NONPROFIT AGENDAS

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TAKING CARE OF BUSINESS

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4 ideas to counter shrinking donations under the new tax law

Passage of the Tax Cuts and Jobs Act (TCJA) last year spread dismay in the nonprofit community. With several provisions in the law expected to depress charitable giving, nonprofits should mobilize to minimize the negative impact on their bottom lines.

What are the donation disincentives?

The TCJA makes several changes that could reduce the tax incentive to donate. It:

- Drops individual income tax rates, which, in turn, diminishes the value of deductions,
- Nearly doubles the standard deduction to $12,000 for individual taxpayers and $24,000 for married couples filing jointly,
- Limits the state and local tax deduction to a total of $10,000, and
- For 2018, roughly doubles the estate tax exemption to $11.18 million for individuals and $22.36 million for couples.

One of the TCJA's stated goals is to reduce the number of taxpayers who claim itemized deductions — and taxpayers who don't itemize can't claim charitable donation deductions. The nonpartisan Tax Policy Center estimates that the number of households claiming charitable deductions will fall from about 37 million to 16 million in 2018.

What can combat the expected trend?

In the face of these challenges, many nonprofits will need to alter their donation solicitation strategies. For starters, you might consider encouraging existing donors and potential donors to:

1. Bunch their donations. Charitable deductions generally have zero tax value for taxpayers who don't itemize. And with many previously popular deductions eliminated or limited, and the state and local tax deduction capped at only $10,000, many taxpayers will just take the standard deduction. By bunching their donations, though, taxpayers can accumulate enough itemized deductions to put them over the standard deduction hurdle for some tax years.

Bunching is simple — donors time their donations so that two annual gifts count for the same year. For example, a donor who normally gives every December could bunch donations in alternative years (giving in January/December 2019 and January/December 2021), or a donor could make five years' worth of annual donations in a single year.

2. Establish donor-advised funds. Of course, bunching may leave nonprofits with some lean years between donations. With donor-advised funds (DAFs), donors can achieve similar tax benefits while providing a steadier stream of funding. Your

An alternative for retiree donors

To combat the new tax law's donation disincentives, nonprofits should consider promoting a giving technique that's available only to donors age 70½ or older — qualified charitable distributions (also known as charitable IRA rollovers).

Qualified taxpayers can transfer up to $100,000 to charitable organizations (other than donor-advised funds or private foundations) every year from their traditional IRA accounts. Married couples can distribute up to $200,000 annually. No charitable deduction is allowed, so it doesn't matter if taxpayers itemize.

But, because the distribution is made directly by the IRA trustee to the charitable organization, the distribution from the IRA isn't included in the taxpayer's adjusted gross income (AGI). This reduces taxable income, makes it easier to obtain deductions subject to AGI floors and can avoid the net investment income tax. And, importantly, the payments count toward taxpayers' required minimum distributions from IRAs.

donor can bunch several years of donations to a DAF in a single year to exceed the standard deduction. But he or she can ask the DAF's administrator to pay out the funds annually in equal increments. That way, you enjoy regular gifts even in years the donor doesn't itemize.

3. Make microdonations. You also might consider soliciting more microdonations — small gifts that donors don't think twice about giving. Think of a quick $10 donation-by-text or a $15 per month automatic donation out of a checking account or to a credit card. This avenue of giving is becoming more popular, especially among younger donors who appreciate the ease. And donors who get on board with small donations when they're younger and in their early income-earning years may well become bigger donors down the road.

4. Remember their philanthropic motives. There's more behind most people's charitable giving than the potential tax advantages. Remind donors of the on-the-ground impact of their donations and the differences they can make in the real world.

There are other strategies for bumping up donations. Keep abreast of suggestions offered in the nonprofit community.

Help them help you

No one can say for certain how the TCJA will affect charitable giving going forward. But even if the direct consequences are less dire than predicted, these strategies can help your nonprofit maintain the steady donation levels you depend on to fulfill your mission.

Midterm elections

What your nonprofit can and can't do

Although 2018 isn't a presidential election year, election season is shaping up to be extremely active. On the federal level, races are underway for all seats in the U.S. House of Representatives and about one-third of the seats in the U.S. Senate. And that's not to mention the hundreds of races at state and local levels.

Does your not-for-profit know the rules about acceptable and prohibited political activities? If not, you'd better study up. Fail to adhere to them and your organization risks losing its tax-exempt status.

Avoiding political intervention

The IRS states that 501(c)(3) organizations can't participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. An organization engages in political intervention when it 1) makes or solicits contributions to or for candidates or political organizations, 2) endorses a candidate or rates the candidates, 3) publishes or distributes partisan campaign literature or written statements (including online material), or 4) lets its representatives speak out about a candidate.

Repealing this prohibition has been discussed in Washington, but these rules are still in place. However, you can conduct nonpartisan activities that educate the public and help them participate in the electoral process as long as these activities are in line with your exempt purpose.

Communicating with voters

Not-for-profits can provide voter education, including voter registration or get-out-the-vote drives — if they're conducted in a nonpartisan

manner. To reduce the odds of bias, you should avoid mentioning any candidates or political parties in communications about the activity.

For example, get-out-the-vote communication efforts should only urge people to register and vote, and describe the hours and places of registration and voting. Any additional services offered, such as rides to polling places, should be offered to everyone, regardless of political affiliation.

Some nonprofits compile the voting records of incumbents or document candidates' responses to questions posed by the organization. Regardless of its form, a voter guide must cover a broad range of issues and refrain from judging the candidates or their positions.

Voting records can be considered political campaign intervention if they identify any incumbent as a candidate or compare an incumbent's positions with those of other candidates or your organization. Such guides are particularly risky if published simultaneously with a political campaign or if they're targeted to areas where campaigns are occurring.

Pinning down positions

Organizations sometimes use questionnaires to collect and distribute information about candidates and the issues. Phrase questions neutrally, in a way that doesn't suggest a bias or preferred answer. For example, "Do you support saving innocent lives through gun control?" probably won't fly. Further, send any questionnaire to all candidates for an office, publish all responses received (without substantive editing) and avoid comparing the responses to your own positions.

Hosting candidates

Candidate appearances can take a variety of forms. For example, so-called "noncandidate" appearances take place when candidates appear in a role other than that of the candidate or to speak on a topic other than the election.

To pass muster with the IRS, your organization should maintain a nonpartisan atmosphere at the event and ensure that no campaigning activity goes on. None of your organization's representatives should mention the campaign or the invitee's candidacy. And any announcement of the event should clearly indicate the capacity in which the candidate is appearing. Again, avoid mention of his or her candidacy.

If a candidate is invited to speak *as a candidate*, your organization is engaging in political campaign intervention unless it gives all qualified candidates an equal opportunity to speak — with substantially similar invitations and events. Your organization also must make clear that it neither supports nor opposes any speaker's candidacy.

Candidate forums in which all of the politicians appear together are generally permissible. But ensure that the candidates are treated fairly and impartially.

Too important to dismiss

The IRS itself admits it has only proposed revocation of tax-exempt status because of a nonprofit's involvement in political activities in a few egregious cases. But don't take that risk. Intervening in political campaigns also can lead to excise taxes on the amount of money spent on the prohibited activity, as well as reputational damage. Always make sure your political activity is clearly nonpartisan. ■

The TCJA changes the rules on UBI

As the Tax Cuts and Jobs Act (TCJA) made its way through Congress, many nonprofits understandably focused on the provisions likely to affect charitable giving. But the law also contains some significant requirements affecting unrelated business income (UBI). If you engage in "unrelated business" — and even if you don't — you could find that your unrelated business income tax (UBIT) liability increases under the new law.

Calculation of your income

The most significant change related to the UBIT comes into play when you're computing your UBI. Under the TCJA, nonprofits must calculate UBI separately for each unrelated trade or business, with the total UBI equaling the sum of those amounts. (None may be less than zero.) The determination for each business is made without regard to the $1,000 deduction generally allowed. That deduction is applied to the aggregate UBI.

Importantly, net operating losses (NOLs) can only be claimed against future income from the specific business that generated the loss. (You can still use NOL carryovers from years prior to 2018 to offset all UBI.) Previously, you could apply NOLs from one business to reduce the taxable income of another, as well as to gains from alternative investments or pass-through entities also considered UBI. The loss of this option could mean that nonprofits with multiple unrelated businesses will have more UBI than in the past.

The TCJA also changes the corporate tax rate to 21% from a range of 15% to 35%. Because nonprofits pay the corporate rate on UBI, your tax liability potentially could fall even if your UBI grows.

Inclusion of certain fringe benefits

UBI also might grow due to a change in the treatment of certain fringe benefits. Until now, you could provide your employees with qualified transportation benefits (including commuter transportation and transit passes), qualified parking fringe benefits and on-site athletic facilities free of income tax for both you and employees. While these benefits are still not taxable to employees, the TCJA treats your cost to provide them as UBI unless they're directly connected with an unrelated business (for example, parking benefits provided employees of the unrelated business).

As a result, nonprofits may owe UBIT even without operating any unrelated businesses. This change, and several others under the TCJA, is intended to treat nonprofits more like for-profit businesses.

Possible responses

Your nonprofit may be able to minimize the effects of the changed rules for UBI. For example, if you operate multiple unrelated businesses, consider housing them in a single taxable corporate subsidiary. This will allow you to offset the businesses' income and losses against each other. Bear in mind, though, that such restructuring can have additional tax and legal implications.

You also might want to conduct an audit of all of your unrelated businesses to ensure you've been accurately capturing all expenses that are allocable to each business. Otherwise, you could be inflating UBIT! Every nonprofit with UBI will need effective methods for tracking and allocating income and expenses, including compensation, investment management fees and overhead.

As for the inclusion of certain fringe benefits, think about replacing them with alternative forms of compensation. It might make sense to simply increase employees' income commensurately so you don't have to worry about triggering UBIT. Who knows? Your employees may well prefer cash. Yes, it will be taxable to them, but the TCJA cut individual tax rates, too, and cash gives employees more discretion.

Navigating the ins and outs

The new UBI rules, like many of the TCJA's changes, will take some time to shake out. Clarifying regulations are likely to follow over the next few months or years. Your CPA can help you stay on top of developments and chart the way ahead. ■

Do you qualify for the new family leave credit?

The new tax law creates a credit for eligible employers in 2018 and 2019 based on paid leave for up to 12 weeks, granted under the federal Family and Medical Leave Act (FMLA). Employers aren't required to pay employees for FMLA leave, but — for 2018 and 2019 — those that do may qualify for a tax credit of 12.5% of the wages paid. That's *if* the rate of payment under the leave program is at least 50% of employees' regular rate.

The credit percentage rises incrementally as the rate of payment exceeds 50% of the regular rate. It maxes out at a 25% credit for full wages.

To qualify, an organization must allow all eligible full-time employees at least two weeks of annual paid family and medical leave and all eligible less-than-full-time employees a commensurate amount of leave on a prorated basis. Paid vacation, personal time or other medical leave doesn't qualify for the credit. Payment to employees earning more than $72,000 per year doesn't, either.

Consider modifying your leave policies to take advantage of the credit and developing appropriate tools for tracking eligible employees and pay.

Nonprofits join the impact investment game

Organizations, including the YWCA Metropolitan Chicago and the NAACP, are backing impact-themed exchange traded funds (ETFs), launched by nonprofit start-up Impact Shares, that focus on their particular interests. An ETF is an investment fund that's traded like a common stock on a stock exchange. Impact-themed ETFs invest in socially responsible companies, with an eye toward influencing corporate behaviors. Individual investors who share a nonprofit's goals can buy shares of its ETF, and Impact Shares will donate the advisory fees those investors pay back to the nonprofit. This allows investors to support the organization while pursuing an investment strategy that aligns with their values.

Study scrutinizes foundations' investment performance

Foundation Source's 2017 *Private Foundation Investment Performance* report examined the investment activities of private foundations with assets of less than $50 million, comparing data from 2016 to 2015. It found that the average asset balances of foundations with assets under $1 million fell 1.4%, while larger foundations' average balances grew 5.6% to 6.8%.

Foundation Source, which provides support services to private foundations, said the drop in small foundations' average assets could be attributed to smaller foundations distributing a greater percentage of their assets for grants and expenses than their larger counterparts. The report also found that, compared with the previous year, 2016 portfolio performance was more robust across all foundation sizes.

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