the individual level and by generally taxing the production or sale of all goods purchased by individuals.

The overall impact of radical tax revision on charitable giving will depend on the resulting price (or cost) of giving. The Joint Committee on Taxation staff cited economic studies that show that charitable giving responds to the price of giving: when that price declines, giving increases. The price of giving under a new tax regime in relation to the present one would be affected by (1) whether the donor itemizes charitable deductions under current law, (2) the donor's marginal tax rate under current law, and (3) the rate of the value-added tax or sales tax.

Thus, today's taxpayers may see, following the advent of a substitute tax system, the price of charitable giving rise or fall. For example, individuals who currently do not itemize deductions would see the price of giving fall, as all of their noncharitable expenditures would be subject to the consumption-based tax. By contrast, an individual in the 31-percent tax bracket would see the price of giving increase if the current income tax was replaced with a 15-percent value-added tax or retail sales tax.

This outcome could affect not only overall charitable giving, but also various categories of charities in the nonprofit sector. Although dependent on the rate of the replacement tax, it appears that high-tax-bracket itemizers under current law may see their price of giving increase. This could adversely affect giving to institutions such as universities, hospitals, and museums. Correspondingly, entities such as churches and other religious organizations could see enhanced giving. (Students of this subject will recall that substitution of the current income tax charitable deduction with a tax credit is projected to trigger the same consequences.)

Conclusion

What, then, is Congress likely to do with respect to structural tax reform? The best guess, as the new Congress (the 105th) begins to settle in, is that there will be a lot of discussion and written analysis, but nothing will be done, at least during the next few years. The announcement has been made that the full Ways and Means Committee will hold a series of hearings throughout 1997 to examine the impact of replacing the current income tax with a broad-based consumption tax.

If something meaningful is done, chances are very high that it will not be a pure income flat tax. The present income tax system is probably about as flat as it is going to get. There is a possibility that some form of income or consumption tax that encourages savings would be engrafted onto the existing income tax. (The savings feature could be used to ameliorate the coming crunch with respect to the social security system, as the baby boomers are coming into the system as beneficiaries (sometimes known as the "demographic train wreck").) Such a tax might be a basis for repeal of the estate and gift taxes.

Two wild cards in all of this are the attitude and role of President Clinton and the freshman class in Congress. It is far too soon to responsibly predict beyond this. Nonprofit organizations, like other entities in society, are simply going to have to watch current developments. For nonprofit entities, those developments will be reported here. □

NOTED IN PASSING . . .

■ The IRS has ruled that services provided by a corporation to four private foundations do not amount to acts of self-dealing, even though the corporation is a disqualified person with respect to each of the foundations (Private Letter Ruling 9703031). The reason is that the services are "similar to" those exemplified in the personal services exception to the self-dealing restrictions (IRC § 4941(d)(2)(E)) and are necessary to the performance by the foundations of their exempt purposes. These services will include: asset management (such as review of and advice regarding asset allocation, including the selection and monitoring of investment managers); coordination of tax matters (such as recordkeeping, preparation of returns, and tax planning); other financial services (such as cash management, accounting, accounts payable, financial analysis, and investment appraisals); and administrative

assistance in charitable programs. The Service accepted the representation that the fees entail reasonable compensation. The IRS also found that these arrangements do not constitute private inurement. This is a welcome ruling, in that often the IRS has been unwilling to apply the personal services exception outside the range of the services stipulated in the tax regulations (Reg. § 53.4941(d)-3(c)(2)).

■ The IRS has ruled that income received by an IRC § 501(c)(3) consortium of instructional television broadcasters, from the sublicense of excess television channel capacity, will not be unrelated business income because it is either royalty or rental income (Private Letter Ruling 9703025). The consortium has some channels representing capacity in excess of the amount necessary to carry educational and instructional programming to the general public. It sublicensed this excess channel capacity to a for-profit corporation. The revenue would have been taxable as unrelated business income were it not for these exceptions. The IRS wrote that a *royalty* is generally defined as "any payment received in consideration for the use of a valuable intangible property right, whether or not [the] payment is based on the use made of such property," although payments for personal services provided in connection with the granting of the rights are not royalties. The for-profit organization's use of the consortium's excess channel capacity was ruled to be the use of intangible property. The payments by the for-profit entity for utilization of the consortium's receiving earth station were held to be excludable rent.

■ In *Ohio Farm Bureau Federation, Inc. v. Commissioner*, the U.S. Tax Court held that refraining from competition under a covenant not to compete is not a *business* for purpose of the tax on unrelated business income (see the May 1996 issue). This was contrary to the position of the IRS as expressed in General Counsel Memorandum 39865. The IRS has decided to adhere to the Tax Court's view of the matter and thus has revoked this GCM (General Counsel Memorandum 39891).

■ How many income beneficiaries can a charitable remainder trust have? The law does not impose a specific limitation, although as a practical matter the availability and the extent of the charitable contribution deduction serves as a restraint on making the list of these beneficiaries too extensive. Nonetheless, the IRS has approved a charitable remainder unitrust that is to pay the unitrust amount in the following sequence: to the grantor for her life, then on her death in equal shares to A and B, then on the death of either of them to their survivor, then on the death of this survivor to C and D in equal shares, and then, following the death of C or D, to their survivor (Private Letter Ruling 9652011). At the death of the last of them, a charitable organization is to receive the then principal and income.

■ The U.S. Supreme Court has agreed to hear a case concerning whether states may impose income and sales taxes on entities known as *production credit associations* (*Arkansas v. Farm Credit Services of Central Arkansas PCA*). This review will be of an opinion from the U.S. Court of Appeals for the Eighth Circuit holding that these entities within the farm credit system are instrumentalities of the federal government and thus immune from state taxation (see the May 1996 issue).

■ The January issue contains an analysis of the private letter ruling concerning the creation of a health care delivery system by means of a joint operating agreement. That ruling is IRS Private Letter Ruling 9651047.

Quote of the Month: An article in *The Wall Street Journal* on February 10 opened with this: "An Internal Revenue Service plan obtained by [the *Journal*] shows that the agency intends to increase its audits of nonprofit organizations, and that they can be triggered by heightened media coverage of a group's political activity." Four IRS key districts (Baltimore, Dallas, Brooklyn, and Los Angeles) are to oversee the audits, looking for, in the parlance of the IRS plan, "specific situations of potential noncompliance" with the ban on political campaign activity by charitable organizations. In response to the question as to what type of political campaign activity might trigger an audit, an IRS spokesman said, "It's a facts-and-circumstances issue that's decided on a case-by-case basis."