2018-2019 Policy Support Overview

A0623/S4347 – Signed into Law in 2019
This legislation amends section 204 of the Not-for-Profit Corporation Law to provide that a 501(c)(3) non-profit corporation shall not participate in, or intervene in, any political campaign on behalf of or in opposition to any candidate for public office.

This bill would place in state law protections that are currently outlined in the federal “Johnson Amendment” to the Internal Revenue Service Code, prohibiting nonprofit tax-exempt 501(c)(3) organizations from endorsing political candidates or becoming monetarily or otherwise involved in election campaigns.

A10336/S08669 – Signed into Law in 2018
This legislation amends section 601 of the Not-for-Profit Corporation Law to provide that No Not-for-Profit Corporation shall have a membership comprised of just one person or, if the nonprofit’s sole corporate member, a corporation, joint-stock association, unincorporated association and partnership owned or controlled by just one person.

As it stands, the Not-for-Profit Corporation Law affords nonprofits the authority to appoint leaders using one of two models: a “self-perpetuating board model” where the board of directors is empowered to appoint its own directors; or, a “member model” where a membership comprised of one, or more, individual(s) or business entity/ies reserves the right to elect directors.

AB10336 (Paulin) seeks to close a significant loophole currently existing in the Not-for-Profit Corporation Law which allows charitable nonprofits to be controlled by a single individual or entity if structured as a “single member” nonprofit corporation.

A222 /S1897 – Passed Assembly, Sitting in Senate
This legislation amends sections 902 and 1002 of the Not-for-Profit Corporation Law to provide that in the case of a vote by the board of directors to consolidate, merge or dissolve a charitable nonprofit corporation, that upon adopting a plan it shall be approved by a two-thirds vote of the entire board.

The decision of a nonprofit board of directors to merge, consolidate or dissolve is a decision of utmost importance with wide-ranging impacts. Currently, Not-for-Profit Corporation Law allows boards approve such a decision by a simple majority of a quorum of the board.

A10534/S08638 – Signed into Law in 2018
This legislation amends paragraph d of section 712-a of the not-for-profit corporation law to provide that directors from one or more controlled corporations may serve on any designated audit committee
of the board of the controlling corporation and perform the duties required by this section for each corporation and any controlled corporations.

Nonprofits occasionally operate as part of corporate families where one organization (commonly referred to as a “parent”) controls other affiliates (known as “subsidiaries”) in an effort to best advance their charitable purpose. This legislation will expressly permit voting directors from subsidiaries, who do not themselves serve on the parent nonprofit's board of directors, to serve as voting members of a parent's audit committee, for the purposes of overseeing audits of the parent or any subsidiary corporations. Currently, the not-for-profit corporation law (NPCL) provides that only the board of directors of a controlling corporation, or a designated “audit committee of the board” of such entity, may assume sole oversight of all financial audits, for both the controlling corporation and any subsidiaries.

A01647/S2273 – Signed into Law in 2018
Under current Real Property Tax Law, in acknowledgement for our charitable, religious and educational purposes, 501(c)3 nonprofits are eligible for a real property tax exemption. There is a loophole, however, in the current law as 501(c)3 nonprofits do not receive an exemption immediately after the purchase of property. Contrary to our otherwise tax-exempt status, these nonprofits must pay the full amount of taxes, in some cases for almost two years after purchasing property while awaiting state approval to file for the exemption retroactively. This practice is unjust to nonprofits who are guaranteed property tax exemption under the New York State Constitution and unfairly serves to divert legitimate and much needed resources from charitable resources, and thus the people who those resources were intended to benefit.

A11051/S8831 – Signed into Law in 2018
As you may be aware, the Tax Cuts and Jobs Act requires nonprofit employers to pay Unrelated Business Income Tax (UBIT) on employee commuter benefits such Buffalo NFTA Metro Passes, NYC Metrocards, Rochester RTS Passes, and employee parking. Nonprofits in New York City are required to provide transit benefits to their employees and throughout the state, these benefits are a crucial way of recruiting and retaining our combined 1.25 million qualified employees (18.1% of the state workforce.)

New York State Tax Law currently imposes a state UBIT whenever federal UBIT is applied, meaning nonprofits that continue to subsidize employee commuter benefits as of January 1, 2018 will face both a 21% federal and a 9% New York State Tax. Amendment S.8821/A.11051 proposes to decouple federal and state tax laws and eliminate the New York State tax on unrelated business income, saving nonprofits from millions of dollars in unanticipated, unbudgeted new state taxes in 2018.