

October 3, 2018

**Comments to IRS on Contributions in Exchange  
for State or Local Tax Credits (REG-112176-18)**

The Board of Directors of the North Dakota Association of Nonprofit Organizations (NDANO) writes to express its opposition to proposed regulations (REG-112176-18) regarding Contributions in Exchange for State or Local Tax Credits and to urge that these regulations either be withdrawn or modified before adoption and implementation.

It is our understanding the proposed regulations are intended to address new laws passed in several states other than North Dakota to work around the new \$10,000 limit on the federal itemized deduction for state and local taxes (SALT). It appears these new laws would allow taxpayers to make certain state and local tax payments in the form of charitable contributions to nonprofits formed by state and local governments and, as a result, those taxpayers would be able to deduct state and local taxes of more than \$10,000 via the charitable deduction.

Unfortunately, these proposed regulations appear to cast a wide net and impact not only these government agencies or government-formed charities, as addressed above, but also long-established charitable giving tax credits such as North Dakota's Endowment Fund Tax Credit.

It is of great concern to North Dakota nonprofits that the state's long-standing North Dakota Endowment Fund Tax Credit, and ultimately North Dakotans and communities in our state served by nonprofits, will be negatively impacted by the proposed regulations. More than 10 years ago, our state, recognizing the essential work of North Dakota nonprofits for the common good of its citizens and communities, established a 40 percent state tax credit for a contribution of \$5,000 or more to a qualified North Dakota endowment up to a maximum credit of \$10,000 per year per taxpayer or \$20,000 per year per couple filing jointly.

For purposes of the North Dakota Endowment Fund Tax Credit as outlined in state law, a qualified endowment fund is a permanent, irrevocable fund that is held by a qualified nonprofit organization (or by a bank or trust company on behalf of the qualified nonprofit organization); is comprised of cash, securities, mutual funds, or other investment assets; is established for a specific religious, educational, or other charitable purpose; and is only allowed to disburse the income from, or the increase in value of, the assets contributed to the fund. A qualified nonprofit organization is a tax-exempt charitable organization under federal income tax law that meets either of the following sets of criteria:

- It is incorporated or established in North Dakota and maintains a physical location in North Dakota.
- It is incorporated or established in a state bordering North Dakota; maintains a physical location outside North Dakota that is within five miles of a North Dakota city with a population of 5,000 or more that does not have a hospital; and supports or benefits a hospital, nursing home, medical center, or any combination of these.

Historically, North Dakota has ranked at or near the bottom of all states in the number and amount of in-state foundation assets. The North Dakota Endowment Fund Tax Credit, first passed in 2007 and expanded in 2011, has had a positive impact on our state and its citizens. It has strengthened North Dakota by encouraging charitable giving to support nonprofits' work to improve our quality

of life. It has kept money earned in North Dakota in our state by encouraging gifts to endowments that continue to give back over time. It has empowered North Dakotans to give more to their local community and have a greater impact. It has helped build nonprofits' long-term sustainability by growing endowments as a stable funding source.

If taxpayers are required, per the proposed regulations, to reduce their charitable deduction by the amount of any state or local tax credits they receive, such as the North Dakota Endowment Fund Tax Credit, many North Dakota donors will likely reduce their contributions to these important endowment funds and could stop giving altogether. Although fewer taxpayers are expected to itemize due to tax reform, many of North Dakota nonprofits' most generous donors will likely continue to itemize and would therefore be negatively impacted by these regulations.

NDANO urges the U.S. Treasury Department and the Internal Revenue Service to withdraw the regulations and start over again to draft regulations targeted at recently-enacted state and local tax credits for contributions to government agencies or government-formed charities designed to circumvent the new \$10,000 limit on the federal itemized deduction for SALT.

If not withdrawn, then NDANO strongly urges the regulations be modified to prevent long-standing, beneficial state tax credits, such as the North Dakota Endowment Fund Tax Credit, from being stripped of their ability to incentivize giving to nonprofits that support citizens and communities across our state. Potential solutions to the proposed regulations include:

- Narrowing the regulations to apply only to charitable contributions to government units, as provided under Section 170(c)(1) of the Internal Revenue Code.
- Raising the de minimis exception under which a taxpayer may disregard a state or local tax credit from 15 to 40 percent, thus providing that a state or local tax credit that does not exceed 40 percent does not reduce the taxpayer's federal deduction for a charitable contribution.
- Exempting from the regulations state tax credit programs that are expressly dedicated to promoting giving to in-state endowments at charitable and philanthropic organizations as determined under Section 501(c)(3) of the Internal Revenue Code.
- Exempting from the regulations any state or local charitable giving tax credits established before passage of the Tax Credits and Jobs Act of 2017 (Public Law No. 115-97).

NDANO is the statewide membership association for the North Dakota nonprofit sector. Its mission is to educate, advocate and connect to strengthen nonprofits. NDANO's members work in all mission areas, from human services and the environment to education and the arts, and represent all sizes, from small volunteer-run nonprofits to multi-million-dollar organizations, all across North Dakota.

Respectfully submitted,



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