**Northwest Planned Giving Roundtable**

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GOVERNMENT RELATIONS REPORT
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## Federal Activity

It is the election season and the Republican candidates are traveling hither and yon to win the nomination and the chance to face Barak Obama in the November election. The focus is on election year posturing and significant legislation is not in the works.

The Congress remains divided, so it remains difficult to get partisan legislation passed.

### President's Budget Once Again Calls for Limiting Charitable Deduction

President Obama released his fiscal year 2013 budget and for the fourth consecutive year he is proposing to limit the value of itemized deductions including the charitable deduction at 28 percent for couples with incomes of more than $250,000 and individuals with incomes of more than $200,000 (see page 39). This year, however, the Presidents budget proposal also lays out broad principles of tax reform and includes the so-called "Buffet Rule," which would require that individuals earning more than $1 million per year pay at least a 30% effective tax rate. Notably, under this iteration of the Buffet Rule, the charitable deduction would be preserved as the text of the Presidents plan states that the rule should be implemented in a way that is equitable, including not disadvantaging individuals who make large charitable contributions (also see page 39).

The Presidents fiscal year 2013 budget also includes a number of other tax provisions of great interest to exempt organizations. For example, the budget calls for reinstatement of the IRA Charitable Rollover, which expired at the end of 2011.

Legislative Update from Partnership for Philanthropic Planning

It is important to be aware of the President's budget proposal, but remember what you see is not likely to be what is actually passed.

### The IRA Charitable Rollover has expired.

When Congress recessed at the end of 2011 no action of the IRA Charitable Rollover was taken, so the provision expired on December 31. President Obama's budget does include a renewal of the IRA Charitable Rollover.

## State Activity

The abbreviated annual legislative session for Oregon was held. A new $14.7 billion spending plan was adopted that left K-12 schools and social service programs largely intact. The governor's initiatives for health care and education were passed.

There was no legislation considered or passed that affects the nonprofit sector. A proposal to modify Oregon's kicker tax rebate did not gain any momentum. Also, a proposal to continue higher income taxes on upper income earners went nowhere.

## Other Information

### Be aware of the Clawback.

Tax uncertainty raises its head again – and you may have thought this was settled already!

Lifetime gifts of between $1 million and $5 million during 2012 escape gift tax. But the way the Tax Code is now written, if the donor dies in 2013 or later, the applicable exclusion amount reverts to $1 million. As a result, lifetime gives of over $1 million are "clawed back" in the transfer tax system without the protection of a $5 million applicable exclusion amount. That means there could be an estate tax on what had been free of gift tax.

The worst that happens in this scenario is that a transfer tax on a lifetime gift is paid at death instead of at the time of the gift.

On the plus side – in the time between the date of the gift and the donor's death, post-gift appreciation is removed from the taxable estate. But there is a downside that one might not consider. The recipients of the lifetime gifts won't suffer the cost of a gift tax, and they might not suffer any of the costs related to the increased estate tax. If those receiving the lifetime gifts aren't beneficiaries of the estate, then someone else will feel the impact of the increased estate tax.

It may be wise for the donor to enter into an agreement with the donees whereby they agree to pay over to the estate an appropriate share of the estate tax in the event of a clawback and increased estate tax.

Such an agreement could be contingent on a change in the estate tax provisions. In some cases, without such an agreement, the estate tax could be large enough to adversely affect the estate.

Trusts & Estates, January 2012

So – here we are again, anticipating the new Congress that will be elected in November will be forced to once again consider estate tax reform.

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**That's it for issue #18. Please feel free to comment, send tips, or provide questions.**