

Committee on Ways and Means, Subcommittee on Oversight
Hearing on Tax-Exempt Charitable Organizations
July 24, 2007

Overall, the tone of this hearing on the non-profit sector was in marked contrast to previous hearings in the Senate Finance Committee on the non-profit sector. The House members praised the community for its contributions and repeatedly asked what more could be done to advance the work of the non-profit sector. That said, there was some very pointed testimony on payroll tax abuse in the sector, but even the witness from the GAO who reported on the abuses noted that the abuses he uncovered, that the sector suffered from a “few bad apples” and not widespread problems. Chairman Lewis heard the same from the IRS Commissioner, who stated that the non-profit sector was “very compliant.”

We understand the Oversight Subcommittee is planning on a second hearing, most likely in the early Fall. Given the amount of comments we understand the Subcommittee has received to date, we expect at least part of the next hearing to focus on problems with the non-profit provisions in last year’s Pension Protection Act.

Summary of the Hearing:

The Subcommittee held the first of what are expected to be a series of hearing on the tax-exempt sector. This hearing was intended to be a broad overview of the sector, focusing on charities and foundations. Members in attendance at the hearing included, Chairman Lewis (D-GA), Ranking Member Ramstad (R-MN), and Reps. Neal (D-MA), Becerra (D-CA), Tubbs Jones (D-OH), Kind (D-OH) and Pascrell (D-NJ).

Chairman Lewis set the tone for the hearing in his opening statement which lauded the charitable community for the important role they play in helping government serve society’s most needy and asked how Congress can help to strengthen the nonprofit community and help them to do more to meet “important unmet needs.”

Ranking Member Ramstad’s statement opened by praising the good work being done in Minnesota by its vibrant community of charities and foundations. He referenced the upcoming GAO testimony about the investigation done at his request which examined tax exempts delinquent in paying payroll taxes, but was quick to point out that he believed these cases were the exception rather than the norm.

Following opening statements from Chairman Lewis and Ranking Member Ramstad, the Chairman then offered up the opportunity for other Members in attendance at the time, Reps. Tubbs Jones, Kind and Pascrell, to make opening brief remarks prior to the witness testimony.

Testimony then got underway, with the following individuals testifying:
Steve Miller, Commissioner, Tax Exempt and Governmental Entities Division, IRS
Stanley J. Czerwinski, Director, Strategic Issues, GAO

Gregory D. Kutz, Managing Director, Forensic Audits and Special Investigations, GAO
Diana Aviv, President and CEO, Independent Sector
Steve Gunderson, President and CEO, Council on Foundations

IRS

Commissioner Miller began his testimony by saying that the charitable sector deserves to be commended for its work and conceded that while there are some problems in the sector, they are not widespread, and on the whole, the charitable sector is very compliant with the Tax Code. He went on to list the five areas in which the IRS has specific concerns about compliance and possible abuse of tax-exempt status, which included: 1) charitable contribution overvaluation, 2) charities established to benefit the donor – abusive donor-advised funds arrangements, 3) a blurring of the line between tax-exempt and commercial sectors, 4) executive compensation and inurement, and 5) regulation and reporting of political activities. He closed by stating that the service is working to enhance transparency in the sector and to that end he mentioned the IRS' efforts to redesign the Form 990 to provide for electronic filing of the Form 990 and the 990 PF.

GAO

The GAO testified about the study made public yesterday which found that nearly 55,000 tax-exempts were responsible for about \$1Billion in unpaid taxes last year, and that some of those organizations not in compliance were funneling millions of dollars into executive compensation and lavish benefits. As shocking as this revelation was, however, the witness explained that the vast majority of tax-exempts pay their taxes and it was the case of a “few bad apples”.

IS

Diana Aviv testified generally about the state of the sector and about the creation of the national Panel on the Nonprofit Sector and how its collaboration with Congress led to the reforms passed in the Pension Protection Act (PPA). Expressing pleasure with the overall outcome of the PPA provisions, Ms. Aviv called for permanent extension of the rollover provision include therein. She further indicated that IS would soon be releasing 33 recommendations on governance. In concluding her testimony, Diana Aviv called upon Congress to create a Small Nonprofit Administration (she used the Small Business Administration as an analogy) that would train individuals in the administrative, governance, fundraising, and planning skills necessary to run small charitable organizations.

COF

Steve Gunderson, former Member of Congress and current President and CEO of COF was welcomed warmly by his former colleagues on the Committee after an introduction by Rep. Ron Kind, who holds the Wisconsin seat once held by Gunderson. Gunderson testified about the vital role foundations play in strengthening and sustaining communities, and called on Congress to make a number of adjustments to the Pension Protection Act provisions that are hampering community philanthropy. He praised the formation of the congressional Philanthropy Caucus co-chaired by Reps. Robin Hayes (R-NC) and Stephanie Tubbs Jones and also made mention of the upcoming August

conference sponsored by COF to be held in Missoula Montana on Philanthropy and Rural America.

Questions

Chairman Lewis' questions focused on eliciting from the witnesses ways that government could help the charitable community to better serve more people, asking about the challenges facing charities in trying to recruit volunteers, and how foundations determine need. His last question asked of the GAO witness was how to promote self-regulation. Interestingly, the GAO witness demurred, but no one else on the panel was willing to offer up an answer to the question that was left hanging. Further, the Chairman got Commissioner Miller to concede that notwithstanding allegations of abuse, that the non-profit sector was "very compliant".

Ranking Member Ramstad saved most of question for the GAO witness, Kutz, asking how many tax-exempts were there in the U.S., to which he answered 1.8 million. Of those 1.8 million 55,000 were found to be delinquent in payment of payroll taxes. He pressed Kutz further, asking him if he believed changes in federal law were needed to address this problem. Kutz answered by saying "no, just more aggressive enforcement."

Rep. Stephanie Tubbs Jones took Kutz to task during her question period, stating that by her math, 55,000 delinquent tax-exempts out of a universe of 1.8 million is only about three-percent. She went on to ask Kutz, "Don't you think it would have been good to tell us there are 1.8 million exempt organizations [in the report] when you threw out that number? It's your job to get the numbers right."

Rep. Pascrell's questions concerned contributions which may have inadvertently funded terrorist activity.

Rep. Becerra opened his questions by praising the sector for its good work and expressed a hope that Congress continue to incent giving. His questions focused on executive compensation, asking whether there was anything in the tax code to prohibit charities from paying excessive executive compensation. Commissioner Miller answered by stating that the Code requires the pay to be "reasonable." He further pressed Aviv on how they arrive at a "reasonable" sum, to which she answered that bigger organizations hire outside consultants to assess reasonableness.

Finally, Rep. Neal recalled the series which ran in the Boston Globe in 2003 exposing outrageous behavior of several private foundation officials, using foundation dollars for their own benefit, such as using foundation assets to subsidize family weddings and other outrageous and illegal behavior, and asked Commissioner Miller what the overall compliance rate of tax-exempts is versus other entities. Commissioner Miller replied that there was no compliance baseline to which they could compare, but suggesting that the tax-exempt sector is no worse than any other in terms of noncompliance.