



Nonprofit *Alert*®

Alerting nonprofit leaders to key legal developments and responsive risk management steps

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Update on Congress' Exempt Organization Reform Proposals

A Conference Committee has now been officially convened to reconcile the Senate's Tax Relief Act of 2005 and the House's Tax Relief Extension Reconciliation Act of 2005. As reported in the previous NPA, the Senate version of this bill contains various exempt organization reforms and charitable giving incentives. The timeframe for final action is currently not clear, but it may be as late as April or May.

The Conference Committee members are as follows:

- Senate Finance Committee Chairman Charles Grassley (R-IA)
- Senate Finance Committee Ranking Member Max Baucus (D-MT)
- Senator Jon Kyl (R-AZ)
- House Ways and Means Chairman Bill Thomas (R-CA)
- House Ways and Means Ranking Member Charles Rangel (D-NY)
- Representative Jim McCrery (R-LA)
- Representative Dave Camp (R-MI)
- Representative Pete Stark (D-CA)

⇒ A number of nonprofit associations, including the Independent Sector, the Alliance for Charitable Reform, and the Council on Foundations, have sent letters to the conferees pointing out provisions that they favor and oppose. For a summary of the legislative proposals, please see the January / February 2006 edition of the NPA. If you have further questions, please contact Stephen Kao at ssk@gg-law.com.

IRS Reports on Political Activities Compliance Initiative

Frequent reports of prohibited political campaign activity by 501(c)(3) organizations (including churches), specifically during the 2004 campaign cycle, prompted the IRS to implement an initiative that allows it to respond more quickly to credible allegations of prohibited activity. The IRS has issued a report of examination results from this initiative, and has indicated that 132 organizations (fewer than half of which are churches) have been examined thus far. (Numerous referrals of other organizations were not chosen for examination.) To date, out of the approximately 100 cases that have been completed, 40 were closed (either prior to or after a full examination) without a determination that prohibited political activity had occurred. Three examinations resulted in revocation of tax-exempt status, and 55 resulted in written advisories. Written advisories were issued in cases where the IRS determined there had been: (a) a one-time or isolated incident of prohibited political activity; (b) a correction of the violation where possible; and (c) affirmative steps taken to ensure no future violations. The IRS report lists the following as prohibited activities found in the examinations:

- Distributing printed materials that encouraged voting for a particular candidate
- Endorsing or opposing a particular candidate from the pulpit

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Political Activities Compliance...cont'd

- Supporting or criticizing a particular candidate on the organization's website, or through links to another website
- Disseminating improper voter guides (note that distribution of unbiased, nonpartisan voter guides is permitted - see Jan/Feb '06 NPA story on Christian Coalition)
- Placing signs (or allowing candidates to place signs) on organization property
- Preferentially permitting candidates to speak at official organization functions
- Making cash contributions to a candidate

The Service will continue its initiative into future election periods, focusing on both education and enforcement. More information may be found in Fact Sheet FS 2006-17, which lists specific examples of permissible and prohibited political activity in categories such as:

- Voter Registration and Get Out the Vote Drives
- Individual Activity by Organization Leaders
- Candidate Appearances
- Issue Advocacy vs. Political Campaign Intervention
- Voter Guides
- Web Sites

⇒ Fact Sheet FS 2006-17 is available at:

<http://www.irs.gov/newsroom/article/0,,id=154712,00.html>.

⇒ For additional background on political activity and lobbying restrictions on nonprofits, order **Nonprofit Alert Memo, Non Profit Lobbying and Political Activity - Know Your Limits.**

Massachusetts House Rejects Legislation Requiring Churches to Disclose Finances

UPDATE: By an overwhelming margin of 147 to 3, the Massachusetts House defeated proposed legislation intended to make churches and religious groups more accountable to the state in an effort for greater financial transparency. As reported in the September/October 2005 Nonprofit Alert, the bill, "An Act Relative to Charities in Massachusetts," would have required ALL churches and other religious organizations to file annual financial reports with the state Attorney General, including information about real estate holdings.

Those opposed to the bill, including the Catholic Archdiocese of Boston, warned that it would lead to "an unwarranted and costly intrusion by the state into the practice of religion." Others raised further concerns about the bill's infringement on First Amendment rights.

The House defeat of the bill pleased many religious leaders who believed that the proposed scrutiny was both unnecessary and an excessive burden that would have violated the constitutionally-protected religious liberty of churches.

Senate Finance Committee Holds Roundtable Highlighting Inquiries Into Charities

On March 3 the Senate Finance Committee held an invitation-only roundtable discussion focusing on board governance. The session highlighting the difficulties faced by the American Red Cross and American University that allegedly have resulted from ineffective boards. There has been speculation that the Senate Finance Committee's inquiries into these organizations may be a ramp-up to the introduction of a second round of legislation related to exempt organization reform.

The SFC's inquiry into American University, and particularly its compensation policies, was reported in the January / February 2006 edition of the NPA. The Senate Finance Committee also began a broad inquiry into the American Red Cross after widespread criticism of how the organization handled disaster response for Hurricane Katrina.

The American Red Cross' competency, as well as integrity, has been called into question amidst allegations of widespread ineffectiveness, including its use of contributions for purposes other than represented, its failure to adequately respond to minority and low-income areas, and a general unresponsiveness towards cooperating with grass-roots organizations.

Senator Charles Grassley, Chairman of the Senate Finance Committee, says that the review will determine "whether the current board and governance structure meets the high level of competence and engagement that is expected of the agency." In particular, the Finance committee is seeking information about the American Red Cross's governance, its handling of money for disaster relief, and its compensation policy.

"It's time for the Red Cross Board to start answering questions about its role in the turmoil at the top of this premiere charitable organization. In fact, the name and notoriety of the Red Cross make it essential for those governing the organization to go the extra mile to ensure public confidence not only in the Red Cross but also in the non-profit sector generally" Senator Charles Grassley.

The Senate Finance Committee has also signaled an investi-

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gation into the charitable foundations of Freddie Mac and Fannie Mae. The Committee will investigate whether activities of the foundations may violate campaign-finance and lobbying laws. Senator Grassley has expressed concerns that these foundations are not being used for the public good, but rather for lobbying interests.

The Senate Finance Committee has also asked for information from the Chapman Trusts (a group of 12 Oklahoma trusts established by heirs of two oil tycoons) relating to a trustee's compensation totaling over \$1 million. The Chapman Trusts are organized as Type 3 supporting organizations. The SFC's inquiry came after the Chapman trustee had written a letter opposing Senator Grassley's reform proposals in TRA 2005 that would place significant restrictions on Type 3 supporting organizations.

⇒ For more information, visit
Senate Finance Committee:
<http://www.finance.senate.gov>

Controversial Interpretation of the Fifth Amendment's "Eminent Domain" Clause Has Important Implications for Nonprofits.

All across the nation, the fallout from the controversial Supreme Court decision *Kelo v. City of New London* is beginning to be felt, and nonprofits are not exempt. Local governments are now using powers of eminent domain to take away land from nonprofit organizations in an effort to generate more tax revenue.

Understanding: *Kelo v. City of New London*

- Eminent Domain case argued before the US Supreme Court on February 22, 2005.
- Eminent domain: The power to take private property for public use by a state, municipality, or private person or corporation authorized to exercise functions of public character, following the payment of just compensation to the owner of that property .
- The ruling expanded the definition of "public use" to include the use of eminent domain as a means to promote economic development.
- A public use can be found even if the property seized by eminent domain will be utilized for private purposes.
- The court found that if an economic project creates new jobs, increases tax and other city revenues, and revitalizes a depressed (even if not blighted) urban area, it qualifies as a public use for which eminent domain may be exercised .

As an example, the town of Sand Springs, OK has vocalized its intentions to take Centennial Baptist Church—along with other buildings including a school—and replace them with a new commercial "super center." This "unholy land grab," as tabbed by Church members, is part of a larger set of public re-development projects known collectively as "Vision 2025," a plan designed to promote economic growth in Tulsa County. Unfortunately, under *Kelo* it does not matter if a property is well maintained and the owners do not want to sell, which is the case with Centennial Baptist.

The fear of losing property has united opponents across ideological lines. Accordingly, a recently introduced bill would prohibit any government entity that accepts federal aid for a development project from using eminent domain to promote economic growth. Many agree with Sandra Day O'Connor's dissenting opinion in *Kelo*: "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result."

⇒ For additional information related to land use and religious organizations, order **Nonprofit Alert Memo, Zoning & Land Use Issues for Religious Groups**

IRS Revokes Exemptions of Credit-Counseling Organizations

After sixty audits over a two-year period prompted by consumer complaints of deceptive business practices, the Internal Revenue Service has determined that more than thirty nonprofit credit counseling firms are not entitled to tax-exempt status.

"We do not believe [that these credit-counseling organizations] are providing sufficient education to the debtor," says Steven T. Miller, commissioner of the IRS's tax-exempt and government entities division.

Since the credit counseling business is largely based on the tax-exempt status of the counseling agencies, concerns have arisen as to whether there will be enough economically viable firms available to provide these services, especially with new bankruptcy laws that require consumers to consult with credit counseling organizations before seeking protection from creditors in court.

⇒ For more information, visit:
<http://www.irs.gov/pub/irs-tege/eotopica04.pdf>
 Credit Counseling Organizations Written by Debra Cowen & Debra Kawecky 2004 EO

Exempt Organization Tax News In Brief

- Upholding a long line of cases, the Tax Court has ruled that payments made by parents for their child's tuition (in this specific case, to a child's Jewish day school) are not charitable contributions because of (a) the substantial benefits gained from the payment, and (b) the lack of charitable intent. *Sklar v. Commissioner*.

- Lois G. Lerner has replaced Martha Sullivan as the Director of the IRS's Exempt Organizations Division. Lerner, according to TE/GE Commissioner Steven T. Miller, has "played an active role in strengthening IRS enforcement, reengineering the determination letter, and maintaining important stakeholder relationships." She began her new role in January.

- New Vehicle Donation Guidance

The IRS has updated its vehicle donations guidelines related to the requirements for a contemporaneous written acknowledgement. The donee organization may use a Form 1098-C for such purposes, and must submit a copy of each 1098-C to the IRS along with a Form 1096 Annual Summary. An organization that will file more than 250 Forms 1098-C during the calendar year must file them electronically or magnetically. Filing of Forms 1098-C does not affect the obligation of an organization to file a Form 8282, Donee Information Return.

- Workshops for Exempt Organizations

This spring and summer the IRS Exempt Organizations Division will offer workshops for small and mid-sized exempt organizations. The workshops will explain what exempt organizations must do to maintain exempt status and comply with tax obligations.

⇒ To view the workshop schedule and agenda, and to register online, visit EO's Calendar of Events at: <http://www.irs.gov/charities/article/0,,id=96083,00.html>

To Order Memos: Memos referenced in the *Nonprofit Alert* can be purchased for \$20 each (\$10 for clients) from Gammon & Grange, P.C. Five or more copies of the same memo are bulk priced at \$5 each. Visit the [Nonprofit Alert Memo Page](#) for details.

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