



State of New York
Executive Chamber
Albany 12224

Andrew M. Cuomo
GOVERNOR

September 9, 2018

David J. Kautter
Acting Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Kautter:

The recent actions by your agency to perpetuate the Trump Administration's blatantly political and unconstitutional assault on taxpayers in New York State and other "blue" states is troubling, arbitrary, and will be opposed and challenged by this state. I ask that you retract pending regulatory tax proposals that further attack our taxpayers or we will be forced to object and oppose your actions administratively and legally.

Last year, that federal government enacted a partisan tax law that targeted New York and other states that did not vote to elect President Trump. Notably, the elimination of full state and local tax deductibility will cost New York families \$14.3 billion each year, effectively raising our taxes and making us less competitive. The President and his allies laid bare their intention during the legislative debate, stating that the new cap on deductions for state and local taxes are intended to force New York and other states to change our policies. So we did: we crafted new programs to mitigate the impacts of this federal assault that fully comport with long-standing principles of federal tax administration.

Specifically, New York created new opportunities for charitable giving to support public education, health care, and other charitable purposes in the State, incentivizing contributions through tax credits. In so doing, we modeled our program on longstanding, existing Internal Revenue Service (IRS) precedent in states like Arizona, Alabama, Georgia, Montana, Louisiana, and South Carolina, which have for years offered tax credits to support so-called "school choice" initiatives.

But in response to our efforts to protect New York's taxpayers, you and the Trump Administration are trying to change those rules again. The politically motivated regulations you recently proposed would change the long-standing treatment of tax credits that incentivize charitable giving by requiring a charitable deduction to be reduced by the value of any state or local tax credit the donor expects to receive. Under these rules, state and local tax credits would be treated differently than other tax benefits a donor might receive, undermining any pretense that this is a neutral policy proposal. The political motives here are clear.

And now, in a transparent effort to bolster President Trump's political allies and assuage the school voucher program constituency, you have now gone a step further, "clarifying" that the new proposed regulation would not impact the ability of businesses to treat charitable contributions as deductible business expenses. Secretary Mnuchin affirmed that the new proposed regulation would have "no impact on federal tax benefits for business-related donations to school choice programs," removing any doubt that this "clarification" is aimed at states that offer education credits.

This "clarification" undermines the very premise of your proposed regulation: you are inviting taxpayers to deduct donations to school voucher programs as "business expenses" even though those donations are 100% subsidized by state tax credits, while at the same time you are working to block deductions that support public schools solely because those donors could receive partial tax credits for those donations. This is especially troubling because the IRS will be reviewing the purported "business purposes" for these business expense deductions behind closed doors, leaving the American people with little confidence that the political motives driving these policies will not also infect these decisions.

The IRS has tremendous powers that profoundly affect individuals and institutions every day. The American public needs confidence that this power is exercised fairly, free of political influence that favors some taxpayers and causes over others. I urge you to resist the immense pressure to veer from this course. And you can rest assured that, if you do not, we will explore all options available to us including objecting to these rules and pursuing litigation. We will not and cannot stand for this arbitrary and capricious abuse of government power.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Cuomo". The signature is stylized with a large initial "A" and a long, sweeping underline.

ANDREW M. CUOMO