

Via Hand Delivery

November 22, 2017

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Re: Unrelated Business Income Tax and Public Pension Plans

Dear Mr. Chairman and Ranking Member Wyden:

On behalf of the Council of Institutional Investors (CII or Council), we are writing to express our opposition to Section 5001 of H.R. 1, the Tax Cuts and Jobs Act (H.R. 1), that we understand as a result of a technical flaw would impose a new tax on public pension plans.¹ We respectfully request that you please continue to exclude this provision from the related legislation before your Committee, as well as any final compromise with the United States House of Representatives.

CII is a nonpartisan, nonprofit association of public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management exceeding \$3 trillion. CII's member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. The Council's associate members include a range of asset managers with more than \$20 trillion in assets under management.²

It is our understanding that as the result of a technical flaw Section 5001 of H.R. 1 would subject certain investments by public pension plans to the unrelated business income tax (UBIT). In addition to the fund revenue loss from the UBIT itself, Section 5001 of H.R. 1 would impose significant, complex compliance costs that could impact portfolio construction and diversification at public pension plans.

For example, it could force the consideration of alternative and more costly investment structures in order to avoid being negatively impacted by the UBIT and may diminish earnings which are critical to pension funding. Furthermore, it is our understanding that Section 5001 of H.R. 1 would currently be scheduled to go into effect

¹ H.R. 1, 115th Cong. § 5001 (engrossed in House Nov. 16, 2017), <https://www.congress.gov/115/bills/hr1/BILLS-115hr1eh.pdf>.

² For more information about the Council of Institutional Investors (Council) and our members, please visit the Council's website at http://www.cii.org/about_us.

for tax years beginning January 1, 2018, which would impact many existing investments of public pension plans that could not be restructured prior to that effective date.

Investment earnings pay for most of the pension benefits distributed to workers and retirees by many public pension plans. Those benefits are generally taxed when distributed to participants across virtually every state, city, and town in America. Subjecting public pension plans to the UBIT would result in a drag on these critically important investment returns, sets a potentially dangerous precedent for taxation of state entities, and would likely ultimately increase costs to taxpayers.

Thank you for considering our views. We would welcome the opportunity to discuss our perspective on this important issue with you or your staff in more detail. I can be reached at jeff@cii.org or by telephone at 202.822.0800.

Sincerely,



Jeffrey P. Mahoney
General Counsel

cc: The Honorable Chuck Grassley, Committee on Finance, United States Senate
The Honorable Mike Crapo, Committee on Finance, United States Senate
The Honorable Pat Roberts, Committee on Finance, United States Senate
The Honorable Michael B. Enzi, Committee on Finance, United States Senate
The Honorable John Cornyn, Committee on Finance, United States Senate
The Honorable John Thune, Committee on Finance, United States Senate
The Honorable Richard Burr, Committee on Finance, United States Senate
The Honorable Johnny Isakson, Committee on Finance, United States Senate
The Honorable Rob Portman, Committee on Finance, United States Senate
The Honorable Patrick J. Toomey, Committee on Finance, United States Senate
The Honorable Dean Heller, Committee on Finance, United States Senate
The Honorable Tim Scott, Committee on Finance, United States Senate
The Honorable Bill Cassidy, Committee on Finance, United States Senate
The Honorable Debbie Stabenow, Committee on Finance, United States Senate
The Honorable Maria Cantwell, Committee on Finance, United States Senate
The Honorable Bill Nelson, Committee on Finance, United States Senate
The Honorable Robert Menendez, Committee on Finance, United States Senate
The Honorable Thomas R. Carper, Committee on Finance, United States Senate
The Honorable Benjamin L. Cardin, Committee on Finance, United States Senate
The Honorable Sherrod Brown, Committee on Finance, United States Senate
The Honorable Michael F. Bennet, Committee on Finance, United States Senate
The Honorable Robert P. Casey, Jr., Committee on Finance, United States Senate
The Honorable Mark R. Warner, Committee on Finance, United States Senate
The Honorable Claire McCaskill, Committee on Finance, United States Senate