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Capitol Journal

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Association Update

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Organization

Noteworthy:

**Current Members of
the Ways and Means
Committee:**

- Republicans:**
Bill Thomas (CA)
Philip M. Crane (IL)
E. Clay Shaw, Jr. (FL)
Nancy L. Johnson (CT)
Amo Houghton (NY)
Wally Herger (CA)
Jim McCrery (LA)
Dave Camp (MI)
Jim Ramstad (MN)
Jim Nussle (IA)
Sam Johnson (TX)
Jennifer Dunn (WA)
Mac Collins (GA)
Rob Portman (OH)
Philip S. English (PA)
Wes Watkins (OK)
J.D. Hayworth (AZ)
Jerry Weller (IL)
Kenny Hulshof (MO)
Scott McInnis (CO)
Ron Lewis (KY)
Mark Foley (FL)
Kevin Brady (TX)
Paul Ryan (WI)

- Democrats:**
Charles B. Rangel (NY)
Fortney Stark (CA)
Robert T. Matsui (CA)
William J. Coyne (PA)
Sander Levin (MI)
Benjamin Cardin (MD)
Jim McDermott (WA)
Gerald Kleczka (WI)
John Lewis (GA)
Richard E. Neal (MA)
Michael McNulty (NY)
William Jefferson (LA)
John S. Tanner (TN)
Xavier Becerra (CA)
Karen Thurman (FL)
Lloyd Doggett (TX)
Earl Pomeroy (ND)

The Capitol Journal would like to extend our deepest appreciation to all those who have given us valuable feedback and offered their continued support! Thank you!

AMERICAN SOCIETY OF ASSOCIATION EXECUTIVES (ASAE) ASSOCIATION ISSUES UPDATE

The following is an overview of issues currently impacting associations. Information provided by ASAE; leading the charge for associations today!

ASAE has received an estimate from the Joint Committee on Taxation concerning how much tax revenue would be lost if the tax deduction for lobbying at the state level were restored. The committee estimated that the measure would cost more than \$500 million over five years. In addition to supporting a complete repeal of the lobby tax as it applies to state lobbying, ASAE has also focused on possible incremental reforms that could ease the administrative burdens this law poses to associations.

TAXING ASSOCIATION LOBBYING:

Major efforts are being undertaken by ASAE to repeal or invalidate provisions to the 1993 law that removed the tax deduction of lobbying expenditures. The law requires that a 501(c)(6) association either notify it's members of the amount of their dues which is non-deductible, or pay a 35 percent proxy tax to the government.

Last May, the U.S. Supreme Court denied ASAE's petition for writ of certiorari in its First Amendment lawsuit, effectively ending the society's challenge to the special lobbying tax provisions. ASAE argued that the 1993 law establishing a tax penalty on association activities is the same as a restriction on association free speech.

Despite the outcome of the suit, ASAE's legal challenge does appear to have had some positive effect on the enforcement and interpretation of the tax provisions. For example, the Internal Revenue Service (IRS) has been permitting underestimated lobbying amounts to be rolled over, and informally permitting overestimated amounts to be subtracted from the following year's calculation.

LEGISLATION:

ASAE Beacon Award winners and association supporters, Sam Johnson (R-TX) and Ben Cardin (D-MD), have again introduced their proposal (H.R. 2948) to stop the government from taxing an organization's advocacy at the state level. Additionally, Sen. Craig Thomas, CAE (R-WY) introduced a bill in June to restore the deduction for lobbying expenses in connection with state legislation. The bill (S.2721) was supported by bipartisan cosponsors, two of which are members of the Senate Finance Committee where the bill has been referred.

STATE LEVEL LEGISLATIVE ISSUES:

A trial court in Vermont has struck down a provision in a campaign finance law that pays for public financing of state political campaigns partly through revenues received from a new tax on lobbyists in that state. A November 1999 opinion from the Washington County Superior Court of Vermont sides squarely with the plaintiffs, including the Vermont Society of Association Executives. According to the court, the tax on lobbyists is a special levy on speech that violates both the U.S. and Vermont constitutions. State officials have appealed the ruling to the Vermont Supreme Court.

In Arizona, voters narrowly approved a referendum in the 1998 elections that provides for public funding of state campaigns, financed partly through a \$100-per-lobbyist tax. This law has been overturned in a court decision issued in February 2000. It is likely that the state will appeal this decision.

ASAE has learned that proposals to tax lobbyists in Michigan and Wisconsin have been floated, but backers of such measures decided against pushing for them.

ASAE Board-Approved Position:

ASAE supports repeal of the 1993 law that removes from businesses the ability to deduct their lobbying expenses.



UNRELATED BUSINESS INCOME TAX ISSUES:

ASAE has been successful in leading a major effort in opposing a budget proposal to tax the "investment" income of §501(c)(6) trade and professional organizations.

ASAE has fought this proposal on a number of fronts, including grassroots communications, one-on-one visits, and the creation of a coalition comprised of interested and active associations. Last February, ASAE delivered an open letter to Congress signed by over 2,200 association executives opposing the tax. ASAE has also submitted written testimony to the Senate Finance Committee and House Ways and Means Committee. (*for list of members, see page 1*)

In other UBIT news, the IRS has issued proposed regulations regarding corporate sponsorship income received by exempt organizations. These proposed regulations implement a 1997 law requiring that payments received by an exempt organization from a corporate sponsor not be taxable as unrelated business income to the exempt organization as long as the sponsor does not receive any "substantial return benefit" for the payment. The proposed regulations define "substantial return benefit" as any benefit other than (1) use of the payer's name or logo in connection with an exempt organizations activities, or (2) certain goods or services that have an insubstantial value under existing IRS guidelines.

The IRS has also announced it will change its position on the tax treatment of income received pursuant to exempt organization affinity programs and mailing list rentals. Former IRS Exempt Organizations Division Director, Michael S. Owens had commented that he "did not foresee" more litigation on the issue. Owens' remarks came just days after two decisions were handed down by the U.S. Court of Appeals for the Ninth Circuit that found in favor of two associations and against the IRS on the issue of taxing affinity credit card revenue.

ASAE Board-Approved Position:

ASAE opposes any increased or additional federal income tax burdens on associations.

CAMPAIGN FINANCE REFORM AND PACS:

Many state PACs were required to file Form 8871 with the IRS by July 31, 2000, and subsequently file periodic reports (Form 8872). The filing obligation came about after the enactment of H.R. 4762, calling for new disclosures of political organizations. This law would require some state PACs to file additional disclosures.

Groups that otherwise fit under Section 527 of the Internal Revenue Code are not required to file Form 8871, or the subsequent regular reports if (1) They already must file regularly with the Federal Election Commission (FEC); (2) They reasonably expect annual gross receipts to always be less than \$25,000 in taxable each year, or (3) They are section 501(c) organizations that file Form 1120-POL and are covered under section 527(f)(1) of the Internal Revenue Code. This exception includes those 501(c)(6) organizations that do engage in political activities, but not through a separate segregated fund/PAC.

Important note: these disclosure requirements will apply to some larger, state-chartered PACs.

ASAE Board-Approved Position:

ASAE opposes any increased or additional federal income tax burden on association.

FEC DEFINITION OF "MEMBER"

In July 1999, The Federal Election Commission (FEC) approved a final definition of "member" based primarily on the agency's December 1998 set of proposed regulations. The FEC's final rule comes about a year after it had issued an initial set of proposed regulations to implement a new definition. ASAE had submitted oral testimony, on three separate occasions regarding the issue. The final rule is evidence of the FEC's willingness to listen to the association community's arguments.

ASAE Board-Approved Position:

ASAE believes that the Federal Election Commission definition of "member" is narrow and excludes many categories of membership.

ASAE CHAMBER EVENT FOCUSES ON NEW ADMINISTRATION.

About 100 key association executives participated in a half day, off-the-record session sponsored by ASAE and the U.S. Chamber of Commerce Office of Association Relations. One of the topics at this event was a panel discussion made up of former past and present Office of Public Liaison (OPL) Officials. Kirk Blalock, deputy director of the Bush Administration's OPL, discussed that office's current structure and offered tips on how associations may best avail themselves of the office's services.

Information provided by ASAE's Inroads

TAXING ASSOCIATE MEMBER DUES

The IRS released a technical advice memorandum (TAM) in November 1998 that determined that a 501(c)(6) association's associate member dues income is not taxable. The TAM emphasized the ability of associate members to participate in the exempt function activities of the state association, even though such members did not have the right to vote for board members of the association. The IRS issued guidance on the tax treatment of associate member dues for 501(c)(6) organizations on January 9, 1997.

ASAE Board-Approved Position:

ASAE opposes any abridgement of tax exemption for associations.

ASSOCIATIONS AND LIABILITY

The association community scored a major victory at the end of the 105th Congress, when both Houses unanimously passed and the President signed the *Year 2000 Information and Readiness Disclosure Act*. The law provides limited immunity for organizations that share information about Year 2000 computer issues. ASAE has served as an active partner with the White House in alerting others about the computer bug, hosting a number of events designed to raise awareness.

ASAE is also pushing for legislation similar to the 105th Congress' Trade and Professional Free Flow of Information Act (H.R. 1542). The bill would protect trade and professional associations from liability claims when they exchange information with their members regarding product defects, quality, or performance. The bill also creates an association-member privilege that associations could claim to prevent disclosing materials or information involving product defects.

ASAE Board-Approved Position:

ASAE favors legislation to relieve unwarranted legal risks to associations and association volunteers.

ASSOCIATION HEALTH PLANS

The U.S. House of Representatives voted 221-205 on October 6, 1999, in favor of a bill that would allow association-sponsored health plans to provide insurance to association members and their members' employees under ERISA law, which preempts state mandated benefit statutes. The bill was later tied to the "Norwood-Dingell" managed care reform legislation that passed the House on October 7, 1999.

The combined package is still awaiting action in a House-Senate conference committee.

ASAE Board-Approved Position:

ASAE favors removal of obstacles to growth, management, and financial stability of association-sponsored employee benefit plans.

DEDUCTION OF BUSINESS MEALS EXPENSES

A proposal to raise the tax deduction for business meals from 50 percent to 60 percent was included in the \$792 billion tax cut bill that was vetoed by the President in September of 1999. A similar provision directed at small businesses is included in a House minimum wage proposal (H.R. 3081) that is expected to receive serious consideration this Congress.

ASAE Board-Approved Position:

ASAE supports the full restoration of business meal deductibility.

INTERMEDIATE SANCTIONS

In July of 1996, President Clinton signed the *Taxpayer Bill of Rights 2* legislation including a provision that would allow the IRS to impose intermediate sanctions against 501(c)(3) and 501(c)(4) organization managers who conduct "excess benefit transactions."

Then, in July of 1998, The IRS released proposed regulations on the intermediate sanctions provisions. Though the proposed regulations are detailed, there are some areas that need clarification – such as what types of incentive-based compensation will be allowed under these provisions. The IRS has not released a final version of the regulations.

The intermediate sanctions legislation also expands on the public availability requirements for an association's IRS *Form 990*. The legislation states that all nonprofit organizations must make their Form 990s available for inspection. The IRS issued final rules regarding public disclosure requirements for tax-exempt organizations in April of 1999. ASAE has submitted comments to the Department of Treasury and Joint Committee on Taxation (JCT) on whether exempt organization disclosure is sufficient under current laws. The Department of Treasury has still not released its report.

Association Pension Plans: The House voted to approve a bill that would raise contribution limits for individual retirement accounts, 401(k), 403(b) annuities, and defined benefit plans.

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ASAE Board-Approved Position:

ASAE favors equal opportunity for employees of tax-exempt associations to participate in tax-deferred benefit plans.

NONPROFIT MAIL

In October of 2000, President Clinton signed into law a bill stabilizing nonprofit postal rates at a percentage of the rates charged to other classes of mailers. ASAE advocates continuation of favorable postal rates for qualified nonprofit mailers.

ASAE Board-Approved Position:

ASAE advocates continuation of favorable postal rates for qualified organizations.

EMPLOYER EDUCATION ASSISTANCE

In late 1999, Congress agreed to extend the tax exclusion for employer-provided educational assistance until December 2001. ASAE believes employer-paid educational benefits should be deductible to the employer and taxable to employees.

ASAE Board-Approved Position:

ASAE supports employer-paid business and professional education benefits.

MUSIC LICENSING

Under the Amendment, trade show organizers would not be liable if a trade show exhibitor were to play copyrighted music. ASAE supports legislation that would amend federal copyright law to provide fair protection against discriminatory enforcement and abusive collection practices of music licensing organizations.

THE ASSOCIATION ALLIANCE

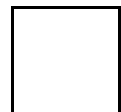
This report and the activities described in it are made possible by funds from the Association Alliance. To find out how your organization can participate in the Association Alliance, call ASAE Public Policy Division today at (202) 626-2703.

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FINAL THOUGHTS:

How to Kill Our Organization in 10 Easy Steps:

1. Don't attend meetings.
2. If you do attend, find fault.
3. Decline committee appointments, -OR-
4. Get sore if YOU are not appointed.
5. Do not work if you can help it.
6. Complain that social meetings are a waste of time.
7. Never accept a place at the head of the table.
8. If you are not asked to sit there, threaten to resign.
9. Oppose all banquets and parties as a waste of time and money.
10. Don't rush to pay your dues. After all, isn't that the bookkeepers problem?

