

May 16, 2006

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## Office Locations

### Indiana Offices

Downtown  
One American Square  
Suite 2000  
Indianapolis, IN 46282  
(317) 633-4884

### North Office

8402 Harcourt Road  
Suite 820  
Indianapolis, IN 46260  
(317) 871-6222

### Kentucky Office

614 West Main Street  
Suite 4000  
Louisville, KY 40202  
(502) 568-1890

### Michigan Office

Columbia Center, Suite 315  
201 West Big Beaver Road  
Troy, MI 48084  
(248) 740-7505

### Wisconsin Office

411 E. Wisconsin Avenue  
Suite 900  
Milwaukee, WI 53202  
(414) 721-0442

## Contact Us

[hallrender@hallrender.com](mailto:hallrender@hallrender.com)

## Conference Committee Continues to Negotiate over Charitable Provisions Omitted from Tax Reconciliation Package

Jeffrey L. Carmichael

Last week, the Senate and House approved a \$70 Billion tax reconciliation bill that excluded all but one of the numerous charitable reform proposals and charitable giving incentives previously approved by the Senate. Hospital and other nonprofit executives should remain watchful, however, as Senators and Representatives on the Conference Committee continue to negotiate over including these charitable provisions in different legislation.

In its earlier version of the reconciliation bill, the Senate had proposed numerous general charitable reforms, as well as specific changes impacting supporting organizations and donor-advised funds. Of particular concern to many hospitals were the proposals applicable to supporting organizations, since many tax-exempt health organizations (including most health system parent organizations and some hospital foundations) are classified as supporting organizations for purposes of their federal income tax exemption. Among the proposed changes, the Senate's version of the bill would have required a particular level of distributions by certain types of supporting organizations, would have imposed more restrictions to prevent supporting organizations from engaging in activities to benefit their founders, and (perhaps most significantly) would have prohibited private foundations from making grants to any type of supporting organization.

The earlier Senate version of the bill also included various incentives to increase charitable giving. One section would have authorized non-itemizers to take a deduction for their contributions to charitable organizations; another would have permitted charitable rollovers of individual retirement accounts (without the IRA holder first having to recognize income).

Ultimately, the only charitable reform provision retained in the bill is a non-controversial revenue-raising provision that imposes penalties upon tax-exempt organizations that participate in specified tax shelter transactions. The rest of the charitable giving incentives and charitable reform proposals, while excluded from the tax reconciliation package, are not finished yet. Senate Finance Committee Chairman Charles Grassley and House Ways and Means Committee Chairman Bill Thomas, who were the driving forces on the Conference Committee that addressed the tax reconciliation bill, continue to negotiate over including these charitable provisions in the Pension Protection Act or some other legislation.

At this point, there is uncertainty not only regarding the vehicle for these proposals (and the prospects for that vehicle to pass both Houses of Congress) but also regarding the precise scope of the charitable provisions as they have evolved through this process. While reports confirm that staffers of the Senate Finance Committee and the Joint Committee on

Taxation have been working closely with representatives of various charitable organizations (including Independent Sector, which was instrumental in the work of the Panel on the Nonprofit Sector) to modify some of the more problematic charitable reform provisions, a revised version of the proposals has not yet been made available to the public. There also remains some concern that Chairman Grassley or Chairman Thomas may use this opportunity to insert broader-reaching reform provisions into the legislation.

Hall, Render will continue to monitor this process closely and will provide additional reports as events unfold.

**About the Author:** Jeff Carmichael is an attorney in the Indianapolis office of Hall Render. He concentrates his practice in the areas of business and tax law. He is a member of Indiana State Bar Association, Indianapolis Bar Association, and American Health Lawyers Association and is admitted to practice in Indiana. Jeff can be contacted at (317) 977-1443 or by e-mail at [jcarmichael@hallrender.com](mailto:jcarmichael@hallrender.com).

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