Northwest Planned Giving Roundtable

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GOVERNMENT RELATIONS REPORT
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FISCAL CLIFF AVERTED – NOW WHAT?

The process was agonizing to watch, but the fiscal cliff was avoided. Congress passed HR 8, the "American Taxpayer Relief Act" on Tuesday, January 1, and it was then sent to President Obama for signature. The bill was signed into law on January 2nd.

If you follow politics, the process was fascinating.

- Obama campaigned on the theme that tax rates must increase for the wealthy – defined as those making more than $200,000. He claimed a mandate to increase taxes.
- Republicans retained control of the House of Representatives which indicated to them that more legislative districts indicated that tax rates should remain low to increase job creation and grow the economy.
- Obama said tax rates must go up. Republican House said tax rates will not go up, but deductions and loop holes could be addressed. Republicans said spending is the real issue and the country cannot keep adding trillions to national debt.
- Compromise came out of the Senate in conference between Democratic and Republican leadership.
- American Taxpayer Relief Act began life as HR 8 in the House. Once the compromise was proposed, the House bill was gutted and stuffed with the new language since tax and spending legislation must begin in the House.
- Spending and the mounting debt have not been addressed. Next confrontation will occur over the need to raise the debt limit. It is not over yet.
  "Now the focus turns to spending" and overhauling the tax code, indicated Speaker John Boehner. The GOP will fight for "significant spending cuts and reforms to the entitlement programs that are driving our country deeper and deeper into debt."

  In response, President Obama said he would demand deficit-cutting savings from added revenue on the well-off, not just spending cuts.

Key provisions of American Taxpayer Relief Act of 2012 (ATRA):

(priority focus on those aspects of interest to charitable community)

- **Individual income taxes**. Across-the-board tax rate increases scheduled for 2013 are repealed. Instead, the new law permanently retains the 10%, 15%, 25%, 28%, 33%, and 35% individual income tax rates. However, the top tax rate of 35% is boosted to 39.6% for single filers with income about $400,000 and joint filers with income above $450,000.
- **Capitals gain – investment income**. ATRA extends the 0% and 15% capital gains and dividends tax rates, but imposes a 20% tax on such income to the extent that a taxpayer's

income exceeds the thresholds for the 39.6% bracket. Qualified dividends continue to be taxed at capital gains tax rates.

Explanation: Without ATRA, long-term capital gains would have been taxed at a maximum 20% rate, while qualified dividends would have been taxed at ordinary income rates. The new law retains the previous favorable tax rates, but still imposes a maximum 20% tax rate on single filers with income of more than $400,000 and joint filers with income of more than $450,000.

- **Itemized deductions**. ATRA revives the overall limitation on total itemized deductions, known as Pease limitation, which reduces itemized deductions by the lesser of 80% of itemized deductions and 3% of the amount by which a taxpayer's adjusted gross income (AGI) exceeds the applicable amount. The new law establishes higher thresholds of $250,000 for single filers and $300,000 for joint filers. Also, the reduction rule doesn't apply to deductions for medical expenses, investment interest expenses, wagering losses, and casualty and theft losses.
- **Alternative minimum tax (AMT).** The new law provides a permanent "patch" to the AMT by increasing the exemption amounts and indexing it to inflation. ATRA also allows taxpayers to use certain personal tax credits to reduce taxable income to the credit's full amount.
- **Estate and gift taxes**. ATRA maintains the unified gift and estate tax exemptions at their 2011 and 2012 levels of $5 million indexed for inflation ($5.12 million in 2012 and $5.25 million in 2013) with portability.

  The unified estate and gift tax system, which was severed and then reunified, will remain reunified after 2012. The estate tax exemption continues to apply to lifetime gifts as well as inheritances.

  The top estate tax rate, which was scheduled to increase from 35% to 55%, rises only slightly to 40%, in 2013 and thereafter.

  ATRA continues to enable spouses to elect to apply the unused portion of a decedent spouse's exclusion to the surviving spouse's own transfers during life and death. As a result, the total gift and estate tax exclusions for spouses may exceed $10 million.

- **Enhanced charitable deductions**. Several tax law provisions allowing enhanced deductions for charitable donations of property by a business – including gifts of food inventory, books, and computer equipment expired after 2011. ATRA only extends the enhanced deduction for donations of food through 2013, retroactive for 2012.
- **Charitable IRA Rollovers extended**. ATRA extends the Charitable IRA Rollover through December 31, 2013. Donors age 70 and ½ or older can ask their IRA custodian to transfer up to $100,000 in 2013 to a public charity.

  Under special rules, any qualified charitable distribution made during January 2013 will be deemed to have been made on December 31, 2012. A donor who received an IRA mandatory distribution or other distribution during December of 2012 may choose to make a charitable gift in January of 2013 to a qualified charity and it will be treated as a 2012 Charitable IRA Rollover gift. Customary Charitable IRA Rollover rules apply.

- **Sales tax deductions**. For members in Washington, the option to deduct state and local general sales taxes, which expired at the end of 2011, is now revived for 2012 and continued through 2013.

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.

Implications of ATRA for Fund Raisers

1. Financial markets and investors like stability and certainty. The fact that ATRA stabilized tax rates, including capital gains tax rates, may help create more consistent positive investment returns. This is a qualified "assist" because other factors influence the markets as well.
2. Agreement on the tax rates will help donors plan more effectively and may lead to increased charitable gifts. However, the tax rates generally remained low so tax rates will still not be a key motivator for charitable gifts.
3. Capital gains tax rates remained at 15% for most taxpayers, so there is still little motivation to give to avoid the tax on long-term capital gain. However, for high net worth donors, the increase in the capital gains tax rate to 20% may provide some increased incentives.
4. The continuation of the relatively high unified gift and estate tax exemption amount means that the tax-related incentive to include charitable distributions in estate plans continues to be a lesser priority. The end of 2012 saw a lot of gift and estate planning activity because of the fear that the $5 million exemption amount would be reduced. This was especially true for distributions to family members. Now that those limits have been made "permanent" and adjusted for inflation, donors (and their advisors) can make more definite and significant long-term distribution plans.
5. The reinstitution of the limitation on itemized deductions for high-income taxpayers ($300,000 for joint filers), known as the "Pease limitation, will add considerable complexity to calculating the amount by which itemized deductions, including the charitable deduction, reduce income tax liability. "It is unclear how this added complexity will affect charitable giving in 2013 and future years." More complexity makes people hesitate.
6. The continuation of the IRA Charitable Rollover means that those gifts continue to be good options for targeted gift campaigns to retired donors (over age 70 ½). However those nontaxable distributions can still not be made to donor advised funds or life income gifts (gift annuities or charitable remainder trusts).
7. **The key motivation for significant charitable gifts is still the mission of the charity and identification with the donor's passion.** The news from ATRA continued the tax-planning environment for the most part. There are no new significant incentives for giving, nor did the legislation add new reasons to give. That result is kind of like a pause and one is left wondering what is next?

Next up – the Debt Ceiling and Tax Reform

- The next deadline for action is March and is triggered by the need to approve the increase in the debt ceiling.
- As noted above, the stage is set for conflict. The two sides have staked out their opening positions. "Now the focus turns to spending" and overhauling the tax code, indicated Speaker John Boehner. The GOP will fight for "significant spending cuts and reforms to the entitlement programs that are driving our country deeper and deeper into debt."

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- Senator Mitch McConnell (R) recently indicated that the tax questions have been settled, now the focus must be on spending reduction.
- President Obama has proposed reductions in itemized deductions in past budget proposals.
- Recently Republicans were open to changes in deductions and closing tax loopholes.

These divergent perspectives mean that nothing much is going to get done in Washington until the end of March when these issues are addressed.

Oregon Legislature begins work

The 2013 Oregon legislative session gets underway with the Democrats firmly in control. The balance in the Senate is 16 Democrats and 14 Republicans. The balance in the House is 34 Democrats and 26 Republicans. Governor John Kitzhaber may be able to drive the agenda more than in the last session.

The still struggling Oregon economy, need for increased school funding, labor strife related to the Portland harbor, and continued tight budgets will drive legislative priorities.

Democrats have released their 2013 legislative priorities, some of which are of note. "The path to prosperity requires leadership with the right priorities: increasing family wage jobs, providing a quality public education, standing up for middle class families, and focusing on the services Oregonians need most."

- Education and job creation go hand in hand. House Democrats will invest in schools to give children a prosperous future and will give Oregon business the tools they need to flourish.
- Invest in infrastructure projects like roads, rail and energy-efficient upgrades that create local jobs, improve access to markets, protect natural resources, and make communities more livable.

[Looking at full text of the press release, it seems that the same generalities could have been made for the last several legislative sessions. Time will tell what will really be the priorities as bills move through the process.]

Oregon State Bar has some proposals that may be of interest to the charitable community.

- Amending the Unlawful Trade Practices Act (UTPA) to make the unlawful proactive of law a violation under the Unlawful Trade Practices Act. [This should not be a problem for charitable gift planners, but may address some unscrupulous activities. Let's hope the process does not look like the State of Washington.]
- Establishing definitions and rules for digital assets.
- Numerous technical changes to Uniform Trust Code.

SB 54 would define digital accounts and digital assets for the purpose of administering estates and trusts. It would require the custodian of digital accounts and digital assets to transfer, deliver or provide access to accounts or electronic copies of assets to a personal representative, conservator or settlor upon written request.

HB 2573 would amend the Unlawful Trade Practices Act to explicitly make the unlawful practice of law an unlawful trade practice.

The Rural Organizing Project has this as one its legislative priorities:

> *A basic standard of living for every member of society is a foundation of a democracy. Part of the role of a democratic government is to ensure that basic human needs such as food, housing, health care, education, and safety are met.*
>
> What does that mean for legislation in 2013? We need a fair budget that does not cause harmful cuts to schools, health care, and public services. Oregon's tax burden should be shared equitably across all income levels rather than falling on low- and middle-income households, and corporations should pay their fair share.

It is unclear what the implications of this statement are or what the desired changes to the tax structure may be for this organization. Tax changes and budget priorities do affect nonprofits and charitable giving.

More news on the Oregon legislature to come.

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That's it for issue #20. Please feel free to comment, send tips, or provide questions.