Northwest Planned Giving Roundtable

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GOVERNMENT RELATIONS REPORT
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It has been awhile since a Government Relations Report was issued. There is not a lot of "new news;" however it may be a good idea to be aware of some things. The focus now is on the election and November 6 is not that far away.

Federal Activity – All Eyes are on November

The issues now are the same as back in 2010 when the midterm elections approached – but the stakes are higher.

- Income tax rates
- Capital gains tax rates
- Estate tax rates
- Carry-over basis vs. step-up in basis

In 2010 the Republicans gained control of the House and President Obama was forced to work with the Republicans. The legislation passed in December of 2010 was a surprise to most everybody.

A recent speaker at Estate Planning Council spent 1 ½ hours talking about the state of tax legislation and said almost nothing. But what else could he do? There are no clear answers until after the election, Congress gets organized, and the real work of sausage-making can begin.

Remember – if Congress does nothing, the estate tax will revert to a tax rate of 55% with $1 million exemption amount. If Congress does nothing, the income and capital gains tax rates revert to the rates in effect in 2001.

Many estate planning professionals are working with their clients to take advantage of the current $5 million gift tax exclusion to pass assets to heirs. It is expected that such transfers will be "grandfathered" and allowed to remain.

There are basically two competing proposals:

1 – Proposal advocated by President Obama.
- Increase the tax rates on upper income people.
- Maintain the current (2001) income tax rates for all others.
- Reduce the unified estate and gift tax credit to $3.5 million.
- Increase the top estate tax rate to 45%.

2 – Proposal from the Republicans in the House.
- Maintain the current income tax rates and policies that were put in place in 2001.
- Maintain a top estate tax rate of 35%.
- Keep the unified estate and gift tax credit of $5 million per decedent.
- Continue the portability. This provision allows the executor of a deceased spouse's estate to transfer any unused estate tax exemption to the surviving spouse without prior planning.

The Republicans are advocating tax reform through the elimination of certain deductions – but whose cow is to be gored? It seems the specific tax deductions in question are not being discussed because that would give away the negotiating points before the election. What does this mean for the charitable sector?

What are the possibilities?

1. President Obama is re-elected, the Senate remains in Democratic hands, and the Republicans maintain control of the House (likely). The same situation prevails as exists today, however President Obama will be a lame duck president and there will be less incentive for all parties to compromise.
2. Romney is elected president, the Senate remains in Democratic hands, and the Republicans maintain control of the House. Tax legislation is supposed to begin in the House, but there will still need to be some compromise. It also depends on the margin of control held by the Democrats. If the margin is close and a few Democrats can work with the Republicans there may be some change but not major course changes.
3. Romney is elected president and the Republicans control both the Senate and the House (not likely). If this should happen, then there may be some opportunity for major tax changes (good or bad for the nonprofit sector) and the estate tax situation may stabilize.

There is a key philosophical difference between the major political parties in this election, so for the political junkies it is one to watch. Is the best approach more government spending, more debt, and increased tax revenue from the "wealthy." Or, is the best approach to generate more economic activity by strengthening the private sector, decreasing federal debt, and maintaining lower tax rates for everybody – especially for those who "create jobs"? Which plan will benefit the middle class – whoever that may be?

Problem: the debt limit will likely become an issue in January or February.

It is fascinating that the political pundits are saying that the presidential race will be determined by no more than eight states – Virginia, Florida, Nevada, Colorado, Iowa, Ohio, Wisconsin, and New Hampshire. Oregon is projected to go for Obama, so we will be spared much of the political advertising.

State Activity

Oregon's referendum process allows the public to directly pass legislation through the initiative process. This year there are 9 measures on the ballot.

Measure 77	Revision to responses to catastrophic disasters; requires approval by a 2/3rds majority
Measure 78	Changes terminology in the state Constitution for the three state gov't branches
Measure 79	Would ban real estate transfer taxes.
Measure 80	Would create a cannabis commission to regulate the cultivation and sale of cannabis.
Measure 81	Bans Columbia River commercial salmon fishing with gillnets by non-tribal persons, allows seine nets instead.
Measure 82	Authorizes establishment of privately-owned casinos.
Measure 83	Authorizes Multnomah County casino.
Measure 84	Phases out estate and inheritance taxes.
Measure 85	Allocates corporate income/excise tax "kicker" refund to additionally fund K through 12 public education.

Measure 84 may have the most interest for those in the nonprofit sector.

When someone from Oregon dies, the state imposes a one-time tax on their estate, if that estate is worth $1 million or more. Measure 84 would phase out Oregon's estate tax.

In a recent Oregonian commentary, Jim McDermott wrote:

> The estate tax raises significant revenue for schools and other public infrastructure. At a time when income inequality and wealth concentration are historically high and growing, why are we offering more tax breaks to those of us who don't need them? In the past 30 years, virtually all of our country's prosperity has been diverted to the top earners and the wealthy. Aren't we precisely the people who should pay more in taxes, not less? Otherwise, our country will keep slouching toward a feudal society that perpetuates dynastic wealth.

He goes on to say:

> I also worry about paying back my moral debt to our government so others less fortunate can benefit the way I did. Our country's publicly supported infrastructure provided a platform for me to prosper. The estate tax should help provide a similar platform for future generations. So I want our government to make me -- and others like me -- pay back our societal debts in the form of an estate tax.

For a growing number of decedents, the total worth of their estates (including the personal residence, other real property, life insurance, retirement assets, and investments) is exceeding $1 million. The Oregon estate tax is becoming a factor more than ever before.

The other point of view is represented by this letter writer.

> While McDermott was growing up, going to school and working, his parents and him paid taxes on the money they earned supporting the city, county, state and federal government. As he said, nothing was handed to him, so who made it possible for him to go to college? His parents and himself. Not the government**. If he wants to send money to the government, or better yet to charities that help those in need, instead of just handing it over to his children, he can do that at any time. Or he can leave his money to such groups when he dies. He does not have to subsidize his kids for any amount of money.**
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> The government has no right to what you have built on your own just because you are successful. You have the right to decide what happens to your estate after you die. Make a good will, trust and donation statement.

How does the estate tax figure into the public's support of charities? Does the threat of the estate (death) tax influence people to increase giving to charity during life or through their estate plan? Should that be a motivator? Should tax policy (federal or state) influence philanthropy, or should other, more pure motives stimulate support for the nonprofit sector?

What would happen if the threat of the estate tax was removed?

Will Oregon remove this fourth leg of the three-legged tax stool? Stay tuned for the election results on November 6. The tax stool is understood to involve income taxes, sales (consumption taxes), and property taxes. Oregon and Washington balance on two of the three legs.

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That's it for issue #19. Please feel free to comment, send tips, or provide questions.