



**DEPARTMENT OF JUSTICE**  
CIVIL ENFORCEMENT DIVISION

**MEMORANDUM**

DATE: February 20, 2013

TO: Honorable Paul Holvey, Chair  
House Consumer Protection and Government Efficiency Committee

FROM: Aaron Knott, Legislative Director  
Elizabeth Grant, Assistant Attorney General, Charitable Activities

SUBJECT: HB 2060 – Charitable Donations

**RECOMMENDED ACTION**

This memorandum is presented in support of HB 2060. We recommend that the Committee approve HB 2060 with a do pass recommendation. This memorandum is presented with the specific intention of responding to inquiries advanced by members of the Committee during and subsequent to the public hearing of February 14, 2013.

**RESPONSE TO COMMITTEE QUESTIONS**

- **Isn't this just going to cause Department of Justice to spend a lot of money for a minimal result in terms of enforcement?**

*The Department already receives and reviews the data that would be used to determine the list of disqualified charities. Little additional work would be necessary to formalize the process and we anticipate that the administrative hearing process available in the event an organization challenges the notice of disqualification would be a streamlined procedure since the assessment is made from the organization's own reports and the charitable organization would be essentially attempting to challenge their own filed tax records.*

*The result is not believed to be minimal. If a charitable organization elected to continue soliciting after receiving a notice of disqualification and continued to represent that donations to it could be deducted from Oregon income tax purposes, this would trigger a possible penalty of \$25,000 per violation under the Unlawful Trade Practices Act.*

- **Why do we need to do this now? Hasn't Oregon survived this long without your proposed regulation?**

*The most recent economic recession has been particularly painful for charitable organizations who are forced to compete for even fewer available donated dollars. The national rate of charitable giving declined at its steepest rate in five decades as the recession crested in 2009 and is not expected to reach pre-recessionary levels for several years. The problem of charitable organizations being co-opted to serve the financial interests of professional fundraisers or the organization's managers is contributing to a decline in public confidence in the charitable sector. Additionally, because a charitable organization is routing almost no donated moneys to a charitable purpose, they are free to invest that money aggressively into advertising and solicitations, placing their organization at a competitive advantage relative to charitable organizations who choose to spend their money on an actual charitable purpose.*

*Many members of the public assume that the 501(c)(3) charitable designation carries with it an assessment by a government agency that the organization meets some minimum standards in terms of fulfilling its charitable purpose, such that the government encourages donations to those organizations by offering tax deductions. They are surprised to learn that organizations such as those on the Oregon's "20 worst" list continue to receive government subsidization through tax deductible donations. HB 2060 will not solve all forms of abuse in the charitable sector, but it is a step in the right direction.*

- **Isn't this punishing the donor rather than the target organization?**

*Offering a tax deduction is an incentive to give, but declining to subsidize certain activities by not allowing a tax deduction should not be viewed as a punishment. HB 2060 doesn't punish anyone. It merely enables the identification of activities the government declines to subsidize. The proposed legislation would require the target organization to disclose that donations are not tax deductible. Assuming the donor receives the legally required disclosures, then as with any other tax deduction, the taxpayer is responsible for ensuring that they only claim deductions permitted by law and that they maintain the necessary paperwork to establish their entitlement to the deduction.*

- **Shouldn't the IRS be doing this instead?**

*There are approximately 1.6 million organizations listed as tax exempt with the IRS. Approximately 1.1 million of those are 501(c)(3) organizations. The Exempt Organizations unit of the IRS examined approximately 11,000 exempt organization returns last year. Typically, an IRS audit of a tax exempt organization involves examination of multiple returns, so the number of organizations audited may be less than half of the number of returns examined. In any event, fewer than 1 percent of exempt organizations are likely to be audited by the IRS in any given year. From 2005 through the first half of 2012, fewer than 1,000 of the more than 1 million charitable organizations have had their tax exempt status revoked by the IRS for substantive compliance issues (as opposed to not filing returns for three years in a row, which is another way to become revoked.)*

*It is important to remember that the IRS focus is on taxation, not consumer protection. Organizations like those on Oregon's "worst" list may not rate as a priority for the IRS. The IRS is rarely proactive with their consumer protection policies. The Department of Justice is optimistic that a change in the treatment of Federal 501(c)(3) designations will be made more probable by state innovation.*

- **Couldn't you achieve the same purpose with a series of Public Service Announcements calling attention to your Bad Charities List?**

*There is merit in the suggestion that the Department of Justice should affirmatively promote public awareness of our annually posted list of the Top 20 Worst Charities as defined by smallest percentage of donated moneys ultimately applied to a charitable purpose. The Department of Justice has no budget for advertising, and the use of PSAs would need to have state-wide coverage and be done annually to have significant impact on Oregonians.*

*The donor base and funding sources for the charities that are most likely to be impacted by HB 2060 are people who make relatively small donations (\$20 to \$50). Most people are unlikely to do extensive research before making a \$20 or \$50 donation and instead respond to the emotional appeal of the organization's stated charitable purpose. The charities likely to be affected by HB 2060 count on the fact that many of the people they are soliciting are generally trusting individuals who assume that an organization that holds charitable status is reasonably efficient and will make wise use of the person's donations. Many people believe that the 501(c)(3) designation is an indication that the organization meets minimum standards of conduct.*

*The advantage of HB 2060 is that it puts information in the hands of prospective donors at the time they are making their giving decision. They would be informed that the organization is not entitled to receive tax deductible donations in Oregon, which would place donors on notice that there is something unusual about this particular charitable organization. It would be up to the donor armed with such information to decide at that time whether to do additional research or to alter their giving decision.*

**THERE IS NO KNOWN FISCAL IMPACT FOR DEPARTMENT OF JUSTICE**

#### **DOJ CONTACT**

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