JANUARY 30, 2018

New Tax Laws Expected to Affect Charitable Giving

The final version of the Tax Cuts and Jobs Act, aside from the provisions directly applicable to exempt organizations that we discussed **here**, also contains a few provisions that may change how charities go about soliciting contributions. The Act retains the charitable deductions against income, estate, and gift tax, but changes to other provisions have reduced the applicability or value of those deductions to many potential donors. The new Act:

- **Nearly doubles the standard deduction**. This change, in conjunction with the highly-publicized cap to the state and local taxes deduction and a reduction in the cap on the mortgage interest deduction, is expected to dramatically reduce the number of itemizers – people who take itemized deductions rather than the standard deduction. The Urban-Brookings Tax Policy Center **estimates** that the changes in the law will reduce the number of itemizers from 46 million to around 16 million, reducing charitable giving by $15 billion this year.
- **Doubles the estate and gift tax exclusion amount**. This will further reduce the number of families that are subject to the estate tax, eliminating any tax incentive for charitable bequests for all but a very few of the wealthiest households.
- **Eliminates the charitable deduction for donations to universities in exchange for preferential athletic tickets**. This has already changed the way universities structure their athletic seating subscriptions, and may well reduce contributions to those institutions.

Meanwhile, two changes could increase the value of the charitable deduction for select donors:

- **The repeal of the "Pease" limitation**, which trimmed the value of total itemized deductions for those with adjusted gross income (AGI) upwards of $300,000. Repealing the limitation increases the value of itemized deductions for those above that income level, provided that their itemized deductions exceed the standard deduction.
- **The increase in the percentage of AGI that can be deducted for cash contributions to public charities**. Most of us cannot afford to give away more than half of our income to charity – and many who could afford to do so, don't. However, for those select few with both the means and the desire, the increase of the AGI limit from 50% to 60% will be a welcome change.

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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What does all this mean to you? With an across-the-board reduction in charitable giving, especially from middle-income donors, charities that tend to rely on many smaller donations may want to adjust their approaches in one or more of the following ways:

- Focusing on the important reasons to give, apart from any tax benefit. Tax benefits are not the only motivator to support your charity, of course.
- Focus on attracting gifts of stock and other appreciated assets. The value of the tax deduction may have been reduced or eliminated for many, but avoiding capital gains is still relevant and can be quite valuable for donors.
- Refocusing solicitations on higher-income donors who will still itemize. This approach will work better for some organizations than for others.
- Suggesting that donors consider alternating their donations year-to-year (sometimes called “bunching”). For example, a donor might give twice as much as usual in 2018 and take the itemized deductions, but then give little to none in 2019 and take the standard deduction that year. Over the two-year span the donor’s giving could remain level, but with up and down years to maximize the tax benefits. Up and down giving could require changes to charities’ budgeting process, and donors could reduce this stress by using a donor-advised fund to smooth out the funds flowing to the charities of choice.

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