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Charitable Deduction Fixes Proposed

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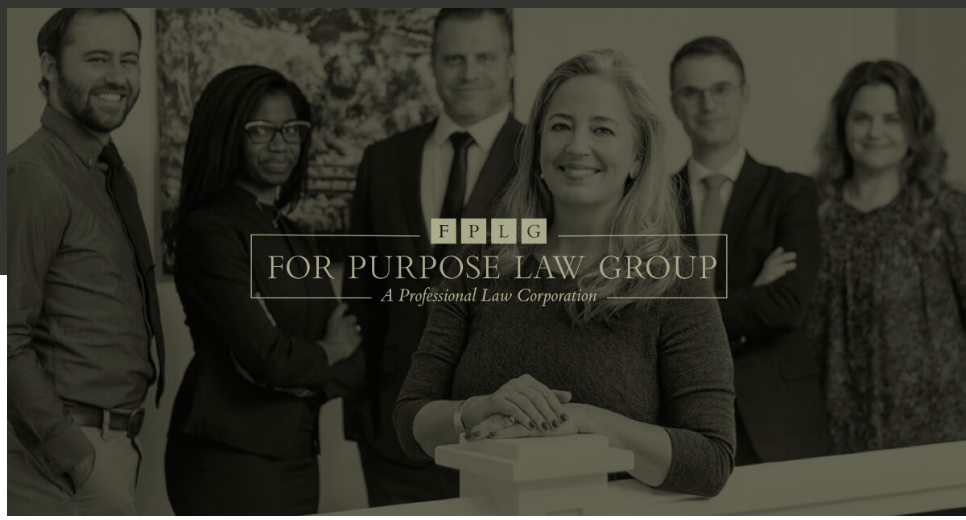

The Tax Cuts and Jobs Act of 2017 (TCJA) enacted last December was unlike other major overhauls of the federal tax code. Gone were the traditional months-long hearings, large number of amendments, and old-fashioned horse-trading. Instead, it was a mad dash for the finish line, with no bipartisan participation at all, and with relatively little thought and planning about what is good tax policy.

Unsurprisingly, what emerged was a hodge-podge mess of questionable, and poorly drafted, new tax provisions. A few of them directly relate to the nonprofit sector; others have an indirect – though still substantial – impact.

It's customary following major legislation for Congress to write one or more technical correction bills to add in omissions, and to clear up vague and ambiguous provisions. Six months after the TCJA was signed into law, there is little movement on actual fixes for some glaring problems, although many proposals have popped up.

We've covered some of these ongoing discussions in recent months; this latest focuses on the charitable deduction. Some new statistics just released for the first quarter of 2018 seem to confirm what many in the nonprofit sector feared; charitable contributions are down. However, there is other data that seems to show little to no effect, specifically the Blackbaud Index seems to indicate that charitable contributions have actually increased.

Deduction for Charity

While it is unclear how the new law will ultimately affect philanthropy, a key provision in the TCJA that many fear will likely have a profound effect on the entire sector is the significant change in the standard deduction for many taxpayers. Under the new law, the standard deduction is now available to a much larger number of taxpayers, up to $24,000 for couples and $12,000 for single filers. That means 21 million fewer taxpayers will itemize deductions, according to statistics from the Tax Policy

Center.

Since the charitable deduction is available only to itemizers, some predict that this change in law will suppress giving by at least a few billion dollars, according to multiple analyses. Americans gave $281.9 billion in 2016, according to the annual "Giving USA" study; many are predicting that that figure is likely to drop significantly.

In addition, the TCJA changed the estate tax, significantly raising the minimum threshold before it comes into play. This difference may, according to some estimates, dramatically reduce the number of charitable bequests, perhaps up to some $7 billion a year.

In response to these dramatic changes in the tax law, a number of interesting possible responses and changes are currently being proposed at both the state and levels.

Federal

A new bill has been introduced in Congress that, if passed would permit all American taxpayers to take the charitable deduction, whether or not they itemize deductions.

The concept of a "universal deduction" has been tossed around for years, with some bipartisan support. Last year, as Congress was gearing up to pass more comprehensive tax-overhaul legislation, Rep. Mark Walker (R-NC) introduced the Universal Charitable Giving Act of 2017. This proposal included a monetary cap. At the time, nonprofit leaders said they thought it was a good first step, but were concerned that the cap would depress charitable giving. Later, when the House GOP crafted the TCJA, the Walker "universal deduction" bill was not added to the the House version and – of course – did not make it into the final legislation.

The current legislation, called the Charitable Giving Tax Deduction Act, is co-sponsored by two House members, New Jersey Republican Chris Smith and Texas Democrat Henry Cuellar. According to sponsor Smith, "Charitable organizations are the lifeblood of services to those in need in our society, and I am committed to a tax policy that amplifies their ability to serve our community." The new bill does not contain any financial cap. According to Steve Taylor, senior vice president and counsel for public policy at United Way Worldwide and a key Washington lobbyist, this proposal gets a thumbs-up. It's "exactly what nonprofits have been looking for…[F]rom the sector's perspective, [it's] the consensus solution to the unintended consequences on charitable giving as a result of the tax reform law."

Nevertheless, the measure faces an uphill battle in Congress. Taylor suggests that local charities ask their representatives to join in as co-sponsors.

State

In connection with the fallout from the Tax Cuts and Jobs Act, various state proposals around the nation have been formulated to, in one way or another, lessen the effect of or effectively nullify certain aspects of the federal legislation. While the intentions may be good, the results are not necessarily lauded by the nonprofit community.

For instance, Vermont lawmakers have passed a bill to repeal the state's charitable giving incentive and replace it with a five-percent tax credit. There is a catch, though.

The tax credit is capped at donations of $20,000, so the "maximum incentive for charitable giving can reduce state taxes by no more than $1,000 per year." The Governor responded by proposing a change to a credit. Then the House added a $10,000 cap, and the Senate partially responded to nonprofit concerns by raising the House cap. However, in an open letter from the nonprofit community to elected officials, there was a warning that the measure "if enacted will fundamentally change the nature of charitable giving in Vermont. Its negative effects will hurt Vermont nonprofits, and more importantly, diminish our ability to serve Vermonters in our communities."

Conclusion

The nonprofit community should keep track of the various developments around the states to avert a patchwork of supposedly corrective laws that are well-intentioned but are not well-crafted fixes.