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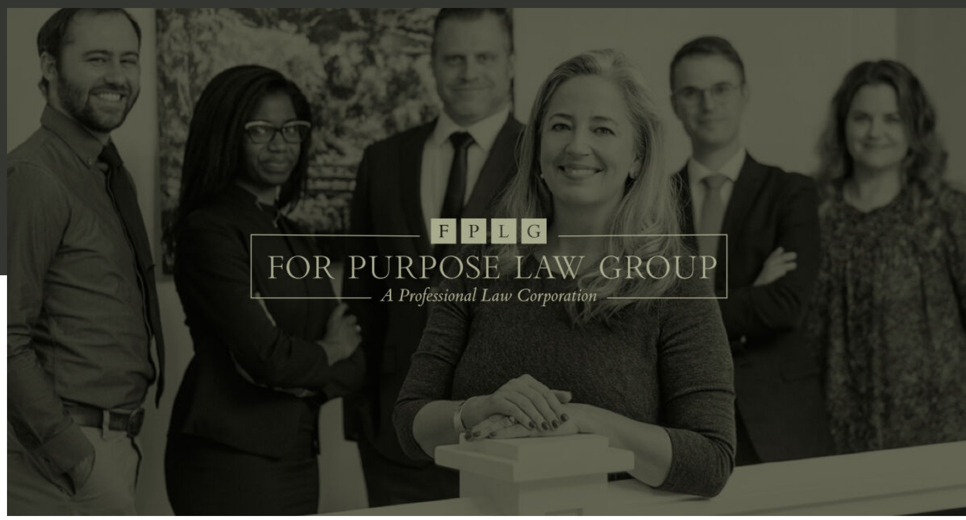
NONPROFITS: INTERNAL REVENUE SERVICE

Nonprofits: Happy New (Tax Plan) Year!

01.09.18 | Linda J. Rosenthal, JD



In the hundred years or so since the modern federal income tax was first established in 1913, there have been several comprehensive overhauls. Congress, seeing the need to fix problems or meet new and changing conditions, acted.

The most recent significant revision of the Internal Revenue Code was in 1986 when President Reagan, the Treasury Department, and Congress worked for almost two years to develop and write a plan that passed, under the regular order rules of the Senate, with "broad bipartisan support."

The procedure in late fall 2017 for what was announced as a long-overdue, sober and serious, reconsideration of the nation's tax laws was … different. There were no hearings for H.R. 1, the Tax Cuts and Jobs Act (TCJA). Last spring, the Treasury Department released a one-page set of bullet points and a brief "United Framework" in September. Treasury Secretary Steve Mnuchin contradicted his own office's analysis of proposed key points in the plan.

In the House of Representatives, the vote on its 448-page bill took place just two weeks after it was presented for consideration. The Senate, likewise, raced through its 515-page amended bill quickly.

The action in December to reconcile and vote on the final 500+-page legislation happened at such warp speed that many legislators freely admitted in front of TV cameras that they voted before even reading the entire package, similar to statements made when the Affordable Care Act passed with some of the same criticisms in 2009-2010.

There were additional factors muddying up the process this time around. Most notably, the pressure to pass a Senate version under the "budget reconciliation" rules – requiring only 51 votes – instead of "regular order" – effectively requiring 60 votes – skewed the results dramatically. In one instance, this had a fortuitous result for the apparent majority opinion in the philanthropy community that the Johnson Amendment should be left untouched. The House's proposed change to the politics rules for 501(c)(3)s was tossed out of the reconciliation bill *only* because the Senate Parliamentarian ruled that including it in the combined H.R.1 violated the procedural rules. It was not the result of any thoughtful decision or vote by legislators. The matter of the Johnson Amendment's fate can pop up again at any time – and surely will. More about that in later posts.

Also looming over these proceedings were the unfinished business on the federal budget as well as the lasting debris from the sequestration law passed several years ago. The final "negotiations" were – to put it charitably – horse-trading to secure enough votes for passage. Items were tossed in and out of the legislative brew without any serious consideration of policy or consequences. This included many items of interest to nonprofit organizations and to charitable donors.

Another matter of deep concern is the absence of delayed effective dates for many aspects of the new tax laws. Anyone with an email account must have noticed the avalanche of last-minute pleas for tax-deductible donations before the December 31st deadline. While this is good news in the short run for many organizations, it may be very bad news in the year or years ahead.

The bottom line is that chaos and confusion should never be part of the process or result of official tax, economic, or business policy. Few would disagree that this is what we have. It's not unusual in the case of significant legislation to see "technical corrections" bills to correct errors or ambiguities. House Budget Committee Chair Rep. Kevin Brady has already announced that such a bill is going to happen…soon.

Reaction by Nonprofits to New Law

While the passage of time is the only way to truly gauge the impact of the new tax law will have on nonprofit organizations, the early verdict by the National Council of Nonprofits is that "the Tax Cuts and Jobs Act is a disaster for the people we serve and for the ability of organizations dedicated to the public good to address community needs."

Other reactions? The title of an op-ed in the *Hill* blog sums up the apparent overwhelming opinion about the new tax law by people in or affected by philanthropy: *Nonprofits are the unintended victims of the new tax bill.* The Washington Post published a similar article: *Charities fear tax bill could turn philanthropy into a pursuit only for the rich.* In CNN Money, the headline blares: *Tax bill makes nonprofits pay up for millionaires.*

And then there's the article by respected, Harvard-educated, philanthropy consultant Alan Cantor: *I Hope I'm Wrong*. He tells his readers that "[a]n earthquake just hit the nation: the new Republican tax bill."

> *It will take months and years to sort through the ramifications and debris. There are huge implications for the economy, for the wealth divide, and for the healthcare system.*
> *But I'm going to focus on the probable impact on the nonprofit world – and it's really bad.*

Effect on Charitable Giving to Nonprofits

While there are significant concerns about individual items of interest to, or directly affecting, nonprofits, the main focus of serious angst in the philanthropy community is the major changes to the standard deduction and the estate tax, all of which have taken effect this week.

The new law increases the standard deduction for individuals (to $12,000), couples to ($24,000), and heads of households (to $18,000). The number of taxpayers who itemize deductions may go down from 30% to less than 10% of them. Supporters of the new law, the Congressional GOP, and the White House downplay worries that these elements of Internal Revenue Code will have a suppressive effect on philanthropic giving. But "experts estimate the change will shrink giving to the work of charitable nonprofits by $13 billion or more each year, costing 220,000 to 264,000 nonprofit jobs." A compromise that was floated by philanthropic organizations to include a "universal charitable deduction" was rejected.

While the estate tax changes affect far few taxpayers – and were not as drastic as they could have been – they still may depress overall philanthropic giving. The estate tax remains, but the new law doubles the exemption to approximately $11 million for individuals and about $22 million for couples. This provision is effective through 2025. "In addition to reducing revenues by nearly $100 billion over ten years, the estate tax is an important source of revenue for the work of charitable nonprofits and creation of foundations…"

Another element of the new tax law that may wreak havoc on charitable giving is the controversial change to the deductibility of state, local, and property taxes, capping it at $10,000 in the aggregate. It may change the ability or inclination in high-tax states to make charitable contributions.

Conclusion

In the next posts, we'll review what's in the new law directly affecting nonprofits as well as which items were considered, but ultimately omitted from the final version passed in late December 2017. In these upcoming analyses, we'll emphasize that some of the items that were included are not necessarily good or thoughtful tax policy. Instead, some were included as part of the last-minute vote grabs – in certain cases, directed at one specific senator or another.

We'll also caution that items that didn't make the final cut may – nevertheless – show up sooner or later in future legislation, White House action, or administrative rulemaking.