crowell moring

CLIENT ALERT

Camp Tax Reform Proposals Impact Colleges and Universities

Mar.04.2014

There are plenty of items of interest for colleges and universities in the tax reform proposals just released by Chairman Camp of the House Ways and Means Committee of the U.S. Congress. While many commentators have speculated that tax reform is stalled in the current political environment, there is a good chance that some of these proposals will be enacted eventually. It is not too soon to start taking them into account.

The proposals that directly affect colleges and universities include the following:

- Income from research (for example, under a contract by a university to perform research services for an outside party) would be taxable as unrelated business taxable income (UBTI) unless the research results are made available to the public. Currently, income from research by a college or university is exempt.
- Private colleges and universities would be subject to a 1 percent excise tax on net investment income. The tax would apply if the institution has assets (other than those used in carrying out its educational purposes) of at least $100,000 per full-time student.
- UBTI would have to be computed separately for each trade or business. Currently, a college or university can offset UBTI from one activity with losses from another, and a recent IRS study indicated that many do. This would no longer be allowed.
- Royalties for use of an institution's name and logo would be taxable. This would include income from, *e.g.*, credit card affinity programs. Currently, these royalties may escape taxation if the institution is simply a passive licensor.
- For the first time, an accuracy-related penalty would apply personally to the managers of an institution. The penalty, 5 percent of the tax resulting from an unsupportable position on the return, would be capped at $20,000 and apply in those situations in which the institution is subject to the 20 percent accuracy-related penalty.
- Currently, where a private institution pays an insider (*i.e.*, a "disqualified person") excessively, an excise tax equal to 25 percent of the excessive amount is imposed on the disqualified person and a corresponding 10 percent excise tax (up to $20,000) is imposed on managers who participated in the decision. The excessive amount could be above-market compensation but could also, for example, involve property transactions between the disqualified person and the institution at a non-arm's-length price. There is a presumption that there is no excess benefit if the institution performs certain due diligence, including reliance on outside professionals, as to the appropriate amount to be paid. This presumption currently is rebuttable by the IRS. The new proposal would expand the scope of "disqualified persons" to include athletic coaches and investment advisors, often among the highest-paid employees of colleges and universities. It also would impose a new 10 percent excise tax on the institution itself when there is an excess benefit as described above, and the disqualified person would not enjoy any presumption created by the institution's due diligence. Finally, reliance by a manager on professional advice would not, by itself, excuse the excise tax.
- Exemption for qualified sponsorship payments would be limited. Currently, such payments (from business sponsors of events, who receive no benefit other than acknowledgement of the name, logo, or product lines of the business) are

exempt. Under the proposal, they would be taxable if either (a) product lines are mentioned or (b) the aggregate payments for one event exceed $25,000, and the sponsor's name or logo appears more prominently than the names of a significant portion of the other donors to the event. Thus, for example, an exclusive (*i.e.,* no other donors) sponsorship payment of over $25,000 would be taxable.

There are numerous other provisions in the proposal (*e.g.*, changes to treatment of charitable contribution deductions, overall tax rates, and education benefits) that would have an indirect effect on colleges and universities as well. Institutions would do well to start thinking about influencing the course of the legislation, as well as taking the possible changes into account when structuring their transactions.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Laurel Pyke Malson
Partner – Washington, D.C.
Phone: +1 202.624.2576
Email: lmalson@crowell.com