

**Legislative Alert
November 2016**



The following items were reported on by Jack Owen, Esq. at our last meeting on November 8, 2016:

- There are two legislative proposals to expand the current-law IRA Charitable Rollover, which was made permanent on January 1, 2016. Under the first, the Legacy IRA Rollover Act (H.R. 5171), the current-law IRA Charitable Rollover would be amended to permit life-income gifts, such as charitable gift annuities and charitable remainder trusts. There would be a \$400,000 cap for life-income gifts beginning at age 65, and for individuals 70 ½ or older, the combined ceiling for direct and life-income transfers is \$400,000 (with a \$100,000 cap for direct IRA Charitable Rollovers). The second is the Grow Philanthropy Act, H.R. 4907, which would amend the IRA Charitable Rollover to allow donor advised funds.
- The IRS has recently released its work plan for 2017, stating that its Tax Exempt and Government Entities Division will focus its regulatory enforcement activities in five major areas next year. The five strategic focus areas include: (1) Tax exempt status, including non-charitable purposes and private inurement; (2) Protection of assets, including self-dealing, excess benefits and loans to insiders; (3) Closing the tax gap by assessing employment and unrelated business income taxes against tax exempt organizations; (4) International tax issues and (5) Emerging issues such as non-tax exempt charitable trusts.
- The Final Regulations for the U.S. Department of Labor's new overtime rules are still scheduled to be effective on December 1, 2016. There have been numerous reactions to these Final Regulations, with some organizations reorganizing their work week in attempts to prevent staff from accumulating overtime hours. Some organizations have decided to increase rates of pay, while others are taking a wait and see approach, making no changes to rates of pay until they have a clearer understanding of how the new rules will work out in practice.
- In recent years, the IRS has put much more effort into providing continuing education services to taxpayers. In this effort, the IRS recently reminded the public of the Exempt Organizations Select Check, which is an online search tool that allows users to search for, select a tax exempt organization, and check IRS information about its federal tax status. EO Select Check will tell users whether an organization is eligible to receive tax deductible charitable contributions (the IRS Publication 78 data). EO Select Check also tells a user if an organization has had their tax exempt status automatically revoked because they have failed to file a Form 990 series form as required for 3 consecutive years. Finally, EO Select Check tells a user whether an organization has filed a Form 990-N (e-postcard), used by small tax exempt organizations.

All tax exempt organizations are encouraged to review EO Select Check and make sure the IRS public disclosure about their organization is correct.

POST-ELECTION UPDATE

Given that a Republican has won the White House and Republicans still have majorities in the U.S. House of Representatives and Senate, I decided to provide a Post-Election Update and to make a few observations on how charities may be affected (although I am not attempting to speculate on how potential federal spending cuts could affect charitable organizations):

- Regarding individual taxes, President-Elect Trump campaigned on lower taxes, tax reform, repeal of the estate tax, disallowance of stepped up basis at death, and repeal of the alternative minimum tax, among other things.

In order to pay for lower tax rates, it is possible that caps on itemized deductions could be enacted, particularly for high-income taxpayers. Caps were proposed by President-Elect Trump in his campaign.

It does not appear that President-Elect Trump or Congress plan to eliminate the charitable tax deduction; however, Congress may need to pay for lower tax rates and we should all stay tuned for future developments on caps.

Given these potential changes, donors may want to consider enhanced charitable giving in 2016, before the charitable tax deduction could be made less valuable. Donors, however, should always be cautious and obtain qualified, independent tax advice to be certain that enhanced charitable giving would be in their best interest. It is also critical to consider complicated rules like the AMT, which is still fully effective in 2016, can be a huge surprise, and can eliminate (or reduce) the value of the charitable tax deduction.

As always, there is a big difference between a political campaign and actual governing. President-Elect Trump and the Republican-controlled Congress may face numerous obstacles in attempting substantial reforms of the Tax Code.

- Regarding the U.S. Department of Labor's Final Regulations on the overtime rule, it is possible that a Republican-controlled Congress and President could attempt a repeal or modification of the new overtime rules. A repeal/modification would be awkward, however, as the Final Regulations are still effective December 1, 2016, and President Obama has expressed strong support. This is another topic to which we should all stay tuned.