

Friday, May 21, 2010

The latest edition of the ACR newsletter is available below.

Washington Roundup

With just two more weeks to go before Congress leaves town for the week-long Fourth of July recess, there are a number of lingering legislative items that Congress hopes to tackle including the Wall Street Reform bill and the tax extenders bill.

Tax Extenders

For a bill that was supposed to pass before the Memorial Day recess three weeks ago, it's proving extremely difficult to secure support for the tax extenders legislation, this time in the Senate. This legislation (H.R. 1250/S. 864), extends popular tax credits (tax extenders) including the IRA Charitable Rollover provision through December 31, 2010. The newly dubbed *No-Debt Democrats* are concerned about the large, unpaid portion of the legislation, which would get added to the current deficit. More likely, the current bill – with a net cost of about \$58 billion – will have to be further winnowed on the spending side to capture the 60 votes necessary to pass this bill in the Senate. A final Senate vote is expected next week, with the President signing the bill before the end of the month.

Wall Street Reform Bill and the New Consumer Financial Protection Bureau: Coalition Letter to Conferees

The House and Senate conferees appointed to reconcile the differences between the House and Senate bills (H.R. 4173/S. 3217) on financial regulatory reform began negotiating in earnest last week. Importantly for the nonprofit community, the conference committee's working document includes the House and Senate provisions ACR worked hard to secure that mitigate the impact of this legislation on foundations and charities (click [here](#) for background on this issue).

Because there is always the possibility that things could change as the process moves forward, ACR drafted a letter to the conferees from leaders in the non-profit community asking them to retain the provisions we secured. ACR is working with the Non-Profit coalition we helped form to circulate this letter in the community for signatures. A copy of the letter is available [here](#). We plan to send this letter to the House and Senate conferees this week. Congressional Leadership has indicated that they would like to send this bill to the President before the Fourth of July recess, giving them only two more weeks to agree on the legislation and have both Houses pass the combined bill.

We will keep you updated as we hear about developments from the conference committee on this issue.

Private Foundation Excise Tax

Last week, Senator Chuck Schumer (D-NY) tried unsuccessfully to add his legislation to flatten the PF excise tax rate to 1.39% to the Tax Extenders bill being debated by the full Senate. What was the stumbling block? As the *Chronicle of Philanthropy* [reports](#), Senator Charles Grassley (R-IA) submitted a letter calling on the Council on Foundations (COF) to [provide additional data](#) about the need for the legislation and its impact on foundation grantmaking. Specifically, Senator Grassley questioned whether this legislation would actually result in charities getting more funding, saying “[f]lattening the rate without mandating that the tax savings be paid out seems like it’s rewarding those who just do the minimum while hurting those who go above and beyond what’s required.”

COF responded quickly, but the inquiry by Senator Grassley likely precludes Senator Schumer’s legislation from being ultimately added to the tax extenders bill. We expect Senator Schumer to continue to try and add this legislation to future tax bills.

Consider This...

You know the old adage that death and taxes are the only sure things in life? Well for the time being at least one of those certainties is in question – on January 1 of this year, the tax on estates disappeared. It went to zero. That’s right, zero.

Just last week, the New York Times ran an [article](#) about a Texas billionaire who died in March. Under current law his heirs will avoid billions in taxes that they would have otherwise paid if he’d died three months earlier or nine months later.

So Congress must be working night and day to resolve the issue right? Wrong. With half of 2010 behind us, there is no clear plan to deal with the estate tax. The House has passed legislation ([H.R. 4154](#)) to continue the tax at 2009 levels but an agreement in the Senate is nowhere in sight. Just last month, when rumors of an estate tax deal were swirling, the Chairman of the Senate Finance Committee Max Baucus (D-MT) put an end to those rumors by saying, “there’s no agreement on the estate tax on either the substance or process. None whatsoever.”

Next year, the rate is due to jump to 55 percent on estates over \$1 million. There are many members of the Senate who’d like to soften that blow. But there are also many members who’d be happy to see the rate go that high or even higher.

There is a glimmer of hope that Congress could renew their discussions on the estate tax in the near future. Senator Blanche Lincoln’s (D-AR) primary win last week may very well restart estate tax discussions. As you may recall, it was Senators Lincoln and Jon Kyl (R-AZ) that had been working very closely on compromise estate tax legislation earlier this year. Fresh off of her win, look for Senator Lincoln to renew her interest in an estate tax fix, though she doesn’t have much time.

All of this is important to the charitable community both because estate planning prompts individuals to consider charitable bequeaths and because if Congress wants to soften the blow, tax increases elsewhere will be needed to help “payfor” the change. And foundations are being eyed as a possible way to pay for reducing the estate tax next year and beyond.

If Congress doesn’t act, the rate goes to 55%. If Congress does act, other taxes will have to go up to help pay for the change. What a choice.

We’re watching this issue closely and will keep you up to date on all the latest developments.

Making Headlines

Here are recent headlines you may find interesting:

Federal

6/16 [Nonprofit Leaders Praise New Charity Legislation](#) – *Chronicle of Philanthropy* reports on the newly introduced bill (H.R. 5533) by Congresswoman Betty McCollum, (D-MN) creating a new agency to represent the nonprofit sector.

6/9 [Opposition May Derail Campaign Disclosure Bill](#) - *Washington Post* reports on opposition from advocacy groups to a proposed exemption to the disclosure act (H.R.5175) for large membership organizations like the NRA. This bill was introduced in response to the *Citizens United* Supreme Court ruling, which lifted many restrictions on spending by corporations or nonprofit advocacy groups on political communications. For Additional coverage:

- 6/17 [Nonprofit Advocacy Groups Oppose Campaign-Finance Exemption](#), *Chronicle of Philanthropy*
- 6/14 [Dems Close to Campaign Finance Deal](#), *Politico*

State

The passage of Florida bill [SB 998](#) to protect philanthropic freedom has generated discussion nationwide:

- 6/14 [Florida Stands Up for Charity](#) - Adam Meyerson provides an op-ed in the [San Francisco Examiner](#) and the [Washington Examiner](#) the value of this bill.
- 6/4 [Florida Protects Philanthropic Freedom](#) - On *Philanthropy Daily* Naomi Schaeffer Riley comments on the passage of SB 998.
- 6/5 [New Florida Law, Resolutions Promote & Protect State's Philanthropy](#) - *Florida Philanthropic Network News* shares news of the bill passage with its members.
- 6/1 [FLa. Adopts Legislation to Protect Foundations' Autonomy](#) - *Chronicle* reports on the passage of SB 998 and comments from opposition.
--- 6/11 [New Fla. Law Makes It Harder for Foundations to Live Up to Values](#) - Emmett Carson challenges the usefulness of SB 998 in this *Chronicle* commentary, and the philanthropic community responds to Carson's arguments.

6/13 [A New Normal for State's Nonprofits](#) - *Minneapolis Star-Tribune* reports on the dramatic changes to the once booming nonprofit sector in the state because of increasing demand for social services and precipitous drops in revenue as nonprofits.

6/4 [Nonprofits Lose Funding](#) - *Wall Street Journal* reports that due to New York's budget gridlock, the state has cut off funding to roughly 30,000 social-service agencies across the state and both sides remain unsure if and when it can pay on contracts to provide safety-net services such as senior care and mental-health counseling.

Commentary

6/4 [Five Threats to Philanthropic Freedom](#) - In a Washington Legal Foundation brief, Jeff Cain examines the five major threats to philanthropy from the public sector and non-profit world.

Reports/Studies

Giving USA released its 2010 findings on giving in 2009. Overall, total giving declined by 3.6% decline to \$303.75 billion and contributions to foundations fell by 8%. Full coverage:

- 6/9 [Donations Slip Amid Anxiety](#), *Wall Street Journal*
- 6/9 [Wealthy Give More Overseas, Less to Education, Religion](#), *Wall Street Journal*
- 6/9 [How Much Less Did You Give Last Year](#), *New York Times*
- 6/9 [Americans Didn't Pull Back on Their Giving Last Year](#), *Chronicle of Philanthropy*
- 6/10 [Report: Charitable giving was down in 2009, though with some bright spots](#), *USA Today*

6/13 [Michigan's Nonprofit Sector Added Jobs During Recession](#) - According to the Michigan Nonprofit Association the state is bucking nationwide trends as employment grew by 2.7 percent in the nonprofit sector.

Other

6/16 [The \\$600 Billion Challenge](#) - *Fortune* reports that Bill and Melinda Gates and Warren Buffett are campaigning to get the nation's billionaires to pledge at least half their net worth to charity, which if done could change the face of philanthropy.

6/9 [Viable Options For Hands On Charitable Giving](#) - *Forbes* discusses recent data showing a growing interest in donor advised funds as well as the pros and cons of advised funds versus or in addition to starting foundations.

6/8 [Funders Say Greater Efforts Needed To Assess Performance](#) - A recent survey conducted by the Learning for Action Group finds that a large majority of foundation executives and program officers say more effort is needed to assess funder performance but cite reasons why it's not routinely done.

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