Recent Developments for Exempt Organizations, Including 2011 Year in Review

Dow at 13,000 Edition

It is with a profound sense of tradition that we assemble and distribute a 2011 "Year in Review" in March, 2012, instead of simply tweeting what IRS Commissioner Shulman had for breakfast this morning. Some of the developments described herein are very recent, others not so much, but we hope you will find it helpful to pause for a moment, look back over the past 14 months, and anticipate new challenges ahead. As for the Dow, we remain firm in our prediction that it will continue to behave erratically.

IRS and Treasury Initiatives

IRS Exempt Organizations Division Announces Focus on Private Foundations, Unrelated Business Income, International Activities

Looking ahead, the IRS Exempt Organizations division recently released its annual work plan outlining activities it intends to focus on in 2012. In addition to continuing various general projects, the division's activities will center around three main areas: implementing new legislation, incorporating data from the redesigned Form 990 into various compliance initiatives and continuing collaborative projects with other IRS divisions and external stakeholders. Some of the division's specific activities will include:

- Examining a selection of the country's largest private foundations, based on information reported on Form 990-PF;
- In anticipation of an upcoming project on unrelated business taxable income, looking at organizations that have reported unrelated business activities on Form 990 but have failed to file Form 990-T;
- Continuing to examine exempt organizations – and, in particular, large foundations – that operate overseas or own foreign bank accounts to ensure their activities are consistent with their exempt purposes;
- Continuing to develop guidance on the new section 501(r) requirements for tax-exempt hospitals;
- Analyzing data from the colleges and universities compliance questionnaire;
- Developing a questionnaire for holders of group exemptions that explores parent organizations' compliance with the law;
- Identifying compliance issues commonly associated with disaster relief organizations and developing a plan to educate such organizations about the law; and
- Sending a questionnaire to 501(c)(4) social welfare organizations, 501(c)(5) labor and agricultural organizations and 501(c)(6) business leagues designed to assess whether they have classified themselves correctly under the Code and whether they are complying with the law.

IRS Continues Employment Tax Initiative, Launches Voluntary Worker Classification Settlement Program

The IRS is continuing its three-year initiative (announced in 2009) aimed at determining whether businesses and tax-exempt organizations are complying with employment tax laws. Among other activities, the initiative includes approximately 1,500 audits of tax-exempt organizations, targeting issues such as worker classification, fringe benefits, officer compensation and employee expense reimbursements.

In concert with the initiative, the IRS announced the Voluntary Classification Settlement Program (VCSP) in September 2011. Under the VCSP, eligible employers that have misclassified employees as independent contractors may voluntarily reclassify the workers and receive partial relief from federal employment taxes as well as avoid interest and penalties. Tax-exempt employers may be eligible to participate in the program, provided they are not currently under IRS examination.

In addition, the U.S. Department of Labor has initiated efforts to deter the misclassification of employees, including increased information-sharing with the IRS. Various states are also targeting worker classification as part of an effort to recoup lost taxes and other revenue.

Treasury Issues Report on Supporting Organizations and Donor-Advised Funds

In December, the Treasury Department released its long-awaited report on donor-advised funds (DAFs) and supporting organizations (SOs). Under the Pension Protection Act of 2006, Congress required Treasury to consider several issues in the report. Some of the more controversial questions Treasury was required to address were: (1) are the existing deduction rules for contributions to DAFs and SOs appropriate, and (2) should DAFs be subject to a distribution requirement?

Treasury concluded that the current deduction rules for gifts to SOs and DAFs, which are the same as for other public charities, are appropriate. The report also concluded that it is permissible to treat donations to DAFs as completed gifts that qualify for income, gift and estate tax deductions even if the donor retains non-binding advisory rights, so long as the gift complies with existing legal standards that require the DAF sponsoring organization to make it clear to donors that the sponsoring organization is the legal owner of all contributed assets and controls how assets are invested and disbursed. With regard to a DAF payout requirement, Treasury concluded that DAF distribution rates are high as compared with private foundations and that it would be premature to recommend a distribution requirement until more years of data from Form 990 become available.

IRS Guidance on Employer-Provided Cell Phones

Last year the IRS issued Notice 2011-72, which clarifies that when an employer provides an employee with a cell phone "primarily for noncompensatory business reasons," the IRS will treat the employee's use of the cell phone for reasons related to the employee's trade or business as a working condition fringe benefit, the value of which is excludable from the employee's income, and will treat the value of any personal use of the cell phone as a *de minimis* fringe benefit, similarly excludable. A facts and circumstances test will be used to test whether the cell phone is provided primarily for noncompensatory business reasons, and the notice provides examples of situations where this test is and is not met. This rule is applicable to any use of an employer-provided cell phone occurring after December 31, 2009. Although the notice only applies to situations where an employer provides an employee with a cell phone itself, the IRS also released a nonbinding internal memorandum to all of its field agents addressing cell phone reimbursements. The memorandum states that, while Notice 2011-72 does not address reimbursements received by employees from employers for the business use of an employee's personal cell phone, agents should analyze these situations "in a manner that is similar to the approach described in Notice 2011-72." While an important step in the right direction, the internal memorandum leaves several questions unanswered, including substantiation requirements for reimbursements.

Final Regulations Clarify Rules Regarding Public Inspection of Exempt Organization Documents

Final regulations (T.D. 9581) were released on February 28, 2012, clarifying the information and materials related to tax-exempt organizations available from the IRS for public inspection. The final regulations were developed in response to a decision of the U.S. Court of Appeals for the District of Columbia, which invalidated previous regulations that permitted the IRS to withhold from public review letter rulings denying or revoking an organization's tax-exempt status. The final regulations, which adopt rules proposed in 2007 with minor amendments, clarify that the IRS must make applications for tax exemption, as well as supporting materials, available for public inspection even if the IRS subsequently revokes an organization's tax-exempt status. In addition, the rules clarify that the IRS must make the following materials (among others) available for public inspection: group exemption letters; negative determination letters; letters relating to an organization's status as a public charity or private foundation (including whether the organization is an exempt operating foundation or a supporting organization); and notices of political organization status submitted to the IRS by section 527 organizations. The final regulations also clarify that the IRS may publish a list of organizations currently recognized as tax exempt and that such list may include the specific Code section under which the organizations obtained exempt status.

As University Audit Initiative Appears to Enter Quiet Phase, Fourth Circuit Affirms IRS Position on Parking Income as UBTI

The IRS has not had a lot to say in the past year about the college and university audit initiative it launched in 2008 with a lengthy compliance check questionnaire. An interim report was released in 2010, and while some of the approximately 30 audits that resulted from the questionnaire remain ongoing, others have been concluded. The IRS has yet to make any promises about when a final report on the initiative will be delivered.

An issue that has emerged in some university audits has been the appropriate characterization of income from parking lot operations. Earlier this month, the U.S. Court of Appeals for the Fourth Circuit affirmed the Tax Court's 2010 decision in *Ocean Pines Association, Inc. v. Commissioner*, finding that income received by a section 501(c)(4) homeowners association from the operation of parking lots constituted unrelated business taxable income (UBTI). In addition to operating facilities and providing services to the Ocean Pines residential community, the association also owned and operated two parking lots and a beach club eight miles away. During daytime hours throughout the summer season, the parking lots were only available for use by members of the association. The Tax Court held that the operation of the parking lots constituted a trade or business not substantially related to the association's tax-exempt purpose of promoting social welfare because the lots were not open to the general public. Of particular interest to many tax-exempt organizations, the Tax Court further held that the rental income exclusion from UBTI was not applicable to income earned from operating parking lots, while leaving open the possibility that "this conclusion might not apply to a parking lot that is so unusual that it would not be considered a 'parking lot' within the ordinary meaning of the term." The Fourth Circuit upheld the Tax Court's finding that operating parking lots outside the association's community was not substantially related to its tax-exempt purpose. The association did not appeal the Tax Court's decision on the rental income exclusion.

IRS Starts and Stops Gift Tax Examinations of Contributions to Section 501(c)(4) Social Welfare Organizations

Last year, in what turned out to be a short-lived effort, the IRS Estate and Gift Tax Unit initiated examinations of five donors who had not filed gift tax returns associated with contributions made to section 501(c)(4) social welfare organizations. The taxability of gratuitous contributions to section 501(c)(4) organizations is an issue that has been lingering unresolved for many years. Although the Code provides specific carve outs from gift tax liability for contributions to section 501(c)(3) organizations and to political organizations described in section 527, it does not contain a specific carve out for contributions to section 501(c)(4) organizations. Nonetheless, the IRS's long-standing practice has been to not assert gift tax liability on contributions to section 501(c)(4) organizations. In response to considerable criticism, and recognizing the lack of enforcement history, the IRS stopped the investigations it had initiated, and announced that, until further notice, IRS examination resources are not to be used to pursue examinations with respect to the application of the gift tax to contributions to section 501(c)(4) organizations.

Federal Legislative Developments

Ways and Means Subcommittee Chair Presses IRS for Additional Information on the Oversight of Exempt Organizations

Following an October 6, 2011 letter to the IRS seeking a broad range of information about IRS audits of tax-exempt organizations as well as other exempt organization compliance efforts, House Ways and Means Subcommittee on Oversight Chair Charles Boustany (R-LA) sent a March 1, 2012 letter to the IRS requesting information on the oversight of applications for new tax-exempt organizations. Rep. Boustany noted that he is seeking the information in response to rumors that the IRS has been questioning applicants for tax-exempt status – and, in particular, grassroots political entities such as Tea Party groups – about their operations and donors. Among other information, Rep. Boustany is requesting details regarding the IRS's process for reviewing applications for 501(c)(3) and 501(c)(4) status. He is also inquiring into whether the IRS uses standard procedures to request additional information from applicants.

Items Pertinent to Exempt Organizations in President Obama's 2013 Budget

- Cap on itemized deductions. As it has in past years, the President's budget proposes capping itemized deductions, including the charitable contribution deduction, for individuals earning over $200,000 a year ($250,000 for joint filers).

- Private foundation excise tax. The budget proposes a single, 1.35% rate to replace the current two-tiered structure (2% for many foundations, 1% for others) for the private foundation excise tax. Companion proposals were introduced in the House and Senate in 2011 to replace the current tax with a flat rate of 1.39%.

- Limit on charitable contribution deductions. The budget assumes the reinstatement of the limit on itemized deductions that reduces itemized deductions by 3 percent of the amount by which adjusted gross income exceeds a specified threshold, up to a maximum reduction of 80 percent of itemized deductions. The provision, first instituted in the tax code in 1990, was phased out over 10 years beginning in 2001 and was fully repealed in 2010. If the repeal is not extended, the provision would return with the expiration of the Bush tax cuts in 2013.

Expiration of Tax Provisions that Affect Exempt Organizations

Several important tax provisions relevant to exempt organizations expired at the end of 2011 and have not yet been renewed, but are proposed to be extended in President Obama's budget:

- The IRA charitable rollover, which permitted individuals age 70½ and older to exclude from gross income distributions from a traditional or Roth Individual Retirement Account of up to $100,000, if given for charitable purposes, provided the distribution was made directly by the IRA trustee to a public charity other than a supporting organization or donor-advised fund. Distributions made from IRAs as charitable contributions did not qualify for an income tax charitable deduction. Sens. Chuck Schumer (D-NY) and Olympia Snowe (R-ME) have introduced the Public Good IRA Rollover Act of 2011 (S. 557). The legislation would make permanent and expand the IRA charitable rollover, lifting the $100,000 charitable gift limit and allowing for certain contributions, including to a charitable remainder trust, to begin as early as age 59½. A companion bill (H.R. 2502) has been introduced in the House.

- The exclusion from unrelated business taxable income (UBTI) of rents, royalties, annuities and interest paid by a controlled organization to its exempt parent, which ordinarily would be considered UBTI pursuant to section 512(b)(13). This exclusion was only applicable to payments made to the tax-exempt organization pursuant to either (i) a binding written contract in effect on August 17, 2006, or (ii) a contract which is a renewal, under substantially similar terms, to a binding written contract in effect on August 17, 2006.
- Enhanced charitable contribution deductions for (1) contributions of capital gain real property made for conservation purposes, (2) contributions of food and book inventory from the trade or business of corporate and non-corporate taxpayers, and (3) contributions of computer technology equipment by corporate taxpayers.

Legislation and Legislative Proposals Affecting Charitable Organizations

- The President signed the Hiring Heroes Act of 2011 in November. The Act provides a tax credit (applied against the employer share of social security tax) to qualifying employers that hire service-disabled and unemployed veterans.
- In October, the House Oversight and Government Reform Committee approved the Postal Reform Act of 2011 (H.R. 2309), which would reform the United States Postal Service. A companion bill (S. 1625) was introduced in the Senate in late September. The bill includes a provision that would significantly reduce the discount that nonprofits receive on postage rates, effectively reducing the discount rate from 40% to 20% over several years. It is not clear when the full House will consider the bill.
- H.R. 3420, the Philanthropic Facilitation Act of 2011, was introduced in November. The proposed legislation would simplify the current process for obtaining an IRS ruling on program related investments (PRIs) by requiring the IRS to rule, favorably or unfavorably, on PRI ruling requests within 120 days. Once a determination has been made that investments in an entity qualify as PRIs, any private foundation investing in that entity would be entitled to rely on the determination. The proposed legislation provides that the ruling request process would remain voluntary, and the criteria for PRIs would remain unchanged.

IRS Form 990 Developments

Revocation of Exemption for Organizations that Fail to File Form 990

Underscoring the importance of completing the required IRS filings for all tax-exempt organizations, no matter how small, the IRS released its automatic revocation of exemption list of organizations whose tax-exempt status was revoked for failure to file a Form 990, Form 990-EZ, Form 990-PF or Form 990-N (e-Postcard) for three consecutive years. As of November 2011, approximately 380,000 organizations had lost their tax-exempt status for failing to meet the filing requirements for 2007, 2008 and 2009. Simultaneously, the IRS released guidance explaining how to seek reinstatement of exempt status, including retroactively, and providing transitional relief for certain small tax-exempt organizations.

Providing Board Members with Copy of Form 990 Prior to Filing

The Form 990 asks whether a complete copy of the form was provided to all voting members of the governing body before the form was filed with the IRS. The instructions indicated previously that the form could be provided to board members electronically or in paper form. In light of the common practice for boards to view various materials on a secure website, the 2011 instructions make clear that it is sufficient to email board members a link to a "password-protected web site" where the entire Form 990 is available, noting in the email that the form may be viewed on that site.

IRS Clarifies Questions Regarding Adoption of Policies

Section B of Part VI of Form 990 includes several questions regarding the adoption of certain policies (e.g., conflict of interest, whistleblower and document retention). Some confusion existed as to what steps an organization needed to take in order to be able to respond that it had adopted these policies and whether an organization would be treated as having adopted a policy if it had been adopted by a body other than the entire governing board. The IRS has clarified that an organization will be treated as having adopted a policy for purposes of Form 990 reporting if either the organization's governing body, or a committee of the board, adopts the policy by the end of the tax year with respect to which the Form 990 is being filed. This clarification was made effective for an organization's 2010 tax filing, and has been incorporated into the instructions for the 2011 Form 990.

501(c)(3) Borrowers Now Required to Report on Written Bond Compliance Procedures

Effective for tax years beginning in 2011, Schedule K (Supplemental Information on Tax-Exempt Bonds) has been revised to add a new question that asks whether the 501(c)(3) borrower maintains written procedures to ensure that violations of federal tax requirements are timely identified and corrected through the IRS's voluntary closing agreement program (or VCAP) if self-remediation is unavailable under applicable regulations. The new question is the latest in a series of IRS efforts over a number of years to encourage borrowers to adopt written post-issuance compliance procedures. While there is no legal requirement that borrowers have such procedures, the IRS apparently believes that the adoption of written procedures by a borrower increases the likelihood that the borrower will do what is required to maintain the tax-exempt status of its bonds.

Any borrowers that have not yet adopted written procedures for their 501(c)(3) bonds should consider doing so, in order to be able to answer "yes" to the new question. The written procedures should cover private business use and arbitrage compliance, and should make reference to correcting potential violations through the remedial action provisions of the regulations (with respect to private business use) or through the VCAP (with respect to private business use or arbitrage). These written procedures may also be helpful on audit to demonstrate to the IRS the borrower's good faith in attempting to meet its compliance responsibilities.

Disclosure of Split-Interest Trust Donor Information

Names of Split-Interest Trusts Not Reportable on IRS Form 990 Schedule R

The IRS has revised the instructions to Schedule R (Related Organizations and Unrelated Partnerships) to clarify that an exempt organization with related split-interest trusts is only required to list such trusts by type (e.g., charitable remainder trust, charitable lead trust, pooled income fund) and to report the number of each such type of trust to which it is related. The prior instructions to Schedule R had suggested that an organization would need to list each trust separately, providing the trust's name, employer identification number (EIN) and other identifying information. Because donors to split-interest trusts often include their names or the names of non-charitable beneficiaries in the name of the trust, the requirement for an organization to report the names of all related split-interest trusts naturally raised concerns with respect to donor and beneficiary confidentiality.

IRS Releases Information About Split-Interest Trusts in EO Business Master File

Since the 2007 tax year, split-interest trusts have been required to file a revised IRS Form 5227. While information reported on Schedule A to the form pertaining to donors and non-charitable beneficiaries, is not disclosed to the public the instructions to the revised form indicated the IRS's intention to make the rest of the form publicly available, including disclosure of a trust's name. In response to concerns about donor confidentiality, the IRS indicated in 2008 that it did not intend at that time to make any Forms 5227 publicly available unless it received a request with the specific name of a specific trust.

It therefore came as a surprise when, last year, it was discovered that the IRS had begun to include certain information about split-interest trusts derived from Form 5227 – including, among other information, the trust's name, EIN, address, value, and month and year of recognition by the IRS – in the IRS's EO Business Master File extract, which is publicly available via the IRS's website as well as other websites, including GuideStar.org. Our recent communication with the IRS suggests that the release of split-interest trust information as part of the EO Business Master File extract was not an intentional shift in approach, but rather the result of a technical adjustment that was uninformed by the 2008 guidance received from the IRS. We are working with the IRS to address these continuing concerns regarding disclosure of information about split-interest trusts.

Developments of Particular Interest to Health Care Organizations

During 2011 and early 2012, the IRS and Treasury issued guidance related to the implementation of certain aspects of the Patient Protection and Affordable Care Act (PPACA).

ACOs

In October 2011, the IRS released a fact sheet on tax-exempt organizations that participate in accountable care organizations (ACOs). The IRS had released a short notice in conjunction with the finalization of the ACO regulations, although that notice did little more than restate current law. The fact sheet provides more information, and unlike the prior notice, acknowledges that an ACO could itself qualify as a tax-exempt organization, even if it does more than participate in the Medicare Shared Savings Program, depending on the circumstances.

Most of IRS Form 990 Schedule H Becomes Mandatory for Hospitals

When the IRS revised Schedule H (Hospitals) of the Form 990 to incorporate questions to address the additional requirements imposed on tax-exempt hospitals by new section 501(r), a portion of the new questions were optional. Part V.B of Schedule H addresses a hospital facility's community health needs assessment (Lines 1 through 7), financial assistance policy (Lines 8 through 13), billing and collections (Lines 14 through 17), emergency medical care policy (Line 18) and basis for determining individuals eligible for financial assistance (Lines 19 through 21). For tax years beginning in 2011, Part V.B is mandatory, with the exception of Lines 1 through 7 (related to the community health needs assessment), which remain optional for tax years beginning on or before March 23, 2012.

Community Health Needs Assessments

Last year the IRS issued Notice 2011-52, which addresses the new community health needs assessment (CHNA) requirements of section 501(r)(3) and related excise tax and reporting obligations. The notice describes regulatory provisions that Treasury and the IRS anticipate will be included in proposed regulations under section 501(r), including the following: (1) clarification of which hospital organizations are required to meet the CHNA requirements, (2) application of the CHNA requirements to hospital organizations with multiple hospital facilities, (3) elaboration of the documentation requirements for a CHNA, (4) an explanation of how and when a CHNA should be conducted, (5) determination of the community served by a hospital facility, (6) satisfaction of the requirement that a CHNA take into account input from persons who represent the broad interests of the community, (7) rules regarding making a CHNA widely available to the public, (8) rules regarding a hospital organization's implementation strategy for its CHNA, including how and when an implementation strategy is adopted, (9) imposition of a $50,000 excise tax on a hospital organization for each hospital facility with respect to which it fails to meet the CHNA requirements for any taxable year, and (10) new reporting requirements that have been and will be added to Schedule H of IRS Form 990 related to the CHNA requirements. The CHNA requirements are not effective until taxable years beginning after March 23, 2012. Although the requirement for a hospital organization to report its implementation strategy for addressing needs identified in its CHNA is effective for taxable years beginning after March 23, 2010, Notice 2011-52 provides that Treasury and the IRS do not intend to enforce this requirement for tax years beginning on or before March 23, 2012 (see above development regarding IRS Form 990 Schedule H). The guidance included in the notice may be relied upon with respect to any CHNA made widely available to the public, and any implementation strategy adopted, on or before the date that is six months after further guidance regarding the CHNA requirements is issued.

Tax-Exempt Health Insurers

In February 2012, new guidance was issued for qualified nonprofit health insurance issuers (QNHIIs) participating in the Consumer Operated and Oriented Plan (CO-OP) program established by the Centers for Medicare and Medicaid Services (CMS). These organizations may apply for tax-exempt status under new section 501(c)(29). Under the program, CMS will provide loans to organizations applying to become QNHIIs to help cover start-up costs. Pursuant to the new guidance, the IRS will recognize a QNHII as exempt effective as of the later of the date of formation or March 23, 2010 (the date PPACA became law), provided the application is submitted in the manner and within the time prescribed by the IRS and the QNHII's prior purposes and activities are consistent with the requirements for exempt status under section 501(c)(29). The guidance requires that an application be submitted in letter form, along with, among other items, a statement of receipts and expenditures, a balance sheet, a proposed budget if the organization has been in business for less than one accounting year, a detailed narrative of its activities, representations that the organization will comply with the limitations on private inurement, lobbying and political campaign activity set forth in section

501(c)(29)(B), and a copy of the Notice of Award issued by CMS and the fully executed Loan Agreement with CMS.

Selected State-Specific Developments

New York Nonprofit Reforms on the Horizon

New York Attorney General Eric Schneiderman kicked off 2012 by announcing a plan to "reform and revitalize" the state's nonprofit sector, which will include introducing legislation (the Nonprofit Revitalization Act) that would make comprehensive changes to New York's nonprofit laws. The Attorney General is basing his plan on a report from the Leadership Committee for Nonprofit Revitalization, a group of 32 nonprofit leaders convened by the Attorney General in 2011 to develop proposals to reduce burdens on the nonprofit sector while strengthening governance and accountability. Consistent with the report, the Attorney General has announced that the Nonprofit Revitalization Act will include provisions to expedite the formation of nonprofits and the approval of key nonprofit transactions, require enhanced, independent board oversight of executive compensation, increase board oversight responsibilities with respect to financial audits and require that nonprofits adopt conflict of interest and whistleblower policies.

Attorney General Schneiderman's actions come on the heels of high-profile efforts related to executive compensation practices within state-supported nonprofits. Such efforts include Governor Andrew Cuomo's creation of an investigative task force in late 2011, the Governor's signing of an executive order in January 2012 that will limit the state's reimbursement of nonprofits' administrative and executive compensation expenditures and a February 2012 hearing of the state's Senate Committee on Investigations and Government Operations that examined executive compensation practices.

Massachusetts Pending Legislation Would Curb Director/Trustee Compensation

In April 2011, the Massachusetts Attorney General's Office issued a report that asserted that compensating directors of charities "creates an unavoidable conflict of interest inherent in the unchecked ability to self-elect compensation with charitable funds." The report stated further that charities should undertake this practice "only if they have a sound and convincing rationale." In conjunction with the release of the report, the Attorney General's Office announced that it would file legislation to prohibit the compensation of directors of Massachusetts-based charities unless that compensation is approved by the Attorney General's Office. The bill currently under consideration in the Massachusetts House (H.3516) would prohibit any "Massachusetts based public charity" from compensating an "independent officer, director or trustee" unless it obtains approval from the Director of the Attorney General's Nonprofit Organizations/Public Charities Division. Note that "public charity" for Massachusetts purposes includes not only organizations classified as public charities for federal tax purposes, but also organizations classified as private foundations. "Independent officer, director or trustee" is defined to include those parties who are not serving as employees (or as the equivalent of an employee) of the charity.

The bill authorizes the Director of the Nonprofit Organizations/Public Charities Division to develop filing requirements and guidelines for the compensation approval process. According to the language of the bill, an organization would need to provide a clear and convincing argument that paying compensation is necessary to enable the charity to attract and retain experienced and competent individuals to serve on its board. The bill also grants the Attorney General's Office the authority to rescind an approval, at any time, upon a finding that the amount of compensation paid is more than reasonably necessary. The effective date of the legislation would be six months after the date of enactment.

DC's Revised Nonprofit Corporations Law Takes Effect

On January 1 of this year, DC's new Business Organizations Code, which includes the revised Nonprofit Corporation Act, took effect, substantially revising the rules applicable to nonprofit corporations in DC. With the revised Act now in effect, nonprofit organizations should review their governing documents and policies to ensure compliance with the new rules. Among the highlights of the revised Act are the following: (1) the offices of President and Treasurer, rather than those of President and Secretary, must now be filled by different persons; (2) inclusion of comprehensive rules regarding indemnification of directors and officers; (3) codification of the common law fiduciary duty rules for directors and officers; (4) ability of DC nonprofit corporations to restate their articles of incorporation, including prior amendments, into a single new document; (5) new rules with respect to Board committees and bodies that exercise Board authority; (6) new rules with respect to membership corporations, including revised default rules for member meetings and new recordkeeping obligations and inspection rights by members; and (7) shift of the due date for biennial reports required to be filed with the Department of Consumer and Regulatory Affairs (DCRA) from January 15 to April 1. The revised Act also appears to require so called "Old Act" Corporations (those corporations incorporated in DC prior to 1962) to opt out of the revised Act, although the details of how this will be achieved are still being determined. The DCRA is in the process of drafting proposed regulations to implement the new rules.

New Edition of the Ropes & Gray Manual

Tax Aspects of Charitable Giving, the plain brown wrapper version of the Harvard Manual of the same name will appear in 2012 – maybe by this summer. This is the third edition and has been written by Martin Hall and Carolyn M. Osteen of Ropes & Gray LLP. Although this manual is directed primarily to an audience of practicing attorneys, accountants and other professional tax counsel, it has proven to be useful to individuals who are philanthropic and/or have some familiarity with the tax law relating to charitable contributions. The new edition represents a substantial update of all federal tax rules in this area and includes new chapters relating to private foundations, donor advised funds and supporting organizations. For information about obtaining this manual, please email carolyn.osteen@ropesgray.com.

Upcoming Nonprofit Law Conference

Kendi Ozmon and Lorry Spitzer will again be chairing the Massachusetts Continuing Legal Education Nonprofit Law Conference, this year on Thursday, April 5, 2012. We have assembled an all-star cast of speakers, who will bring you up to date on developing nonprofit law, including hot topics such as governance, mergers and acquisitions and health care reform. We would love to see you there, either in person or via the Webcast!

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