taxable without the deduction benefit from the incentive. In addition, a much smaller share of taxable estate returns would fall below the exemption for taxable returns. Assuming that the share with an estate of less than $20 million would no longer be subject to the estate tax, that share is 92% for taxable returns, indicating 2.4% of bequests would lose the tax incentive (8% of 30%). For all estates the

[76] This analysis attributes the charitable giving amounts according to the methodology presented in *Patterns of Household Charitable Giving by Income Group, 2005*, Prepared for Google by the Center on Philanthropy at Indiana University, Summer 2007, at https://philanthropy.iupui.edu/files/research/giving_focused_on_meeting_needs_of_the_poor_july_2007.pdf.

[77] Public society benefit includes civil rights, social action, and advocacy; community improvement and capacity building; philanthropy, voluntarism, and grant making foundations (including donor advised funds); science and technology; social science; and public and societal benefit such as public policy research, government and public administration, transportation systems, public utilities, including telecommunications, consumer rights/education/protection, military and veterans organizations, and financial institutions.

[78] The Center on Philanthropy at Indiana University, *Giving USA 2019*.

share is 74%, which suggests 13.8% of bequests would lose the benefit of the charitable deduction (26% of 53%).

The tax price increase for those estates affected by the TCJA is 66%. Such a large price increase does not permit the use of a point elasticity estimate, so the underlying exponential formula is used, leading to a reduction in affected estates of 64% with an elasticity of -2.0.[79] These calculations produce a range of percentage reductions in total bequests of 1.5% (0.64 times 2.4%) to 8.8% (0.64 times 13.8%). Bequests were $39.7 billion in 2017,[80] suggesting a decline in bequests ranging from $0.6 billion to $3.5 billion. This same methodology can be used to estimate the effect on bequests of either eliminating the charitable deduction or repealing the estate tax, which would result in a further reduction of $7.0 billion to $10.0 billion.[81] These estimates depend, however, on the elasticity. Excluding the one study that found no effect, the smallest elasticity estimated (-0.6) would result in an effect 30% smaller, and the largest (-3.0) would result in an effect 22% larger than these amounts.

The National Council on Nonprofits has estimated a decline in bequests of $4 billion as a result of the 2017 tax revision.[82] Because bequests vary considerably from year to year (and can be affected by very wealthy decedents as well as economic factors), examining changes from the previous year provides a limited amount of information.

Corporate Giving

As noted above, some theories of corporate giving suggest that taxes do not affect a decision that is made for purposes of maximizing profits by generating advertising and goodwill. Empirical studies of the response are limited, dated, and quite mixed, including findings of large responses, small responses, no responses, and responses that are positive rather than negative.[83] All of these findings make estimated effects on giving responses difficult to determine, although the corporate rate cut in 2017 substantially increased the tax price (by 22%) to the extent giving provided a benefit to managers. Corporate giving constituted the smallest share of total giving, amounting to $19.5 billion in 2017; therefore, the effects of the TCJA on overall corporate giving are likely small.

Policy Options

Some proposals to revise the tax treatment of charitable giving are aimed at increasing the incentive to give or changing the distribution of incentives across donors, while others are aimed at what may be perceived as abuses.

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[79] The formula for the ratio of post-tax change contributions to prior ones is $(1-t)^{E}$, where E is the absolute value of the price elasticity. The specific calculation with a 40% tax rate is 0.6^{2}, which is 0.36, indicating a decline in contributions of 64%.

[80] The Center on Philanthropy at Indiana University, *Giving USA 2019*.

[81] The $7.0 billion is 0.30 times 0.92 times 0.64 times $39.7 billion, and the $10.0 billion is 0.53 times 0.74 times 0.64 times $39.7 billion.

[82] National Council of Nonprofits, "Tax Cuts and Jobs Act, H.R. 1: Nonprofit Analysis of the Final Tax Law," April 5, 2018, at https://www.councilofnonprofits.org/sites/default/files/documents/tax-bill-summary-chart.pdf.

[83] This literature is summed up in Robert Carroll and David Joulfaian, "Taxes and Corporate Giving to Charity," *Public Finance Review*, vol. 33, no. 3 (May 2005), pp. 300-317. The Carroll and Joulfaian study found very high elasticities, but they were based on personal tax rates and included Subchapter S Corporations that are taxed as partnerships under the personal tax. They also did not control for transitory effects.

Options Related to Tax Incentives for Charitable Giving

Deduction for Nonitemizers

As mentioned previously, tax incentives for giving are largely confined to higher-income households because these taxpayers are more likely to itemize their deductions (largely deductions for state and local taxes, mortgage interest, and charitable contributions), which tend to rise with income, or choose the standard deduction of a fixed dollar amount. This concentration of tax benefits on higher-income individuals also tends to favor the charities they favor, such as those pertaining to health, education, and the arts, while disfavoring religion and charities aimed at human services. The concentration of charitable giving incentives to those with higher incomes has increased as a result of the 2017 tax revision.

Nonitemizers were able to claim a deduction for charitable contributions in the early 1980s. A temporary charitable deduction for itemizers was adopted in the Economic Recovery Tax Act of 1981 (P.L. 97-34), initially allowing a deduction for 25% of contributions in 1982-1984, 50% in 1985, and a full deduction in 1986, with the provision then expiring. The deduction was also capped in the first three years, at $100 in the first two years and $300 in the third year.

Over time, policymakers have continued to propose policies that would extend charitable tax benefits to all taxpayers, either by allowing a deduction for nonitemizers (often termed an *above-the-line deduction*, reflecting its position on the tax form) or by replacing the itemized deduction with a credit available to all taxpayers.[84] In the 116th Congress, Representative Danny Davis has introduced legislation that would allow an above-the-line deduction for charitable giving H.R. 1260), as have Representatives Henry Cuellar and Christopher Smith (H.R. 651). (A similar bill was introduced in the 115th Congress as H.R. 5771.) Earlier proposals for an above-the-line charitable deduction include the Universal Charitable Giving Act of 2017 (H.R. 3988/S. 2123) in the 115th Congress, introduced by Representative Mark Walker in the House and Senator James Lankford in the Senate.[85] In the 116th Congress, Representative Danny Davis has introduced legislation that would allow an above-the-line deduction for charitable giving (H.R. 1260), as have Representatives Henry Cuellar and Christopher Smith (H.R. 651). (A similar bill was introduced in the 115th Congress as H.R. 5771.)

Different models have been used to estimate the budgetary cost of a nonitemizer deduction. Using the Penn-Wharton Budget Model, the Indiana University Lilly Family School of Philanthropy estimates a nonitemizer deduction would cost between $14.4 billion and $16.1 billion in 2020 (see **Table 5** for a summary of the revenue and charitable giving effects of the policy options evaluated in the study).[86] Building on the Open Source Policy Center's Tax Calculator, Brill and

[84] Under this proposal, the deduction would be limited to one-third of the standard deduction that was allowed at that time.

[85] Under this proposal, the deduction would be limited to one-third of the standard deduction that was allowed at that time.

[86] The range in estimates reflects different assumptions about how taxpayers respond to tax incentives for charitable giving. Ten-year revenue estimates are also given to provide additional information on longer-term costs and potential for induced charitable giving. Note that this period includes years after 2025, when most of the individual provisions of the TCJA expire, and more taxpayers would be itemizing deductions and thus claiming the charitable deduction. See The Indiana University Lilly School of Philanthropy, *Charitable Giving Tax Incentives: Estimating Changes in Charitable Dollars and Number of Donors Resulting From Five Policy Proposals*, 2019, at http://hdl.handle.net/1805/19515; and John Ricco and Mariko Paulson, *Policy Options to Increase Charitable Giving Using Tax Incentives*, Wharton School at the University of Pennsylvania, June 24, 2019, at https://budgetmodel.wharton.upenn.edu/issues/2019/6/24/policy-options-to-increase-charitable-giving-using-tax-incentives.

Choe estimated such a change would cost $25.8 billion at 2018 levels (the revenue and charitable giving effects of the policy options in the study are summarized in **Table 6**).[87]

These studies also estimated the effect of the proposals on charitable giving. One concern is whether further encouraging charitable contributions is an efficient way of achieving the benefits such charitable giving might bring. In general, if the price elasticity of giving is less than 1.0, the induced charitable giving will be less than the revenue cost, and more charitable giving could be obtained by making direct expenditures. If the elasticity is greater than 1.0, charitable giving will be greater than the revenue loss. (This argument also applies to existing charitable deductions.)

Table 5. Revenue Loss and Induced Charitable Giving in Various Policy Scenarios: Indiana University Study/Penn-Wharton Budget Model

(in billions of dollars)

	Projected Revenue Loss		Estimated Increase in Charitable Giving	
	2020	**2020-2029**	**2020**	**2020-2029**
Nonitemizer Deduction				
Static	-14.4	-169.3	—	—
Low Elasticity	-15.0	-176.6	8.4	77.5
High Elasticity	-15.5	-183.1	16.8	154.7
Income-Based Elasticity	-16.1	-192.0	24.9	253.0
Enhanced Nonitemizer Deduction				
Static	-15.9	-191.0	—	—
Low Elasticity	-16.6	-200.5	9.2	86.1
High Elasticity	-17.3	-208.7	18.3	172.2
Income-Based Elasticity	-18.2	-221.2	27.7	287.6
Nonrefundable 25% Nonitemizer Credit				
Static	-20.6	-238.4	—	—
Low Elasticity	-21.9	-254.0	11.4	104.0
High Elasticity	-23.2	-266.9	22.8	208.0
Income-Based Elasticity	-24.6	-285.9	35.1	349.2
Nonitemizer Deduction with Cap				
Static	-13.1	-154.4	—	—
Low Elasticity	-13.8	-163.4	5.6	52.3
High Elasticity	-14.4	-171.1	11.2	104.5
Income-Based Elasticity	-14.8	-179.6	16.6	172.3
Nonitemizer Deduction with AGI Floor				
Static	-11.7	-138.5	—	—
Low Elasticity	-12.3	-145.1	7.9	73.2

[87] Alex Brill and Derick Choe, *Charitable Giving and the Tax Cuts and Jobs Act*, AEI Economic Perspectives, June 2018, at http://www.aei.org/publication/charitable-giving-and-the-tax-cuts-and-jobs-act/.

	Projected Revenue Loss		Estimated Increase in Charitable Giving	
	2020	2020-2029	2020	2020-2029
High Elasticity	-12.8	-151.0	15.9	146.4
Income-Based Elasticity	-13.4	-159.4	23.7	241.0

Source: The Indiana University Lilly School of Philanthropy, *Charitable Giving Tax Incentives: Estimating Changes in Charitable Dollars and Number of Donors Resulting From Five Policy Proposals*, 2019, at http://hdl.handle.net/1805/19515; and John Ricco and Mariko Paulson, *Policy Options to Increase Charitable Giving Using Tax Incentives*, Wharton School at the University of Pennsylvania, June 24, 2019, at https://budgetmodel.wharton.upenn.edu/issues/2019/6/24/policy-options-to-increase-charitable-giving-using-tax-incentives.

Notes: The "low" tax price elasticity is -0.5. The "high" tax price elasticity is -1.0. The "income-based" elasticity is -2.236 for tax units under $50,000 in 2017 AGI, -1.49 under $100,000, and -1.182 over $100,000.

Brill and Choe used a unitary elasticity (an elasticity of -1.0) in their study, but found a smaller increase in charitable contributions ($21.5 billion) than the lost revenue (the absolute value of lost revenue) when evaluating an above-the-line or nonitemizer deduction. Presumably some additional revenue beyond the amount of induced giving is lost because some itemizers would move to the standard deduction, causing a loss of revenue unrelated to the charitable incentive. (Even very-high-income individuals who had no mortgages might be better off moving to a standard deduction because of the $10,000 cap on state and local tax deductions; the standard deduction for a married couple is $24,000).

Table 6. Options to Increase Charitable Giving and the Associated Revenue Loss: Brill and Choe/Open Source Policy Center's Tax Calculator

(in billions of dollars)

	Projected Revenue Loss, 2018	Estimated Increase In Charitable Giving, 2018
Nonitemizer Deduction	-25.8	21.5
Nonitemizer Deduction with Floor	-14.6	19.1
Nonrefundable 25% Credit for All	-31.1	23.3
Nonrefundable 25% Credit with Floor	-15.4	20.0

Source: Alex Brill and Derick Choe, *Charitable Giving and the Tax Cuts and Jobs Act*, AEI Economic Perspectives, June 2018, at http://www.aei.org/publication/charitable-giving-and-the-tax-cuts-and-jobs-act/.

Note: The price elasticity of charitable giving is assumed to be -1.0.

The Indiana University study looks at giving under a "low-elasticity" scenario (an elasticity of -0.5), a high-elasticity scenario (an elasticity of -1.0), and an income-based elasticity scenario. The increase in giving in 2020 under each scenario was $8.4 billion, $16.8 billion, and $24.9 billion, respectively. Under the low-elasticity scenario, an above-the-line deduction for giving would reduce revenues by $15.0 billion in 2020, while generating $8.4 billion in additional charitable giving. Under the high-elasticity scenario, the revenue reduction in 2020 is estimated at $15.5

billion, with additional charitable giving estimated at $16.8 billion.[88] In the income-based elasticity scenario, the revenue reduction in 2020 is $16.1 billion, while additional charitable giving is $24.9 billion in 2020.[89] Thus, if elasticities are less than 1.0, as the survey of studies accounting for transitional effects in **Appendix A** indicates, charitable deductions would likely be smaller than the revenue cost.

In evaluating the trade-off between revenue loss and charitable contributions, the charitable contributions from an above-the-line deduction would tend to go to charitable causes favored by lower- and middle-income taxpayers. These include religion, youth and family services, community improvement, and directly providing basic necessities. If the desired objective is to increase resources devoted to these activities, additional resources could be provided directly by the federal government, instead of induced via charitable giving incentives (which result in a loss in federal revenue).

The Indiana University study also looks at a scenario that would provide an enhanced nonitemizer deduction. In this policy, single filers with less than $20,000 in income ($40,000 for joint filers) would be able to deduct 200% of their charitable contributions. Taxpayers making less than $40,000 ($80,000 for joint filers) would be able to deduct 150% of their contributions. Under this policy, revenue losses would be between $15.9 billion and $18.2 billion in 2020, depending on the elasticities assumed. Charitable giving would increase by an estimated $9.2 billion to $27.7 billion, with the rise in giving greater than the loss in revenue in both the high-elasticity and income-based-elasticity case.[90] This policy would tend to encourage additional giving by lower-income taxpayers.

Adding a deduction for nonitemizers (or replacing the existing itemized deduction with a credit, as discussed below) would increase the complexity of the tax code for the individuals now taking the standard deduction. Charitable deductions require various types of substantiation and recordkeeping, and it is difficult for the IRS to monitor these contributions, especially with respect to small contributions where audit and investigation by the IRS are not cost effective. Charitable deductions are among the items with no third-party reporting, which makes enforcement more costly and difficult.

Allowing a charitable deduction or credit to be taken regardless of whether a taxpayer itemizes or takes the standard deduction would further increase the share of taxpayers who take the standard deduction rather than itemizing deductions. The remaining major itemized deductions are state and local taxes and mortgage interest. Such a move would, for example, reduce the incentives for owner-occupied housing even further than the effects of the 2017 tax revision, which some might see as desirable and others as undesirable.

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[88] Looking at 2020, under the high-elasticity scenario, a nonitemizer deduction would appear to generate more charitable giving than is lost in revenue. However, over the 10-year budget window, lost revenue would exceed induced charitable giving.

[89] These elasticities were -2.236 for incomes less than $50,000, -1.49 for incomes of $50,000 to $100,000, and -1.182 for incomes above $100,000. These elasticities were independently estimated from the Panel Study on Income Dynamics, and showed higher elasticities for lower incomes. These estimates were much larger than those reported in **Appendix A** and probably reflected the lack of control for transitory effects. One study of the 1986 data on nonitemizers estimated that the price response for nonitemizers was less than for itemizers, although this study was not able to address transitory effects. See Christopher M. Duquette. "Is Charitable Giving by Non-Itemizers Responsive to Tax Incentives? New Evidence," *National Tax Journal*, vol. 52, no. 2 (June 1989), pp. 195-206.

[90] Over the 10-year budget window, the rise in charitable giving would exceed the revenue loss only in the case where income-based elasticities were assumed under the enhanced nonitemizer deduction policy option.

A Tax Credit for Charitable Giving

An alternative to a nonitemizer deduction is to provide for a nonrefundable tax credit. It could either be as a substitute for or an addition to the current itemized deduction. Both the Indiana University and Brill and Choe studies estimate revenue effects and increased charitable contributions for a 25% credit. Indiana University considers a credit as an addition to the current itemized deduction, with an estimated revenue cost in 2020 of $20.6 billion to $24.6 billion, depending which elasticity is assumed.[91] Brill and Choe consider a 25% credit that replaces the current itemized deduction, costing $31.1 billion at 2018 levels.

Brill and Choe estimate the credit would (at their assumed -1.0 price elasticity) increase charitable giving by $23.3 billion. The Indiana University study estimates increased contributions in 2020 of $35.1 billion for the higher income-based elasticities, $22.8 billion for the elasticity of -1.0, and $11.4 billion for an elasticity of -0.5.

The induced contributions associated with the elasticities of -1.0 and -0.5 are smaller than the revenue losses and raises the basic concerns about the tradeoff between revenue loss and contributions. If the credit replaced the itemized deduction, it would shift more of the incentive to lower- and middle-income individuals by creating the same tax price for all taxpayers and thus to their preferred beneficiaries. Expanding the scope of the benefit for charitable contributions would, like a deduction, tend to increase complexity in compliance and tax administration, as well as potentially reduce the incentive for home ownership by reducing the number of itemizers.

If a credit substituted for the itemized deduction, it would be possible to set the credit so as not to lose revenue while equalizing the treatment of the charitable contribution incentive across taxpayers. For example, in a 2011 report by the Congressional Budget Office (CBO), an option of a 15% credit was considered, which, compared to a 25% credit, would have cost $20.4 billion less in 2006 dollars, and a larger amount at current income levels.[92]

Modifying Charitable Giving Incentives: Caps and Floors

Some proposals would cap expanded deductions. For example, the Universal Charitable Giving Act of 2017 (H.R. 3988/S. 2123) in the 115th Congress would have limited the nonitemizer deduction to be one-third of the standard deduction that was available at that time. When a nonitemizer deduction was available in the early 1980s, it was limited to a certain percentage of contributions in the first three years of the temporary policy. Proposals have also been made to provide a floor, either under nonitemizer deductions or all deductions.

Caps

A cap for a deduction that provides a desired incentive could be inefficient, as the cap eliminates the incentive for those with giving above the cap while still resulting in a revenue loss. Nevertheless, a cap may be useful for a deduction for nonitemizers or a credit that does not replace the itemized deduction, as it would reduce the number of current itemizers who would switch to the standard deduction. The Indiana University study finds that imposing a cap of $8,000 for a joint return (and $4,000 for a single return) applied only to the nonitemizer deductions would have, depending on what giving elasticity is assumed, a revenue cost in the

[91] The 10-year revenue estimates in the Indiana University study include years 2026 through 2029, after most of the TCJA's individual income changes expire. The cost of a 25% charitable giving credit for nonitemizers is lower in these years, when more taxpayers would be itemizing deductions.

[92] Congressional Budget Office, *Options for Changing the Tax Treatment of Charitable Giving*, May 2011, at https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/charitablecontributions.pdf.

range of $5.6 billion to $16.6 billion in 2020 (less than the $8.4 billion to $24.9 billion estimate for a nonitemizer deduction without a cap). This cap is generous compared the one proposed in the Universal Charitable Giving Act of 2017 (one-third of the standard deduction in 2017, which was $12,700 for a married couple and $6,350 for a single return). The $8,000/$4,000 cap is about a third of the current standard deduction under the new law ($24,000 for married couples and $12,000 for singles in 2018).

The Indiana University study found an itemized deduction with this cap would increase charitable giving in 2020 by $16.6 billion assuming their high income-based elasticities, $11.2 billion at the elasticity of -1.0, and $5.6 billion at the elasticity of -0.5. With this cap, induced contributions are less than the revenue loss in all but the high income-based elasticity case (induced contributions are less than the revenue loss in all cases over the 10-year period).

Caps for itemized deductions could also be set at a certain rate, instead of a fixed dollar amount. For example, the Obama Administration's FY2010 and FY2011 budgets proposed limiting the value of itemized deductions to 28% (a rate below the top individual income tax rate at the time of 35%).[93] By limiting the amount of the deduction, the value of the charitable tax incentive would decrease for taxpayers in tax brackets above 28%. However, the subsidy would become more equal across taxpayers in different tax brackets. The policy would also raise additional revenue and result in a decline in charitable giving.

Floors

Floors would allow charitable deductions in excess of a given amount, either a dollar amount or a percentage of income. As opposed to a cap, a floor could increase the efficiency of the incentive; to the extent that contributions are above the floor in the absence of the incentive, the floor does not affect the incentive at the margin, even though it reduces revenue loss. The floor would also, if applied only to the nonitemizer deduction, reduce the attractiveness of this deduction and thus reduce the number of taxpayers who shift to a standard deduction. A 2% floor was included in the 2014 major tax reform proposal by then-chairman of the House Ways and Means Committee Dave Camp (the Tax Reform Act of 2014, H.R. 1 in the 113th Congress).

The Brill and Choe study estimated the revenue effect of a nonitemizer above-the-line deduction and the 25% credit with a floor of $1,000 for married couples and $500 for singles. For the above-the-line deduction, they found a substantial fall in the revenue loss from $25.8 billion to $14.6 billion, but a relatively small effect on charitable contributions (at their -1.0 price elasticity), which were estimated to fall from $21.5 billion to $19.1 billion. Thus, at their unitary price elasticity, the induced contributions were expected to be larger than the revenue loss. Looking at the same dollar floor for the 25% credit, the revenue loss was reduced even more, from $31.1 billion to $15.4 billion, presumably because the floor would apply to existing itemizers as well. The induced contributions (at the -1.0 price elasticity) fell from $23.3 billion to $20.0 billion.

The Indiana University study examined a modified percentage-of-income floor where contributions below 1% of AGI would receive a 50% deduction and the remainder a full deduction. The estimates of revenue loss and induced giving depend on the elasticity that is assumed. In the high-elasticity case, giving in 2020 would increase by $23.7 billion, while the revenue loss would be $13.4 billion. At the elasticity of -1.0, induced giving would be $15.9

[93] CRS Report R40518, *Charitable Contributions: The Itemized Deduction Cap and Other FY2011 Budget Options*, by Jane G. Gravelle and Donald J. Marples.

billion, while the revenue loss would be $12.8 billion. With an elasticity of -0.5, induced giving would be $7.9 billion, with a revenue loss of $12.3 billion.

In addition to potentially creating more "bang for the buck," a floor (as long as it completely excluded contributions below a dollar amount or percentage of income) would simplify administration and compliance by having no deductions for small contributions.

In considering a percentage of income versus a dollar floor, a dollar floor would be more transparent and serve the purpose of excluding deductions for minor contribution amounts, but the percentage-of-income floor would be more efficient because it could provide a meaningful floor for wealthy taxpayers.

Charitable Giving and Disaster Relief

As noted previously, in the past Congress has passed legislation eliminating the percentage of AGI limit for charitable contributions made for disaster-relief purposes following certain disaster events.[94] Senator Tim Scott has introduced legislation that would temporarily increase the limitation on charitable contributions made for relief efforts related to Hurricane Dorian (S. 2476). Other proposals in the 116th Congress would temporarily increase charitable giving limits following disaster events generally (the Tax Relief and Expedited Assistance for Disasters Act of 2019 (TREAD Act) (H.R. 3287), introduced by Representative Tom Rice), or for disasters in 2019 (the Disaster Tax Relief Act of 2019, introduced by Representative Adrian Smith [H.R. 2284] and Senator Deb Fischer [S. 1133]). Other legislation introduced earlier in the 116th Congress would have increased the limitation on charitable contributions made for relief efforts for disasters in 2018 (the 2018 Natural Disasters Tax Relief Act [H.R. 1148], introduced by Representative Rice).

Gifts of Appreciated Property

Gifts of appreciated property, as noted above, receive a double benefit: a deduction for the fair market value and an exclusion of the gain from tax. These benefits also create an incentive to overvalue a gift so as to maximize the value of the charitable deduction. Charities may also incur costs to maintain or sell the property and may not even want the contribution but will accept it so as not to antagonize a wealthy donor.

Several options could be considered for gifts of appreciated property. First, only contributions made in cash could be deductible, which would force the taxpayer to sell the property and then donate the proceeds to charity (thus incurring a capital gains tax and valuing the deduction at market value). A similar approach would be to allow a deduction equal to the basis in the property (usually, the amount originally paid for it). Taxpayers might still donate property with little appreciation, but that approach would also eliminate the double benefit and address the valuation issue. One difficulty with this option is that it would require either a loss of deduction or limit the optimal recipient in cases where the property was particularly desired to be used by the recipient, such as a contribution of a work of art to a museum.

An option that would eliminate the double benefit but not address the valuation problem would be to allow the contribution of appreciated property but to tax the appreciation as if it were a realized capital gain. This approach would address the problem of donating an artwork to a museum.

[94] Additional discussion related to tax incentives for charitable giving to support disaster relief can be found in CRS Report R45864, *Tax Policy and Disaster Recovery*, by Molly F. Sherlock and Jennifer Teefy.

The Tax Reform Act of 2014 (H.R. 1) had provisions aimed at limiting the problems attached to valuation. The deduction would have been limited to basis except for property related to the purpose of the charitable institution, certain property receiving special treatment such as conservation easements, and publicly traded stock as long as it was no more than 10% of the total shares.

Another option is to allow a deduction only for the amount that the charity receives from a sale. One analyst has suggested (presumably to address property used by the charity) that the deduction be limited to the lesser of the benefit from sale, or the donor's tax basis plus one-half of the untaxed appreciation.[95]

There are proposals to address concerns about inflated values of easements that may be associated with the use of syndicated partnerships to donate conservation easements. One proposal would limit the value of these deductions to 2.5 times the partnership adjusted basis (the Charitable Conservation Easement Program Integrity Act of 2019, introduced by Senator Steve Daines [S. 170] and Representative Mike Thompson [H.R. 1992]).[96]

Charitable Mileage Rate

Charitable organizations can reimburse volunteers (without income tax consequences) for miles driven for charitable purposes. Nontaxable reimbursements by charities can be made up to the charitable mileage rate of 14 cents per mile. This rate was set in 1997, and has not been adjusted since. The IRS has the authority to adjust the business mileage rate (58 cents per mile for 2019) and the medical and moving expense mileage rate (20 cents per mile for 2019).[97] The charitable mileage reimbursement rate is set in statute.

Legislation in the 116th Congress, the CHARITY Act of 2019 (S. 1475/H.R. 3259), would align the charitable mileage reimbursement with the rate used for medical and moving expense purposes. Other legislation, the Volunteer Driver Tax Appreciation Act of 2019 (H.R. 2072), introduced by Representative Collin Peterson, and the Nonprofit Relief Act of 2019 (H.R. 3323), introduced by Representatives Carolyn Maloney and James Clyburn, propose increasing the charitable rate to match the business mileage rate. The Delivering Elderly Lunches and Increasing Volunteer Engagement and Reimbursements (DELIVER) Act of 2019, introduced by Representatives Joseph Morelle and Ron Wright (H.R. 2928) and Senators Angus King and John Cornyn (S. 1603), would raise the standard charitable mileage rate for delivery of meals to homebound individuals who are elderly, disabled, frail, or at-risk.

Increasing the charitable mileage reimbursement rate could encourage charitable activity, such as meal delivery, and help adjust for the increase in the cost of automobile use since the late 1990s. A concern with increasing the charitable mileage rate, particularly to the business mileage rate, is that a higher rate could overcompensate volunteers for their automobile-related expenses (i.e., allow taxpayers to take a deduction that exceeds actual driving/vehicle use costs).

[95] Roger Colinvaux, "Fixing Philanthropy: A Vision for Charitable Giving and Reform," *Tax Notes*, March 4, 2019, pp. 1007-1015.

[96] CRS Insight IN11141, *Charitable Conservation Contributions: Potential for Abuse?*, by Molly F. Sherlock.

[97] Internal Revenue Service, "IRS Issues Standard Mileage Rates for 2019," press release, December 14, 2018, at https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2019.

Proposals Relating to Tax-Exempt Organizations

Some proposals relate to the treatment of the charitable organizations.[98] Certain types of tax-exempt or charitable organizations may have specific or additional requirements.

DAFs, Endowments, and Foundations (Nonactive Charities)

Several policy options are related to entities that receive charitable contributions, but do not immediately use these contributions for a charitable purpose. These entities include DAFs, supporting organizations, and university endowments. One option could be to subject these organizations to rules similar to private foundations and Type III Non-FISO supporting organizations, and require a minimum payout. Another option is to require all funds in a DAF account to be distributed within five to seven years.

A proposal has been made to not allow foundations to make donations to DAFs, or require that if they do, the funds be spent immediately and with full disclosure. This option might address the concern that DAFs can be used to avoid transparency that is otherwise required of private foundations. The New York State Bar Association (NYSBA) Tax Section, commenting on an advance version of Treasury Notice 2017-73, addressing certain issues relating to DAFs, suggested that foundations could give to DAFs if the DAFs agree to distribute the funds immediately. The NYSBA also recommends applying the same rules as applied to foundations in cases where a pledge is made and DAF distributions satisfy it.[99]

A proposal to encourage greater use of DAFs would allow IRA rollover contributions to charity to go to DAFs (generally these contributions must go to public charities but cannot go to supporting organizations or DAFs). This proposal was included in the Charities Helping Americans Regularly Throughout the Year (CHARITY) Act of 2019, introduced by Senator John Thune (S. 1475) and Representative Earl Blumenhauer (H.R. 3259).

Several policy options that relate to university endowments might be considered. These could include payout requirements, or measures to address offshore sheltering of earnings from the UBIT. Another proposal is to modify or repeal the tax on endowment net investment income enacted in the 2017 tax revision.[100] The Reducing Excessive Debt and Unfair Costs of Education (REDUCE) Act of 2018 (H.R. 5916) would have imposed an excise tax on undistributed required payouts from college and university endowments, with payout requirements designed to direct support lower- and middle-income students. Also in the 115th Congress, the Don't Tax Higher Education Act (H.R. 5220) would have repealed the endowment excise tax.

Another proposal would eliminate the provision that reduces the excise tax rate on private foundations contingent on distributions and directly reduce the excise tax rate to 1%. This proposal is included in the proposed CHARITY Act of 2019.

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[98] A number of these proposals are discussed in Colinvaux, "Fixing Philanthropy."

[99] See New York Bar Association Tax Section, *Report on Notice 2017-73*, February 28, 2018, at http://www.nysba.org/workarea/DownloadAsset.aspx?id=80453. IRS Advance Notice 2017-73 dealt with situations where original donors received a benefit from funds contributed through DAFs (such as tickets to events), where the DAF contribution satisfied a pledge, and the ability of organizations that would otherwise be private foundations to qualify as public charities by having large donors make their contributions through DAFs. Notice 2017-73 is at https://www.irs.gov/pub/irs-drop/n-17-73.pdf.

[100] See CRS Report R44293, *College and University Endowments: Overview and Tax Policy Options*, by Molly F. Sherlock et al.

Tax-Exempt Hospitals

A nonprofit hospital applying for, or seeking to maintain, tax-exempt status as a "charitable" organization under IRC Section 501(c)(3) must meet the "community benefit standard." Broadly, and as previously discussed, this standard requires the hospital to show that it has provided benefits that promote the health of a broad class of persons to the community. One way hospitals can demonstrate that they have met the community benefit standard is by providing charity care.[101] The potential for increased coverage of health care for low-income individuals in the Affordable Care Act may have reduced the need for charity care and has raised questions about the need for the tax benefits for nonprofit hospitals.[102] Disallowing tax-exempt bond financing was an option discussed during debates leading up to the 2017 tax revision. In addition, concerns have been raised about the enforcement of the community benefit standard.[103]

UBIT Provisions Adopted in the 2017 Tax Revision

Some proposals reconsider the UBIT provisions adopted in the 2017 tax revision (P.L. 115-97).[104] One proposal would eliminate the separate business calculation of the UBIT (see the Nonprofit Tax Relief Act of 2019; H.R. 3323). Requiring that unrelated business taxable income be computed separately for each trade or business activity treats nonprofits differently from for-profit businesses, and it complicates administration and compliance because of the difficulties of classifying businesses. This provision may have been motivated by concerns about improper allocation of expenses across 501(c)(3) colleges' and universities' unrelated business activities. A 2013 IRS compliance report found that some colleges and universities were misallocating expenses between nonprofit and for-profit activities (which was already disallowed) and underpaying UBIT.[105]

Criticisms have also arisen about a change in the 2017 tax revision that subjects transportation benefits for employees to the UBIT. The purpose of this provision was to treat nonprofit business like for-profit businesses (where deductions are denied). This provision includes free parking, which would require nonprofits (including churches) that provide parking for their employees to determine the value of this benefit and file a tax return, in some cases for the first time. The House Committee on Ways and Means has approved legislation (the Economic Mobility Act of 2019; H.R. 3300) that would, among other things, repeal the inclusion of certain fringe benefits in UBIT. Other legislation that would repeal the inclusion of nonprofit fringe benefits in UBIT includes Representative James Clyburn's Stop the Tax Hike on Charities and Places of Worship Act (H.R. 1223); the Lessen Impediments From Taxes (LIFT) for Charities Act (S. 632), introduced by Senators James Lankford and Christopher Coons; the Stop the Tax Hike on

[101] See CRS In Focus IF10918, *Hospital Charity Care and Related Reporting Requirements Under Medicare and the Internal Revenue Code*, by Marco A. Villagrana et al.

[102] There remain, however, questions about the hospitals' provision of charity care. Some have argued that hospitals set artificially high prices, and when they lower the price for uninsured patients it is considered charity care. Dan Diamond, "GOP Fails to Pressure Hospitals on Community Benefits," *Politico*, December 21, 2017, at https://www.politico.com/story/2017/12/21/gop-congress-tax-reform-nonprofit-hospitals-252841, quoting Laurel Prussing, former mayor of Urbana, Illinois.

[103] See Dan Diamond, "GOP Fails to Pressure Hospitals on Community Benefits," *Politico*, December 21, 2017, at https://www.politico.com/story/2017/12/21/gop-congress-tax-reform-nonprofit-hospitals-252841; Travis F. Jackson, "Congressional Scrutiny of Charitable Hospitals Likely to Return," *Tax Notes*, July 2018, pp. 45-50.

[104] These provisions affecting UBIT are discussed in Colinvaux, "Fixing Philanthropy."

[105] Internal Revenue Service, *College and Universities Compliance Project Final Report*, May 2, 2013, at http://www.irs.gov/pub/irs-tege/CUCP_FinalRpt_050213.pdf.

Charities and Places of Worship Act (S. 501), introduced by Senator Sherrod Brown; and legislation introduced by Representative Mark Walker (H.R. 1545).

The Preserve Charities and Houses of Worship Act (S. 1282), introduced by Senator Ted Cruz, and the Nonprofits Support Act (H.R. 513), introduced by Representative Michael Conaway, would repeal both of the TCJA provisions discussed above.

Administrative Reforms

Several proposals have been made to provide administrative reforms. One such proposal is to require electronic filling of 990 forms. This proposal is included in the CHARITY Act of 2019.

Another proposal, considering the task of monitoring a large number of charities, would be to provide more funds to the IRS or even to create a separate regulatory authority, given that the IRS is a revenue collection agency, not a nonprofit regulator. For that reason the IRS has few incentives to devote resources to enforcing the rules regarding nonprofits.[106]

[106] These administrative reforms are discussed in Colinvaux, "Fixing Philanthropy."

Appendix A. Evidence on Elasticities for Charitable Giving

Lifetime (Inter-Vivos) Giving

Table A-1 reports the results of seven different studies (with a number of specifications that attempt to measure both permanent and transitory effects of changes in price and income on charitable giving).[107] Two of these studies (Bakija 2000, and Bakija and McClelland 2002) also provided some critiques of other studies and some sensitivity analysis that is useful in understanding the studies and their strengths and weaknesses. Results that are not statistically significant have an asterisk. Lack of statistical significance means that, although a relationship that most closely fits the data is estimated, there is such deviation from that relationship in the observations that there is not a clear causal effect. Estimates that are not statistically significant are usually, although not always, associated with very small values that are close to zero.

While the studies differ in methodology, as discussed below, one difference is the type of data used. Tax return data are available for general use only to researchers in the Treasury Department and the Joint Committee on Taxation. (The Congressional Budget Office [CBO] has access to taxpayer data but must have uses approved by the Joint Committee on Taxation.) The data on giving and tax rates are probably superior in these studies and contain a larger sample of high-income taxpayers; however, such research cannot be replicated or subjected to any sensitivity analysis by others. Other researchers have to use public-use data constructed from other sources. Of the seven studies in **Table A-1** four (Randolph 1995, Auten et al. 2002, and Bakija and Heim 2008 and 2011) used taxpayer data, and all had as authors or coauthors a Treasury employee. The Bakija and McClelland (2002) study, with a CBO coauthor, included a sensitivity analysis for the Auten et al. study, but used a public-use file, not the tax data. The other two studies also used a public-use file.

Many of the studies listed below report multiple results using different specifications and, in general, an attempt is made to report the results that appear to be preferred by the author(s). In the case of the Bakija and Heim (2011) report, the preferred estimate for the permanent elasticity is associated with variations in the state tax rate, and estimates from other specifications (such as allowing coefficients to vary across incomes) are even larger (see the discussion of that study).

For comparison with this table and to illustrate the importance of dealing with transitory effects, Bakija and McClelland (2002), who presented a range of strategies, also estimated a standard pooled cross-section estimate, the type that had been done prior to the evidence shown by the

[107] The studies are William Randolph, "Dynamic Income, Progressive Taxes, and the Timing of Charitable Contributions," *The Journal of Political Economy*, vol. 103 (August 1995), pp. 709-738; Kevin Stanton Barrett, Anya M. McGuirk, and Richard Steinberg, "Further Evidence on the Dynamic Impact of Taxes on Charitable Giving," *National Tax Journal*, vol. 50 (June 1997), pp. 321-334; Jon Bakija, "Distinguishing Transitory and Permanent Price Elasticities of Charitable Giving with Pre-Announced Changes in the Tax Law," October 2000, Mimeo; Gerald E. Auten, Sieg Holger, and Charles T. Clotfelter, "Charitable Giving, Income and Taxes: An Analysis of Panel Data," *American Economic Review*, vol. 92 (March 2002), pp. 371-382; Jon Bakija and Rob McClelland, "Timing vs. Long-Run Charitable Giving Behavior: Reconciling Divergent Approaches and Estimates," December 2004, Mimeo; Jon Bakija and Bradley Heim, *Does Charitable Giving Respond to Incentives and Income? Dynamic Panel Estimates Accounting for Predictable Changes in Taxation*, National Bureau of Economic Research Working Paper 14237, August 2008; Jon Bakija and Bradley Heim, "How Does Charitable Giving Respond to Incentives and Income: New Estimates From Panel Data," *National Tax Journal*, vol. 64, no. 2, part 2 (June 2011).

1980s tax cuts that did not deal with transitory effects. That estimate showed results that are typical of past cross-sectional studies, a price elasticity of -1.22 and an income elasticity of 0.84.

In general, the theoretical expectation is that transitory price effects are large and transitory income effects are small (due to the permanent income hypothesis or consumption smoothing). Price elasticities and income elasticities in cross-section studies are a combination of permanent and transitory effects. Thus, a lower permanent price elasticity and a higher permanent income elasticity would be expected than those observed in cross-section studies. Only two studies, Randolph (1995) and Bakija and Heim (2008) find these results, and the Bakija and Heim income elasticity is only marginally higher.

Table A-1. Elasticities from Studies that Accounted for Transitory Effects

Study	Permanent Price Elasticity	Transitory Price Elasticity	Permanent Income Elasticity	Transitory Income Elasticity
Randolph (1995): Giving Weighted	-0.51	-1.55	1.14	0.58
Unweighted	-0.08*	-2.27	1.30	0.09
Barrett et al. (1997)	-0.47	-1.18	0.495	—
Bakija (2000)	-0.29*	-1.15	0.44	0.79
Auten et al. (2002): 1980-1983 Data	-0.79	-0.52	0.40	0.45
1980-1987 Data	-1.26	-0.61	0.49	0.49
1980-1992 Data	-1.26	-0.40	0.87	0.29
Bakija and McClelland (2002): Basic	-0.24	-0.40	0.72	0.02*
Using Tax Reform Instruments	-0.29*	-0.56	0.27*	-0.06*
Basic with Lagged Variables	-0.75	-0.50	0.40	0.14
Tax Reform Instruments, Lagged Variables	-0.74	-0.66	0.04*	0.11*
Auten et al. (2002) Method; with Foresight	-0.64	-0.34	0.55	0.12
Bakija and Heim (2008): Aggregate	-0.70	-0.47	0.91	0.25
<$100,000	-0.147*	-0.500	0.104	0.301
>$200,000	-0.654	-0.589	0.783	0.271
>$500,000	-0.483	0.730	0.608	0.301
>$1,000,000	-0.493*	0.557	0.916	0.320
Bakija and Heim (2011): State Tax Rate	-1.16	-0.85	0.51	0.34
Federal Tax Rate	-0.35	-0.61	0.51	0..34
Federal and State Combined Tax Rate	-0.61	-0.60	0.60	0.32

Source: See text for discussion of studies.

Randolph (1995) was the first study to focus on the problem of transitory effects, and the technique used a 10-year panel that treated deviations from average income (and the resultant deviations from tax rates) as transitory. Permanent tax rates varied through changes in the tax law (and years around the 1981 and 1986 changes were excluded). This study allowed a long period of time to be transitory; therefore, it is possible that some of the permanent price and income effects are reflected in the transitory estimates, as the author acknowledges. Other studies tend to allow much shorter-term transitory effects, which might go too far in the other direction.

Randolph's model allowed the price elasticity to vary by the share of giving, and he reports two measures: one unweighted with a price elasticity of -0.08, which is not statistically significant, and one weighted more heavily toward large contributors, which Randolph appears to prefer. The results in the Randolph study are consistent in general magnitude with the expectations based on the aggregate data discussed in the text: a small permanent price elasticity, a large transitory price elasticity, an income elasticity of around 1.0, and a smaller transitory income elasticity.

Bakija (2000), who among other things replicates the Randolph results with public-use data, argues that the second weight, which yields an insignificant price elasticity, is more appropriate (although he criticizes other aspects of the model). In his own replications with public-use files he finds effects similar to Randolph's unweighted results but suggests the appropriate measure of the aggregate elasticity evaluated over the full sample. These results are similar to Randolph's unweighted results: he also finds similar results for the elasticity when confined to incomes over $100,000.[108] Based on the specification he prefers and his replication, this approach basically finds no evidence of a permanent price response.

The Randolph study differs from the other studies in some important ways. By using average income over the panel as permanent income and estimating transitory effects based on deviations, he allows a broad scope for shifting over time, whereas other studies use shorter periods. This choice may be influenced by experience with capital gains realizations studies, where using short periods to control for transitory effects was not successful in producing reasonable results.[109]

Barrett et al. (1997) allow limited intertemporal shifting variation and also a lagged value of giving to deal with adjustment. They focus particularly on how quickly adjustment takes place, which they find to be very rapid. Their panel also does not include tax rate changes after 1986, which are an important exogenous source of variation. They find a lower price elasticity than a standard cross section, but also a small income elasticity. Like the other studies, this study includes individual fixed effects that are designed to control for heterogeneity among taxpayers (e.g., a taste for philanthropy, religiosity). (Randolph could not employ individual fixed effects because he used an average over the entire panel for permanent income, which was then indistinguishable from a fixed effect.) One drawback, however, of fixed effects, as Barrett et al. acknowledge, is that the fixed effect could also be picking up permanent income effects, and so suppressing the value of that elasticity. The Barrett et al. study also allowed a more limited scope for intertemporal substitution.

Auten et al. (2002) also use fixed effects and more limited intertemporal substitutions. As pointed out by Bakija and McClelland (2002), they also did not address known changes in the tax law (that is, 1986 was a higher-tax year than 1987, even though the high realizations in 1989 were associated with a preannounced drop in tax rates), which would tend to bias their price elasticities upward. This was a particular problem for panels that included 1986, and Bakija and McClelland reestimated their model using a public data file and found a much lower elasticity.

Bakija (2000) mainly contrasted his model with Randolph's by using legislated transitory changes in tax rates as the way to determine the transitory component of taxes. Bakija and McClelland

[108] He finds a positive but insignificant permanent price elasticity of 0.322, a transitory price elasticity of -1.202, a permanent income elasticity of 1.188, and a transitory income elasticity of 0.195. For incomes over $100,000 he finds an insignificant permanent price elasticity of -0.155, a transitory price elasticity of -0.744, a permanent income elasticity of 0.611, and a transitory income elasticity of 0.145.

[109] For a discussion of some of these issues, see two reprinted CRS reports by Jane G. Gravelle: "Can A Capital Gains Tax Cut Pay for Itself," *Tax Notes*, vol. 48 (July 9, 1990), pp. 209-219; and "Limits to Capital Gains Feedback Effects," *Tax Notes*, vol. 51 (April 22, 1991), pp. 363-371. As these two reports taken together show, studies of capital gains realizations with short intertemporal effects continued to produce the high elasticities that appeared much larger than reasonable, given that realizations cannot exceed accruals.

base their analysis off Auten et al., and while they introduce a number of innovations, their main changes are to model expected tax changes and introduce adjustment lags.

Bakija and Heim (2008) use a panel approach with tax data, with fixed effects, with more limited substitution frameworks than Randolph, and with attention to expectations of tax changes. They characterize intertemporal substitution mainly through those preannounced tax changes and allow shorter substitution periods. The main source of determining the price elasticity is the difference in response across taxpayers who had different changes in their tax rates. They also examine separate estimates for higher-income individuals. They obtain different estimates depending on how they deal with fixed time effects (variables meant to control for changes that affect all observations in a given year), which cannot be introduced into the higher income levels because they are so closely correlated across the sample with legislated changes in tax rates. The first one they reported, which did not use fixed time effects but incorporated a time trend, is included in the assessment.[110]

Bakija and Heim (2011) is similar to their 2008 study but reports effects for using the state tax rate alone, the federal tax rate alone, and the combined federal and state rate. The authors believe the state tax rate provides a more reliable measure of response because state tax rates allow a comparison of people with the same income but living in different states, and thus is less likely to reflect the effects of omitted variables. The federal rate or combined rate (where the federal rate would dominate) captures the effects of changes in income and the effects of exogenous federal tax changes. The study also reports effects when coefficients of nonprice variables (i.e., other than the tax variables) differ across income, finding higher permanent price elasticities (a permanent elasticity of -1.53). When the study allows price elasticities to vary across income, there is some indication that elasticities increase with higher incomes, but some estimates are statistically insignificant (including estimates for some high-income individuals). Statistically significant estimates of -1.19 are found for the $200,000-$500,000 class and of -1.71 for the over $1 million class; but estimates for the other classes were not statistically significant.

Ultimately no study is perfect, and thus it is difficult to choose a central elasticity from among these. Excluding the high elasticities in Auten et al. for the panel that covers 1986 and that are likely overstated, the elasticities range from essentially 0 to 1.2. It seems likely that the unweighted Randolph estimate may be biased downward, but some others may be biased upward because of fixed effects or short periods for intertemporal substitution. In addition, the response to the 1986 tax revision suggests a higher transitory price elasticity than permanent price elasticity, and intuition would suggest that charitable giving is a luxury that would tend to have an income elasticity above 1.0. Only the Randolph study finds effects consistent with these expectations, suggesting an elasticity of around 0.5.

Table A-2 reports the results of seven different studies that attempt to estimate both the price and wealth elasticities of charitable bequests. Although these studies find a diverse set of estimated elasticities, they reach two common general conclusions: (1) the price elasticity dominates the wealth elasticity and (2) charitable bequests, generally, respond elastically to changes in the tax price of bequests. The exception to this second conclusion is provided by Greene and McClelland (2001) and is likely explained by their focus on the portion of the tax price related to the exemption level.

[110] When they used time dummies for the higher-income sample, they got results much like cross-section results, suggesting they were identifying effects in a similar way.

Table A-2. Elasticities from Charitable Bequests

Study	Price Elasticity	Wealth Elasticity
Bakija, Gale, and Slemrod (2003)	-2.14	1.56
Joulfaian (2000)	-2.26	1.2
Boskin (1976)	-1.2	0.7
Clotfelter (1985)	-2.79	0.42
Greene and McClelland (2001)	-0.6	0.37
Barthold and Plotnick (1984)	No effect	0
Joulfaian (1991)	-3.0	0.23

Sources: Jon M. Bakija, William G. Gale, and Joel B. Slemrod, "Charitable Bequests and Taxes on Inheritances and Estates: Aggregate Evidence from across States and Time," *Papers and Proceedings of the Annual Meeting of the American Economic Association*, vol. 93, no. 2 (May 2003); David Joulfaian, "Estate Taxes and Charitable Bequests by the Wealthy," vol. 53, no. 2 (September 2000); Michael J. Boskin, "Estate Taxation and Charitable Bequests," *Journal of Public Economics*, vol. 5, no. 1-2 (January/February 1976); Charles T. Clotfelter, *Federal Tax Policy and Charitable Giving* (Chicago: University of Chicago Press, 1985); Pamela Greene and Robert McClelland, "Taxes and Charitable Giving," *National Tax Journal*, vol. 54, no. 3 (September 2001); Thomas Barthold and Robert Plotnick, "Estate Taxation and Other Determinants of Charitable Bequests," *National Tax Journal*, vol. 37, no. 2 (June 1984); and David Joulfaian, "Charitable Bequests and Estate Taxes," *National Tax Journal*, vol. 44, no. 2 (June 1991).

Appendix B. History of the Tax Treatment of Charitable Contributions and Organizations

Charitable Contributions

The charitable deduction was added by passage of the War Revenue Act of 1917 (P.L. 65-50). Senator Henry Hollis, the sponsor, argued that high wartime tax rates would absorb the surplus funds of wealthy taxpayers, which were generally contributed to charitable organizations.[111] The deduction was originally limited to individuals. A deduction for trusts and estates was added in the Revenue Act of 1918 (P.L. 65-254), and a deduction for corporations was added in the Revenue Act of 1936 (P.L. 74-740).

The deduction allowed in 1917 was limited to 15% of taxable income. Most of the revisions in the early tax law related to this limit. In 1944, it was changed to 15% of adjusted gross income. The corporate deduction was limited to 5% of income when introduced. In 1952, the individual limit was increased to 20%. The limit was increased to 30% in 1954, but the additional 10% had to go to specified charities (churches or religious orders, educational institutions, and hospitals). Thus, the 20% limit was retained for foundations and other charities. A carryover of unused deductions for two years was first allowed for corporations in 1954. In 1964, the carryover was increased to five years and extended to individuals.

The percentage limit on individual contributions to charities was increased to 50% by the Tax Reform Act of 1969 (P.L. 91-172) but was restricted to 30% for gifts of appreciated property. The percentage limit on corporate charitable contributions was increased to 10% of taxable income in the Economic Recovery Tax Act of 1981 (P.L. 97-34). The limit on contributions to private foundations was increased to 30% for cash contributions by the Deficit Reduction Act of 1984 (P.L. 98-369).

The Economic Recovery Tax Act of 1981 also allowed a temporary deduction for nonitemizers, but this provision was not extended by the Tax Reform Act of 1986 (P.L. 99-514).

Concerns about abuse led to provisions requiring greater substantiation of gifts. The Deficit Reduction Act of 1984 (P.L. 98-369) required written substantiation of contributions in excess of $2,000, and the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) lowered that amount to $250. The American Jobs Creation Act of 2004 (P.L. 108-357) increased reporting requirements for donors of noncash gifts.

The Pension Protection Act of 2006 (P.L. 109-280) provided for some temporary additional benefits (part of the "extenders") that were effective through 2007 at that time. The 2006 act also added restrictions on DAFs and certain supporting organizations. The 2006 law also tightened rules governing charitable giving in certain areas, including gifts of taxidermy, contributions of clothing and household items, contributions of fractional interests in tangible personal property, and recordkeeping and substantiation requirements for certain charitable contributions.

[111] A history of the charitable deduction can be found in Vada Waters Lindsey, "The Charitable Contribution Deduction: A Historical Review and a Look to the Future," *Nebraska Law Review*, vol. 81 (2003), pp. 1056-1096; and Nicolas J. Duquette, "Founders' Fortunes and Philanthropy: A History of the U.S. Charitable-Contribution Deduction," *Business History Review*, 2019, pp. 1-32.

Temporary charitable giving incentives were further extended through 2009 by the Economic Emergency Economic Stabilization Act of 2008 (P.L. 110-343), enacted in October 2008, and through 2011 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312). Some provisions were extended through 2013 by the American Taxpayer Relief Act (P.L. 112-240). These provisions were made permanent in the Consolidated Appropriations Act (P.L. 114-113).

The 2017 tax change, P.L. 115-97, popularly known as the Tax Cuts and Jobs Act, increased the percentage-of-income limit for contributions of cash to public charities to 60% and eliminated the phase-out of itemized deductions on a temporary basis (through 2025).

Charitable Organizations

Corporations or associations organized for religious, charitable, or educational purposes were defined as exempt from tax in the original 1913 law establishing the income tax.[112]

These organizations could earn exempt income from activities related to their mission and also from unrelated business activities whose profits were used for the exempt purpose. The Revenue Act of 1950 (P.L. 81-814) established the unrelated business income tax (UBIT) on the income from commercial activities (other than on churches). The UBIT also applied to rents from real estate sale-leaseback arrangements that relied on debt finance.

The Tax Reform Act of 1969 (P.L. 91-172) defined private foundations, established a series of restrictions on them, imposed a 4% excise tax on their investment income (to share the cost of enforcement), and established a minimum payout requirement of 6% of assets to avoid a penalty. The 1969 legislation also expanded the UBIT to all tax-exempt organizations (including churches), and applied it to all debt-financed income. The Tax Reform Act of 1976 (P.L. 94-455) changed the minimum distribution requirement to 5% of assets. The Revenue Act of 1978 (P.L. 95-600) reduced the net investment income excise tax to 2%. The Deficit Reduction Act of 1984 (P.L. 98-369) exempted certain operating foundations from the excise tax and reduced the tax to 1% for foundations making improvements in their distributions. The 2017 tax reduction (P.L. 115-97) imposed an excise tax of 1.4% on investment income of certain private colleges and universities (excluding smaller ones), added certain fringe benefits (such as parking) to the UBIT base, and required UBIT to be calculated separately for each business activity.

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[112] A detailed history of the treatment of the tax-exempt sector through 2007 can be found in Paul Arnsberger, Melissa Ludlum, Margaret Riley, and Mark Stanton, "A History of the Tax Exempt Sector: An SOI Perspective," *Statistics of Income Bulletin* (Winter 2008), at https://www.irs.gov/pub/irs-soi/tehistory.pdf.

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