Republican tax law hits churches

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Some nonprofits could start paying taxes for the first time.

House Ways and Means Chairman Kevin Brady is defending a controversial provision of the GOP tax law that requires churches and other historically tax-exempt organizations to begin paying a 21 percent tax on some types of fringe benefits they provide their employees. | John Shinkle/POLITICO

Republicans have quietly imposed a new tax on churches, synagogues and other nonprofits, a little-noticed and surprising change that could cost some groups tens of thousands of dollars.

Their recent tax-code rewrite requires churches, hospitals, colleges, orchestras and other historically tax-exempt organizations to begin paying a 21 percent tax on some types of fringe benefits they provide their employees.

That could force thousands of groups that have long had little contact with the IRS to suddenly begin filing returns and paying taxes for the first time.

Many organizations are stunned to learn of the tax — part of a broader Republican effort to strip the code of tax breaks for employee benefits like parking and meals — and say it will be a significant financial and administrative burden.

It also means political peril for lawmakers, many of whom were surely unaware of the provision when they approved the tax plan. Churches' tax-exempt status, in particular, has long been considered sacrosanct and Republicans are relying on the faithful to back them in the November elections.

Though many organizations are still unaware of the tax, more than 600 churches and other groups have already signed a petition demanding it be repealed.

“There’s going to be huge headaches,” said Galen Carey, vice president of government relations at the National Association of Evangelicals, an umbrella group of evangelical Christian organizations. “The cost of compliance, especially for churches that have small staffs or maybe volunteer accountants and bookkeepers — we don’t need this kind of hassle.”

The Jewish Federations of North America is looking at a new $75,000 tax bill this year because of the change.

“A lot of people are just finding out about it and the more people find out about it, the more pressure there will be on Treasury and Congress to either delay implementation or consider changing this,” said Steven Woolf, senior tax policy counsel for the group.

At least one Republican lawmaker is now proposing to rescind the tax, though House Ways and Means Chairman Kevin Brady — one of the architects of the Tax Cuts and Jobs Act — is defending the provision.

It will simplify the code when it comes to how workers are compensated, Brady said through a spokesman.

The debate comes as Republicans celebrate the six-month milestone of the law’s enactment. They’ve emphasized the benefits of its big cuts in taxes on businesses and individuals.

But to help defray the budgetary cost of those changes, Republicans simultaneously pared tax breaks for workers’ fringe benefits, which is projected to raise around $40 billion over the next decade.

They were mainly trimming deductions companies have long taken for entertaining clients and providing meals for employees.

But Republicans also wanted to treat nonprofits equally, which proved challenging.

Because those organizations don’t pay income taxes, lawmakers couldn’t take away fringe-benefit deductions. So instead they created a 21 percent tax on the value of some of nonprofit employees’ benefits.

The main benefits affected are transportation-related, like free parking in a lot or a garage and subway and bus passes. It also targets meals provided to workers and, in some circumstances, may affect gym memberships.

“The Tax Cuts and Jobs Act included provisions that provided grater parity in the tax treatment of different types of employee compensation,” said Rob Damschen, a Brady spokesman. “These provisions apply to both employers that are taxable entities and those that are tax-exempt entities.”

“Providing this greater parity helps to reduce the extent to which decisions about the elements included in the employee compensation package are driven by tax considerations,” he said in an email.

The proposal got virtually no attention when the legislation was making its way through Congress late last year, and many groups are outraged to now learn of the requirement.

“What we’re talking about is an income tax on the church for providing parking to its employees — that’s what we’re talking about,” said Mike Batts, chairman of the board of the Evangelical Council for Financial Accountability, which is circulating the petition denouncing the tax. “It's absurd."

He scoffs at the idea of treating businesses and nonprofits equally.

“The whole idea of tax exemption for nonprofit organizations that are doing charitable, religious and educational work is for them not to be on the same playing field as for-profit businesses when it comes to taxes, in order to incentivize the good work they do to make our society better,” said Batts, who is also managing partner of an accounting firm that specializes in religious nonprofits.

He and others complain that, thanks to nonprofits’ tax-exempt status, many don’t have experts on staff who can help them understand the provisions. They also note that while companies also lost fringe-benefit breaks, they simultaneously got big cuts in their tax rates and new incentives for investments that more than made up for the lost deductions.

Many nonprofits say they are confused over how exactly the tax is supposed to work.

Churches and other groups want to know how they are supposed to go about calculating the value of things like parking spaces for employees. Some wonder if the garages provided as part of clergy residences are now taxable.

Other nonprofits have their own questions.

Universities want to know if the bus services they provide for faculty and students are taxable and how they figure out how much they owe. Orchestras want to know how to treat musicians who may perform in different locations.

“At what point is something a travel reimbursement? And at what point is it a commuter benefit?” said Heather Noonan, vice president for advocacy at the League of American Orchestras.

Treasury is now working on regulations spelling out the details of how the tax will work, though the groups are supposed to have already been paying the tax. It took effect Jan. 1 and nonprofits are supposed to pay it quarterly.

A host of groups, including the Boys & Girls Clubs of America, Goodwill Industries, the YMCA and the National Council of Nonprofits are demanding the tax at least be delayed, saying it is unfair to ask them to be paying a levy they don’t understand.

Earlier this month, Rep. Michael Conaway (R-Texas) introduced legislation to kill the tax.