

# Panel on the Nonprofit Sector

Convened by INDEPENDENT SECTOR

Work Group Recommendations to the Panel on the Nonprofit Sector  
Posted for Public Comment January 26, 2005

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## #12: State Enforcement of Federal Laws

### I. Government Oversight and Self-Regulation Work Group Recommendations

#### A. Statement of Problem

Senate Finance Committee staff has proposed giving states the authority to pursue, with the approval of the IRS, federal tax violations by exempt organizations. This has been the case in 48 states and the District of Columbia which since 1978 have had laws imposing the restrictions on private foundations in Chapter 42 of the Internal Revenue Code as a matter of state law

#### B. Recommendations

States currently have sufficient authority to enforce federal tax provisions that are incorporated into state law. Work Group members have varying positions as to whether states should be encouraged to incorporate federal tax standards into state law.

#### C. Rationale

Some members of the Work Group stressed that there are quite different interests to be served by the federal tax law and the state laws on the generation and use of charitable funds. They note that remedies and sanctions available to a state attorney general under state law, and perhaps common law, are sometimes stronger than those under federal law. These members believe that state officials would not find it necessary or practical to adopt what are now only federal standards, that states already have sufficient legal tools to pursue actions against charitable organizations and their managers and, given generally insufficient state enforcement budgets, that states would be unlikely to seek such additional authority.

Note: These recommendations have not yet been reviewed by the Panel on the Nonprofit Sector. They will be part of the deliberations by the Panel as it prepares its interim report.

Other members of the Work Group believe that encouraging, but not requiring, states to adopt federal standards as state law would result in more uniform standards for charitable organizations and ensure that organizations are not buffeted by inconsistent or contradictory expectations.

#### **D. Other Considerations**

The Work Group is seeking more information about current provisions for enforcement of federal tax laws at the state level in federal courts.

## **II. Expert Advisory Group Comments**

The Expert Advisory Group recommends that states incorporate federal tax standards for exempt organizations, such as IRC section 4958 (prohibiting excess benefit transactions), into state law so that states can then enforce those standards as a matter of state law.

The Expert Advisory Group believes that state enforcement of federal standards incorporated into state law will assist federal enforcement efforts and will likely result in increased enforcement of those standards. The incorporation of federal standards into state law will provide exempt organizations with uniform federal and state standards of behavior. Because both federal and state authorities will be enforcing the same standards, enforcement synergies will be created. Such synergies already exist with respect to many aspects of tax enforcement against taxable entities and individuals, as most states that impose an income tax have adopted as their own law the vast majority of the federal tax laws. The result will be an increased ability to coordinate efforts to enforce federal law and ensure the same standards are upheld across states.