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2015 Year-End Congressional Measures Affecting Nonprofits in 2016

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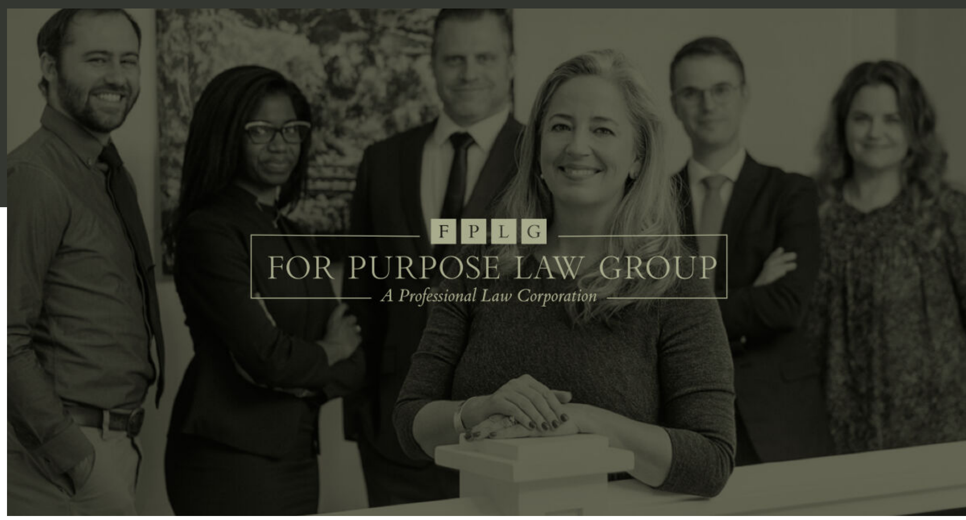

In a perfect world, federal tax policy would be comprehensively analyzed, thoughtfully debated, and then enacted without partisan rancor or dispute.

We don't live in that perfect world. For several years, budgets and tax proposals have been held hostage to entirely unrelated political disputes. The result is that even when there are temporary extensions for relatively uncontroversial tax laws, sometimes these extensions expire before another piecemeal, eleventh-hour emergency patch can be cobbled together.

There was some, small good news in Congress' most recent end-of-year marathon to avoid a shutdown and pass some legislation. But there were also omissions, as well as a partisan gag on a matter in the headlines and generating continued controversy.

Three Charitable Giving Incentives Made Permanent

There are three popular charitable-giving incentives that have been caught up in recent years in this budget turmoil. They have been re-authorized for a year at a time, in a way that leaves organizations and taxpayers in a bind. These three provisions actually expired at the end of 2014, with no intermediate legislation remedying the problem.

The good news is that – this time – Congress not only reinstated these incentives (with retroactive application back to January 1, 2015) but the legislators managed to enact a *permanent* extension of these tax provisions. They are:

- *The IRA Charitable Rollover*

This provision permits individuals who are 70-½ and older to donate up to $100,000 from the Individual Retirement Accounts (IRA) directly to charities.

- *Food Donation Tax Deduction*

This worthwhile and much-needed incentive authorizes small businesses that donate surplus food to take the same enhanced tax deductions available to regular C corporations.

- *Conservation Easement Deduction*

This tax break allows an enhanced tax deduction for donation of conservation easements.
These charity related deductions were part of a package of dozens of tax extenders made permanent under the Protecting Americans from Tax Hikes (PATH) Act of 2015. Just in time for the Representatives and Senators to flee Washington, D.C. for their Christmas holidays destinations, the measure passed in the House by a vote of 318-109 and in the Senate by a vote of 65-33.
"The charitable sector worked closely with Congress," according to the Council on Foundations, "to educate members and their staff about the difference these incentives make….Passage of the PATH Act is the culmination of a nearly 10-year-long effort to have charitable tax incentives permanently enacted and, in the case of the food donation tax deduction, expanded. After years of renewal and expiration, … these charitable giving incentives are now permanent law."
The Council on Foundations noted, also, that –

> *during the first two years the IRA charitable rollover was available, it prompted more than $140 million in gifts, assisting social service providers, religious organizations, cultural institutions and schools, and numerous other nonprofit organizations. Similarly, according to Feeding America, this legislation would significantly increase food bank access to the 70 billion pounds of nutritious food wasted each year, particularly the 6 billion pounds of produce that does not make it to market. Finally, a survey by Land Trust Alliance showed that the land conservation incentive helped 1,700 land trusts increase the pace of conservation by a third – to over a million acres a year.*

Less Favorable Results

There was a setback in the complicated negotiations surrounding the omnibus spending bill (that eventually passed and will keep the government open until next September).
For two years, since the blow-up over the IRS Exempt Organization Division's purported targeting of certain section 501(c)(4) social welfare organization, the IRS has been working with the Treasury Department to update and

improve the rules that govern permissible political activities of 501(c)(4) groups. Needed revisions to the regulations have been repeatedly promised but delayed.

In the omnibus spending bill there is now a provision that *prohibits* the Internal Revenue Service from clarifying the rules at all. There is disappointment by many observers over this partisan halt to what is needed clarification of confusing and divisive rules.

Another proposal that was left out of the final budget package was one aimed at simplifying the private foundation excise tax to a flat 1 percent.