



New Tax Act Has Much for Nonprofits

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The Protecting Americans From Tax Hikes Act of 2015 (the Act), which was signed by the president on Dec. 18, 2015, contains many provisions that directly affect tax-exempt organizations. Many recent tax provisions have been so-called “extenders,” which required passage of legislation annually in order for them to continue to remain in effect. These were typically passed at year-end for the applicable year, making planning for such provisions impossible. Now, the year-end panic is over, as the Act makes many of these provisions permanent.

This, along with several other provisions the Act introduces, will have tax implications for nonprofits going forward. Let’s discuss several that nonprofits should be aware of.

The Extenders:

Tax-Free Distributions from Individual Retirement Accounts (IRAs) for Charitable Purposes:

This provision allows individuals over 70½ to make distributions directly from their IRA accounts to charities—and have them count as the distributions they are required to take (required minimum distributions). Otherwise, such distributions would first have to be taken into the individual’s income as a distribution and then contributed by the individual and taken as a charitable deduction on the individual’s personal income tax return. For wealthier persons who itemize deductions, this often results in a penalty due to limitations on itemized deductions based upon adjusted gross income. The direct distribution to a charity eliminates this penalty. This provision is now permanent for years beginning after Dec. 31, 2014.

Payments from Controlled Entities:

In general, certain passive income (such as rents, interest and royalty payments) is excluded from taxable unrelated business income (UBI) by statute. However, Internal Revenue Code (Code) Section 512(b)(13) provides that such payments received by a tax-exempt organization from entities that they control (more than 50 percent ownership) are generally taxed as UBI. An exception to the UBI treatment was made for payments made pursuant to a binding written contract in effect on Aug. 17, 2006 (or renewal of such contract under substantially similar terms). If such an agreement is in effect, the taxable income is limited to the amount of the

payments in excess of fair market value. This exception had to be extended every year and now is made permanent for years beginning after Dec. 31, 2014.

Qualified Conservation Contributions:

For most contributions, taxpayer deductions of capital gain property to public charities are limited to 30 percent of adjusted gross income (AGI) before any net operating loss deduction. Under this extender, individuals can deduct qualified conservation contributions up to an amount equal to 50 percent of their AGI, as long as additional charitable contributions plus the conservation contributions do not exceed the 50 percent limitation. There is a 15-year carryforward allowed for conservation contributions not utilized in the current year (as opposed to a five-year carryforward for other charitable contributions). Qualified farmers and ranchers, under this provision, are allowed to take a deduction of up to 50 percent of AGI even if total contributions are in excess of 50 percent of AGI. This provision is now permanent for years beginning after Dec. 31, 2014. There are special rules for contributions by Native Corporations for years beginning after Dec. 31, 2015.

Contributions of Food Inventory:

This extender allowed taxpayers, other than C corporations, to take an enhanced deduction for donations of “apparently wholesome” food inventory that was previously only available to C corporations. This provision makes the deduction the lesser of basis plus one-half of fair market value in excess of basis or two times basis. This also limits the percentage of the deduction for various types of entities. This provision is now permanent and effective for years beginning after Dec. 31, 2014.



For years beginning after Dec. 31, 2015, the charitable percentage limitation is increased for such donations.

New (Non-extender) Legislative Provisions:

Charitable Contributions to Agricultural Research Organizations and Public Charity Status:

This new provision allows contributions to agricultural research organizations to qualify for the 50 percent AGI charitable deduction limitation and treats such organizations as public charities (not private foundations) regardless of their sources of financial support (i.e., not subject to the public support test). The provision is effective on Dec. 18, 2015, for contributions made on or after that date.

Administrative Appeals Procedures Relating to Adverse Determinations of Tax-Exempt Status of Certain Organizations:

This provision codifies the May 19, 2014, interim guidance requiring the Secretary of the Treasury to describe procedures under which any 501(c) organization may request an administrative appeal (including a conference, if requested) to the Internal Office of Appeals in the case of an adverse determination. This provision is effective for determinations made on or after May 19, 2014.

Section 501(c)(4) Social Welfare Organization Notice of Formation and New Exemption Application:

Section 501(c)(4) organizations have been under increased scrutiny because of the proliferation and publicity of their political activities. These organizations are not required to file an exemption application Form 1024 in order to operate as a tax-exempt entity. However, many such organizations do file an exemption application in order to obtain the additional assurance of a favorable determination from the IRS.

Under a new provision, all new 501(c)(4) organizations must provide notice of formation and intent to operate as a 501(c)(4) organization no later than 60 days after formation. The notice must include name, address, taxpayer identification number, date on which (and the state under the laws of which) the organization was organized, and a statement of purpose of the organization. There will also be a user fee required with this notice. This required notice and user fee does not grant the organization a favorable determination.

Organizations that do want the additional assurance of a favorable determination must still complete an exemption application and submit to the IRS with the user fee. The exemption application will be made on a new form (not the existing Form 1024) which will be only for Section 501(c)(4) organizations. This provision is effective for organizations organized after Dec. 18, 2015.

Declaratory Judgments for Section

501(c)(4) and Other Exempt Organizations:

Under present law, only organizations seeking Section 501(c)(3) status that have been denied such status by the IRS may go to court to seek a declaratory judgment to obtain such status under Section 7428 of the Code. Under a new provision, the Section 7428 declaratory judgment procedure is extended to any organization exempt under any subsection of Section 501(c) including Section 501(c)(4) and 501(c)(6) organizations. This provision is effective for pleadings filed after Dec. 18, 2015.

Gift Tax on Gifts to Certain Exempt Organizations:

It has long been a question as to whether the gift tax was applicable to gifts made to non-charitable organizations such as 501(c)(4), (5) or (6) entities. The IRS has not enforced the gift tax in this situation but has also not ruled that it is not applicable. This provision makes it clear that gifts to 501(c)(4), (5) or (6) organizations are exempt from the gift tax. The effective date of this provision is for gifts made after Dec. 18, 2015.