Colorado
NONPROFIT
Association

October 10, 2018

Internal Revenue Service
CC:PA:LPD:PR (REG-112176-18)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice of Proposed Rulemaking/Contributions in Exchange for State and Local Tax Credits

Colorado Nonprofit Association represents over 1,400 nonprofit organizations in the state of Colorado. The mission of Colorado Nonprofit Association is to lead, serve, and strengthen Colorado's nonprofit community to improve the quality of life throughout our state.

I am writing on behalf of Colorado Nonprofit Association to express our opposition to the proposed Internal Revenue Service (IRS) rule on Contributions in Exchange for State and Local Tax Credits [REG-112176-18], published in the Federal Register on August 27, 2018.

This rule negatively impacts several Colorado tax credits to incentivize charitable giving, many of which existed a decade or more before passage of the Tax Cuts and Jobs Act (TCJA). These credits benefit the public by helping nonprofits provide child care services, administer job training programs, conserve land for public use, revitalize historic properties, build affordable housing, offer arts and cultural attractions to boost local tourism, encourage economic development in enterprise zones, and more.

Colorado's legislators enacted these policies to ensure our communities are well served through meaningful government/nonprofit partnerships. Most Coloradans can make donations that qualify for these credits, whether they itemize or not.

Our 2014 survey of Colorado donors, entitled *Understanding Giving,* found that 76 percent of higher income taxpayers consider tax benefits when they donate.[1] These donors tend to make the largest donations and will likely be among the 5% of taxpayers that continue to itemize with the changes made by TCJA. Because these higher income donors consider tax benefits when giving, they will be unlikely to make donations to claim Colorado's tax credits if their charitable deductions are reduced by the amounts of those credits.

In Colorado, taxpayers with incomes of $250,000 and over accounted for 3 out of every 10 donations (more than 8,000 out of 27,000) and more than 6 out of every 10 dollars given ($18 million of $28 million) via the three largest charitable giving tax credits.[2] Through these tax credits, taxpayers save $0.25 to $0.50 on state taxes for each dollar they give. But charitable

[1] https://www.coloradononprofits.org/sites/default/files/attachments/UnderstandingGiving_2014_WEB_0.pdf
[2] Analysis of Table 24- Enterprise Zone Credits, Child Care Contribution Credit, Gross Conservation Easement, Colorado Statistics of Income for Income Tax Year 2013 https://www.colorado.gov/pacific/sites/default/files/2013%20SOI%20.pdf

nonprofits will lose 100% of each dollar that is not given because of this rule. The rule unfairly punishes both Colorado taxpayers and charitable organizations benefitting from these credits.

This rule is overly broad and should be targeted specifically to the challenges raised by SALT workaround laws. In the rulemaking notice, the IRS states that "…when a charitable contribution is made in return for a state or local tax credit and the taxpayer has pre-credit state and local tax liabilities in excess of the $10,000 limitation in section 164(b)(6), a charitable contribution deduction under section 170 would no longer be offset by a reduction in the taxpayer's state and local tax deduction under section 164." Because TCJA capped the SALT deduction at $10,000, it could no longer be reduced dollar-for dollar to offset any increases in taxpayers' charitable deductions.
For this reason, a few other states have proposed or passed laws (i.e. SALT workarounds) allowing taxpayers to give to designated government entities to take a larger charitable deduction and reduce liability for taxes above the $10,000 SALT cap. The primary purpose of such laws is to allow taxpayers to pay their legal obligation for state and local taxes in the form of a donation and fully deduct their payments on federal taxes.

Unlike these laws, the intent of Colorado's tax credits is to incentivize voluntary donations pursuant to Section 170(c)(2) to nonprofits to deliver specific services for public benefit. Donors intend to make a gift rather than intending to make a tax payment. Colorado's tax credits are wholly unrelated to changes to federal tax treatment due to the new SALT cap.

This proposed rule is too broad because it also applies to state and local tax credits that preceded TCJA and challenges donations that have traditionally qualified for the charitable deduction. The rule affects itemizing taxpayers even if claiming state and local tax credits has no effect on the $10,000 SALT cap. It should be narrowed to address the specific problems caused by SALT workaround laws rather than undermining state giving incentives generally.

We urge the IRS not to proceed with the rule in its current form. Should the IRS decide to continue with a modified rule, we ask that the rule exempt tax credits that preceded TCJA and are unrelated to making tax payments. The rule should not affect taxpayers that make gifts to charities pursuant to Section 170 (c)(2), rather than governments under Section 170 (c)(1) or affect donors who pledged a gift in 2018 while this rule is pending. These donors give with the intention of making a contribution that benefits the public, and with the expectation of claiming a state tax credit once their contribution is made, or their pledge is paid.

Thank you for considering our concerns with this proposed rule.

Sincerely,

Mark Turner

Mark Turner, Senior Director of Public Policy