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From: alice@anpslaw.com on behalf of Alice Anderson [alice@anpslaw.com]
Sent: Thursday, August 17, 2006 11:34 PM
To: admin@anpslaw.com
Subject: Courtesy alert -- HR 4 becomes new pension/charities law

Dear friends and colleagues,

As you may know, today President Bush signed into law a very extensive package of charitable reform provisions as part of the new Pension Protection Act of 2006. For those of you who might be interested in a quick overview, the new Act includes the following:

- A. Charitable giving incentives for certain types of donations (e.g., distributions donated from traditional or Roth IRAs, food and book inventory, S corporation assets, real property for conservation purposes);
- B. Exempt organizations reform provisions, affecting:
 1. Exempt organizations that have not been required to file Form 990 returns due to annual gross receipts that normally do not exceed \$25,000. These organizations must now e-file certain basic information annually, and must provide notice of any termination. If an organization fails to e-file and/or to file Forms 990 as required for three consecutive years, its tax-exempt status will be revoked, without a monetary penalty. Reinstatement will require a new tax-exemption application regardless of whether such application was originally required, unless a discretionary exception is made for reasonable cause;
 2. Disclosure of Forms 990-T. These are now subject to Form 990 public-disclosure provisions (certain sensitive information is excepted);
 3. Deductions for clothing and household item donations -- deductibility is now limited to items in "good used condition or better" unless the claimed value of an item exceeds \$500 and the donor's tax return includes a qualified appraisal of the donated item;
 4. Recordkeeping and substantiation requirements for money donations in any amount -- the donor must now have either a bank record or a written acknowledgment showing donee name, date and amount from the charity;
 5. The tax base for private foundation net investment income. This is expanded by amending the definition of "gross investment income" to include income "similar" to income items enumerated in the Internal Revenue Code (in particular certain types of investment income), and revising "capital gain net income" to include capital gains from appreciation and exclude certain gains and losses;
 6. Excise tax penalties are doubled for self-dealing and excess benefit transactions with disqualified persons (this includes 501(c)(4) as well as 501(c)(3) organizations, as applicable), and for private foundations' failures to distribute income, excess business holdings, jeopardizing investments, and taxable expenditures;
 7. Tangible personal property donations for which a deduction of more than \$5,000 is claimed, that are not in fact used for an exempt use. Any discrepancy in the deduction value may be recaptured, through an adjustment, from the donor, unless the recipient charity provides certain certifications. A \$10,000 penalty applies to false representations regarding such use. The recipient charity's current 2-year "tattle-tale" Form 8282 reporting period is also extended to 3 years, the Form 8282 content is modified, and it must include a certification if applicable;
 8. Reporting requirements for acquisition of certain interests in insurance contracts (this is a temporary, two-year provision);
 9. Easement donations in registered historic districts -- deductibility is limited to easements preserving the

entire exterior including space above the buildings, with additional qualifying requirements; a \$500 fee is required; and deductions are reduced to recapture prior rehabilitation credits;

10. Donations of partial interests in tangible personal property;

11. "Convention or association of churches" -- this term is now defined;

12. Overstatements of donated property values. "Substantial" and "gross" valuation misstatements are defined for penalty purposes, and penalties are established against appraisers whose appraisals result in such misstatements, and tightened against misstating donors;

13. Credit counseling agencies. Their exemption eligibility is substantially narrowed through new requirements designed to ensure that their purposes are in fact exempt and their governance is in the public interest. 501(c)(4) organizations applying to be exempt credit counseling agencies will have additional notification requirements, and debt management services by organizations that are not qualified as credit counseling agencies are subject to unrelated trade or business income tax;

14. Disclosure by the IRS to state officials for state law enforcement purposes is now expressly permitted, upon request or in specified circumstances, regarding proposed 501(c)(3) tax exemption refusals and revocations, issuance of certain proposed tax deficiencies, identifying information of organizations applying for 501(c)(3) exempt status, and returns and return information regarding organizations that have been the subject of the foregoing disclosures. Further disclosure for civil administrative and judicial proceedings is also permitted, and penalties prescribed to deter unauthorized disclosure; and

15. Deductibility of taxidermy donations -- this is substantially narrowed.

C. Provisions affecting donor-advised funds and supporting organizations:

1. Treasury will undertake a 1-year study and report on whether current exemption, deductibility and other provisions should continue to apply to donor-advised funds and supporting organizations; and

2. New accountability requirements apply to both donor-advised funds and supporting organizations. These are extensive and should be carefully reviewed.

D. Reporting, tax treatment, and penalties changes for certain passive income payments made by a controlled entity to its controlling tax-exempt parent that are received or accrued for January 1, 2006 through December 31, 2007. The reporting requirement continues beyond this period, and extends to loans and other transfers between the parent and controlled organization; and

E. Certain excise tax exemptions for blood collector organizations.

The list above is not necessarily comprehensive, but gives some sense of the scope and variety of the new provisions, which vary in their effective dates. Note that various penalties apply which aren't enumerated here. Finally, much of the Act obviously consists of other reform provisions regarding pension plans, which may or may not be of interest to you.

You'll find a link to the Joint Committee on Taxation's Technical Explanation of the new Act online at www.house.gov/jct/x-38-06.pdf, and the language of the actual legislation is currently at <http://www.thomas.gov/cgi-bin/query/D?c109:4:./temp/~c109iilxiC::>

If these new laws may affect your organization and you would like to discuss them further, don't hesitate to call.

At your service,

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