



Philanthropic NEWS

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ROUNDUP OF NOTABLE LEGISLATION IN 2008

As the 2008 legislative year gets under way, legislation that will significantly impact nonprofits and fundraisers has already been adopted or introduced on the federal and state level. A roundup of some of these important bills follows.

In February, the federal Do Not Call Improvement Act was passed by Congress and signed into law. The Act amends the Do Not Call Implementation Act of 2003 to prevent more than 150 million phone numbers currently registered on the Do Not Call Registry from expiring in September. When the Registry was originally created in 2003, the Federal Trade Commission (the agency responsible for implementing and overseeing the Registry) developed rules that required consumers to re-register their phone numbers every five years. With this Act, consumers will no longer have to re-register because the law prohibits the FTC from automatically removing phone numbers from the Registry. The Act provides that phone numbers may only be removed from the Registry if the number is

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IRS ISSUES GUIDELINES FOR SUPPORTING ORGANIZATION STATUS

The IRS has finally issued guidelines for Type I, Type II, and Type III supporting organizations in order to alleviate some of confusion caused by the Pension Protection Act of 2006. The IRS memorandum released March 18, 2008, clarifies the tests to be used by IRS examiners when determining if an organization seeking public charity status as a supporting organization is Type I, II, or III.

Generally defined, Type I supporting organizations are operated, supervised, or controlled by one or more 509(a)(1) or (2) organizations; Type II supporting organizations are supervised or controlled in connection with one or more 509(a)(1) or (2) organizations; and Type III supporting organizations are operated in connection with one or more 509(a)(1) or (2) organizations.

In particular, the Guide Sheet Explanations are helpful in distinguishing between the two sub-categories of Type III supporting organizations for tax purposes. The two categories are: "supporting organizations that are not functionally integrated" and "functionally integrated Type III supporting organizations." The IRS originally provided no further guidance regarding the two categories of Type III organizations, which led to a great deal of confusion in the nonprofit community.

The new guidance is important because Type III organizations that are not functionally integrated *are* subject to the excess business holding rules of IRC 4943 and must meet annual payout requirements. Also, private foundations cannot treat grants

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invalid, disconnected or reassigned or if the individual consumer asks to have his or her number removed from the list. Charities are not covered by the do not call prohibitions of the national Registry.

On the state level, a number of Do Not Mail bills have been introduced this year that would allow consumers to register on lists to opt out of receiving so-called “junk mail” solicitations. So far at least nine states have introduced or carried over from the 2007 legislative session bills that would implement state-wide Do Not Mail lists. The states include Hawaii, Illinois, Maryland, Michigan, New Hampshire, New York, North Carolina, Rhode Island, Tennessee, Vermont, and Washington. In general, the bills would establish Do Not Mail registries listing residents who have indicated they do not want to receive unsolicited direct mail material. Most of the bills have some form of exceptions for solicitations by 501(c)(3) organizations engaged in fundraising. Last year around 15 similar bills were introduced, but none were adopted.

Other notable state bills have been introduced that would bolster the oversight of charitable activity. In particular, Hawaii Senate Bill 3171 (and the almost identical House Bill 2308) was introduced to require registration and financial reporting for charities before they can solicit funds in the state. Based on the Model Act for the Solicitation of Funds for Charitable Purposes drafted by the National Association of Attorneys General and the National Association of State Charity Officials, the bill seeks to improve information available to the public and law enforcement. This legislation would re-enact Hawaii’s registration requirement for charities that was repealed in the mid-1990s and comes in response to recent reports that describe Hawaii as having some of the most lax charitable oversight laws in the country. Currently, Hawaii is one of only 11 states that lack charitable registration requirements.

Some of the provisions of the bill would require charities to register and file annual financial reports with the state Attorney General, require annual filings of audited financial statements for charities with over \$500,000 in gross revenue, require professional solicitors to report national and local gross revenues in financial reports to the Attorney General and require commercial co-venturers to file a copy of a written consent not less than 10 days prior to commencement of a promotion in the state. The bill has passed the Senate and is currently under committee review in the House.

IRS ISSUES GUIDELINES

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made to these Type III supporting organizations as qualifying distributions under IRC 4942. In contrast, functionally integrated Type III supporting organizations are *not* subject to the excess business holding rules of 4943 or annual payout requirements, and private foundations may treat grants made to these organizations as qualifying distributions.

Final guidance has not yet been issued that clearly defines “functionally integrated Type III supporting organizations.” Until such final guidance is issued, the IRS will not be issuing determination letters on this category of Type III organizations. If an organization still wants to seek such a determination, they can choose to write the IRS under the Advance Notice of Proposed Rulemaking (ANPRM) and the IRS can issue the organization a determination letter. The ANPRM is available on the IRS website at www.irs.gov. If the organization does not agree to comply with the ANPRM, it can still request a letter that classifies it as a Type III supporting organization, without determining whether or not it is functionally integrated.

All supporting organizations should consult the Guide Sheet Explanations for information on classification. While the Guide Sheets do not alleviate all of the confusion caused by the Pension Protection Act changes, they are certainly a step in the right direction.

For additional information on supporting organizations, please contact Cliff Perlman at cliff@perlmanandperlman.com.

IRS ANNOUNCES SUBSTANTIATION REQUIREMENTS FOR CONTRIBUTIONS THROUGH THE CFC

The Internal Revenue Service (IRS) recently released interim guidance for substantiating lump-sum charitable contributions made through the Combined Federal Campaign (CFC) or a similar program (such as a United Way Campaign). Pursuant to changes made under the Pension Protection Act of 2006 which added Internal Revenue Code §170(f)(17), donors who wish to claim charitable deductions for monetary gifts made after August 17, 2006 must maintain a bank record or written communication from the donee organization showing the name of the organization, as well as the date and amount of the contribution.

The IRS notice states that a deduction for a lump sum contribution made in taxable years beginning after August 17, 2006 will not be allowed unless the new IRC § 170(f)(17) record keeping requirements are met. In the case of lump sum contributions made through the CFC or similar programs, the organization receiving the payment made as a contribution may be treated as a donee for purposes of IRC § 170(f)(17) even if the organization distributes the amount received to other charitable organizations (pursuant to donor's instructions or otherwise). A written communication from such organization must include the name of the donee organization that is the ultimate recipient of the charitable contribution to which the CFC or similar organization distributes the amount received.

The IRS and the Treasury Department expect to issue regulations that will incorporate the recordkeeping requirements of IRC § 170(f)(17). The anticipated regulations may require disclosure to each donor of the actual amount distributed to the ultimate recipient organizations through the CFC or the similar program and the date of that distribution. For now, donors may rely on this notice to substantiate lump-sum contributions made through the CFC or a similar program until those regulations are effective.

GUIDESTAR INTRODUCES CHARITY CHECK

Organizations can now use Guide Star's Charity Check subscription service to verify an organization's charitable status and identify supporting organizations. Charity Check integrates data from several IRS sources into one report and is compliant with the Pension Protection Act of 2006 for identification of supporting organizations.

Charity Check allows subscribers to verify the status of an organization in Publication 78, determine an organization's reason for non-private foundation status, and identify supporting organizations. Using Charity Check can also simplify the grantmaking due diligence process. Subscribers can search by name or EIN to find information on organizations quickly and easily. Subscription prices start at \$75.00 for a single monthly user.

Further information on Charity Check is available at www.guidestar.com.

CHARITABLE GIVING INCENTIVES IN BUSH'S PROPOSED BUDGET

The Bush administration's 2009 budget proposes to make permanent some incentives for charitable giving that had previously been temporary. Some of the major proposals encouraging charitable giving under the proposed budget are:

- Individuals age 70 ½ or older could donate up to \$100,000 from their Roth IRAs without paying income tax on the money.
- Grocery stores, restaurants, farmers and other small businesses could claim an "enhanced tax deduction" for donating excess food to charity.
- Companies that donate computers, computer hardware, and software to schools and libraries would qualify for a charitable deduction.
- Donors could claim a deduction for partial donations of land for conservation purposes.
- A flat tax of 1% on all private foundations' net investment income would be implemented. The current rule is that private foundations pay 2% on such income unless their charitable giving for the year exceeds their average giving for the past five years.

The administration's goals are to encourage and simplify charitable giving. For example, the 1% flat tax rate proposal on a private foundation's net investment income would eliminate the threat that the foundation would have to pay the higher tax rate if it greatly increased giving one year to meet demand, as this would also increase the foundation's five-year average. The 1% flat tax rate would also make more funds available for donations.

While these proposed incentives all seem positive for charities since their purpose is to encourage charitable giving, several of these changes have been proposed in the past and have yet to be adopted by Congress. Instead, Congress has previously voted to keep the proposed changes short-term or dropped them completely.

The encouragement for charitable giving is likely also designed in part to balance Bush's proposals to curtail spending on social services, the arts, and health care as part of the same budget proposal. These budget cuts have alarmed many nonprofit organization leaders who have vowed to fight them. In any case, it will be interesting to watch what happens in this election year as any budget proposals made under this administration may change in short order.

UPCOMING SPEAKER EVENTS AND ANNOUNCEMENTS

Cliff Perlman will be speaking on April 28 at the National Breast Cancer Coalition Fund Annual Conference in Washington, D.C. on "Electioneering by Nonprofits." He will also be speaking about cause related marketing at the Cause Marketing Forum in Chicago, IL on May 30. On June 19, Cliff will give a presentation on Fundraising Regulation at the American Institute of Certified Public Accountants (AICPA) National Not-for-Profit Conference in Washington, DC.

Allen Bromberger has been named as Legal Adviser to the NYU Catherine B. Reynolds Foundation Program in Social Entrepreneurship Graduate Fellows Selection Event, held on April 18 and 19 in New York, NY. He was also selected to serve on the Graduate Fellows collective committee, which is one of the program's main components.

Allen was honored last month with the Social Enterprise Alliance's National Leadership Award. The award recognizes outstanding leadership in the field of social enterprise. Allen has been responsible for groundbreaking work with nonprofit-for-profit hybrid legal structures and received the award as a result of the work he has done on the legal, financial, and operational implications of such structures.

Copies of this publication and prior editions of Philanthropic News can be downloaded from the firm's website, www.perlmanandperlman.com.

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