Legal counsel

Changes in Charitable Giving May be Imminent

New Tax Provision Would Generate Billions for Nonprofits

What can you do to speed these changes along?

By Tom English

Congress and the President are poised to enact tax law changes that will have a profound impact on charitable giving. Nonprofit managers should remain abreast of this legislation and, when possible, influence the process.

How Do Tax Laws Affect Giving?

On August 13, 1981, the Economic Recovery Tax Act (ERTA) was passed. This law allowed taxpayers who don't itemize deductions to deduct a portion of their charitable giving. The law had a great effect on charitable giving, as reported in *Nonprofit World* in 1992.[1] The deduction was phased out in the mid '80s.

A recent study by United Way of America also concluded that letting non-itemizers deduct charitable giving would have a major effect on giving.[2] The study reveals that more than 2/3 of American taxpayers don't itemize deductions and that a tax provision letting them deduct charitable giving would increase giving to United Way by as much as $217 million. Since non-itemizers contribute $36 billion annually to charities, such a provision would lead to billions more dollars for nonprofits, according to the study.

It's clear that tax law changes, favorable to charities, are likely in the near future.

What Is the President's Position?

President Bush is serious about a tax law change. He recently said, "I earned capital in the campaign, political capital, and now I intend to spend it." The President is pledging to make permanent the tax cuts of his first term. He also wants to change the current system that he has called a "complicated mess." His tax wishes are considered by many to be likely to pass Congress since the Republican majorities in both the House and Senate are bigger now than when his prior term tax changes were enacted.

There is some fear that the tax

code could be scrapped and replaced by a national sales tax or a value added tax. For example, David Wyss, Standard & Poor's Chief Economist, has stated, "The U.S. tax system is out of step with the rest of the world. We are the only major industrial country that does not have either a national sales tax or a VAT." Either of these tax systems would have a devastating effect on the nonprofit world, as they would eliminate all tax breaks for charitable giving. Many tax experts say it is unlikely that Bush will propose a national sales tax or a flat tax. However, some members of Congress support such a change. What is clear is that a change is on the way. It should be noted that President Bush has indicated that he favors retention of certain incentives such as deductions for mortgage interest and charitable contributions.

Where Does Congress Stand?

In 2004 the Senate passed the CARE (Charity Aid, Recovery & Empowerment) Act by a vote of 95 to 5. This act includes the provision to allow non-itemizers to deduct charitable giving in excess of $250 for a single taxpayer and $500 for a married couple. The Act includes other provisions to enhance charitable giving as outlined in Figure 1.[3] Although the CARE Act received large support, a House-Senate conference never met to consider it, and it never became law.

If United Way is correct, billions are at stake.

The House has considered the Charitable Giving Act (H.R. 7), which is similar to the Senate version (see Figure 1). It passed by a vote of 408 to 13 but, like the CARE Act, never became law.

The CARE Act was recently re-introduced in the Senate. The House is expected to re-introduce similar legislation soon. On March 1, Sen. Rick Santorum (R-PA) introduced an amendment to the 2006 Senate Budget Resolution which states that the CARE Act has enjoyed huge bipartisan support, that a relevant portion of tax relief in the resolution should be used for charitable aid, and that there is a need for the non-itemizer deduction.

It's clear that tax law changes, favorable to charities, are likely in the near future. Both houses of Congress have shown a recent propensity to pass such legislation, and the President seems likely to sign it. It's also clear that political pressure should be applied to encourage these parties to avoid being sidetracked by items such as social security reform. We've already seen the legislation lose steam in the fall of 2004.

How Should Nonprofits Respond?

Response from those in the nonprofit sector should be twofold:

1. Ensure that favorable legislation is enacted. United Way has spearheaded this effort with their research. Others should follow suit by making their position public and lobbying for the new tax provision.

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2. Become familiar with the legislation so you can direct your marketing efforts to those who would be most affected by the law changes. For example, make donors who are non-itemizers aware of the new tax benefits available to them, especially since the greatest dollar impact will come from this source. ■

Footnotes

[1]English, Denise and Thomas English, "How Do Tax Laws Affect Your Donors?", *Nonprofit World*, Vol. 10, No. 6 (www.snpo.org/members).

[2] "United Way Finds Non-Itemizer Deduction Would Substantially Boost Charitable Giving," March, 2005 (www.unitedway.org).

[3] Source OMB Watch (ombwatcher @ombwatch.org).

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Figure 1 Rundown of House & Senate Tax Provisions

Provision	House Charitable Giving Act (H.R. 7)	Senate CARE Act
Non-Itemizer Deduction	Sec. 101. Non-itemizers can deduct amount given over $250 ($500 couple) up to $500 ($1000 couple); sunsets 12/31/05; started January 2004; requires Dept. of Treasury to report to Congress on effect on giving and compare compliance between itemizers and non-itemizers.	Sec. 101. Same, except started 2003 and sunset December 31, 2004.
IRA Rollover	Sec. 102. Distributions for Individual Retirement Accounts deductible by persons age 70 and over if made directly to an exempt organization; effective tax years beginning 2004.	Sec. 102. Same, but also allows deduction for persons age 59½ for split interest entities (trusts with both charitable and non-charitable purposes)
Increase in Cap on Corporate Contributions	Sec. 103. Increases cap on deductible contributions from corporations on a sliding scale, beginning with 11% in 2004 and reaching 20% by 2012 and beyond.	Not in CARE Act.
Food Inventory Donations Deductible	Sec. 104. Fair market value deduction for wholesome food; started January 2004.	Sec. 103. Similar, but some variance in definition of fair market value; effective on enactment.
Deduction for Contribution of Scientific Research Property & Computers	Sec. 107. Expands deduction to equipment assembled; began January 2004.	Sec. 105. Same.
Additional Giving Incentives	Not in H.R. 7.	Sec. 104. Deductions for contributions of book inventory for educational purposes; Sec. 106-108. Incentives for contributions to encourage land conservation; Sec. 110. Deductions for contribution of literary, musical, artistic or scholarly compositions, or any copyright based on fair market value; Sec. 111. Reimbursement for volunteers' mileage not taxable income; Sec. 112. Extends deduction for inventory to schools, except for computer equipment.
Foundation Excise Taxes and Administrative Expenses	Sec. 105. Reduces tax on net investment income to 1%; administrative expenses can't count toward required 5% annual payout in grants.	Not in CARE Act.
Revenue Raisers to Pay Cost Tax Incentives	Not in H.R. 7.	Eliminates several corporate tax shelters.
Excise Tax on Unrelated Business Income for Charitable Remainder Trusts	Sec. 106. Modifies this tax to make excise tax equal to unrelated business income; began January 2004.	Section 301. Same.
S Corporation Stock and Contributions	Sec. 108. Adjusts basis of S Corporation stock for decrease caused by charitable contribution; effective tax year beginning 2004.	Sec. 109. Same, but starts date of enactment.
Suspension of Tax-Exempt Status of Terrorist Organizations	Sec. 201. Automatic revocation of exempt status for groups designated as terrorist or supporting terrorism; no appeal; effective date of enactment.	Sec. 208. Same.
Clarify Definition of Church Tax Inquiry	Sec. 202. Adds an exemption to the special process for IRS reviews relating to continuing exemption for churches for unrelated business income and information provided by the Secretary.	Sec. 305. Same.
Expands Declaratory Judgment Remedy	Sec. 203. Allows groups to go to court for declaration on qualification for tax-exempt status; effective for determinations made after the date of enactment.	Sec. 306. Same, but effective for determinations starting 12/31/02.
Landowner Incentive Programs	Grants to private landowners from Depts. of Interior and Agriculture tax-free if used for habitat or wildlife protection; effective date of enactment.	Not in CARE Act. (CARE has several different conservation related incentives.)
Modification re Taxes on Excess Payments Made to Controlling Organizations	Sec. 205. Tax on income to controlling organization from subsidiary limited to excess payments.	Not in CARE Act.
Simplification of Lobbying Rules for Charities	Sec. 206. Eliminates the distinction between direct and grassroots lobbying for charities using the expenditure test to measure allowable lobbying; repeals separate limit for grassroots lobbying. All lobbying must still be within expenditure cap; effective date tax year beginning 2004.	Sec. 303. Same, except started 2003.
Holdings of Foundations in Publicly Traded Corporations	Sec. 207. Increases allowed foundation stock holdings of a publicly traded corporation from 2% to 5%, but must increase grant payout from 5% to 6%; effective tax year beginning 2004.	Sec. 113. Similar, but grant payout must increase from 5% to 12%. Increases time for divestiture of holdings from 5 to 10 years.
Compassion Capital Fund	Sec. 301. Authorizes Sec. of HHS to give out $150 million in FY 2003 for grants to entities that will provide technical assistance to groups operating social service programs, with or without federal funds. Authorizes "such sums as may be necessary" for FY 2004-2007.	Sec. 801-805. Similar, but authorizes same amount of money over four agencies: $85 million to HHS, $15 million to the Corporation for National and Community Service, $35 million to the Department of Justice and $15 million to the Department of Housing and Urban Development. Defines "social service organization" as one with no more than six full time equivalent employees providing social services and a budget of less than $450,000. The agencies are required to coordinate their efforts so that funds are distributed equitably and duplication is avoided. In addition, no agency can award more than one grant to the same group for the same purpose.
Individual Development Accounts	Sec. 302. Reauthorizes low-income savings program until 2008.	Sec. 501-512. Reauthorizes and expands the program until 2012.
Corporate Contributions to Faith-Based Organizations	Sec. 303. Sense of Congress statement encouraging greater giving from corporations to faith-based groups.	Not in CARE Act.
Maternity Group Homes	Sec. 304. Authorizes $33 million in FY 2003 and "such sums as may be necessary" for FY 2004. Requires evaluation of the program.	Sec. 901. Same
Restoration of Funds for Social Services Block Grant	Although H.R. 7 doesn't contain this provision, it has been introduced as a separate bill (H.R. 1858).	Restores $2.35 billion for FY 03 and $1.3 billion for FY 04 to SSBG program, bringing total authorization to $2.8 billion. Restores authority to transfer up to 10% of Temporary Assistance to Needy Families funds to SSBG. Requires HHS to report information submitted by states on expenditure and use of social services funds to Congress annually.
Oversight of Exempt Organizations	Not in H.R. 7	Sec. 201. Public inspection of documents; Sec. 202-206. Disclosure of Web address, and more; Sec. 207. Organizations with budgets of less than $5,000 a year required to file annual statement re continuing existence and qualification for exemption; Sec. 304. Expedited consideration of exempt status applications for groups applying for federal grants; Sec. 307. Stipulates that conventions or associations of churches won't fail to qualify for exempt status by virtue of having individual members. Miscellaneous provisions addressing specific situations.