The New Tax Law: A Summary for Gift Planners

On December 16 , the U.S. House of Representatives passed, unamended, the compromise tax bill that was passed by the U.S. Senate a few days earlier. President Obama signed the bill into law on December 17.

The tax bill contains a number of provisions that are of particular interest to gift planners. A summary of these provisions is below.

Extension of the charitable IRA rollover. From a gift planner's perspective, this may be the most exciting provision in the new law. The charitable IRA rollover, which allows taxpayers who are 70 ½ or older to make tax-free transfers of up to $100,000 per year from a Traditional IRA or Roth IRA directly to charity, was originally effective for 2006 and 2007 and then twice extended through 2009. However, it was allowed to expire on January 1, 2010 and had not been available since.

The new law extends the charitable IRA rollover for two years, retroactive to January 1, 2010 (that is, through 2011). Recognizing that there is little time left to take advantage of this extension in 2010, the new law allows donors to elect to treat IRA rollover gifts made in January 2011 as if they were made on December 31, 2010. Taxpayers who make this election get to count their gift against the $100,000 limitation on such gifts in 2010 instead of against the 2011 limitation. They may also count their gift toward fulfilling their required minimum distribution for 2010.

Taxpayers hold trillions of dollars in IRAs. The resurrection of the charitable IRA rollover presents gift planners with an excellent opportunity to promote lifetime gifts of IRA assets among their supporters.

Extension of Individual Income Tax Rates

For the past several years, federal income, capital gains, and qualified dividend tax rates have been at historically low levels. While these low rates leave additional income in the hands of would-be donors, they also depress the income tax amounts donors can save by giving to charity. The new law extends these rates for all taxpayers through 2012, thereby continuing the relatively low tax incentives for making lifetime charitable gifts, including planned gifts.

Temporarily extend all federal income tax brackets for two years. The 10%, 25%, 28%, 33%, and 35% individual income tax brackets were set to expire at the end of 2010 and increase to 15%, 28%, 31%, 36%, and 39.6%, respectively. The lower income tax brackets have been extended through 2012.

Temporarily extend the capital gains and dividend rates. The capital gains and dividend rates for taxpayers below the 25% income tax bracket has been equal to zero percent in 2010. For those in the 25% bracket and above, the tax on capital gains and qualified dividends has been 15%. For 2011, capital gain rates were scheduled to become 10% and 20%, respectively, and qualified dividends to be subject to the ordinary income

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rates (up to 39.6%). The current capital gains and qualified dividends rates have been extended for all taxpayers through 2012.

Temporarily repeal the itemized deduction limitation. Since 1991, the amount of itemized deductions that a taxpayer may claim has been reduced, to the extent the taxpayer's adjusted gross income is above a certain amount. This limitation on itemized deductions was repealed for 2010, but would have returned in 2011. The repeal of this limitation has been extended through 2012. This repeal means that donors who itemize and are in higher income levels will be able to use more of their charitable deductions. This is good news for fundraisers.

Adjustments to Estate, Gift, and Generation Skipping Tax

Estate, gift, and generation skipping taxes were scheduled to return to pre-2001 levels on January 1, 2011: a top tax bracket of 55% with a $1 million exemption. Under the new law, the top bracket will be 35% with a $5 million exemption per person, $10 million per married couple. These changes apply in 2011 and 2012. This means that for all taxpayers but the tiny minority with estates in excess of $5 million ($10 million for married couples), federal transfer taxes will cease to be a concern for at least the next two years. Accordingly, during this time most planned gift donors will not save transfer tax as a result of their gift because they had no transfer tax to pay in the first place. Nevertheless, it is important to keep these changes in perspective; most donors make gifts from their estates because of their commitment to your mission, not because of estate or gift tax savings.

Estate, gift, and generation skipping taxes in 2011 and 2012. Estate and generation-skipping transfer taxes have been phased out over the past six years and were fully repealed in 2010. Meanwhile, the gift tax rate was reduced to 35 percent and the gift tax exemption maintained at $1 million for 2010. As mentioned above, the new tax law sets the exemption at $5 million per person and $10 million per married couple and a top tax rate of 35 percent for the estate, gift, and generation skipping transfer taxes, effective through 2012. The exemption amount is indexed beginning in 2012. The new rates and exemption are effective January 1, 2010, but executors may elect to choose no estate tax and modified carryover basis for estates arising anytime during 2010.

Portability of unused exemption. For many years, couples have had to do careful estate planning, such as the creation of a credit shelter trust, in order to claim their combined estate tax exemption. The new law allows the executor of a deceased spouse's estate to transfer any unused estate tax exemption to the surviving spouse without such planning. The provision is effective for estates of decedents dying after December 31, 2010.

Reunification. Prior to 2001, the estate and gift taxes were unified, creating a single graduated rate schedule for both. The single lifetime exemption could be used for gifts and/or bequests. The Economic Growth and Tax Relief Reconciliation Act of 2001 (i.e., "the Bush tax cuts") decoupled these systems. The new law has unified them once again, along with the generation skipping tax, at least through 2012.

Additional Provisions of Interest to Gift Planners

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Extension of provision encouraging contributions of capital gain real property for conservation purposes. The new law extends for two years (through 2011) the increased contribution limits and carryforward period for contributions of appreciated real property (including partial interests in real property) for conservation purposes.

Extension of enhanced charitable deduction for contributions of food inventory. The new law extends for two years (through 2011) the provision allowing businesses to claim an enhanced deduction for the contribution of food inventory.

Extension of enhanced charitable deduction for contributions of book inventories to public schools. The new law extends for two years (through 2011) the provision allowing C corporations to claim an enhanced deduction for contributions of book inventory to public schools (kindergarten through grade 12).

Extension of enhanced charitable deduction for corporate contributions of computer equipment for educational purposes. The new law extends for two years (through 2011) the provision that encourages businesses to contribute computer equipment and software to elementary, secondary, and post-secondary schools by allowing an enhanced deduction for such contributions.

Extension of special rule for S corporations making charitable contributions of property. The bill extends for two years (through 2011) the provision allowing S corporation shareholders to take into account their pro rata share of charitable deductions even if such deductions would exceed such shareholder's adjusted basis in the S corporation.

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