United States Senate

WASHINGTON, DC 20510

August 21, 2018

Mr. Charles Rettig
Nominee for Commissioner
Internal Revenue Service

Dear Mr. Rettig:

We are writing to express our concern with the unequal manner in which the Internal Revenue Service (IRS) intends to treat state programs that provide tax credits to incentivize charitable contributions. Specifically, IRS Notice 2018-54 appears to arbitrarily target states that developed programs after the passage of P.L. 115-97, treating taxpayers differently based only on what state they live in. With your nomination to lead the IRS pending and guidance on this issue imminent, we respectfully ask you to clarify your intentions before your nomination comes to the floor of the United States Senate.

As you may know, 32 states and the District of Columbia have for years implemented programs that provide state or local tax credits as a way to incentivize charitable donations. Some states, like Georgia and Louisiana for example, offer dollar for dollar state tax credits for donations made to state-approved funds. The IRS has blessed such programs and allowed for the full deductibility of donations from taxpayers' federal tax liability. Indeed, in an IRS Chief Counsel Advisory memo published in 2011, the IRS cited various case law to support the conclusion that any state or local tax benefit received by the donor should not be considered income or a thing of value. Rather, the memo concludes that a state or local tax credit should be treated as a reduction in tax liability, and thus should not reduce the value of the federal charitable deduction.

Unfortunately, it appears the IRS is poised to completely disregard years of precedent and instead, administer the tax code in a partisan and biased manner. In IRS Notice 2018-54, the Agency made unwarranted accusations that states are attempting to "circumvent the new statutory limitation on state and local tax deductions" and essentially warned taxpayers from making donations to these charitable funds. Even more egregious, the guidance is only directed at states with new programs. This effectively creates two separate sets of rules, treating taxpayers differently based solely on what state they live in.

The IRS announcement that it intends to specifically target state tax credit programs developed after passage of P.L. 115-97 is fundamentally unfair and raises serious suspicions of political targeting. The nation's tax laws must be applied fairly and equally, not used as a partisan weapon to punish perceived political opponents. We urge you to provide assurances that, if confirmed, you will correct course and pledge to enforce the tax code in an objective, fair, and non-partisan manner.

Sincerely,

ROBERT MENENDEZ
United States Senator

CHARLES E. SCHUMER
United States Senator

RON WYDEN
United States Senator

CORY A. BOOKER
United States Senator

BENJAMIN L. CARDIN
United States Senator

KIRSTEN GILLIBRAND
United States Senator

CHRIS VAN HOLLEN
United States Senator

JEFFREY A. MERKLEY
United States Senator

RICHARD BLUMNETHAL
United States Senator

CHRISTOPHER MURPHY
United States Senator