Pittsburgh Planned Giving Council

Legislative Update

By Jack Owen, Esq.

September 2020

As we previously discussed in our June meeting, considerable legislation and regulations have been passed in response to the COVID-19 pandemic, and I reported on the following items at the “virtual” PPGC meeting on September 8, 2020:

1. Surprising Pennsylvania Response to Pandemic and Economic Downturn

On July 23, 2020, Governor Wolf signed into law H. B. 2484, Act 71 of 2020, which permits increased payouts from endowment funds to charities and expands the standing of donors. This legislation was passed in response to pressure from charities to spend more from their endowments after recent economic challenges.

Before this change in the law, Pennsylvania had permitted two types of spending from endowments. The first is under the Principal and Income Act, which permits charities to spend only the actual income earned from an endowment. The other alternative is the Total Return Policy (Act 141), which before the change in law permitted charities an election to spend between 2% to 7% of the three year average value of their endowment as long as consistent with the long term preservation of the endowment. With this recent change in law, charities are now allowed to spend up to 10% of their endowment for a temporary period of three years. Accordingly, for fiscal years ending in 2020, 2021 and 2022, Pennsylvania raised its fixed maximum from 7% to 10% for endowment spending. The spending, however, must consider the long term preservation of the fund and the charity’s need for capital to fulfill its mission. The percentage selected must be done in a prudent manner by the board acting as fiduciaries and applies to the three year average of the balance in the endowment. These rules apply to both nonprofit corporation funds and funds held in separate trusts.

The other major change in Act 71 of 2020 was to expand standing. Under prior law, a donor generally did not have standing to sue a charity for failure to follow endowment restrictions. Following Act 71, a donor now has standing related to his or her donation. Act 71 provides that, in addition to the Attorney General, the charity itself, the donor and any other person named in the gift instrument has standing. For planning purposes, donors may now want to name persons in a gift instrument to enforce the donor’s restrictions after the death of the donor.

Electing a Total Return Policy on endowment spending is something that should be studied carefully by a board of directors (or trustees). Drafting an endowment agreement is also a significant undertaking for a donor, and it is critical for a charity to understand any endowment restrictions.

1. Under the CARES Act, we previously reported that retirement account owners who are age 70.5 and up do not have to take a required minimum distribution (“RMD”) for 2020. IRS has implemented some additional extensions under this legislation. For those who already took RMDs in 2020, IRS Notice 2020-51 provided that they had until August 31, 2020, to roll their distribution back into their retirement account. Under 2020-51, there is also additional relief for elections that were due to be made in 2020 resulting from a retirement account owner who died in 2019. For example, some retirement plans permit employees or beneficiaries to elect whether RMDs are determined under a 5-year rule or a life expectancy rule. Another special extension allows spouses and non-spouse designated beneficiaries of retirement account owners to make the election up until December 31, 2020, for owners who died in 2019.

The COVID response legislation and tax planning are difficult topics. Please do not hesitate to contact any PPGC Board member, or Jack Owen, with any questions.