



OFFICE OF THE PRESIDENT

Office of Federal Governmental Relations
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November 14, 2017

The Honorable Orrin Hatch
Chairman
U.S. Senate Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
U.S. Senate Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of the University of California, I write to share with you a preliminary analysis of the Senate Committee on Finance Chairman's Mark of the Tax Cuts and Jobs Act. The university has a significant number of concerns with the legislation and its adverse impact on the university, our students, faculty and staff.

With more than 264,000 students, 165,000 faculty and staff, and 1.8 million living alumni, the University of California is the largest public research university system in the world. The UC system includes 10 campuses and five medical centers, and is the third largest employer in the state of California.

The university recognizes that these are challenging economic times for our country and that policymakers will need to make important decisions regarding budgetary and tax priorities. As drafted, this legislation would make higher education less affordable and less accessible to Californians, and would undermine the university's ability to achieve its education, research, health care and public service missions.

While there are a broad range of issues that would adversely affect the university community, I would like to draw your attention to four areas that the UC is particularly concerned about, including the legislation's impact on charitable giving, unrelated business income taxation, tax-exempt bond financing, as well as a number of employer/ employee and other related tax provisions.

UC Letter to Chairman Hatch and Ranking Member Wyden regarding the Senate Committee on Finance
Chairman's Mark of the Tax Cuts and Jobs Act

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UC is pleased that the Senate Chairman's Mark does not include provisions to repeal or reduce higher education tax benefits, many of which benefit students from lower-income and middle-income families. UC supports retaining and enhancing higher education related tax benefits and opposes the repeal of higher education tax benefits that are included in the House legislation. In addition, UC is pleased that the Senate Chairman's Mark retains the taxpayer deduction for out-of-pocket medical expenses of the taxpayer, a spouse or a dependent. This provision is particularly important to many of our UC medical center patients who suffer from highly acute medical conditions that necessitate complex and expensive treatment.

As you and your colleagues continue working on tax reform legislation, UC urges you to consider our analysis and the impact it will have on our students, faculty and staff. If you have questions about our analysis or the legislation's further impact on the university, please contact Kamala Lyon (Kamala.Lyon@ucdc.edu or 202-974-6312) or me.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christopher Harrington".

Christopher Harrington
Interim Associate Vice President
UC Office of Federal Governmental Relations

CC:

Members of the Senate Committee on Finance
Senator Dianne Feinstein
Senator Kamala Harris

Tax Reform: Senate Committee on Finance Chairman's Mark of the Tax Cuts and Jobs Act, and the Impact to the University of California

As Congress works to pass tax reform legislation, the University of California (UC) looks forward to providing feedback and analysis regarding the impact of proposed changes on the university. Unfortunately, the Senate Committee on Finance Chairman's Mark of the Tax Cuts and Jobs Act includes numerous changes to the U.S. Tax Code that will have a negative impact on UC and its students and their families, as well as UC's employees, which will make it more difficult for UC to continue to operate efficiently and make it more expensive for students and their families to afford college.

With more than 264,000 students, 165,000 faculty and staff, and 1.8 million living alumni, the University of California is the largest public research university system in the world. The UC system includes 10 campuses and five medical centers, and is the third largest employer in the state of California.

UC opposes the Senate Chairman's Mark of the Tax Cuts and Jobs Act, in its current form. Please find below UC's preliminary analysis of specific provisions of the Senate Chairman's Mark of greatest concern to the university:

CHARITABLE GIVING:

- **UC urges Congress to retain strong charitable giving tax incentives, which preserve the value of the charitable deduction. UC supports a universal, above-the-line deduction for charitable giving, to allow tax payers to subtract charitable donations from their income, regardless of whether they file itemized returns.**

As the nation's largest public research university, UC depends on charitable giving and the strong charitable giving tax incentives that exist under current law to support the university's research, education, public service and health care missions. Adverse changes to the charitable contribution deduction under the U.S. Tax Code would significantly impact this important source of support—with the potential for drastically reducing charitable giving. At a time when UC is increasingly reliant on private support, any reduction in charitable giving could be devastating to the university and its core missions, especially when UC is working to encourage gifts from as broad a donor base as possible.

Charitable contributions serve a critical role in all aspects of UC's operations, including helping to ensure that UC students receive the institutional financial support they need to attend UC, and that UC remains accessible regardless of a student's financial resources. The 2017 fiscal year was a strong fundraising year for the University of California with the university raising slightly over \$2 billion. Consistent with prior years, this philanthropic support is positively impacting virtually every aspect of the university – ranging from student financial aid and research to departmental support and financing capital facilities, UC receives support from a broad base of donors – well over 300,000 individuals, corporations and foundations. While the base is broad, and many small

donations are made, a significant amount of support comes to UC in gifts of \$1 million or more. The experience at UC is generally consistent with national data reflecting the impact of economic conditions on charitable giving by taxpayers. As a result, UC would anticipate that any adverse change in the charitable income tax deduction would negatively impact charitable giving. While difficult to quantify, the timing and the extent of charitable giving is significantly influenced by tax and financial considerations.

Student support has always been a focal point for philanthropic support – at UC as well as colleges and universities across the country. UC has a deep and longstanding commitment to ensuring that financial aid is available for students and their families. This commitment is met through federal aid (Pell Grants), state aid (Cal Grants), UC’s commitment of its own resources, and increasingly, privately funded scholarships and fellowships. In recent years, nearly 28,000 students received privately funded scholarships and fellowships — totaling over \$150 million each year. These awards consist of almost equal parts current use gifts and payout from endowment funds. In 2016-17, just over \$191 million of gifts received by UC were designated for student aid. This total number represents the sum total of a wide spectrum of gifts designated by donors for scholarships, fellowships, awards and prizes.

In addition to providing financial support to UC students, charitable giving supports UC’s ability to drive innovation through cutting edge research, including advancing scientific breakthroughs, finding cures to diseases, and supporting cancer research and precision medicine activities. Charitable giving also supports UC’s health sciences and medicine programs; our ability to provide medical care to patients; the training of medical students and the next generation of health science professionals; and plays a critical role in supporting UC’s faculty, academic departments, museums and libraries. Charitable giving also provides funding to assist with making critical infrastructure improvements, such as to assist with the construction and renovation of student housing and facilities to support scientific discovery.

Impact of the Senate Chairman’s Mark on Charitable Giving:

UC is concerned that the Senate Chairman’s Mark will have a significant negative impact on charitable giving to the university. Specifically, the bill increases the standard deduction for tax filers, which is predicted to reduce charitable giving, since fewer tax filers would choose to file itemized returns, which is necessary to claim the charitable deduction. A [report](#) issued in May of 2017 by the Independent Sector and Indiana University’s Lilly Family School of Philanthropy, *Tax Policy and Charitable Giving Results*, predicted that charitable giving could drop significantly as a result of increasing the standard deduction, due to the resulting drop that would occur in the number of itemizers. To help minimize the negative impact on charitable giving because of fewer tax filers choosing to file itemized returns, UC supports enactment of a universal, above the line charitable deduction, which would allow tax payers to subtract their charitable contributions from their taxes, before choosing whether to file itemized or non-itemized returns.

UC recommends that the Senate Chairman’s Mark be amended to include a universal, above the line charitable deduction.

UC is concerned about the negative impact on charitable giving that could result due to the estate tax changes in Subtitle E, Increase in Estate and Gift Tax Exemption, of the Chairman’s Mark (p. 38), since fewer individuals may choose to make charitable bequests as part of their estate planning because of the language. UC joins with the larger charitable community in encouraging further examination of the potential impact on charitable giving before proposing such dramatic changes to the current tax law.

ENDOWMENTS:

- **UC opposes the inclusion of provisions that negatively impact the tax treatment of endowments.**

Endowments assist higher education institutions in achieving their missions by providing a stable source of revenue for student financial aid, teaching, research, other operating expenses, and capital improvements. At colleges and universities across the nation, endowment funds provide critical support for today's faculty and students, and endowments established today are intended to provide support for future generations. While the language in the Senate Chairman's Mark (p. 160) that establishes an excise tax based on investment income for certain private colleges and universities would not apply to UC as a public institution, the university remains concerned about the inclusion of any language in tax reform legislation that negatively impacts the tax treatment of endowments. The creation of new excise tax liabilities on university endowments sets a bad precedent given the critical role endowments play in helping colleges and universities provide institutional financial aid to their students as well as support for faculty.

UNRELATED BUSINESS INCOME TAXATION (UBIT):

- **UC objects to the inclusion in the Senate Chairman's Mark of UBIT provisions, which would substantially increase tax burdens for tax-exempt organizations, like UC.**
- **UC opposes the inclusion in the Senate Chairman's Mark (p. 163) Name and logo royalties treated as unrelated business taxable income.** Specifically, the proposal would amend Section 513 of the Internal Revenue Code to provide that any sale or licensing by a tax-exempt organization of any name or logo of the organization (including any trademark or copyright related to a name or logo) would be treated as an unrelated trade or business that is regularly carried on by the organization. The proposal would also amend Section 512 to provide that any income from the licensing of name or logo would be treated as unrelated business taxable income, notwithstanding the provisions of Section 512(b). Subjecting UC to taxation on income derived from the licensing of its name and logo will significantly increase UC's taxable income, while reducing the assets available to UC campuses to support core student and campus activities. At one campus alone, the estimated royalties received annually is in the \$2-3 million range, but it is unknown how much may be offset. Furthermore, because current law does not require UC to treat name and logo royalties as unrelated business taxable income (UBTI), the exact monetary impact of this provision is unknown, and may be difficult to calculate. As noted above, name and logo royalties received by UC campuses generate resources that provide critical support to students and campus activities and should continue to be considered core mission related activities exempt from taxation as an unrelated trade or business. UC urges Congress to reject the inclusion of this provision in the Senate Chairman's Mark, and to retain the exemption from UBIT for name and logo royalties.
- **UC opposes the inclusion in the Senate Chairman's Mark (p. 165) Unrelated business income separately computed for each trade or business,** which would require net operating loss (NOL) calculations for all unrelated trades or businesses to be calculated separately for each trade or business activity, rather than the current law's practice of allowing tax-exempt entities to determine the net income and losses from all unrelated trade or business activities. The Senate proposal will only allow NOLs to be used to offset income from those activities to which they are specifically related, rather than the current practice, which permits an organization to determine net income by taking into consideration the full picture of income and

losses for all unrelated trade or business activities. The loss of UC's ability to use consolidated losses against all activities generating unrelated business taxable income will significantly increase UC's tax liabilities and make computing tax liabilities more difficult and administratively burdensome. Although the proposal allows an unlimited carryover of the NOL deduction, it limits the usage of the NOL to 90 percent of taxable income. It is unclear in the Senate proposal how the use of foreign tax credits and general business credits will be available under the "basketing" provision and whether they are limited to an activity by activity basis.

The Senate Chairman's Mark will put tax-exempt organizations at a disadvantage as compared to corporations and other for-profit entities which will still be able to calculate losses and gains on an aggregate basis, as a standard practice, and will not be required to calculate losses and earnings on a per activity basis. This proposal penalizes tax-exempt organizations in comparison to for-profit entities and treats tax-exempt organizations differently with no underlying rationale. This proposal will harm tax-exempt organizations and make it more difficult to continue to operate effectively in furtherance of their tax-exempt purposes. UC urges Congress to reject the inclusion of this provision in the Senate Chairman's Mark, and to preserve the current law's practice of allowing tax-exempt organizations to calculate unrelated business taxable income (UBTI) based on allowing the net operating losses from all activities to be used to offset the net income from all activities.

- **While not included in the Senate Chairman's Mark, UC objects to the inclusion in of UBIT provisions, like those in H.R. 1, which would substantially increase tax burdens for tax-exempt organizations, like UC.**
 - **UC opposes the UBIT provisions included in H.R. 1, Section 5001. Clarification of unrelated business income tax treatment of entities treated as exempt from taxation under section 501(a)**, which would repeal the UBIT exemption for income derived from the public pension plans of government-sponsored entities, such as the University of California's Retirement Plan (UCRP), and treat certain investment income of UCRP as subject to UBIT. UC urges Congress to reject the inclusion of Section 5001 as tax reform moves forward.
 - **UC opposes the inclusion in H.R. 1 of Section 5002. Exclusion of research income limited to publicly available research**, which would eliminate the current exemption from UBIT for income derived from research performed at UC campuses, to allow for an exclusion from UBIT of research income to be available only if the results of which are freely made available to the public.

UC urges Congress to reject changes to the existing UBIT rules, as tax reform legislation is considered.

TAX EXEMPT BOND FINANCING:

- **UC urges Congress to preserve tax-exempt bond financing options, which are critical to financing capital projects, and to reject the provision in the Senate Chairman's Mark (p. 112) Repeal of advance refunding bonds, which will severely impact UC's ability to continue to fund capital and infrastructure projects.**

The University of California increasingly relies on financing to fund capital projects in the environment of less state funding. The university currently has approximately \$19 billion in bonds issued by or for the benefit of the university outstanding, approximately \$13 billion of which is tax-exempt debt. UC benefits from tax-exempt financing rates, which are lower than taxable financing

rates. If UC's ability to issue tax-exempt financing is restricted, UC would be faced with the options of issuing taxable financing at a higher rate, placing an increased operating burden on campuses and medical centers; finding other sources of funding, for which options are very limited; or foregoing certain projects. Tax-exempt financing has helped finance a variety of academic, student housing, hospital, and other projects across all campuses and medical centers. These projects are investments in the university's facilities and infrastructure, which are critical for the university to meet its mission of teaching, research, health care and public service. Some recent examples of tax-exempt bond financed projects include: the Clinical Sciences Building seismic retrofit at UC San Francisco, the Coastal Biology Building at UC Santa Cruz, the Tercero Student Housing project at UC Davis, and the Jacobs Medical Center at UC San Diego.

- **UC opposes the inclusion in the Senate Chairman's Mark (p. 112) Repeal of advance refunding bonds:** The repeal of the ability to advance refund bonds on a tax-exempt basis would have a significant negative impact on UC's ability to finance capital projects. The university issues advance refunding bonds when interest rates are low for interest rate savings (similar to refinancing a home mortgage), and this provision would negatively impact the university's ability to achieve interest cost savings in a low interest rate environment.
- **While not included in the Senate Chairman's Mark, UC objects to the inclusion in H.R. 1 of Section 3601, Termination of private activity bonds, which will severely impact UC's ability to continue to fund capital and infrastructure projects on UC campuses.**

The termination of tax-exempt private activity bonds would have a significant negative impact on UC's ability to finance capital projects. The university has benefited from the issuance of tax-exempt private activity bonds to finance numerous capital projects and intends to utilize tax-exempt private activity bonds in the future for additional capital projects, such as student housing. This provision would adversely impact the university's cost and ultimately, its ability to finance these projects.

UC urges Congress not to include changes to tax-exempt bond financing mechanisms as part of tax reform legislation.

EMPLOYER/EMPLOYEE AND OTHER TAX ISSUES OF CONCERN TO THE UNIVERSITY

Below are additional provisions in the Senate Committee on Finance's Chairman's Mark that would have a negative impact, including, but not limited to:

- **Repeal of deduction for personal exemptions:** UC is concerned that the elimination of personal exemptions under the Senate Chairman's Mark (p. 11) could increase tax liabilities for the families of UC students, since parents would no longer be able to take a deduction for any dependents, such as their children who are college students and for students who are independent tax filers, such as many graduate students, would no longer be able to take any personal exemptions;
- **Excise tax on excess tax-exempt organization executive compensation:** UC opposes the Senate Chairman's Mark's (p. 128) 20 percent excise tax on the compensation in excess of \$1 million paid by tax-exempt organizations to any of its five highest paid employees per year. This section will impose new excise tax liabilities on UC, which may impact UC's ability to recruit top level medical professionals;
- **Charitable Contributions:** UC is concerned that the Senate Chairman's Mark (p. 175) repeals the special rule for College Athletic Seating Rights that allows donors to take a charitable deduction for 80 percent of the amount paid for the right to purchase seating for athletic events;

- **Repeal of deduction for moving expenses:** UC is concerned that the Senate Chairman's Mark (p. 35) repeals the deduction for qualified moving expenses, such as payments received from an employer incurred in conjunction with starting a new job. Repealing this provision may negatively impact UC's ability to attract faculty and staff to work at UC;
- **Medical expenses deduction:** UC is pleased that the Senate Chairman's Mark, unlike H.R. 1, retains the taxpayer deduction for out-of-pocket medical expenses of the taxpayer, a spouse or a dependent. The inclusion of this provision in H.R. 1 may harm UC employees and our patients incurring medical expenses. Many UC medical center patients suffer from highly acute medical conditions that necessitate complex and expensive treatment.

RETIREMENT SAVINGS:

- **UC opposes the inclusion in the Senate Chairman's Mark (p. 177-181) of Subtitle M. Retirement Savings 1. Conformity of contribution limits for employer-sponsored retirement plans, which would substantially decrease the amount of retirement savings participants of 403(b) and 457 retirement plans, such as UC employees, may set-aside.**

UC offers employees the option of participating in both 403(b) and 457(b) retirement plans. UC is concerned that this provision in the Chairman's Mark would apply a single total contribution limit for UC employees enrolled in both 457(b) and 403(b) plans, rather than continuing to allow maximum contribution and deferral amounts for each plan separately, which will reduce the amount of retirement savings UC employees may set-aside. This proposal would negatively impact approximately 10 percent of UC employees who use both plans to make elective deferrals. The \$54,000 aggregate contribution limit includes both employer and employee contributions. The employee deferral limit would cap employee contributions to elective deferrals (which is currently \$18,000). UC is concerned that this proposal would limit the amount of current retirement savings available to 403(b) and 457(b) plan participants, and urges Congress not to include changes to these savings plans.

HIGHER EDUCATION TAX BENEFITS:

- **UC is pleased that the Senate Chairman's Mark does not include provisions to repeal or reduce higher education tax benefits, many of which benefit students from lower-income and middle-income families. UC supports retaining and enhancing higher education related tax benefits and opposes the repeal of higher education tax benefits included in H.R. 1.**

UC supports retaining and enhancing education tax benefits, which help many UC students and their families afford to pay for college and repay student loans. The repeal of a number of higher education tax benefits in H.R. 1 will hurt UC students and their families who are just out of reach of need-based financial aid programs, but still struggle with the cost of attending college, most of which are living expenses such as housing, food, books and supplies.

UC opposes the repeal of education tax benefits in H.R. 1, including:

- The Lifetime Learning Credit (LLC);
- The Hope Scholarship Credit;
- Coverdell Education Savings Accounts;
- Interest Payments on Qualified Education Loans (Student Loan Interest Deduction);
- The Deduction for Qualified Tuition and Related Fees;
- Interest on United States Savings Bonds;

- Section 127 Employer-Provided Education Assistance;
- Section 117 Qualified Scholarships, including Section 117(d) Qualified Tuition Reductions.

UC urges Congress not to repeal critical education tax benefits, as part of tax reform legislation.