



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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This testimony is presented in support of SB 40.

How this Bill Changes Current Law

SB 40 amends and adds new provisions to ORS 128.610 to 128.750, enabling the Attorney General to disqualify charitable organizations from receiving tax-deductible contributions if the organizations fail to expend a minimum of 30% on charitable programs, as opposed to fundraising and administrative expenses. SB 40 also requires that disqualified charities disclose their disqualified status in solicitations and provides that the failure to make such disclosures constitutes a misleading representation under ORS 128.886, which is subject to enforcement under the Unlawful Trade Practices Act. SB 40 also adds provisions to ORS Chapters 316 and 317 to limit the tax deductibility of donations made by persons who received notice of the charity's disqualified status.

Key Points of Legislation

► **SB 40 targets charities that abuse their tax-deductible status and the public trust.**

The vast majority of charities do an admirable job of fulfilling their commitment to operate for the public's benefit. However, a small number of them abuse the privileges associated with obtaining 501(c)(3) charitable status with the Internal Revenue Service and regularly spend less than 30% of their donations on charitable programs. Instead, these organizations spend 70% or more of donations on fundraising and/or management expenses, often relying heavily on the services of for-profit professional telemarketing firms and leaving little to spend on the charitable programs that prompted donors to contribute.

► **SB 40 makes donations to such charities nondeductible for Oregon income tax purposes.**

The Oregon tax code currently provides that, if a charity has IRS 501(c)(3) tax-deductible status, donations can be deducted on state income tax returns to the same extent as on the

taxpayers' federal returns. SB 40 provides a mechanism to exclude charities that do not use donations effectively from the advantages of the Oregon tax code by limiting the deductibility of contributions to such organizations.

► **Limiting tax deductibility does not contravene existing law.**

Oregon and other states once had laws that prohibited charities from soliciting if their fundraising and administrative costs were grossly disproportionate to the funds expended on charitable programs. However, these laws, including Oregon's, were repealed after the United States Supreme Court ruled in *Schaumburg v. Citizens for a Better Environment*, 444 US 620 (1980) that government attempts to restrict a charity's ability to solicit on antifraud grounds violated the First Amendment. SB 40 does not restrict charities' ability to solicit, but instead limits the extent to which Oregon's tax code subsidizes the wasteful and abusive practices of a discrete group of charities. Placing limits on the tax code's subsidization of such activity is not an infringement on First Amendment rights. See *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540 (1983).

► **SB 40 is appropriately tailored to the problem and includes adequate safeguards.**

SB 40 targets organizations that spend less than 30% on program services, averaged over three years. The three year averaging provision ensures that the law affects only those organizations that consistently perform below the standards that the public has the right to expect from charitable organizations. Other safeguards include:

- The disqualification determination is based on the charities' own classification of expenses on financial reports filed with the Department of Justice.
- The disqualification order is subject to the contested case provisions of Oregon's Administrative Procedures Act.
- The legislation includes reasonable exceptions from disqualification. For example, disqualification would not apply to cases in which the minimum expenditure was not met because the organization was saving donations to build a facility, but paying fundraising and management costs in the interim.
- SB 40 applies to larger charities that rely primarily on tax-deductible donations from the public. The legislation does not impact private foundations, organizations that receive fees for services, or organizations that already are ineligible to receive deductible donations.
- The legislation provides a safe harbor for donors who were misled by the disqualified charity about the deductibility of donations and enables the Department to take legal action for unlawful trade practices against organizations that fail to make the appropriate disclosures.

► **SB 40 helps donors and charities.**

SB 40 will help donors identify underperforming charities so they can redirect their donations to organizations that will make better use of their money. It will also encourage charities that do not make effective use of donations to improve their performance if they wish to qualify for tax-deductible donations in Oregon.

Fiscal Impact

No fiscal impact for the Department of Justice. The Department can administer this program with existing resources.

Amendments Pending

We know of no pending amendments.

Recommended Action

The Department recommends adoption of SB 40 to protect the public interest and prevent the subsidization of charities engaged in wasteful and abusive practices.

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