October 11, 2018

Steven T. Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Charles P. Rettig  
Commissioner of Internal Revenue  
Internal Revenue Service, Room 5203  
CC:PA:LPD:PR (REG-112176-18)  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044


Dear Sirs:

This letter is submitted on behalf of the State of New York to provide comments in opposition to the recently proposed Treasury Regulations governing the availability of charitable contribution deductions under Internal Revenue Code (“IRC”) § 170 when a taxpayer receives or expects to receive a corresponding state or local tax credit.

Our opposition is firmly rooted in legal precedent and long-standing principles of federal tax administration. First, the proposed rule lacks any statutory basis, upending decades of precedent regarding the deductibility of charitable contributions without any authorization from Congress. Second, the proposed rule would arbitrarily and capriciously require the recognition of state and local tax credits while excluding other tax benefits that similarly function to reduce the out-of-pocket cost of a charitable contribution. Third, based on the recent “clarification” from the IRS and Treasury Secretary, the proposed rule would arbitrarily and capriciously favor business and flow-through taxpayers over individual wage-earners. And fourth, the proposed rule would have far-reaching negative impacts upon numerous state and local tax credit programs, arbitrarily and capriciously disturbing well-settled state expectations regarding the operation and effect of their tax credit programs.

In short, the proposed limits on deductibility would represent a drastic recharacterization of state and local tax credits that would undermine the innumerable state and local credit programs that have long functioned to incentivize charitable contributions. The proposal must be
withdrawn.

I. **There is no statutory basis for the proposed regulations**

On August 27, 2018, the IRS proposed regulations that would place limits on the federal deductibility of charitable contributions made to organizations under IRC § 170 when a taxpayer receives or expects to receive a corresponding state or local tax credit.\(^1\) The proposal would amend Treasury Regulation § 1.170A-1 to require the reduction of a federal charitable contribution deduction when a taxpayer receives or expects to receive a state or local tax credit in an amount exceeding 15% of the contribution or the fair market value of the property transferred by the taxpayer. Under the proposal, when a taxpayer receives or expects to receive a state or local tax credit in exchange for a charitable donation made to an organization, such state or local tax credit would constitute a return benefit under the *quid pro quo* doctrine, thus necessitating a reduction of the federal charitable contribution deduction under IRC § 170.

According to supplementary information attached to this regulatory proposal,\(^2\) this proposed new treatment of state and local tax credits is intended to prevent state and local governments from circumventing the new $10,000 limitation on the IRC § 164 deduction for state and local tax ("SALT") payments enacted by Public Law No. 115-97 (the "2017 Tax Law").\(^3\)

The *quid pro quo* rule has been implicit in the charitable deduction rules since IRC § 170 was enacted in 1954: for more than 60 years, IRC § 170 has been interpreted to require the recognition of the value of goods and services provided in exchange for a charitable contribution.\(^4\) The IRS has promulgated regulations that define and enforce the parameters of the *quid pro quo* treatment of goods and services under this rule,\(^5\) and it has published guidance materials to assist taxpayers in complying with the rule.\(^6\)

The availability of tax benefits historically has never been viewed as *quid pro quo* for purposes of IRC § 170 deductions, even though those tax benefits function to reduce the out-of-pocket cost of many charitable contributions. As the IRS noted in the materials supplementing the instant regulatory proposal, its Office of Chief Counsel has issued several Chief Counsel Advice memoranda ("CCAs") that reviewed the implications of state tax credits for charitable deductions; none of these CCAs concluded that state tax credits represent *quid pro quo* benefits that must reduce the value of IRC § 170 deductions.\(^7\) Instead, taxpayers were advised that "a state or local tax benefit is treated for federal tax purposes as a reduction or potential reduction

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\(^{5}\) Treas. Reg. § 1.170A-1 et seq.


\(^{7}\) See IRS CCA 201105010 (Oct. 27, 2010); IRS CCA 200435001 (July 28, 2004) (credit for donation to a government agency); IRS CCA 200238041 (Jul. 24, 2002) (credit for donation to a charitable conservation organization)
in tax liability ... not as consideration that might constitute a *quid pro quo*, for purposes of IRC §
170, or an amount realized includible in income, for purposes of IRC §§ 61 and 1001.\textsuperscript{8} As 
recently as 2011, the IRS essentially conceded this point: in *Tempel v. Commissioner*, the Tax 
Court noted that “[r]espondent contends and petitioners do not contend otherwise that 
petitioners’ receipt of State tax credits as a result of their conservation easement contribution 
was neither a sale or exchange of the easement nor a *quid pro quo* transaction.”\textsuperscript{9}

The proposed rule would, for the first time, treat state and local tax credits as *quid pro quo* that must reduce the value of an IRC § 170 deduction. The supporting materials issued in 
conjunction with the proposed regulation suggest that the IRS is newly concerned that the 
availability of tax benefits to incentivize charitable contributions may reduce a taxpayer’s federal 
income tax liability.\textsuperscript{10} Further, the IRS apparently views preventing charitable contributions from 
reducing a taxpayer’s federal income tax liability as a new imperative given the limits on IRC § 
164 deductions enacted as part of the 2017 Tax Law.\textsuperscript{11} The rulemaking materials make clear 
that the proposed rule is intended to prevent taxpayers from using contribution-related tax 
credits in programs established after the new IRC § 164 cap on SALT deductions.\textsuperscript{12}

Nevertheless, there is no statutory basis for this proposed rule. At a time when states 
have been offering substantial tax credit programs to incentivize charitable support for school 
choice programs, conservation efforts, and many other causes, Congress could have, but did 
not, adopt a new *quid pro quo* rule requiring the reduction of IRC § 170 deductions to reflect the 
value of tax credits received by a taxpayer.

In considering Congress’s intentions in this area, it is important to remember that the 
SALT-related tax planning strategies that the proposed rule seeks to foreclose have long been 
available to taxpayers subject to the Alternative Minimum Tax (“AMT”): AMT taxpayers could 
not deduct state and local tax payments,\textsuperscript{13} but generally could deduct charitable contributions. 
In fact, the IRS’s rulemaking materials illustrate how the availability of state and local tax credits 
aﬀected the federal liabilities of AMT taxpayers in the years before the 2017 Tax Law was 
enacted.\textsuperscript{14} The effectiveness of state and local tax credits as a means to reduce the federal 
liabilities of these taxpayers was well understood,\textsuperscript{15} but Congress nonetheless did not opt to 
limit credit-incentivized charitable deductions even as its 2017 Tax Law imposed a new cap on 
SALT deductions and enacted unrelated amendments to IRC § 170.

II. The proposed rule would arbitrarily and capriciously require the recognition of 
state and local tax credits, but would not require the recognition of other tax

\textsuperscript{9} 136 T.C. 341 (2011), aff’d sub. nom. Esgar Corp. v Commissioner, 744 F.3d 648 (10th Cir. 2014).
\textsuperscript{10} Supplementary Information to Prop. Treas. Reg. § 1.170A-1, 83 Fed. Reg. at 43564 (“However, as a 
result of the new limit on the deductibility of state and local taxes under section 164(b)(6) (as added by 
the Act), treating a transfer pursuant to a state or local tax credit program as a charitable contribution for 
federal income tax purposes may reduce a taxpayer’s federal income tax liability.”).
\textsuperscript{11} Id. at 43565.
\textsuperscript{12} See generally Supplementary Information to Prop. Treas. Reg. § 1.170A-1, 83 Fed. Reg. 43563-01, 
Aug. 27, 2018.
\textsuperscript{13} See IRC § 56(b)(1)(A)(ii).
\textsuperscript{15} See, e.g., Phillip Blackman & Kirk J. Stark; Capturing Federal Dollars With State Charitable Tax 
Credits, Tax Notes, Apr. 1, 2013, at 53.
benefits that similarly function to reduce the out-of-pocket cost of a charitable contribution

The new proposed *quid pro quo* rule would require taxpayers to reduce their IRC § 170 deductions for charitable contributions by the value of any state or local tax credits they have received or expect to receive as a result of the charitable contribution. However, even as the proposed rule would require taxpayers to discount their charitable deductions by the state and local tax credits they might receive, it would continue to allow other tax benefits to incentivize charitable contributions.

The proposed regulations would require taxpayers to reduce their federal income tax by the value of any state tax credit when the credit exceeds 15% of the fair market value of the contribution, but a taxpayer would not be required to reduce his or her charitable contribution deduction by the value of any other tax benefits received as a result of the contribution. For example, like tax credit programs, the IRC § 170 deduction itself functions to substantially reduce the out-of-pocket cost of charitable contributions. In 2018, the marginal tax rate can be as high as 37%, so for every dollar contributed to a charitable organization in the United States the taxpayer’s federal tax bill is reduced up to $0.37—well in excess of the 15% *de minimis* threshold established by the proposal.\(^{16}\)

Further, the proposed rule does not address the availability of foreign tax benefits for charitable contributions. Although monies or property donated to foreign organizations are generally not federally deductible,\(^ {17}\) tax treaties of the United States with Canada, Israel, and Mexico allow United States citizens and residents to claim federal charitable contribution deductions for donations to Canadian, Israeli, and Mexican charitable organizations.\(^ {18}\) These contributions will likely also be fully deductible against any foreign income that a United States citizen or resident is required to report to Canada, Israel or Mexico.\(^ {19}\) Those foreign deductions can potentially be worth as much as 33%,\(^ {20}\) 50% and 35%\(^ {21}\) (the highest rates of tax imposed on personal income tax by Canada, Israel and Mexico, respectively), well in excess again of the arbitrary 15% *de minimis* threshold the IRS proposes for state and local tax benefits. Thus, the proposed regulations would place negative restrictions on taxpayers choosing to donate to

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\(^{16}\) [https://taxfoundation.org/2018-tax-brackets/](https://taxfoundation.org/2018-tax-brackets/)


\(^{21}\) [TRADING ECONOMICS](https://tradingeconomics.com/country-list/personal-income-tax-rate), List of Countries by Personal Income Tax Rate, [https://tradingeconomics.com/country-list/personal-income-tax-rate](https://tradingeconomics.com/country-list/personal-income-tax-rate).
charitable organizations within the borders of the United States, while the same types of payments to Canadian, Israeli and Mexican charities would remain fully deductible. This differential treatment of federal, state, and foreign tax benefits undercuts the purported rationale for the instant proposal, namely, the IRS’s assertion that Congress intended only to “provide a deduction for taxpayers’ gratuitous payments to qualifying entities, not for transfers that result in economic returns.” The proposed rule would selectively target some types of tax benefits that “result in economic returns” – namely, disfavored state and local tax credits – while ignoring other tax benefits that function in the same way. The IRS further asserts that “[i]n applying section 170 and the quid pro quo doctrine, the Treasury Department and the IRS do not believe it is appropriate to categorically exempt state or local tax benefits from the normal rules that apply to other benefits received by a taxpayer in exchange for a contribution….” Instead, the proposed rule would arbitrarily single out those state and local tax benefits for disparate negative treatment, while exempting other tax benefits available to a taxpayer in exchange for a contribution.

III. Based on the recent “Clarification” from the IRS and Treasury Secretary, the proposed rule would arbitrarily and capriciously favor business and flow-through taxpayers over individual wage-earners

On September 5, 2018, the IRS issued a “clarification” to the proposed regulations affirming that business taxpayers who make business-related payments to charities or government entities that generate state or local tax credits may generally deduct the payments as business expenses without regard to the value of the tax credits received, so long as the payments qualify as ordinary and necessary business expenses under IRC § 162.

This “clarification” invites the utilization of IRC § 162 by businesses and flow-through taxpayers to avoid the proposed limitations on federal deductibility, while denying individual wage-earners the same treatment on quid pro quo grounds. Moreover, the Treasury Secretary’s coordinated statement regarding the “clarification” suggests that the IRS may discriminate between tax credit programs on political or ideological grounds. This discriminatory treatment against certain types of taxpayers and tax credit programs lacks any basis in the law. It is arbitrary and capricious and indefensible.

The “clarification” to the proposed regulations points taxpayers to a readily available pathway for business entities to avoid the proposed new limits on IRC § 170 charitable contribution deductions: treat the donations to charitable organizations as deductible business expenses under IRC § 162. The Treasury Secretary issued a coordinated statement that the proposed regulation would have “no impact on federal tax benefits for business-related donations to school choice programs,” making clear that the “clarification” was intended to

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23 Id.
25 Id.
assuage concerns among school choice program supporters that donations to such programs would no longer be deductible.\textsuperscript{26}

The proposed regulations seek to require the reduction of a taxpayer’s federal charitable contribution deduction by the amount of any state tax credit received, or expected to be received, because such donation was made.\textsuperscript{27} According to the rulemaking materials, this proposal is intended to apply the well-established \textit{quid pro quo} doctrine to tax credits offered by state and local governments to incentivize charitable contributions.\textsuperscript{28} However, the proposed regulations would not impose a \textit{quid pro quo} rule for contributions to charities that are expensed under IRC § 162.

The IRS’s plan to treat state and local tax credits as \textit{quid pro quo} for purposes of IRC § 170 deductions, but not for purposes of IRC § 162 deductions, raises troubling concerns about how the out-of-pocket cost of the “business” contributions that are deducted under IRC § 162 will be measured. The IRS historically has disregarded the availability of state and local tax credits that function to incentivize certain charitable contributions, whether the contribution was deducted under IRC § 170 or under IRC § 162. According to the rulemaking materials, the IRS now views state and local tax credits as an economic return to the taxpayer.\textsuperscript{29} Nevertheless, the proposed rule would arbitrarily and capriciously limit IRC § 170 deductions to the post-credit out-of-pocket cost of the contribution, while those same credits – producing the same economic return – would be disregarded for purposes of IRC § 162 deductions. In effect, the IRS has invited business taxpayers to deduct as business expenses contributions that were made at no cost to the taxpayer, while denying this treatment to individual wage-earners.\textsuperscript{30}

The proposed regulation, when coupled with the “clarification” inviting IRC § 162 deductions for charitable contributions, would also create a significant disparity in the proposed treatment of a credit-incentivized charitable donation by an individual wage earner as compared to a donation by a flow-through taxpayer. The only deduction that would be available to an individual wage earner who makes a contribution to an organization identified in IRC § 170 would be a IRC § 170 charitable deduction that is reduced by the value of the available tax credit. Business donors making identical contributions, including individuals who receive income from flow-through entities, could opt to claim a similarly reduced IRC § 170 deduction, or they could fully deduct the contribution as a business expense under IRC § 162 without any reduction for the value of the available tax credit. In the context of school choice program tax


\textsuperscript{30} Even more troubling is the possibility that the IRS could decide to recognize the value of a state or local tax credit for purposes of IRC § 162 without requiring a donor to reduce the deduction for the expensed contribution by the value of the tax credit—even while requiring individual donors to make such a reduction. The proposed rule rests on the proposition that state and local tax credits result in an economic return to the taxpayer, leaving open the possibility that the IRS could treat the availability of the tax credit as the only expected financial return necessary to substantiate the IRC § 162 deduction. See Treas. Reg. §§ 1.170A-1(c)(5) and 1.162-15; see also IRS Priv. Ltr. Rul. 9041009 (July 6, 1990).
credits, including the 100% state tax credits offered by several states, the IRS has affirmatively invited flow-through taxpayers to fully deduct contributions that are fully subsidized by the state tax credit. This inconsistency in the IRS's new view of certain tax credits as *quid pro quo* in the IRC § 170 context, but not in the IRC § 162 context, would arbitrarily and capriciously favor those individual donors who have income streams that allow for IRC § 162 deductions.

The invitation to deduct charitable contributions as business expenses under IRC § 162 is especially troubling given the latitude with which the IRS historically has treated IRC § 162 deductions for payments to organizations described under IRC § 170(c). Under business expense deductibility rules, taxpayers must demonstrate that the contribution is ordinary and necessary, that there was a business purpose for the payment, and that the taxpayer had a reasonable expectation of financial return commensurate with the amount of the contribution. The question of whether a contribution was made with a reasonable expectation of a financial return commensurate with the contribution is one of fact. Published guidance suggests the IRS has been willing to accept, at face value, taxpayer claims of benefits and predictions of anticipated benefits. The proposed rule would raise these stakes: the proposed limits on IRC § 170 deductions would likely drive many taxpayers to accept the invitation to expense their contributions.

Of additional concern is the fact that the IRS’s “clarification,” and the coordinated statement by Secretary Mnuchin inviting taxpayers to treat their donations to school voucher programs as business expenses, suggests that the IRS will view IRC § 162 deductions for charitable contributions to school choice programs favorably. Business taxpayers who wish to make charitable contributions to other programs incentivized by state tax credits—for example, programs established to support public education rather than “school choice”—are left to wonder whether their contributions would be treated differently than contributions to school choice programs under IRC § 162. Even worse, these IRS determinations will be shrouded by tax secrecy laws, so the public will not know whether the IRS is fairly and effectively enforcing

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31 See, e.g., ARIZ. REV. STAT. ANN. §§ 43-1183 and 1184; GA. CODE ANN. § 48-7-29.16(c); LA. REV. STAT. ANN. § 47:6301.
34 For example, the IRS considered the expensing of charitable contributions in a CCA in which the business taxpayer inquired as to the deductibility under IRC § 162 of payments to various organizations. The IRS held that the payments to organizations described under IRC § 170 appeared to have been made with a reasonable belief that the payments would “enhance and increase its business,” accepted the taxpayer’s unsupported claim of a reasonable expectation of commensurate financial return for its donations to organizations described in IRC § 170(c), and ruled that the charitable payments were deductible under IRC § 162(a) as business expenses. IRS CCA 201543013. See also IRS CCA 201543013 (July 10, 2015) (contribution found deductible under IRC § 162 even though the donor supplied only incomplete preliminary facts); IRS Priv. Ltr. Rul. 8748007 (Aug. 25, 1987) (contribution deductible under IRC § 162 based on taxpayer’s belief that donation to a fund to enhance U.S.-Mexico border town business activities would promote regional economic stability and garner favorable publicity); IRS Priv. Ltr. Rul. 7843062 (July 27, 1978) (contribution deductible under IRC § 162 when made in exchange for use of the charity’s name in order to retain and expand taxpayer’s business); IRS Info. 2016-0063 (Sept. 30, 2016) (payments to a charitable organization for goodwill advertising to keep the corporation’s name in the public eye was deductible under IRC § 162).
IRC § 162 deduction requirements.

IV. The proposed rule would arbitrarily and capriciously have far-reaching negative impacts upon numerous state and local tax credit programs and disturb well-settled state expectations regarding the operation and effect of these tax credit programs

State and local governments have enacted a wide range of tax credit programs to incentivize particular charitable contributions in reliance on the IRS’s consistent treatment of such tax credits for purposes of IRC § 170. As discussed above, the treatment of tax benefits for purposes of IRC § 170 has been consistent and well-understood. Court decisions and IRS CCAs countenanced federal deductibility of credit-incentivized charitable contributions, and the IRS took no action when states began offering substantial – even 100% – state tax credits for contributions to support non-public schools and other favored charitable causes. Deductions for such contributions have been allowed even though the availability of both a federal deduction and a substantial state credit for contributions to these programs has meant that donors could substantially reduce their state tax liabilities and, in some cases, receive state and federal tax benefits that exceeded the value of the contribution itself.

This proposal would have far-reaching negative impacts upon numerous state and local tax credit programs in New York and elsewhere. New York has established state tax credit programs to incentivize donations of conservations easements, donations of wholesome food to food pantries, and donations to support state healthcare and education initiatives. In addition, the State has authorized local governments and school districts to establish property tax credit programs to support public education and other charitable purposes. The federal deduction reductions that the proposed rule would require would significantly reduce the value of the tax benefits New York offers, in turn reducing the likelihood that taxpayers will make the contributions these tax credits were established to promote.

New York is not alone in offering tax credits to incentivize the donation of conservation easements. On a per-donation basis, donations of conservation easements dwarf every other form of charitable giving, and the impact of the proposed regulations on such donations would likely be catastrophic. Efforts in other states to ensure that food pantries have access to fresh, wholesome food would similarly be obstructed. States across the country have established tax credits to incentivize donations to a multitude of other charitable programs, including, but not

36 See NY TAX LAW §§ 210-B(22) and 606(kkk) (25% refundable credit for property taxes paid on property subject to a conservation easement held by a conservation organization).
37 See NY TAX LAW §§ 210-B(52) and 606(n-2) (refundable credit equal to 25% of the fair market value of qualified food donations to food pantries of wholesome food as defined in IRC § 170(e)[3][C][vi]).
38 See NY TAX LAW § 606(iii).
39 See L.2018, ch. 59, Part LL.
40 See, e.g., COLO. REV. STAT. ANN. § 39-22-522; GA. CODE ANN. § 48-7-29.12; MASS. GEN. LAWS ch. 62, § 6(p); S.C. CODE ANN. § 12-6-3515; VA. CODE ANN. § 58.1-512.
41 Dominic P. Parker and Walter N. Thurman, Tax Incentives and the Price of Conservation, Jan. 4, 2016.
limited to, donations relating to education and school choice programs, foster care, child care, pregnancy resources, playgrounds, wetland conservation, natural heritage preservation, neighborhood assistance, domestic violence shelters, youth rehabilitation and substance abuse centers, residential treatment facilities, and developmental disability care.

These state tax credit programs all rest on well-settled expectations regarding the federal treatment of state tax benefits. The proposed rule would arbitrarily and capriciously upend these expectations and fundamentally undermine the charitable goals that states have determined merit enhanced state support through the provision of state tax credits.

V. The proposed regulations would fundamentally and arbitrarily recharacterize the quid pro quo rule for § 170 deductions and should be withdrawn

The IRS has made clear that the proposed rule is intended to undermine state programs that offer tax credits to incentivize contributions to government entities for public purposes. However, charitable contributions have always been understood to embrace a broad range of contributions that support efforts to promote the public good, including social welfare, religious,

43 See, e.g., LA. REV. STAT. ANN. § 47:6301 (100% credit for taxpayer’s donation to a school tuition organization to fund scholarships for qualified students); S.C. CODE ANN. § 12-6-3790 (100% credit for donations to nonprofit scholarship funding organizations to fund scholarships for students with exceptional needs); K.S.A. § 72-4357 (70% credit for contributions to scholarship granting organizations); IOWA CODE § 422.11S (65% credit for contributions to school tuition organizations); IND. CODE § 6-3.1-30.5-8 (50% individual and corporate credit for contributions to scholarship-granting organizations).
44 See, e.g., ARIZ. REV. STAT. ANN. § 43-1088(B) (100% credit for contributions to qualifying foster care charitable organizations).
45 See, e.g., COLO. REV. STAT. ANN § 39-22-121 (50% credit for contributions to child care facilities or programs that promote child care).
46 See, e.g., MO. REV. STAT §135.600 (50% credit for donations to facilities designated as a maternity home; MO. REV. STAT §§ 135.630 (50% credit for donations to pregnancy resource centers).
47 See, e.g., LA. REV. STAT. ANN. § 47:6008 (36% credit for donations to a qualified playground).
48 See, e.g., ARK. CODE ANN. § 26-51-1505(b) (50% credit for property donations for wetland and riparian zone conservation).
49 See, e.g., CAL. REV. & TAX CODE § 17053.30 (55% credit for property donations for natural history preservation as approved by the Wildlife Conservation Board).
50 See, e.g., 30 DEL. CODE ANN. § 2005 (50% neighborhood assistance credit for contributions to organizations that aid impoverished areas or low and moderate income families); IND. CODE § 6-3.1-9-3 (50% neighborhood assistance credit for contributions to neighborhood organizations that service economically disadvantaged areas by providing job training, crime prevention, ex-offender educational or job-training services, or other community services).
51 See, e.g., MO. REV. STAT §§ 135.550 (50% credit for donations to domestic violence shelters).
52 See, e.g. IDAHO CODE § 63-3029C(1) (50% credit for donations to youth or rehabilitation facilities, including independent living centers and substance abuse rehabilitation facilities).
53 See, e.g., MO. REV. STAT §§ 135.1150 (50% credit for donations to qualified residential treatment agencies).
54 See, e.g. MO. REV. STAT §§ 135.1180 (50% credit of donations to developmental disability care providers for the direct care of children who are Missouri residents).
educational, scientific and governmental purposes, and IRC § 170 has always allowed a deduction for contributions to federal, state or local governments so long as the contribution is made to advance public purposes. Although the IRS now rhetorically recharacterizes state and local charitable donation incentives as “transfers in exchange for state or local tax credits” in order to isolate and distinguish these credits, tax benefits have been widely used by all levels of government to advance charitable purposes.

Although courts have been “loath” to reframe the charitable deduction “in the absence of supportive congressional intent,” here the IRS has advanced a regulatory proposal to recharacterize a concept central to the charitable deduction without any suggestion that Congress intended this change. The proposal would arbitrarily allow some and disallow other types of tax benefits that function to incentivize charitable contributions, arbitrarily recognize tax benefits in some circumstances while ignoring identical benefits in other similar circumstances, and arbitrarily allow identical contributions to be deducted by some taxpayers and not by others. It should be withdrawn.

Very truly yours,

[Signature]
Nonie Manion
Acting Commissioner

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59 Hernandez, 490 US at 693.