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Charitable Considerations for Business Owners and Their Non-Profit Partners - April 1, 2018

It is not true that the recent tax law changes, commonly referred to as the “Tax Cuts and Jobs Act” signed into law on December 22, 2017 will hurt charitable giving. If anyone bothered to check the details of the legislation (PL115-97), they would see the changes actually encourage charitable giving.

Many factors go into why businesses and individuals donate money to charitable organizations, and one of the reasons frequently cited is deductibility for federal tax purposes. During and shortly after the debate over the recently enacted federal tax legislation, there were widely circulated “News” stories about how charities would suffer due to changes in federal tax law. Whether it was poor journalism, news firms seeking a good social media headline by repeating political talking points, or just flat out “Fake News” can be debated, but what cannot be debated is what actually wound up in the Internal Revenue Code.

Yes, by doubling the standard deduction, many people will no longer find it beneficial to itemize their taxes, and as a result they will not be able to specifically deduct charitable contributions. Superficially, the headlines made sense. Now check out the detail -

Individual donors (people who file personal tax returns regardless of their filing status - single, married filing jointly, etc.) fall into several groups:

1. Those individuals or couples that itemize in 2017 (Schedule A of Form 1040), and will again in 2018. For this group charitable donations are now more valuable than they were before. In the details of the tax changes, two things happened: 1. The “3%/80%” phase-out of itemized deductions on high income individuals and couples (Schedule A-Line 29) was effectively eliminated until 2026, and 2. The limit on deductions for charitable cash donations as a percentage of (adjusted gross income less any net operating loss) was raised to 60% from 50% for most qualified charities.

The group most likely, and most able to donate now actually gets a substantial tax benefit (likely 24% - 37%) when they make donations, and they can donate even more. This is in addition to the substantial rate cuts at the top of the tax brackets, a new but misnamed “Pass-Through” tax deduction for small business owners, and a host of other benefits. Even though smaller in number, this group has by far the biggest share of contribution potential and history, and one $10,000 donation has the same value as one-thousand $10 donations. This group also includes many small business “S” Corp owners and partnership members who previously lost tax benefits associated with charitable donations made by their firms.

2. Those that did not itemize in 2017, but will in 2018. Their filing choice probably changes because they made more money, not because of the tax law changes. Regardless, they have more money to donate, and the deductions are more valuable. Please see the group above for other relevant considerations.

3. Those couples or individuals that did not itemize for 2017, and will not itemize in 2018. Nothing was lost by this group. Generally they received a tax rate cut, and many of them got a child tax credit increase. They now have more cash to donate to the charities they value.

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4. Those that did itemize for 2017, but will not in 2018. This is the group that got misrepresented as "Everyone", and also got represented as a bunch of "Scrooges" who were going to end their charitable giving because there was no direct tax deduction. In theory, tax deductibility allows a larger out-of-pocket donation, since some of it is recovered by the donor through reduced federal taxes. The value of that deduction was primarily in the 10% - 25% range for this group. Hardly a reason not to give, or even to reduce their donations. On a cash basis they are better off. Tax rates decreased, and they get the increased personal standard deduction which covers the value of any itemized charitable deduction they may have had in 2017. The purpose of the charity, the work it does, and numerous other tangible and intangible factors drive charitable donations much more than tax deductions. This group still values the organizations they support, their purposes, and their results; and they now have more money to help them. There are numerous tax smart ways charitable organizations can encourage members of this group to continue to fully participate in their mission.

On the business side, things are relatively unchanged with "C" Corporations' charitable deductions and gift matching programs largely unaffected, except for college sports tickets. "S" corporation and partnership charitable deductions are still passed through to the owners, but as noted above, many of the owners will now actually benefit from the deductions. In addition, many businesses can and will still deduct their association with charitable organizations as marketing expenses, sponsorships, partnerships, etc. depending on the nature of the relationship and what they receive in return. Other considerations for business owners when thinking about making donations include:

1. While most charities provide confirmation of their IRS charitable status and proper receipt documentation; it is your responsibility to make sure they are correct, that the charity's status has not been revoked or expired, and that the receipt they provide to you meets both the informational content and deadline required. Guidance on most charitable transactions can be found in IRS Publication 526, but a much shorter, more useful summary can be found on pages A-9 through A-11of the 2017 Instructions for Schedule A. If you need to make sure a charity is eligible to receive tax deductible donations, please visit https://apps.irs.gov/app/eos/ You may also access the past tax returns of most charities with over $50,000 in annual contributions at http://foundationcenter.org/find-funding/990-finder or several other sites that get them from the IRS and then republish them. They hold a wealth of information about how the money is actually spent, so there is decent accountability for the money you are donating. You may also get the past tax returns directly from the IRS.

2. Whether to give other items of value versus cash. The list of non-cash items that cannot be deducted is extensive, as are the documentation requirements for making non-cash donations. That said, there can be substantial tax benefits to donating appreciated assets, so the best advice is to check in advance. In addition, the "Donee - Reporting Exception" (The charity could disclose the contribution on their 990 series tax return instead of providing a receipt to the donor) for cash gifts over $250 has been repealed as part of the recent tax changes. Proper contemporaneous documentation of those cash donations is now required. The donor is denied the deduction unless they have it, even if the charity is at fault for failing to provide it.

3. If you receive anything other than a very cheap token benefit in exchange for your donation, the contribution amount associated with that benefit will not be deductible. If the benefit has no value to you, and uses up a large portion of the potential deduction, you should consider a different type of donation or a different charity.

4. Most of the changes to the tax code affecting individual charitable contributions will expire at the end of 2025, and theoretically could be repealed as early as 2021 depending on election results. These dates could become very important deadlines for once in a lifetime type gifts. The area of charitable giving is one of the more complex areas of the tax code, and the bigger the donation, the more diligence and effort is required to make sure it will qualify for a federal tax deduction.

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