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GOP's Senate Wins Boost Prospects of Tax Changes for Nonprofits

By Alex Daniels

With Republicans poised to take control of the Senate following Tuesday's elections, it is likely that lawmakers will dig deep into the tax code soon after a new Congress is sworn in next year. While that means added scrutiny on the charitable deduction and the tax treatment of nonprofits, charity leaders are confident a solidly Republican Congress will keep their cherished provisions intact.

Before the current Congress wraps up its business, however, charity officials expect lawmakers to consider certain items in the tax code, including moving the deadline for claiming the charitable deduction from the end of the year until April 15 as well as a set of tax preferences that are usually renewed each year.

Also, Congress has yet to take action this year on the "tax extenders," expiring provisions of the tax code that include benefits for land conservation, donations to food banks, and contributions to charity made from certain retirement accounts.

Republicans strengthened their hold on the House of Representatives, and will hold at least 52 seats in the Senate. Michelle Nunn, a nonprofit executive who ran for the Senate in Georgia, was among the candidates Democrats were counting on to help them keep control of that chamber, but she was defeated handily by Republican David Perdue.

Next year, when Republicans control the Senate and operate with an even stronger hand in the House, they are likely to consider a much more comprehensive tax overhaul. While the chances of enacting the first major changes to the tax code since 1986 are slim, some say, any legislative action during the next session of Congress will set the stage for future tax debates during the 2016 presidential campaign.

"I don't know if a Republican-controlled congress can present to the president a bill he could sign," says Sue Santa, senior vice president for public policy at the Council on Foundations. "Nevertheless it will be a very important marker for what's ahead with tax reform."

Less Oversight

Ms. Santa and other nonprofit leaders expressed confidence that Orrin Hatch (R-Utah), who is expected to take over as chairman of the Senate Finance Committee, would push for a tax overhaul that protects provisions like the charitable tax deduction that are designed to encourage more giving. Sen. Hatch, unlike the last Republican chairman of the committee, Iowa's Charles Grassley, is unlikely to focus as heavily on nonprofit oversight.

"He doesn't appear to have the same appetite to go after the charitable sector for alleged misdeeds," says Diana Aviv, president of Independent Sector, a membership organization of foundations, nonprofits, and corporate-giving programs.

A major tax rewrite isn't out of the question, Ms. Aviv says, but "there are a lot of 'ifs' " that make completing legislation difficult.

There is a "fair chance" that a tax bill will be completed, according to Steve Taylor, senior vice president for public policy at the United Way.

"Sen. Hatch told the United Way point blank that if the Republicans took over the Senate, Republicans would enact tax reform in 2015," he says.

If that's the case, merging a Senate bill with House legislation will become an easier task.

"When it comes down to negotiating with Republicans in the House, Sen. Hatch won't be talking with the Ways and Means chairman from a partisan perspective," Mr. Taylor says.

It's unclear who will be chairman of the Ways and Means Committee, the tax-writing panel on the House side. Republican Reps. Paul Ryan (Wisc.) and Kevin Brady (Texas) are the top contenders.

Top Nonprofit Issues

Nonprofit organizations are watching legislation and executive action on the following issues:

- Internal Revenue Service rules governing 501c(4) social-welfare organizations. The IRS is considering what constitutes political activity by these groups and whether their donors can remain anonymous.
- Foundation excise taxes. The House has passed a measure to simplify and lower this tax to 1 percent.
- A proposal to require donor-advised funds to pay out at least 5 percent of their assets each year.
- The provision of federal support for social-impact bonds that fund "pay for success" efforts at the state and local levels.
- Pending rules that limit how to conduct federated campaigns. The United Way hopes a Republican Congress will remove recently added federal regulations.

Tax Extenders

Congress is likely to take action on the tax-extender package during the lame-duck session between now and the new year.

"It's not out of the question that individual provisions or packages of individual provisions could move," says Ms. Santa of the Council on Foundations.

A bill passed by the House, the "American Gives More Act," would make the charitable tax provisions permanent and give people until April 15 to claim a tax deduction on charitable gifts made the previous year.

The best chance for passage of those items is during the final two months of the current Congress, according to David Thompson, vice president for public policy at the National Council of Nonprofits.

"We want to resolve our issues now while we still can," he says.

Others, including Independent Sector’s Ms. Aviv and Sandra Swirski, executive director of the Alliance for Charitable Reform, say it is unlikely Congress will pass all of the provisions in the act this year.

Some nonprofit tax experts, including Eugene Steuerle, senior fellow at the Urban Institute, have argued that an April deadline would prompt more charitable giving.

While Ms. Swirski supports the plan, she says the estimated cost to the U.S. Treasury of $2-billion scared off some Senate Finance Committee members.

But she predicts members of the House Ways and Means Committee, which is "chock-full of businesspeople" would keep the measure alive next year.

Change in Attitude

Those House members, Ms. Swirski says, believe that taxpayers, particularly small-business owners, are in a better position to give to charity after the completion of the first quarter, after they close the books on the previous year.

"They know that it’s not until the dust has settled that they really have an idea of their profits."

Making such a change would be difficult, especially for organizations that rely on end-of-the-year fundraising campaigns for a big chunk of their revenue, says Andrew Watt, president of the Association of Fundraising Professionals.

Mr. Watt said he is "generally supportive" of moving the deadline, but he cautions that large organizations need to buy in to the change. While allowing people until April 15 to claim deductions could ultimately attract more gifts, the end of the year is prime fundraising time, he says.

"Fundraising is predicated on emotion and engagement," he says. "The holiday season tends to be an emotional and, one hopes, spiritual high point."