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Election Results May Give Charities a Shot at Tax-Law Changes

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Nonprofits have some hope that the new Congress will pursue small tax-law changes to their liking following the outcome of Tuesday's elections, congressional observers said, but bigger tax changes that would help charities remain an uphill climb.

Meanwhile, the ban on nonprofit politicking, which President Trump and many other Republicans have been pushing to repeal, appears more likely to survive.

With leadership of the House shifting to the Democrats, and Republican control of the Senate strengthened, it is unlikely a divided Congress will enact sweeping tax changes that affect nonprofits, according to tax-policy experts.

Now that the highly charged midterm contests are behind them, however, members of Congress may be more inclined to work together to make tweaks to tax policy, said Hadar Susskind, senior vice president for government relations at the Council on Foundations.

Many nonprofits are concerned that last year's tax cut, which doubled the standard deduction, will sharply curtail fundraising.

"I don't think we're going to see any kind of full-scale repeal of the tax bill in the short term," Susskind said. "But we can look for ways to empower the sector, not necessarily by making massive changes that impact billions and billions of dollars but through small, smart changes to help the sector maximize its impact."

Fringe Benefits

The most urgent policy change pushed by Susskind and other nonprofit advocates is to delay implementation of a tax on fringe benefits, such as parking and transportation, that nonprofits offer their employees. The change was included in last year's tax law.

On October 26, more than 100 tax-exempt organizations wrote to congressional leaders urging them to delay the 21 percent unrelated-business income tax on transportation benefits, and ultimately exempt nonprofits from the levy. The group estimated that 250,000 organizations work in localities that mandate such benefits. The full cost to nonprofits is unclear: Independent Sector has commissioned a study on the matter.

Subjecting nonprofits to the tax "diverts funds that would otherwise go toward valuable mission services," the groups wrote.

Struggling to Be Heard

Nonprofits have struggled to be heard during the first two years of the Trump administration, with both the White House and Congress under Republican control. The tax law in particular was a significant defeat for nonprofits.

Doubling the standard deduction individuals can take eliminated the tax incentive for giving for most taxpayers. Only wealthy and upper-income donors can now use charitable gifts to reduce their tax burden. The change, some predict, will lead to a significant decline in giving.

During the tax-bill debate, nonprofits tried to include a "universal deduction" that would allow all taxpayers to deduct charitable gifts from their taxable income, on top of the standard deduction. That effort went nowhere.

David Biemesderfer, president of the United Philanthropy Forum, said it is possible that Congress will revisit a universal deduction. However, the issue won't get any traction unless lawmakers see data showing that the increased standard deduction has hurt nonprofit fundraising, he said.

"If it shows there's an impact on charitable giving, that's an opportunity to bring that issue back," he said.

Ben Kershaw, director of public policy and government relations at Independent Sector, agreed that nonprofits need to persuade lawmakers that the new tax law has made their work more difficult.

"This universal charitable deduction would not only stem that potential tide of decreased giving and increase giving beyond that baseline, it would also send a powerful message about the role that every American, whether they itemize or not on their taxes, has to play in investing in their community," Kershaw said.

Politicking Rule

One key victory for many nonprofits so far during the Trump administration has been repelling GOP efforts to water down the "Johnson Amendment," a provision dating to the 1950s that bars nonprofits from endorsing candidates and spending money on partisan campaigns. Proponents of repealing the measure say it infringes on freedom of speech, particularly of religious leaders talking from the pulpit. Many nonprofit leaders and their allies in Congress, mainly Democrats, warn that its repeal would flood political "dark money" into hastily set-up churches and ultimately erode public trust in nonprofits.

Efforts to repeal the Johnson Amendment have resurfaced in this year's negotiations over the annual spending bills Congress must pass to keep the government open. House appropriators included a repeal in their spending legislation; Senate appropriators did not. The two chambers have yet to work out their differences over the spending bill.

If the politicking ban survives in the current House-Senate appropriations negotiations, it's a safer bet that Democrats will be able to protect it for at least the next two years while they are in control of the House, said Biemesderfer.

New Leaders

Both chambers of Congress will see new leaders at the helm of the tax-writing committees during the next session of Congress. Rep. Richard Neal, a Massachusetts Democrat, is poised to take over the House Ways and Means Committee, and Sen. Charles Grassley, an Iowa Republican, is expected to lead the Senate Finance Committee.

Sandra Swirski, executive director of the Alliance for Charitable Reform, expects Neal to be responsive to concerns raised by nonprofits, particularly on the taxation of fringe benefits and the hit that charitable giving took in the rewrite of the tax code last year.

Swirski said she hopes Grassley will also work to provide more incentives to give in the tax code. But on other issues, it's unclear where Grassley's priorities lie, she said. "He has not given a road map of his agenda," she said.

For instance, it is unclear whether Grassley will try to impose payout requirements on donor-advised funds. In recent years, critics who believe the funds warehouse money meant for social change have pressed for requirements that donors direct money they give to the funds to charitable organizations within a certain time frame.

Susskind, of the Council on Foundations, said the group opposes a payout requirement.

However, he said, "there's a robust conversation about whether a payout rate would be a bad thing," particularly among community foundations.

Jeff Hamond, who directs the philanthropy practice at law and lobbying firm Van Scoyoc Associates, says he sees little appetite in Congress for imposing new requirements on donor-advised funds, especially if new members and their staffs learn more about community-foundation work.

"I don't think there's going to be a rush to make major changes," he said.

More Social Spending?

Many nonprofits hope a divided government will weaken efforts to cut federal spending on social programs such as the Supplemental Nutrition Assistance Program.

But Steve Taylor, counsel for public policy at United Way, sees little reason for optimism.

"The political environment over the next two years, I'm sorry to say, is not likely to be any better," Taylor said. "With the presidential election starting day one, really, after this midterm election, you may see things ramp up."

Taylor added that it's not too soon for both large and small nonprofits to start looking ahead to the 2020 elections and letting their representatives know that they're watching.

David L. Thompson, vice president for public policy at the National Council of Nonprofits, agreed, adding that nonprofits should not overlook important state and local policy debates that they might be able to influence.

"Gridlock doesn't mean the end of all things," Thompson said.

On a local issue Tuesday that's received national attention, San Francisco voters approved a business tax that will raise $300 million a year to help the homeless. It was a high-profile battle between philanthropist and tech star Marc Benioff, the Salesforce CEO, who supported the measure, and Jack Dorsey, the head of Twitter and Square, who opposed it. The measure passed with 60 percent of the vote. However, it could get hung up in court action over whether state law requires a two-thirds vote to raise taxes.