ACE scholarships

Sept. 26, 2018

United States Department of the Treasury
Internal Revenue Service
1111 Constitution Ave. NW
Washington, D.C. 20224

To Whom It May Concern:

I am writing on behalf of ACE Scholarships, a nonprofit scholarship-granting organization based in Denver, Colorado. ACE provides K-12 private school scholarships to low-income and working-poor families across eight states. Since 2000, ACE has provided more than 28,000 scholarships worth a combined $65 million.

ACE participates in scholarship tax credit programs in Kansas and Louisiana, both of which would be affected by this rule as currently drafted. ACE is the largest scholarship-granting organization in Louisiana, where it currently serves approximately 1,400 students attending more than 200 private schools.

We appreciate that the IRS faces a difficult situation with this rule. Unfortunately, the rule as it is currently drafted is just as likely to impact disadvantaged families in Louisiana as it is to impact high-income taxpayers in New York.

ACE's primary goal is to protect its scholarship families and partner private schools from damaging instability caused by unexpected regulatory shifts. Without stable assistance, which requires stable levels of fundraising, students could find themselves unable to continue in their chosen schools—a situation that could force them into damaging situations academically, emotionally, and, in some cases, physically.

To mitigate these problems, ACE respectfully proposes the following three potential paths forward:

Use the Legislative Process to Address Fundamentally Legislative Issues
Congressional legislation, not federal regulatory action, is the most appropriate way to address issues stemming from the new SALT deduction cap. Consider the following:

1. The workaround schemes at issue, and the ability for non-AMT donors to realize tax benefits in excess of their contributions, were created by the legislative imposition of a $10,000 cap on state and local tax deductions in the 2017 Tax Cuts and Jobs Act. The problem is therefore fundamentally legislative in nature.

2. The lack of a clear way to define the government entities involved in these workaround efforts as separate and distinguishable from legitimate charities is rooted in existing statutory language that never contemplated their creation. Congress is best positioned to address that shortcoming.

3. The current $10,000 SALT deduction cap is temporary and will expire on January 1, 2026. The rule being considered by IRS has no such sunset.

4. A blanket regulatory solution may be ineffective. Without legislative changes, states pursuing workaround schemes are likely to find new ways to circumvent the SALT deduction cap.

It is not appropriate or effective for the IRS to use a broad, permanent rule to address a granular, temporary legislative issue. Stated differently, the IRS should avoid applying a regulatory sledgehammer to a problem more effectively addressed with a legislative scalpel.

Phase in the Rule over Time

If the IRS feels compelled to move forward with the rule instead of deferring to Congress, the agency should consider a phased implementation of its restrictions.

There is significant disagreement over whether existing tax code and statute allow for permanent distinctions to be drawn between government-created workaround entities and legitimate charities. However, even without clearly codified distinctions, the IRS could consider more temporary distinctions based on enactment date. For instance, the IRS could immediately apply the rule to state tax credit programs enacted on or after January 1, 2018, while allowing for a delayed effective date for programs enacted before 2018.

Such an approach would address workaround schemes in tax year 2018 while allowing long-standing scholarship programs and the nonprofits participating in them to minimize shocks to scholarship funding levels in coming school years.

Delay the Rule's Effective Date

If a phased approach is deemed impractical, the agency should at the very least delay the rule's effective date until tax year 2019. The August 2018 effective date inappropriately interferes with planned philanthropy unrelated to tax workaround schemes.

Many donors pledge money or make contribution plans early in the tax year that they intend to fulfill in Q3 or Q4. These donors planned to contribute to private nonprofits supporting disadvantaged students, not to participate in programs specifically designed to defeat the SALT deduction cap. Given their intent to give toward legitimate charitable enterprises, and given that they had no reasonable way of predicting that the IRS proposed rule might impact those plans, these donors should not be penalized for the legislative actions of states thousands of miles removed from their own.

A delayed effective date of at least January 1, 2019, would allow donors to proceed with planned donations in tax year 2018 while beginning to adjust their giving plans for tax year 2019. It would also minimize negative impacts on scholarships students in the 2019-2020 school year.

Sincerely,

Ross Izard
Director of Policy