

United States Senate

WASHINGTON, DC 20510

October 11, 2018

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
CC:PA:LPD:PR (REG-112176-18)
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

Dear Commissioner Rettig:

We are writing to express our opposition to the Internal Revenue Service's (IRS) proposed regulation (REG-112176-18) limiting the ability of taxpayers to deduct charitable contributions from their federal taxes. We believe this decision was politically motivated and will lead to millions of middle class families in New Jersey and around the country paying more in taxes and being taxed twice on the same dollar.

The IRS's proposed regulation would require taxpayers to subtract the value of any state or local tax credit they receive from the value of their federal deduction, if the credit is valued greater than 15 percent. In addition to adding needless complexity for families, this effectively undermines state and local tax credit programs that are designed to incentivize charitable contributions. In addition, it flies in the face of the broad latitude and flexibility the Constitution provides states in developing their fiscal policy and raising revenue.

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.¹

The proposed regulation would upend 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. This selective targeting more than suggests a partisan motivation underlying the regulation.


¹ CCA 201105010

The nation's tax laws must be applied fairly and equally. Middle class families should not be forced to pay taxes twice on the same dollar so CEOs and corporations can reap huge windfalls. We urge you to withdraw this proposed regulations and stop attempting to raise the property tax burden on hundreds of thousands of New Jerseyans.

Sincerely,



ROBERT MENENDEZ
United States Senator



CORY A. BOOKER
United States Senator