



Are (Some) Tax Exemptions On The Line?

By Bruce R. Hopkins

Recent developments lead to the conclusion that the House Ways and Means Committee may review the appropriateness of federal income tax exemptions, at least in some areas. This could have enormous implications for the entire exempt organizations community. As Committee Chairman Bill Thomas ominously remarked earlier this year, the elimination of the exempt status of nonprofit hospitals and other institutions could create an “enormous area of potential revenue.”

Chairman Thomas ventured into this area initially because of his annoyance at tax-exempt hospitals that asserted they could not reduce prices for uninsured patients because of complexities in the Medicare law. Following a denial by the Department of Health and Human Services that this interpretation of the law was accurate, Rep. Thomas asserted that he found this position by the hospitals to be a “little scary.”

Congressional Rumbblings

The Chairman has complained that the “charitable activities (of hospitals) couldn’t easily be discerned between for-profits and not-for-profits.” He has also said that exempt hospitals “should serve the community” and that they are required to fulfill a “social compact” to maintain their exempt status. He added that he does not have any “preconceived notions” as to what that compact might be but that he “just wants to look at” the issue.

Thereafter, he commented on the similarity of functions of exempt organizations generally and taxpaying businesses, and suggested that the Committee might endeavor to impose “more specific responsibilities” on organizations as a condition of retention of exemption. These rumblings have been heard before, but when someone of Chairman Thomas’ eminence calls for revisions of law in this context, it is meaningful. By the way, matters worsen: He refers to tax-exempt organizations as “tax-preferred” entities.

The Credit Union Argument

Parallel to all of this is the ongoing debate over tax exemption for credit unions. Just listening in on this debate is telling. The chairman of the Federal Deposit Insurance Corporation recently called for repeal of the exemption. So has the head of the Association of Community Bankers who, in calling for Ways and Means Committee hearings on the subject, said that the “free market is being disrupted by tax subsidies provided to large, complex credit unions that compete head-to-head with taxpaying community banks.”

This is the old “level playing field” argument that has been sounded for decades in the context of cries of “unfair competition” involving nonprofit organizations. But the president of the Credit Union National Association said, as to that argument, “We continue to maintain that a level playing field makes sense only if the game is between players of the same species . . .” and that it is “quite clear that credit unions and banks are different.” The Secretary of the Treasury stated that the Administration opposes the idea of taxing credit unions, exhorting that “[we] don’t want to get less of what you do.”

Consequently, this battle may be joined again. This time, however, the controversy is erupting at a time when national policymakers are chasing after questionable charitable gifts (such as donation of used vehicles and intellectual property), charities as pawns in tax shelters and reports of excessive compensation. In one of these contexts, Senate Finance Committee Chairman Charles Grassley spoke of charities benefiting from “big tax breaks.” It is not the best of environments in which to wage this war.

If the battle comes, there will have to be a forceful reminder to the politicians that tax exemption for charitable organizations and other entities is a consequence of implementation of national political philosophical principles of democracy and pluralism. The nonprofit sector is a mainstay of a free society and a necessary counterpart to government. These tax exemptions exist in reflection of this philosophy — they are not “big tax breaks” that the government has gratuitously doled out. Still, government regulation is not going away — the challenge for the sector is to curb it.

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