

Congress of the United States
Washington, DC 20515

June 18, 2018

The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

Dear Acting Commissioner Kautter:

We are writing to express our concern with the Internal Revenue Service's (IRS) Notice 2018-54, which announces an intention to question the federal deductibility of charitable donations made to state-approved, non-profit entities. This flawed interpretation has no foundation in law and would upend years of precedent, infringing on the rights of states to provide local tax benefits for charitable contributions.

As you may know, New Jersey state law authorizes municipalities, school districts, and counties in the state to establish non-profit entities and provide a 90 percent property tax credit for any contributions to these funds. While this is the first time New Jersey is undertaking such an effort, the concept of incentivizing charitable contributions with state tax benefits, including credits, has long been found by the IRS to be acceptable.

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. This concept has also been validated by eight of the nation's top tax scholars, who argue in an academic paper that, "under current law, expressed through both court opinions and rulings from the Internal Revenue Service, the amount of the donor's charitable contribution is not reduced by the value of state tax benefits."

This is not a theoretical question: 32 states and the District of Columbia have for years implemented similar funds, some of which offer dollar for dollar state or local tax credits in exchange for contributions. 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, regardless of the state in which a taxpayer lives.

P.L. 115-97 delivered a significant blow to the people of New Jersey by gutting the state and local tax deduction, raising taxes on hundreds of thousands of residents and increasing the property tax burden on many more. While appalling as it was to use the tax code to exact political revenge against so-called blue states by limiting the state and local tax deduction, it is

absolutely unacceptable to use the IRS as a political weapon to target New Jerseyans. We call on the IRS to issue unbiased guidance—implementing the law as written and as historically interpreted by the agency.

Sincerely,



ROBERT MENENDEZ
United States Senator



CORY A. BOOKER
United States Senator



BILL PASCRELL, JR.
Member of Congress




JOSH GOTTHEIMER
Member of Congress



FRANK PALLONE, JR.
Member of Congress



DONALD NORCROSS
Member of Congress



ALBIO SIRES
Member of Congress



BONNIE WATSON-COLEMAN
Member of Congress



DONALD M. PAYNE, JR.
Member of Congress