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.

**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. Although the CARE Act received large support, a House-Senate conference never met to consider it, and it never became law.

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 reintroduced 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.

   **continued on page 12**

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**If United Way is correct, billions are at stake.**

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Footnotes


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

Nonprofit World • Volume 23, Number 3 • May-June 2005
Published by the Society for Nonprofit Organizations
5620 Canton Center Road, Suite 165, Canton, Michigan 48187
734-451-3582 • www.snpo.org

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Figure 1

Rundown of House & Senate Tax Provisions

### House Charitable Giving Act (H.R. 7)

- **Non-Itemizer Deduction**
  - Sec. 101. Non-itemizers can deduct amount given over $250 ($500 couple) up to $500 ($1000 couple); sunsets 12/31/04; requires Dept. of Treasury to report to Congress on effect on giving and compare compliance between itemizers and non-itemizers.

- **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.

- **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.

- **Food Inventory**
  - Sec. 104. Fair market value deduction for wholesale food, started January 2004.

- **Deduction for Contribution of Scientific Research Property & Computers**
  - Sec. 107. Expands deduction to equipment assembled; began January 2004.

- **Additional Giving Incentives**
  - Sec. 108. Adjusts basis of S Corporation stock for decrease caused by charitable contribution; effective tax year beginning 2004.

- **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.

- **Clarity Definition of Church Tax Inquiry**
  - Sec. 202. Adds an exception for process to IRS reviews relating to continuing exemption for churches for unrelated business income and information provided by the Secretary.

- **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.

- **Landowner Incentive Programs**
  - Sec. 204. Authorizes $10 million to the Corporation for National and Community Service, $35 million to the Department of Agriculture for grants to private landowners from Dept. of Interior and Agriculture tax-free if used for habitat or Not in CARE Act. Effects for determinations starting 12/31/02.

- **Modification in Taxes on Excess Payments Made to Controlling Organizations**
  - Sec. 205. Tax on income to controlling organization from subsidiary limited to excess payments.

- **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.

- **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 10 years.

- **Compassion Capital Fund**
  - Sec. 208. Authorizes “such sums as may be necessary” for FY 2004-2007.

- **Individual Development Accounts**
  - Sec. 209. Reauthorizes low-income savings program until 2008.

- **Corporate Contributions to Faith-Based Organizations**
  - Sec. 200. Adds an exception to the special rules for tax-exempt religious organizations applying for federal grants.

- **Maternity Group Homes**
  - Sec. 201. Sense of Congress encourages providing greater giving from corporations to faith-based groups.

- **Restoration of Funds for Social Services Block Grant**
  - Sec. 202. Authorizes $3 million in FY 2003 and “such sums as may be necessary” for FY 2004. Requires evaluation of the program.

- **Oversight of Exempt Organizations**
  - Sec. 203. Reauthorizes and expands the program until 2012.

### Senate CARE Act

- **Non-Itemizer Deduction**

- **IRA Rollover**
  - Sec. 102. Same, but also allows deduction for persons age 59 1/2 for split interest entities (trusts with both charitable and non-charitable purposes).

- **Increase in Cap on Corporate Contributions**
  - Sec. 103. Same, but with some variance in definition of fair market value; effective on enactment.

- **Food Inventory**
  - Sec. 104. Similar, but not in CARE Act.

- **Deduction for Contribution of Scientific Research Property & Computers**
  - Sec. 105. Same.

- **Additional Giving Incentives**
  - Sec. 106. Modifies this tax to make excise tax equal to unrelated business income; began January 2004.

- **Suspension of Tax-Exempt Status of Terrorist Organizations**
  - Sec. 201. Same, except for group as one with no more than six full time equivalent employees providing social services and not-for-profit organizations.

- **Clarity Definition of Church Tax Inquiry**
  - Sec. 202. Same.

- **Expands Declaratory Judgment Remedy**
  - Sec. 203. Same.

- **Landowner Incentive Programs**
  - Sec. 204. Same, but for effective determinations starting 12/31/02.

- **Modification in Taxes on Excess Payments Made to Controlling Organizations**
  - Sec. 205. Same.

- **Simplification of Lobbying Rules for Charities**
  - Sec. 206. Same.

- **Holdings of Foundations in Publicly Traded Corporations**
  - Sec. 207. Same.

- **Compassion Capital Fund**
  - Sec. 208. Same.

- **Individual Development Accounts**
  - Sec. 209. Same.

- **Corporate Contributions to Faith-Based Organizations**
  - Sec. 200. Same.

- **Maternity Group Homes**
  - Sec. 201. Same.

- **Restoration of Funds for Social Services Block Grant**
  - Sec. 202. Same.

- **Oversight of Exempt Organizations**
  - Sec. 203. Same.

Source OMB Watch (ombwatcher@ombwatch.org).