Legislative Alert
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By Jack Owen, Esq. & Susan Ott, Esq.

Presented by Susan Ott On January 10, 2017

Federal Updates:
In late November, 2016, implementation of the Department of Labor Overtime Rule was effectively blocked when a U.S. District Court in Texas granted emergency preliminary injunctive relief. Many organizations had already implemented strategies to implement the rule by December 1, 2016. This matter is not over and all employers, including nonprofit employers, should stand by for updates.

We now have a Republican President-Elect and Congress, and as of Tuesday, January 3, 2017, Congress is back in session. Of interest to planned giving professionals, the President-Elect's campaign promises included lower taxes, tax reform, repeal of the federal estate tax, disallowance of stepped up basis at death, repeal of the AMT, and repeal of ACA, among other things. And although the President-Elect's position on the Department of Labor's Fiduciary Rule is not known, other Republicans have stated a desire to repeal this rule. A bill to do so has already been introduced.

A budget resolution has been introduced in the U.S. Senate to start the process of repealing the Affordable Care Act ("ACA"). The resolution is on a fast track and mandates that several committees work together to create legislation by January 27 to repeal many of the main components of the ACA. The vote on such legislation will be handled under a procedure called the Budget Reconciliation Bill, which has a lower threshold for approval voting and allows for faster action. At this time, it is unknown whether replacement legislation will be introduced.

It is possible that federal tax reform will begin fairly soon, with some reports stating by February 2017. Insider assumptions are that there will be some effort to lower individual tax rates (with the possible exception of tax rates on high income earners), to lower corporate tax rates, increase the standard deduction and repeal the federal estate tax. It is unknown how Congress will pay for lower tax rates and lower tax revenue. It is always still possible that caps on itemized deductions could be enacted, especially for high-income earners. Although it does not appear at this time that the charitable tax deduction will be eliminated entirely, charitable organizations should keep a close eye on any limitations proposed on the charitable deduction. Tax reform could also be fast-tracked using the above-mentioned "reconciliation" procedure. However, tax reform will likely move more slowly through the Senate than through the House, because the Senate will be busy with other matters, like confirming new cabinet picks.

What does all of this mean for planned giving advisors, professionals and charities? General tax reform will face many obstacles and is more likely for corporations than individuals. Lower taxes may lead to more out-of-pocket giving. Overall, lower individual tax rates and lower capital gains rates may make the charitable deduction less valuable.

Charities may want to encourage donors to consider making charitable gifts in 2017, before tax law changes become effective and before the charitable deduction possibly becomes less valuable.

Pennsylvania Updates:
For the current fiscal year ending June 30, 2016, State revenues may be $500 million to as much as $900 million short of expectations. The needs for state funds are expected to increase at the same time. As

required, the Governor will present his proposed budget for the coming year in February. Unofficial expectations are that charities dependent on state funding should prepare for potential cuts.

Allegheny County has decided to take an aggressive stance in revoking the exemption of more than 300 tax exempt properties, as reported by the Pittsburgh Tribune Review in late December. The revocations occurred after the county reviewed the status of 2200 out of 2800 parcels of land belonging to charitable organizations. The types of properties whose exempt status was revoked run the gamut from volunteer fire departments, faith based groups and land trusts, etc. We are told that the County looked at the less complex properties first and left bigger and more complex organizations, like hospitals and universities, for later consideration. The tax dollars estimated to be captured by these revocations are in the millions of dollars.

Many of these property owners who have lost tax exemption will appeal, but all exempt property owners would be well advised to understand State criteria for qualifying as a purely public charity and should be able to defend their tax-exempt status by applying these criteria. According to the PA Supreme Court, an organization must pass the following five-part "HUP" test to be considered a purely public charity under State law:

1. *Advance a charitable purpose*
2. *Donate or render gratuitously a substantial portion of its services*
3. *Benefit a substantial and indefinite class of persons who are legitimate objects of charity*
4. *Relieve the government of some of its burden*
5. *Operate entirely free from private profit motive*.

Hospitals in Erie County are facing tougher demands for taxes or Payments in Lieu of Taxes (PILOTs). Millcreek Community Hospital in Erie County just lost its tax exemption because the Board of Tax Assessment Appeals decided that the hospital did not meet the tests for purely public charity status. The impact of this decision is that the hospital property, assessed at $18.9 million, is now subject to a potential property tax of more than $424,000.

In the same vein, many counties within other States have tried to increase payments from nonprofits by asking for a fee for municipal services, such as "street lighting services", instead of a tax. The Minnesota Supreme Court in the case of First Baptist Church of St. Paul vs. City of St. Paul, *884 N.W. 2d 355*, stated that the State's constitution included a prohibition on taxing charities and ruled that a "tax" reclassified as a "fee" was still a tax that violated the State's constitution. As Pennsylvania, along with many other States, addresses charitable tax exemption in its constitution, this case could provide a defense to the imposition of municipal service fees.

Summary:

An article from the January 4 Chronicle of Philanthropy asserts that charities face new challenges due to recent political changes. During the Obama years, gridlock and partisan politics protected many issues affecting charitable organizations. The article goes on to say that there are six major federal issues that all charitable organizations face and changes could be more likely to happen with a Republican President and Republican-controlled legislature:

1. Possible increases in defense spending with possible reductions in domestic spending putting more pressure on nonprofits and State governments.
2. Changes to the Internal Revenue Code could affect the charitable income tax deduction.

3. Changes in the ACA could affect the health care of many, including employees of nonprofit organizations and clients of nonprofit programs.
4. Endowment spending at colleges and universities is being reviewed.
5. There is some talk that the prohibition against charitable organizations engaging in political activity could be changed or even revoked.
6. Simplification of federal rules and contracts.

Now is a good time to contact your Representative or Senator to tell the story of your nonprofit, and to demonstrate the return on investment of your mission-related work. The good works and positive outcomes of your charitable organizations may not be entirely understood by lawmakers.