



July 13, 2018

The Honorable Steven Mnuchin
United States Secretary of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Dear Secretary Mnuchin:

I am writing on behalf of The Philanthropy Roundtable to express concern over the efforts by several states and localities to, in effect, declare themselves charitable entities as a way of avoiding the new cap on the federal deduction for state and local taxes.

The Philanthropy Roundtable is America's leading network of charitable donors working to foster excellence in philanthropy, protect philanthropic freedom, assist donors in achieving their philanthropic intent, and help donors advance liberty, opportunity, and personal responsibility in America and abroad. Our 660 members include individual philanthropists and family foundations around the country supporting a broad range of charitable causes.

A strength of our republic is the clear line that exists between the three vital sectors of our society where individuals and families cooperate to achieve together what they would otherwise struggle to accomplish on their own: government, which relies on compulsion in pursuit of public benefit; commerce, where participants voluntarily engage to receive private benefit; and civil society, characterized by its voluntary nature and the absence of personal gain.

Permitting taxpayers to reclassify payment of state and local tax obligations as charitable contributions despite the absence of charitable intent, known as workarounds, would blur or even erase the distinction between government and civil society.

It would also undermine public support for the charitable tax deduction, which Congress and the Administration wisely protected in the Tax Cuts and Jobs Act, by fostering a perception that it is simply a tax avoidance "loophole" for upper-income and wealthy persons. This would hinder future efforts to preserve and even expand the charitable deduction.

To be certain, there are circumstances when it is charitable (because, among other things, the donor has a charitable intent) to give to an entity established or controlled by a state or local government. One such example is giving to support a public college or university. But there are other examples that exist as well, such as programs providing tax credits to donors who give to support scholarships enabling low-income students to attend private schools. These programs should be distinguished from the tax avoidance schemes your office will be seeking to prohibit through regulation and guidance.

Some argue that these new tax workarounds are no different than states providing charitable tax credits for donations to specific charitable programs. But I urge you to keep three key distinctions in mind:

1. Donors that receive state tax credits are generally for gifts made to legitimate charities that are not sponsored or directed by governmental entities. For example, Florida has two independent nonprofits as part of its scholarship program that provide tax credits to donors: the AAA Scholarship Foundation and Step Up For Students (state universities are allowed by the statute to be “Scholarship Funding Organizations” as well, but to date none have done so).
2. State charitable tax credits are permitted where there is a real charitable intent and a beneficiary beyond the donor, such as a child receiving a scholarship. The IRS description of “exempt purposes” for charitable organizations includes 17 distinct activities, including “lessening the burdens of government.” While paying a state tax bill does “lessen the burden of government”, such payment directly benefits the payor in that the payor is relieved of a tax obligation.
3. Unlike government agencies, charities that receive donations and whose donors receive a state charitable tax credit are not promised a specific level of funding. Revenues are dependent on voluntary donations, and the state doesn’t automatically step in to make up any difference. For example, in the Florida program the total amount of tax credits that could be claimed in fiscal year 2016-2017 was \$699 million, but only \$539 million in tax credits were claimed. The state of Florida did not appropriate public funds to make up for the difference between the desired amount of funding it hoped to achieve with its statutory cap and what was actually received by the scholarship program.

The Philanthropy Roundtable encourages you to consider these factors as the U.S. Treasury crafts regulations and guidance to ensure that the charitable tax deduction is not misused while still preserving giving in those instances where government and civil society legitimately overlap and true charitable intent exists, such as contributions to public hospitals and universities or tax credits in support of scholarship programs. Please don’t hesitate to contact me if you or your staff have any questions, comments, or concerns.

Sincerely,

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