December 3, 2018

TO: Taxpayer Services Division, Colorado Department of Revenue

RE: CDOR Enterprise Zone Rulemaking Hearing

I am writing to you on behalf of Colorado Nonprofit Association and our 1,400 nonprofit member organizations. Colorado Nonprofit Association leads, serves, and strengthens Colorado’s nonprofit community to improve the quality of life throughout our state. Our comments are as follows:

First, because the proposed amendments reduce the benefit of credits when donors’ in-kind contributions exceed their monetary contributions, we have concerns that this change would also reduce giving to enterprise zone projects. We understand how the Department’s interprets C.R.S. 39-30-103.5(1)(b), which indicates that “in-kind contributions shall not exceed fifty percent of the total credit claimed.” In Example 4 provided by the department, the value of the credit is reduced by nearly 38% for donors whose in-kind contributions exceed their monetary contributions. Because we have been unable to find specific data on credit claims with in-kind contributions, we are not able to know how many taxpayers could be affected by this change based on past giving trends.

Our 2014 study of donor behavior entitled Understanding Giving found that 76% of individuals with higher incomes consider tax benefits when they donate. About 67% of taxpayers claiming all enterprise zone credits had income of $100,000 or more, according to the Department’s 2013 Statistics of Income report. Because enterprise zone donors tend to have higher incomes, we expect they would respond to this change in the value of enterprise zone contribution credits.

Although donors ought to be aware that this 50 percent limit applies to in-kind contributions, we expect that many donors will not actively track the percentages of their monetary and in-kind contributions throughout the tax year. These donors will be surprised when they file their taxes and receive less of a credit than they anticipated. If donors are less clear about the charitable giving incentive provided by enterprise zone credits, they may be less likely to use these credits.

Second, we appreciate the updated examples of credit calculation because they clarify that the Department does not intend to disallow in-kind contributions for donors who do not make monetary contributions. In requesting feedback from member organizations that participate in the enterprise zone program, we heard that many donors who make in-kind contributions do not necessarily give money too. Donations of vehicles, items of historical significance, and skilled labor may be unique contributions from the donor and may be given independently of any monetary gifts. We recognize that credits are calculated based on all giving to any projects during the year, but we believe donors should still be eligible for the credit even if they only make in-kind contributions.
Third, defining stock as a monetary contribution rather than a non-monetary contribution would be preferred by donors and likely more consistent with how these donations are handled by projects. Donors would be eligible for the full 25% credit for stock donations rather than having the 50% limitation on in-kind contributions apply. As with other in-kind contributions under this proposed change, the value of a stock donation would be reduced if it exceeds the donor’s cash contribution, which could surprise donors. We also heard from several enterprise zone projects that they prefer treating stock donations as cash because they liquidate donations of stock immediately after receiving them. One alternative to this proposed rule is to treat stocks as cash if they are liquidated within a certain time following receipt by the donee.

Fourth, we find that the regulation makes some helpful changes to clarify definitions and ensure consistency with the Economic Development Commission’s policies. In general, clarifying the definitions of monetary and in-kind contributions will be helpful for nonprofits and donors. Also, removing the descriptions of eligible contributions ensures consistency with the Economic Development Commission’s policies for the enterprise zone program which have undergone considerable changes in recent years.

Thank you for the opportunity to comment on these regulations and we are happy to answer any questions related to these comments.

Sincerely,

Mark Turner

Senior Director of Public Policy