2020 Federal Appropriations Act Provisions Impact Nonprofits

On December 20, 2019, the President signed a bipartisan appropriations bill (H.R. 1865, the Further Consolidated Appropriations Act, 2020), which includes several pieces of legislation affecting nonprofit organizations. In particular:

The UBIT "Parking Tax" Has Been Repealed Retroactively

Nonprofits nationwide will be relieved that Congress has repealed the highly unpopular tax on costs they incur in providing certain commuting and parking benefits to their employees. This tax applied to costs paid or incurred after December 31, 2017. The repeal is retroactive and treats the tax, which had been framed as a deemed unrelated business income tax ("UBIT"), as if it had never been imposed. Thus, nonprofits no longer have to calculate or pay the tax for the current tax year. They will also be able to claim refunds for tax amounts previously paid, including current-year estimated tax payments, prior year taxes paid and state UBIT payments.

Nonprofits that made changes to their treatment of employee parking and commuting benefits (such as making employee-only parking spaces unreserved or discontinuing pre-tax commuter and parking benefits) should consider reversing those changes.

The Private Foundation Excise Tax Will be Lower For Some, Higher For Others

For decades, private foundations have been required to pay an excise tax of 2 percent of their net investment income (Section 4940 of the Internal Revenue Code). Organizations that follow a certain pattern of increasing distributions were able to qualify for a lower excise tax rate of 1 percent.

Congress has long considered simplifying this private foundation excise tax scheme by imposing a flat rate of tax to all organizations. The new law accomplishes that by changing the tax rate to 1.39 percent and eliminating the potential lower 1 percent tax rate. For many organizations, this will result in a reduced excise tax. For organizations that would otherwise have qualified for the 1 percent rate, this may result in slightly higher excise tax.

SECURE Act May Decrease Lifetime Gifts from IRAs, While Increasing Gifts at Death

Giving from IRAs, both during lifetime and upon death, is one of the most tax efficient ways to contribute to charity. Taxpayers currently can give up to $100,000 directly from their IRAs to charity without recognizing the distribution as taxable income, giving them the effective equivalent of a 100 percent charitable deduction for the distribution in the year of the gift.

This avoids application of the adjusted gross income ("AGI") limits on charitable deductions, which otherwise would allow a charitable deduction in the year of the gift of no more than 60 percent of AGI for gifts of cash to public charities (with any excess deduction rolling over for up to five years). These Qualified Charitable Distributions (QCDs) also count towards a taxpayer's required minimum distribution.

The SECURE Act, which was attached to and enacted together with H.R. 1865, does not change the QCD rules for distributions to charity, but it does increase the age at which people must start receiving required minimum distributions, from 70 ½ to 72. This change could defer the need for many IRA owners to take advantage of the tax benefit of QCDs, and thereby reduce the number of QCDs made to charity.

On the other hand, changes to the rules for receipt of IRA proceeds by beneficiaries following the death of the IRA account owner could encourage more taxpayers to give their IRA proceeds to charity when they die. Under prior law, those dying with IRA accounts could in many cases allow a designated beneficiary to "stretch" out the IRA payments over the beneficiary's lifetime, thereby deferring and lessening the impact of the income tax burden of receiving IRA distributions.

The new law now greatly reduces the ability to "stretch" out IRA distributions to non-spouses, requiring (with some exceptions) all IRA proceeds to be paid out within 10 years. By accelerating the income tax burden after death, this change in the law may create additional incentives to donors to leave their IRA assets to charity and find other, more tax-efficient ways to benefit family members.

Renewed Tax Incentives for Disaster Relief Contributions

Another way to avoid the AGI limitations, and get effectively a 100 percent charitable deduction in the year in which a charitable gift is made, is to make a gift for qualified disaster relief. These opportunities are not well advertised, as Congress has chosen to offer them not by amending the Internal Revenue Code, but rather by special sections of other bills offering time-limited suspension of the AGI limitations. Such a provision was included in the Bipartisan Budget Act of 2018, but that expired at the end of 2018.

However, Congress has extended these tax incentives in the new law. Individuals who make cash gifts to public charities (other than donor-advised funds and supporting organizations) may effectively deduct up to 100 percent of their adjusted gross income in the year of the gift, so long as those gifts are made for relief efforts in one or more qualified disaster areas between January 1, 2018, and February 18, 2020 (60 days after the new law was enacted). A qualified disaster area is any area with respect to which a major disaster was declared during that period of time by the President under the Stafford Act. A list of qualifying disasters can be found at http://www.fema.gov/disasters. Donors must obtain a contemporaneous written acknowledgement from the charity that the contribution was (or is

to be) used for relief efforts in one or more qualified disaster areas and must elect to treat the contributions as qualifying for the higher percentage limits.

Hemenway & Barnes will continue to monitor these changes in the law and how they may affect our nonprofit clients.

Contact Us

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