



What is a Taxable Year? A Guide to the Effective Dates of HR 4

On August 17, 2006, President Bush signed the Pension Protection Act of 2006 (HR 4) into law. This law includes a number of charitable reforms and incentives. The effective dates for charitable provisions in HR 4 vary. A few provisions apply retroactively, some take effect immediately and the remaining provisions will take effect on later dates.

What is the official “date of enactment” of HR 4? The official date of enactment of the bill is August 17, 2006.

What is a “taxable year”? The definition of taxable year will depend on whether the taxpayer’s tax year is based on a calendar year or a fiscal year. The taxable year for taxpayers on a calendar year is January 1 through December 31. The taxable year for taxpayers on a fiscal year is whatever period the taxpayer chose to be the tax year. For example, for a taxpayer whose fiscal year ends on June 30, 2007, the taxable year is July 1, 2006 through June 30, 2007.

Where can I look to find my foundation’s “taxable year”? Look at the top line of your Form 990 or 990-PF. Calendar year taxpayers will have nothing filled out in that line, while fiscal year taxpayers will have inserted the beginning and ending dates of their tax year.

Can you give some examples of the effective dates of HR 4? Many of the provisions of HR 4 are effective for tax years beginning after the date of enactment. This means that the start dates for those provisions of HR 4 will not be the same for all foundations. For example, if the bill says that a provision is “effective for taxable years beginning after date of enactment,” then the effective date for calendar year taxpayers is January 1, 2007 (i.e., the first taxable year beginning after the August 17 enactment date). However, the same provision will take effect on October 1, 2006 for a fiscal year taxpayer whose tax year ends September 30, 2006, but not until July 1, 2007 for a fiscal year taxpayer whose fiscal year ends June 30, 2006.

Some provisions have the same effective date regardless of a taxpayer’s tax year. For example, if the bill says that a provision is effective “date of enactment,” then the effective date for both calendar year and fiscal year taxpayers is August 17, 2006.

Can my foundation delay the effective date of HR 4 by changing the foundation's tax year? Maybe. If the foundation has not changed its taxable year during the last ten years, it can change its tax year simply by filing Form 990 for the short period beginning on the date on which its current taxable year began and ending on the last day of its new taxable year. The Form 990 should state that the foundation is changing its tax year. For example, a foundation that is currently filing its tax return on a calendar year basis can change to a fiscal year that begins on August 1 by filing Form 990 for the period January 1, 2006 to July 30, 2006 by the due date for the return, which would be December 15, 2006. Doing so will have the effect of postponing many of the effective dates of HR 4 from January 1, 2007 to August 1, 2007 because August 1, 2007 will be the start of the foundation's first taxable year following the date of enactment of HR 4. Foundations should weigh the benefit of the postponement of the effective date against the cost they will incur in accelerating the filing of their tax returns and the ongoing requirement to use the new fiscal year for federal tax reporting.

Can you provide a road map of the provisions of HR 4 and their effective dates?

See chart below. Examples of effective dates are provided for calendar year taxpayers and for taxpayers whose taxable years end on June 30, 2006 or September 30, 2006. Check with your legal counsel to make sure you know when the provisions of HR 4 are effective for your organization.

The information provided here is based on our continuing analysis of the bill. Every effort has been made to ensure accuracy of these documents. However, due to the complexity of the bill and the fact that many of these provisions introduce issues that are new to the Internal Revenue Code, please understand that this information is subject to change. The information is not a substitute for expert legal, tax or other professional advice and we strongly encourage grantmakers and donors to work with their counsel to determine the impact of this legislation on their particular situations. This information may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code.

Provision	HR 4	Internal Revenue Code Section Affected	Effective Date	Examples		
				Calendar Year	Fiscal Year (if fiscal year ends June 30, 2006)	Fiscal Year (if fiscal year ends Sept. 30, 2006)

PRIVATE FOUNDATIONS

(the provisions below affect private foundations most directly, but there may be others of interest to private foundations)

Payments by private foundations to supporting organizations	§1244	§4942(g)(4), §4945(d)(4)	Distributions and expenditures after date of enactment	after Aug. 17, 2006		
Increase in penalty excise taxes for private foundations and public charities	§1212	§§4941-4945 (private foundations); §4958 (public charities)	Taxable years beginning after date of enactment	Jan. 1, 2007	July 1, 2007	Oct. 1, 2006
Expansion of base for tax on private foundation net investment income	§1221	§4940(c), §509(e)	Taxable years beginning after date of enactment	Jan. 1, 2007	July 1, 2007	Oct. 1, 2006

DONOR ADVISED FUNDS

Treasury study on donor advised funds and supporting organizations	§1226	-	Due one year from date of enactment	-		
Taxable distributions for donor advised funds (payments/grants from donor advised funds)	§1231	§4966 (new) (includes definition of donor advised fund)	Taxable years beginning after date of enactment	Jan. 1, 2007	July 1, 2007	Oct. 1, 2006
Prohibited benefits for donor advised funds	§1231	§4967 (new)	Taxable years beginning after date of enactment	Jan. 1, 2007	July 1, 2007	Oct. 1, 2006
Excess benefit transactions for donor advised funds	§1232	§4958(f)	Transactions occurring after date of enactment	after Aug. 17, 2006		
Excess business holdings for donor advised funds	§1233	§4943	Taxable years beginning after date of enactment	Jan. 1, 2007*	July 1, 2007*	Oct. 1, 2006*

*The provision is effectively retroactive because it will apply to all business interests held on that date. A transition rule provides a longer period for divesting holdings acquired prior to Aug. 17, 2006

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Deductibility of contributions to donor advised funds	§1234	§170(f), §2055(e), §2522(c)	Contributions made after 180 days after date of enactment	after Feb. 13, 2007		
Reporting on Form 990 for organizations holding donor advised funds	§1235(a)	§6033	Tax returns filed for taxable years ending after date of enactment	tax returns filed for Jan - Dec 2006 tax year	tax returns filed for July 1, 2006 - June 30, 2007 tax year	tax returns filed for Oct. 1, 2005 – Sept. 30, 2006 tax year
Reporting on Form 1023 for organizations holding donor advised funds	§1235(b)	§508	Applications filed after date of enactment	after Aug. 17, 2006		

SUPPORTING ORGANIZATIONS

Treasury study on donor advised funds and supporting organizations	§1226	-	Due one year from date of enactment	-		
Types of supporting organizations	§1241(a)	§509(a)(3)	Date of enactment	Aug. 17, 2006		
Requirements for Type III supporting organizations	§1241(b)	§509(f) (new)	Date of enactment (3 yr transition rule for organizations supporting foreign charities)	Aug. 17, 2006 (or Jan. 1, 2009 for certain orgs.)	Aug. 17, 2006 (or July 1, 2009 for certain orgs.)	Aug. 17, 2006 (or Oct. 1, 2008 for certain orgs.)
Disqualification as supporting organization if supported organization is controlled by a disqualified person	§1241(b)	§509(f) (new)	Date of enactment	Aug. 17, 2006		
Charitable trust Type III supporting organizations	§1241(c)	§509(a)(3)	Date of enactment (1 year transition rule for certain existing trusts)	Aug. 17, 2006 (or Aug. 17, 2007 for certain existing trusts)		
Payout requirements for Type III supporting organizations	§1241(d)	Treasury regulations under §509	Treasury Department is required to issue regulations (no timeframe provided)	-		

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Excess benefit transactions for supporting organizations	§1242	§4958	Transactions occurring after July 25, 2006 (but expanded definition of “disqualified persons” is effective for transactions occurring after date of enactment)	after July 25, 2006 (and after Aug. 17, 2006 for definition of “disqualified persons”)		
Excess business holdings for supporting organizations	§1243	§4943	Taxable years beginning after date of enactment	Jan. 1, 2007*	July 1, 2007*	Oct. 1, 2006*
				*The provision is effectively retroactive because it will apply to all business interests held on that date. A transition rule provides a longer period for divesting holdings acquired prior to Aug. 17, 2006.		
Payments by private foundations to supporting organizations	§1244	§4942(g)(4), §4945(d)(4)	Distributions and expenditures after date of enactment	after Aug. 17, 2006		
Reporting on Form 990 for supporting organizations	§1245	§6033	Tax returns filed for taxable years ending after date of enactment	tax returns filed for Jan - Dec 2006 tax year	tax returns filed for July 1, 2006 - June 30, 2007 tax year	tax returns filed for Oct. 1, 2005 – Sept. 30, 2006 tax year

CHARITABLE CONTRIBUTIONS

Deductibility of Contributions

IRA charitable distributions	§1201(a)	§408(d), §6034, §6104, §6652	Distributions made between Jan. 1, 2006 and Dec. 31, 2007	Jan. 1, 2006 – Dec. 31, 2007	July 1, 2006 – June 30, 2008	Oct. 1, 2006 – Sept. 30, 2008
Extension of contributions of food inventory	§1202	§170(e)(3)(C)(iv)	Contributions made after Dec. 31, 2005 through Dec. 31, 2007	Jan. 1, 2006 – Dec. 31, 2007		
Basis adjustment to stock of S-corp contributing property	§1203	§1367(a)	Contributions made in taxable years beginning Dec. 31, 2005 through taxable years beginning after Dec. 31, 2007	Jan. 1, 2006 – Dec. 31, 2007	July 1, 2006 – June 30, 2008	Oct. 1, 2006 – Sept. 30, 2008

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Extension of contributions of book inventory	§1204	§170(e)(3)(D)(iv)	Contributions made after Dec. 31, 2005 through Dec. 31, 2007	Jan. 1, 2006 – Dec. 31, 2007		
Deductions for qualified conservation contributions	§1206	§170(b)(1)	Contributions made in taxable years beginning Dec. 31, 2005 through taxable years beginning after Dec. 31, 2007	Jan. 1, 2006 – Dec. 31, 2007	July 1, 2006 – June 30, 2008	Oct. 1, 2006 – Sept. 30, 2008
Contributions of historic structures and land areas	§1213(b)	§170(h)(4)	Contributions made after date of enactment	after Aug. 17, 2006		
Contributions of easements in registered historic districts (“façade easements”)	§1213(a), (c), (d)	§170(h)(4), §170(f)	Contributions made after July 25, 2006 (but after date of enactment for rehabilitation credit reduction and 180 days after date of enactment for filing fee)	after July 25, 2006 (and after Aug. 17, 2006 for reduction in rehabilitation credit; and after Feb. 13, 2007 for filing fee)		
Contributions of taxidermy property	§1214	§170(e)(1), §170(f)	Contributions made after July 25, 2006	after July 25, 2006		
Recapture of donor’s tax benefit for gift of charitable use property not used as such	§1215	§170(e), §6050L(a), §6720B (new)	Contributions made and returns filed after Sept. 1, 2006 (after date of enactment for penalty)	after Sept. 1, 2006 (and after Aug. 17, 2006 for penalty)		
Contributions of clothing and household items	§1216	§170(f)(16) (new)	Contributions made after date of enactment	after Aug. 17, 2006		
Contributions of fractional interests in tangible personal property	§1218	§170, §2055, §2522	Contributions, bequests, and gifts made after date of enactment	after Aug. 17, 2006		
Deductibility of contributions to donor advised funds	§1234	§170(f), §2055(e), §2522(c)	Contributions made after 180 days after date of enactment	after Feb. 13, 2007		

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Recordkeeping Requirements					
Recordkeeping requirements for charitable contributions	§1217	§170(f)(17) (new)	Contributions made in taxable years beginning after date of enactment	Effective date will be based on tax year of donor, not the recipient charity (e.g., for individuals, this will be effective Jan. 1, 2007)	

Valuations and appraisals

Valuation misstatements by donors	§1219(a)	§6662, §6664	Tax returns filed after date of enactment (but returns filed after July 25, 2006 for façade easements)	returns filed after Aug. 17, 2006 (and after July 25, 2006 for façade easements)	
Valuation misstatements by appraisers	§1219(b)	§6695A (new), §6696	Appraisals prepared for tax returns filed after date of enactment (but appraisals prepared for tax returns filed after July 25, 2006 for façade easements)	returns filed after Aug. 17, 2006 (and after July 25, 2006 for façade easements)	
Qualified appraisers and appraisals; disciplinary actions against appraisers	§1219(c), (d)	§170(f)(11), §6664, 31 USC §330(c)	Appraisals prepared for tax returns filed after date of enactment	returns after Aug. 17, 2006	

UNRELATED BUSINESS INCOME TAX

Modification of unrelated business income tax on payments to controlling exempt organizations	§1205	§512(b)(13) and §6033 (reporting)	Payments received or accrued after Dec. 31, 2005 through Dec. 31, 2007	Jan. 1, 2007 – Dec. 31, 2007	
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INFORMATION RETURNS (FORMS 990 AND 1023)

Reporting/notification requirement for tax-exempt entities not currently required to file a Form 990	§1223	§6033, §6652, §7428	Notices and returns for annual periods beginning after 2006	Form 990 filing would be based on the organization's tax year; however, it is unclear whether the IRS will set a different period for filing of the annual notice		
Public disclosure of Form 990T	§1225	§6104(d)(1)	Tax returns filed after date of enactment	after Aug. 17, 2006		
Information returns filed by §4947(a)(2) split-interest trusts	§1201(b)	§6034	Tax returns filed for taxable years beginning after Dec. 31, 2006	Jan. 1, 2007	July 1, 2007	Oct. 1, 2007
Reporting on Form 990 for organizations holding donor advised funds	§1235(a)	§6033	Tax returns filed for taxable years ending after date of enactment	tax returns filed for Jan - Dec 2006 tax year	tax returns filed for July 1, 2006 - June 30, 2007 tax year	tax returns filed for Oct. 1, 2005 - Sept. 30, 2006 tax year
Reporting on Form 1023 for organizations holding donor advised funds	§1235(b)	§508	Applications filed after date of enactment	after Aug. 17, 2006		
Reporting on Form 990 for supporting organizations	§1245	§6033	Tax returns filed for taxable years ending after date of enactment	tax returns filed for Jan - Dec 2006 tax year	tax returns filed for July 1, 2006 - June 30, 2007 tax year	tax returns filed for Oct. 1, 2006 - Sept. 30, 2006 tax year

MISCELLANEOUS

Increase in penalty excise taxes for private foundations and public charities	§1212	§§4941-4945 (private foundations); §4958 (public charities)	Taxable years beginning after date of enactment	Jan. 1, 2007	July 1, 2007	Oct. 1, 2006
Standards for credit counseling organizations	§1220	§501, §513	Taxable years beginning after date of enactment (1 yr transition rule for existing orgs.)	Jan. 1, 2007 (or Jan. 1, 2008 for existing orgs.)	July 1, 2007 (or July 1, 2008 for existing orgs.)	Oct. 1, 2007 (or Oct. 1, 2007 for existing orgs.)
Excise tax exemption for blood collector organizations	§1207	§4041, §4221, §4253, §4483, §6416, §7701	Jan. 1, 2007 (1 yr transition rule for §4483)	Jan. 1, 2007 (and Jan. 1, 2008 for §4483 taxes)	Jan. 1, 2007 (and July 1, 2007 for §4483 taxes)	Jan. 1, 2007 (and Oct. 1, 2007 for §4483 taxes)

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Definition of convention or association of churches	§1222	§7701	Date of enactment	Aug. 17, 2006		
Reporting requirements for charities acquiring interests in certain life insurance contracts	§1211	§6050V (new)	Contracts acquired after date of enactment through two years after date of enactment	after Aug. 17, 2006 through Aug. 17, 2008		
Information sharing between IRS and state charity regulators	§1224	§6103, §6104, §7213, §7213A, §7431	Date of enactment but does not apply to requests made before such date	after Aug. 17, 2006		