Supporting Retirement Security for America's Teachers

National Council on Teacher Retirement

2017-2018
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December 11, 2017

Dear Conferees on the Tax Cuts and Jobs Act:

On behalf of the National Council on Teacher Retirement (NCTR), and the millions of active and retired public employees in your states who, combined, are served by our member retirement systems, I am writing to you concerning the impact of Section 5001 of H.R. 1, which would impose the Unrelated Business Income Tax (UBIT) on your states' pension plans and their investments. Please do not include this provision in any final conference agreement.

UBIT will represent a new tax of approximately 39% on certain public pension plan investment earnings. It is NOT a clarification or updating of existing law. Instead, its application will reverse a 1977 determination by the Internal Revenue Service that UBIT will not be applied to public pensions – a precedent on which our retirement systems have relied in good faith for four decades in structuring our investment portfolios.

NCTR members are still assessing the overall impact of UBIT on their systems. However, it is clear that it could affect asset classes such as private equity and private real estate, as well as absolute return investments. These have historically been very beneficial to our members, providing both high returns as well as significant diversification opportunities, which can help reduce portfolio volatility. The imposition of this unprecedented new tax will significantly erode their ability to create efficient investment portfolios that earn solid returns with a minimum of risk.

Therefore, the ultimate consequences of this new tax on public pension earnings will be to undercut the security of retirement benefits for teachers, public safety employees, school bus drivers, and other government workers in your states, whose efforts are so essential to the security and well-being of our nation. Also, consider this: public pension plans' investment earnings constitute, on average, about two-thirds of every dollar in benefits paid to retirees. Consequently, this new tax will truly be a tax on the retirement benefits of kindergarten teachers, firefighters, school cafeteria works, first responders, and the millions of other public employees in your states whose retirement security NCTR's members are entrusted with safeguarding.

And make no mistake: for every dollar in new federal taxes that UBIT would impose on NCTR member systems, a new dollar will have to be raised from governmental plan sponsors, participants, and, ultimately, taxpayers. This undercuts public pension plans' voluntary reform efforts over the last decade to ensure financial stability and thereby avoid any perceived need for bail-outs.

The new UBIT tax on public pensions is not in the Senate version of tax reform. I therefore respectfully request that the House recede to the Senate on this matter. I have also attached copies of letters from several NCTR members that have already been sent to several of you, urging you not to tax public employee pensions. Please listen to their very serious concerns with the consequences of such action.

Sincerely,

Meredith Williams
Executive Director