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New York Local Governments and School Districts Join Together to Challenge IRS on Treatment of Contributions to Charitable Funds

The Coalition for the Charitable Contribution Deduction (3CD) Submits Letter to the IRS Airing Concerns on Behalf of Counties, Municipalities, School Districts, and Taxpayers

NEW YORK, NY – A newly-formed coalition of counties, cities, towns, villages, and school districts in the State of New York, along with state and countywide professional and advocacy organizations, filed a letter with the Treasury Department and the Internal Revenue Service requesting withdrawal of the proposed regulations issued on August 23 that, if finalized, would deny a full charitable deduction for donations to the charitable funds authorized by a number of red and blue states.

The letter, prepared on behalf of the Coalition for the Charitable Contribution Deduction (3CD) by the globally recognized law firm Baker & McKenzie, takes aim at the arbitrary legal reasoning and abandonment of past IRS precedent that underpins the proposed regulations. In laying out their analysis and argument as part of the public comment period, the group hopes to persuade the Treasury Department and the IRS to withdraw the regulations and preserve full deductibility for voluntary contributions made by individuals to charitable funds established by counties, municipalities, and school districts in a number of states.

> "The denial of charitable deductions for donations to charitable reserve funds disproportionately hits communities like mine," said **Assemblymember Amy R. Paulin**, who took the lead role in coordinating the coalition and whose district includes the Village of Scarsdale, where both the municipal government and school district acted to establish charitable funds prior to the IRS proposing new regulations. "Charitable reserve funds serving a public mission and encouraged by tax credits have proven to be a critical tool for taxpayers and local governments alike. But these proposed regulations break IRS precedent and undermine the effectiveness of the new charitable funds established as well as the over 70 existing funds—in red states and blue states alike. Given the arbitrary and capricious distinctions being drawn, and the potential for real harm for taxpayers across the country struggling to remain in the communities they fell in love with and to send their children to the same nurturing, high-quality schools, we felt we needed to speak out."
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> "This letter reminds the IRS that they do not have the authority from Congress to upend longstanding principles of tax law and, in the process, harm so many New Yorkers and the local governments and school districts that serve them," said **Assemblyman David Buchwald**, one of the lead sponsors for the original legislation to authorize charitable reserve funds under New York State law. "When businesses organize their finances to take advantage of eligible deductions, we call it a sound business practice. Families and homeowners should not be treated differently. United with representatives of all levels of government, we are acting to protect New Yorkers from the prospect of serious harm stemming from arbitrary decisions made in Washington."
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> "It is patently unfair for the federal government to place a 'tax target' on the backs of the citizens of New York State, whether by law or by regulations that depart from precedent and make arbitrary distinctions," said **Nassau County Executive Laura Curran**. "Limiting their charitable tax deductions is just another way of increasing their taxes.

Nassau County taxpayers already pay more than their fair share of federal taxes, and I am determined to fight on their behalf against any attempt to make them pay even more."

"A significant number of Suffolk County residents would be negatively and unfairly impacted by these proposed regulations from Washington," said **Suffolk County Executive Steven Bellone**. "It is imperative that we come together with other local governments across New York to fight these regulations that would effectively raise taxes on working and middle class suburban homeowners."

"New proposed regulations issued by the IRS to limit charitable deductions for publicly established charitable funds are hitting Westchester taxpayers already struggling with the new cap for state and local tax (SALT) deductions," said **Westchester County Executive George Latimer**. "While the Federal Government claims only 5% of the nation will be impacted by the new limits on charitable deductions, we know here in Westchester that is not the case. These regulations will hurt our County's working families, our property values and our way of life. I am calling on the Treasury Department and the IRS to rescind their proposed regulations. This is the right thing to do for New Yorkers and Americans."

3CD is comprised of Nassau, Suffolk, and Westchester Counties, 17 municipalities, 17 school districts, the Association of Towns of the State of New York, the Lower Hudson Education Coalition, the New York Conference of Mayors, the New York State Association of Counties, the New York State Council of School Superintendents, the New York State School Boards Association, the Association of School Business Officials of New York, and the Westchester Putnam School Boards Association. 3CD's members each serve a significant number of residents whose individual financial circumstances will cause them to be adversely affected by the proposed regulations. 3CD estimates that hundreds of thousands of taxpayers served by the local governments involved will be affected if the proposed regulations are finalized in their current form.

In response to the *Federal Tax Cuts and Jobs Act of 2017*, New York enacted legislation that authorized counties, local governments, and school districts to establish charitable gifts reserve funds that may be used to defray some of the costs related to public education, healthcare, or other public services provided by those entities. At the same time, the state allowed counties, local governments, and public school districts the option to authorize a real property tax credit of up to 95% of the amount of a property owner's monetary contribution(s) to the reserve funds during the "associated credit year," as defined under the New York Real Property Tax Law.

It was hoped that individual taxpayers would be encouraged to contribute generously to these charitable funds out of the expectation that the pairing of an increased charitable deduction at the federal level combined with a real property tax credit at the local level might offset the effects of the new $10,000 cap on State and Local Tax (SALT) deductions. These deductions, which include both state income taxes and local property taxes, are now capped at $10,000 per year. In 2015, among New Yorkers who itemized their tax deductions, the average State and Local Tax deduction was $22,000. New York relied on case law and internal IRS memoranda that confirmed that the charitable deduction would be allowed for donations to these types of funds.

However, on August 23 the IRS threw cold water on taxpayers seeking to make these contributions. It proposed regulations that would deny a taxpayer who makes a contribution to a charitable reserve fund and subsequently receives a state or local tax credit a full charitable deduction. The taxpayer would instead lose a portion of the deduction equal to the extent of the tax credit he or she received at the state or local level. This proposed regulation flies in the face of the IRS's previous treatment of the over 70 active programs across 24 states which specifically rely on tax credits granted to individuals who make monetary donations to various entities. Additionally, a subsequent IRS notice announced that businesses will be entitled to a full deduction for their contributions, creating an arbitrary distinction between contributions made by businesses, whose full deductibility will be preserved, and contributions made by individuals, who will not.

3CD believes that the proposed regulations as written are arbitrary and capricious, and therefore invalid. Taxpayers around the country should be entitled to the full charitable deduction for their donations to charitable reserve funds and similar vehicles.

“Local governments in New York State have been doing more with less for years, operating in a tough fiscal climate fraught with unfunded mandates and tax caps. The Association of Towns proudly joins this coalition of fellow municipal associations and local governments to urge the IRS to consider past precedents that permitted tax credits for charitable donations when making its final determination on this important issue. If adopted as currently proposed, these regulations would be a late departure from its prior practices and would cause irreparable economic harm to New York taxpayers,” said Gerry Geist, Executive Director, **Association of Towns of the State of New York**.

“Up until now, the IRS has consistently taken the position that a charitable contribution deduction should not be reduced by the amount of a state or local tax benefit received. To suddenly change the agency’s longstanding position, while also making arbitrary distinctions between businesses and individuals, as well as public and private education needs, will harm our communities, harm our state and harm our taxpayers,” said **NYS Conference of Mayors** Executive Director Peter A. Baynes. “On behalf of the Conference of Mayors and the 580 cities and villages we represent, we hope the IRS will consider the valid legal arguments outlined in these comments and ultimately change the regulations so that our local officials can continue to provide essential municipal services in the most cost effective manner.”

“Superintendents across the state are exceptionally concerned about the combination of the newly imposed cap on the SALT deduction and the draft IRS regulations on charitable contributions which will further limit the ability of New Yorkers to financially support strong public schools,” said Charles Dedrick, Executive Director of the **New York State Council of School Superintendents**. “The full impact of the cap and the IRS proposed regulations won’t be felt until next spring, when tax returns are filed and school budgets are placed on the ballot. We urge the IRS to reverse course so that New York schools can continue to thrive and taxpayers can continue to afford to support them.”

“New Yorkers have a long tradition of supporting their public schools through property taxes,” said **New York State School Boards Association** Executive Director Timothy G. Kremer. “We appeal to the IRS to acknowledge and encourage voluntary public investment by enabling full deductions for donations to charitable funds established by our local school districts.”

“Local property taxes provide 80% of public school funding in our area, and it is critical that school districts continue to have the funding necessary to provide a 21st century education and support the ever-increasing needs of our students,” said Lisa Davis, Executive Director, **Westchester Putnam School Boards Association**. “The proposed IRS constraints on deductions for contributions to charitable funds will affect after-tax income and make it ever more difficult to garner taxpayer/voter approval. We urge the IRS to follow precedent and continue to provide full deductibility of state and local taxes for the public good.”

“Our goal is simple: fairness for the people of our region,” said **Mayor Noam Bramson**, City of New Rochelle. “By recognizing the full spectrum of charitable contributions in an equitable and consistent fashion, the IRS can help ensure that vital public services are supported, and that taxpayers are able to make the best choices for themselves and their communities.”

"I'm hopeful the IRS will carefully consider the comments it has received from local government officials and taxpayers regarding its draft regulations on charitable deductions,” said **Mayor Thomas Roach**, City of White Plains. “These regulations, once finalized, will impact millions of taxpayers in New York and across the country. We are greatly concerned about the seemingly arbitrary nature of some aspects of the proposed regulations—full deductions for businesses but not individuals; prioritizing contributions to private education scholarships but not public education needs—and the precedent this would set. I urge the IRS to embark on a thoughtful review and consider the impact of these regulations on all taxpayers."

“On a municipal level, we are continually stifled by trickled-down mandates that suffocate our taxpayers,” said City of Yonkers **Mayor Mike Spano**. “The IRS’s proposed regulations on charitable contributions, along with the recent cap on the SALT deduction, will place additional burdens on our working families who struggle now to make ends meet. I urge the Treasury Department and IRS to reconsider this unfair hardship on our Yonkers taxpayers."

"The limitation on the deductibility of charitable contributions poses significant hardship on New York taxpayers as well as New York local governments and school districts," said **Supervisor Chris Burdick**, Town of Bedford. "We are hopeful that the IRS will be responsive to our valid assertions that the charitable trust mechanism passes muster under federal tax law."

"This is double taxation at its worst," said **Supervisor Warren Lucas**, Town of North Salem. "Taxing people on money they already paid in taxes with no income thresholds protecting those who are vulnerable is bad government. I am sure we can all agree that every senior who is paying their school tax long after their children graduated is making a 'donation' to our children's future and getting nothing tangible in return. If businesses can get credit for charitable donations, the law needs to allow full deductions for individuals, too."

"The Town of Ossining is hopeful that the IRS will reconsider the proposed regulations regarding the deductibility of charitable giving to municipal and school funds, as we believe they will continue to be the best outlet for individuals to help these valuable organizations thrive," said **Supervisor Dana Levenberg**, Town of Ossining. "As local governments who are hoping to hold the line on taxation while still providing a high level of services to property owners, we believe the IRS should see fit, based on federal tax law, to continue to allow these deductions to the benefit of all."

"The Town of Rye joins with other communities in opposing the imposition of the proposed IRS regulations," said **Supervisor Gary J. Zuckerman**, Town of Rye. "The arbitrary distinctions being made by the proposed regulations, such as full deduction for businesses but not individuals and prioritizing contributions to private education scholarships but not public education needs, which do not follow previous IRS precedents, place enormous burdens on the taxpayers of our Town and County. Charitable deductions have always been fully recognized before, and we fully support the comments in opposition to the proposed regulations."

"These proposed regulations dramatically impair the incentives for individual taxpayers to make contributions to these charitable reserve funds and, in doing so, impair the mission of these funds, namely providing a high-quality public education to all Scarsdale children and supporting public services that are critical to the health, welfare, and safety of all Scarsdale residents," said **Mayor Dan Hochvert**, Village of Scarsdale.

"In denying a full charitable deduction that was heretofore recognized, these regulations impose an unfair and additional burden on the taxpayers of our school district," said Dr. Walter Moran, Superintendent of Schools, **Eastchester Union Free School District**.

"What the IRS hasn't considered adequately about the new tax law and proposed regulations is the impact they will have on the quality of our schools," said Lisa Eggert Litvin, Board Member of the **Hastings-on-Hudson Board of Education**. "By limiting deductibility and effectively raising the tax rates on our residents, the pressure on schools to cut will be great—cut teachers, support staff, programs, classes, foreign language, sports, anything considered 'non-essential.' It is incumbent on the Treasury Department to at least study the impact of its proposal on the quality of our children's education before moving forward."

"These regulations are harmful to both the local taxpayers and the school districts that are devoted to providing excellent educational opportunities for all students," said **New Rochelle Board of Education** President Jeffrey Hastie. "By denying the full charitable deduction to home school districts--a deduction that had always been recognized before--the rules create an added and unnecessary hardship. The IRS can still change course and spare local taxpayers and school districts from the onerous impact of these regulations. We call on the agency do so."

"I believe we have a fiduciary responsibility to the families and taxpayers of our community to explore voluntary contribution systems like the charitable funds that exist in 24 other states," said Mary Fox-Alter, Superintendent of Schools, **Pleasantville Union Free School District**. "Strong public schools and public services are at the heart of our democracy. They are governed by locally elected Boards, are regularly audited, must operate in public, and demonstrate high levels of accountability. The IRS draft regulations are arbitrary, place an undue burden on the states' ability to provide public education and public services, and greatly diminish the federal governments' fiscal responsibility."

"The Board of Education of the Scarsdale Union Free School District unanimously believes that the proposed regulations issued by the IRS on August 23, 2018 dramatically limit the likelihood for individual taxpayers to make contributions to the charitable reserve funds established in the State of New York," said Scott Silberfein, President of the **Scarsdale Board of Education**. "We remain very concerned about the SALT deduction cap's severe impact on our residents' tax burden and its potential negative impact on the delivery of a world-class public education that the residents of Scarsdale expect and deserve."

Although the members of 3CD are hopeful that this airing of concerns will prompt the IRS to withdraw the proposed regulations and reissue new proposed regulations that conform to established law and internal IRS rulings, they are open to taking further steps on this issue in the future, including challenging the regulations in federal court, should that become necessary.

Members of the Coalition for the Charitable Contribution Deduction (3CD)

Association of School Business Officials of New York
Association of Towns of the State of New York
Lower Hudson Education Coalition
New York Conference of Mayors
New York State Association of Counties
New York State Council of School Superintendents
New York State School Boards Association
Westchester Putnam School Boards Association

Nassau County
Suffolk County
Westchester County

City of New Rochelle
City of White Plains
City of Yonkers
Town of Bedford
Town of Lewisboro
Town of Mamaroneck
Town of New Castle
Town of North Salem
Town of Ossining
Town of Pelham
Town of Rye
Village of Ardsley
Village of Hastings-on-Hudson
Village of Pelham
Village of Pelham Manor
Village of Scarsdale
Village of Upper Brookville

Ardsley Union Free School District
Brewster Central School District
Briarcliff Manor Union Free School District
Byram Hills Central School District

City School District of New Rochelle
Dobbs Ferry Union Free School District
Eastchester Union Free School District
Edgemont Union Free School District
Hastings-on-Hudson Union Free School District
Katonah-Lewisboro School District
Ossining Union Free School District
Pelham Public Schools
Pleasantville Union Free School District
Pocantico Hills Central School District
Public Schools of the Tarrytowns
Scarsdale Union Free School District of the Towns of Scarsdale and Mamaroneck
White Plains City School District