COUNCIL on FOUNDATIONS

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2010 Legislative Agenda for Philanthropic Growth

The 2010 Legislative Agenda for Philanthropic Growth includes the legislative proposals outlined below. The Council on Foundations will actively partner with members of Congress to seek support for these measures. We will also collaborate with colleague organizations and funder networks to achieve broad support for these issues across the sector.

PRIORITY ISSUES

Expansion and Extension of the IRA Charitable Rollover

<u>Position:</u> The Council supports the expansion of the IRA charitable rollover to include: gifts to donor advised funds, supporting organizations, and private foundations; gifts above $100,000; and planned gifts. We also support the reinstatement and extension of the IRA charitable rollover to make it applicable to the 2010 tax year and beyond.

Enact a Revenue-neutral Excise Tax on Net Investment Income

<u>Position:</u> The Council supports a revenue-neutral simplification of the private foundation excise tax to a single flat-rate that will encourage increased giving by private foundations. The tax was enacted in 1969, along with other taxes that penalize self-dealing, failure to make adequate minimum distribution, excess business holdings, jeopardizing investments, and taxable expenditures.

Today, almost every foundation is seeking to maintain its present grant commitments, despite the dramatic reductions of its endowment's value. It is critical we encourage foundations to continue this level of giving and not allow them to be penalized in the future with a higher excise tax. Accordingly, we will continue to work with Congress to enact a revenue-neutral legislative proposal to create a single flat rate excise tax on net investment income.

Maintain Current Law on Charitable Deduction Rates

<u>Position:</u> Changes to the link between an individual's tax rate and the charitable deduction rate they can claim make the tax code more complex and threaten to reduce the charitable giving needed to support worthy non-profits across the country. At a time when charities are faced with increasing demands from their communities, it is important that public policies support and encourage charitable giving. The Council strongly supports maintaining the current law with respect to itemized charitable deductions.

<u>Background:</u> President Obama's fiscal 2010 budget outline calls for tax changes that would affect individuals and families in the highest two tax brackets. The proposal includes reducing the value of itemized deductions that families earning more than $250,000 or individuals earning more than $200,000 can take in charitable donations, state and local taxes, and real estate expenses. Although originally linked to health care reform legislation when first proposed in 2009, the measure appears as a stand-alone revenue raiser in the 2010 budget.

OTHER LEGISLATIVE ISSUES

Program-Related Investments (PRIs) Promotion Act

<u>Position:</u> The Council supports federal legislation that would create a timely and consistent process for foundations to request IRS approval prior to making program-related investments (PRIs) involving

low-profit limited liability companies (L3Cs) and other business entities. We will identify champions in the House and Senate to introduce a legislative proposal which calls for the support of PRIs by foundations. With the assistance of colleague entities, we will follow the activities in the various state legislatures that are considering the passage of the PRI concept.

Enhanced Deduction for Food Donations to American Indian Tribes
Position: Should Congress decide to extend the enhanced charitable deduction for contributions of food inventory, the Council supports a technical correction to the provision to include American Indian tribes as qualified recipients of food donations.

Reinstatement of the Estate Tax
Position: The estate tax is an important incentive to charitable giving during a donor's lifetime, as donors use charitable gifts to reduce their estates and the taxes they would otherwise pay on those estates. The Council supports the reinstatement of an estate or inheritance tax that continues to provide robust incentives for charitable giving. However, the Council also supports reform of the tax to create an appropriate exemption level, such as the current $3.5 million per spouse, for smaller estates, farmers, and small business owners, while retaining a high enough marginal rate, such as the current 45 percent rate, as an incentive for the wealthiest taxpayers to give generously.

Background: The Internal Revenue Code imposes a gift tax on certain lifetime transfers, an estate tax on certain transfers at death, and a generation-skipping tax to ensure that property does not skip a generation without a transfer tax being assessed. Since 2001, the value of assets that can be excluded from these taxes has been increasing—from $600,000 in 2001 to $3.5 million in 2009 (effectively $7 million per couple)—and the tax rate has been decreasing—from 60 percent in 2001 to 45 percent in 2009. On December 31, 2009, the estate tax expired as efforts to extend current rates into 2010 or beyond failed. Unless Congress acts this year, the estate tax will not exist in 2010 but will reappear in 2011 at the 2001 rates and exemption amounts. Congress has indicated that they hope to adopt legislation reinstating the tax retroactive to January 1, 2010.

UBIT Exemption for Hedge Fund Investment Income
Position: The Council supports changing the tax code to create an exception to the debt-finance income rules that would allow all tax-exempt entities to invest in hedge funds and similar investment partnerships without being subject to unrelated business income tax (UBIT). The exception is modeled on the exception to these rules that currently exempts pension funds and universities from UBIT when they invest in debt-financed real estate. However, this exception would be available to all tax-exempt entities, including foundations.

Background: Both private foundations and public charities, such as community foundations, are subject to an unrelated business income tax (UBIT) on investment income if the foundation incurred debt to make the investment. Originally enacted as a measure to prevent certain clearly abusive transactions in which businesses used sham transactions with charitable entities to convert ordinary income into capital gains, the debt-financed property rules now have the unintended consequence of burdening foundations that invest in partnerships, such as hedge funds, and similar entities that pay no tax at the entity level, but rather pass through their income and expenses to their investors. If the partnership incurs debt in the course of its investment activity, that debt is passed through to the investors, triggering the application of UBIT to the foundation's investment income. To avoid this result, many foundations invest in hedge funds through off-shore "blocker" corporations in jurisdictions with little or no corporate income tax. Several IRS rulings provide that the interposition of the corporate entity blocks the attribution of the partnership debt to the foundation investor. In response to concerns raised during a Congressional hearing about the prevalence of such practices, several witnesses recommended creating an exception to the debt financed income rules that would allow all tax-exempt entities to invest directly in onshore hedge funds without being subject to UBIT.

NON-LEGISLATIVE ISSUES

Rural Philanthropy Growth Act (RPGA)
Position: The Council supports, in concept, two provisions outlined within the draft legislative proposal titled “The Rural Philanthropy Growth Act of 2009.” Though originally a legislative proposal, the legislative climate in Congress suggests greater likelihood of success through pursuit of programs within relevant Federal Agencies that would encourage community leadership and community philanthropy to revitalize and sustain rural communities throughout America. Specifically, the Council will pursue creation of a program within the US Department of Agriculture or other appropriate Federal Agencies to:

- Provide challenge grants to qualifying community foundations, or other appropriate place-based entities, to build community-based unrestricted endowment funds to benefit one or more economically distressed counties.
- Provide capacity building grants to qualifying community foundations or other place-based entities.

White House Conference on Philanthropy in 2011
Position: The Council will explore the feasibility of a White House conference on philanthropy in 2011 and will advocate for a commitment by the administration to support convening a White House conference.

Background: On October 22, 1999, President Clinton and the National Endowment for the Humanities convened the first “White House Conference on Philanthropy: Gifts to the Future.” This conference brought together individuals engaged in philanthropy to highlight this American tradition of charitable giving, discuss the diverse and changing face of philanthropy, and explore how to preserve and expand this tradition for future generations.

The Council intends to use a conference in 2011 as a catalyst for continued activity and dialogue for the grantmaking community, especially as it relates to the potential for partnership between public, private, and philanthropic sectors. Furthermore, the conference will assist in educating policymakers and the American public about the contributions of, potential for, and positive impact generated by philanthropy.

Regulatory Activities
The Council has a range of regulatory activities on its agenda for 2010. Below are the top three regulatory priorities for the year ahead:

1) Improvements to the Donor Advised Fund and Supporting Organization Reforms Included in the Pension Protection Act of 2006 (PPA)
Position: Improvements to the donor advised fund and supporting organization reforms included in the PPA remain a priority for the Council. We anticipate that Treasury will release a promised study of donor advised funds and supporting organizations in the first quarter of 2010. We also anticipate that the IRS will propose implementing regulations for donor advised funds. Key issues to address include:

- Clarifying and improving the regulation of donor-advised funds to:
  - permit civic organization and similar group scholarship programs operate as they have in the past without being subject to the donor advised fund rules.
  - allow the purchase of goods and services from commercial vendors.
  - exempt funds created by public charities and governmental entities from the definition of “donor advised fund.”
  - exempt, with appropriate safeguards, funds that make grants to individuals in hardship situations.

- Clarifying and improving the regulation of supporting organizations to:
  - suspend penalties for grants to certain Type III supporting organizations until the IRS can update Publication 78 to identify the organizations that fall within this category.
  - clarify the control test for Type I supporting organizations that support a class of charities.

2) Community Foundation Audits
Following up on compliance check questionnaires sent to community foundations in August 2007, the IRS began conducting audits of community foundations in the last quarter of 2009. We are tracking these audits and will provide support if issues emerge that affect the field as a whole. The IRS is planning about fifty audits, with six underway or nearly complete as of January 2010.

3) International Regulations
The Council is working to create a centralized source for determinations that a foreign nongovernmental organization is the equivalent of a domestic public charity.

Our activities in 2010 will include:

- seeking revisions to Revenue Procedure 92-94 to authorize the IRS to issue private letter ruling that would allow grantmakers to rely on equivalence determinations made by staff of the repository.

- working to persuade the treasury department to withdraw the “Anti-Terrorist Financing Guidelines” and substitute the “Principles of International Charity” developed by a working group convened by the Council.