

NSBA Comments on IRS Proposed Rule

Via Online Submission October 11, 2018:

www.regulations.gov

Re: Contributions in Exchange for State or Local Tax Credits

Docket ID: IRS-2018-0025

RIN 1545-BO89

The National School Boards Association (NSBA) represents through our state association members approximately 13,800 school boards nationwide. As the national voice for school boards, NSBA offers the following comments to the proposed rule, IRS-2018-0025, issued by the Internal Revenue Service (IRS), Department of the Treasury.¹

NSBA supports strengthening local school board governance and community ownership in public schools and recognizes the benefit of many options and choices offered to students in our public schools. NSBA unconditionally opposes vouchers, tuition tax credits and similar schemes, and charter schools not subject to oversight of the local school boards, effectively creating a separate unaccountable system of publicly funded education which: a) diverts public funding to private schools, private home schools, including virtual schools, regardless of whether they are owned or operated by individuals, religious institutions, not for profit entities, or corporations; b) diverts public funds outside of locally elected, locally accountable, representative oversight; and c) often has the effect of re-segregating schools.²

NSBA supports in part and opposes in part the proposed IRS regulation regarding contributions in exchange for state or local tax credits. Specifically, NSBA strongly endorses the elimination of a federal income tax shelter for tuition tax credits that allows taxpayers to receive both state and federal tax credits based upon solitary donations to fund private schools through state tuition tax credit programs. Additionally, through this comment, NSBA opposes a potential carve out for tuition tax credit programs, which would adversely impact our nation's public-school students, public school districts and their communities.

¹As indicated in the Summary of the proposed regulation, "the proposed amendments provide rules governing the availability of charitable contribution deductions under section 170 when a taxpayer receives or expects to receive a corresponding state or local tax credit." This includes government-operated public purpose foundations and private charities, such as private schools.

² Resolutions of the National School Boards Association, 2. Use of Public Funds for Privatization, 2018, available at: https://cdn-files.nsba.org/s3fs-public/2018_Resolutions-Adopted-4-6-2018_0.pdf.

NSBA Supports Ending the Tax Shelter

To date, there are 22 tax credit *scholarship*³ or tuition programs authorized by 18 states, which offer supersized tax credits of between 50 and 100% of the amount that taxpayers donate to support tax credit *scholarships*.⁴ These programs allow individuals and corporations to allocate a portion of their owed state taxes to private nonprofit *scholarship*-granting organizations that issue *scholarships* to K-12 students.⁵ Students awarded *scholarships* may choose among a list of private schools, and sometimes public schools outside of the district, approved by the scholarship organization. The *scholarship* is used to pay tuition, fees, and other related expenses at the chosen school.⁶ As a result, the state does not have to appropriate per-pupil education funding for those students that receive *scholarships*.⁷

In twelve states (AL, AZ, GA, KS, LA, MT, NH, OK, PA, RI, SC, VA), taxpayers profit by claiming both state tax credits and federal tax deductions. Together, these tax perks are worth more to taxpayers than the amount they initially donated. Following the passage of “The Tax Cuts and Jobs Act,” Pub. L. No. 115-97, this fact has been aggressively advertised by private schools, scholarship organizations, and tax accountants, and it has proven to be a powerful tool for convincing high-income taxpayers to engage in these schemes to redirect public dollars into private schools. It is appropriate for the IRS to scale back or deny the federal charitable tax deduction in cases where the donation is already reimbursed with a state tax credit. Doing so is essential to the integrity of the charitable deduction, which is meant to reward genuine philanthropy, not sophisticated tax planning.

Additionally, if this tax advantage were to continue, the efforts in many states – and through the Every Student Succeeds Act (ESSA) – to close achievement gaps and advance equitable education opportunities would be undermined. Our nation’s public school districts are pioneers of successful choice programs that are not dependent on tax credits, such as magnet schools, dual enrollment programs with public institutions of higher education, charter schools authorized by local public school boards, community schools, public military academies, lab schools, and open enrollment policies for intra- and inter-district transfers.

The proposed regulation correctly eliminates current tax credit strategies that allow individuals to profit from ostensibly charitable donations to private schools by receiving a federal tax break for

³ The term *scholarship* is emphasized because it is a misnomer. The programs described here are more accurately termed *vouchers*, as they allow funds otherwise headed for public purposes to be redirected to private schools.

⁴Private School Choice: Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs, available at: <https://www.gao.gov/products/GAO-18-679>.

⁵National Conference of State Legislatures, Scholarship Tax Credits, available at: <http://www.ncsl.org/research/education/school-choice-scholarship-tax-credits.aspx>.

⁶National Conference of State Legislatures, Fiscal Impact of Vouchers and Scholarship Tax Credits, Oct. 28, 2013, available at: <http://www.ncsl.org/research/education/fiscal-impact-of-school-vouchers-and-scholarship-tax-credits.aspx>.

⁷*Id.*

subsidizing private school *scholarship* or tuition tax credit programs. The current regulation effectively provides a profitable tax shelter for wealthy donors that drains federal and state revenues to public schools and accelerates the movement of public funds into private schools. By closing the loophole, donors who see much, or all, of their donations fully reimbursed with state tax credits will no longer be allowed to double dip and receive a federal tax deduction for the same donation. Thus, the proposed regulation would correctly allow public funds to be used for public schools and public educational purposes.

NSBA Opposes a Carve Out for Private School Tuition Tax Credit Programs⁸

As a matter of national priority, NSBA urges the IRS to champion reforms that invest in our public schools to help prepare every student for success in higher education and in the workforce. NSBA opposes any exception or carve out to the proposed rule that would permit donors to obtain double tax benefits for contributions to private schools. The diminution of public tax dollars caused by such a carve out effectively reduces funding for public schools and potentially harms 90% of all school-aged children.⁹

If the IRS issues a final regulation denying or reducing the charitable deduction for donors who benefit from state tax credits, that regulation should apply with equal force to those who donate to private schools. In functional terms a federal tax deduction, whether in the form of a private school donation or a state tax credit, is simply a rose by another name. Both function to divert public dollars from public schools. It would be indefensible for the IRS to overhaul its treatment of state charitable tax credits without addressing the longest-running and most egregious tax shelter operating in this area: profiteering by federal taxpayers who financially support private school *scholarship* programs. The IRS should not heed comments and pressure from school choice advocates who seek a *scholarship* or tuition tax credit programs carve out from the proposed regulation.

Additionally, the proposed regulation should endeavor to preserve the federal civil and constitutional rights of students, as tax credit programs ultimately support schools that do not abide by federal civil rights laws and public accountability standards that all public schools must observe including those in Title VI, Title IX, the Individuals with Disabilities Education Act (IDEA), Title II of the Americans with Disabilities Act and the Elementary and Secondary Education Act (ESEA). In fact, the very act of enrolling with public funding resulting from tax credits results in a renunciation of important statutory substantive and procedural due process rights intended by Congress to protect students and ensure fairness and equity in their education. Schools that do not provide students with these basic civil rights protections should not be funded through taxpayer dollars or federal or state tax credits.

Studies Show that Students in a Tax Credit Scholarship Program Are Not Showing Improvement

⁸For some states, such as North Carolina and South Carolina, public school districts charge “tuition” for students who attend school in a school district other than their respective or assigned public school district. In this instance, the tax credit is used for public education.

⁹Eighty-seven percent of our nation’s school-aged children attend public schools. See, School Choice: What the research says, Center for Public Education, 2017, available at: <http://www.centerforpubliceducation.org/research/school-choice-what-research-says>.

NSBA appreciates the value of alternative educational programs within public schools. Yet, such programs should not operate to the detriment of all students. School choice, by itself, is not a guarantee of better student outcomes, and should not be supported by federal funding at higher levels than other initiatives with proven effectiveness. National studies indicate “that school choices work for some students sometimes, are worse for some students sometimes, and are usually no better or worse than traditional public schools. There’s no reason to conclude that choice will produce better outcomes. While many schools of choice do an exemplary job, the results aren’t universally better than those produced by traditional public schools.”¹⁰

For example, a new study by the Institute for Social Science Research at the University of Alabama found that Alabama children attending private schools on a taxpayer-backed *scholarship* program are not showing significant improvement on standardized tests scores.¹¹ *Scholarship* students frequently outperformed their lower income Alabama public school counterparts, but not the state as a whole.¹² *Scholarship* students also were not likely to boost their own test scores. The study concluded, “Overall, the results indicate that over time participating in the scholarship program does not, on average, yield a significant improvement on standardized tests scores.”¹³ Interestingly, while notable for its inability to deliver sustained academic results, the Alabama program also diverts millions of dollars from public schools.

Conclusion

Under current regulations, tuition tax credit program donors can receive a federal windfall with funds that should further the public good ~ at the expense of state and federal budgets. The consequential reduction of federal tax dollars means that local schools suffer. NSBA supports the proposed regulation eliminating the tax shelter that allows taxpayers to profit through donations to private schools under state tuition tax credit programs. And, NSBA urges the Internal Revenue Service to ensure the proposed regulation does not create a carve out for state tuition tax credit programs, effectively creating a separate unaccountable system of publicly funded education.

Sincerely,

¹⁰School Choice: What the research says, Center for Public Education, 2017, available at http://www.centerforpubliceducation.org/system/files/School%20Choice%20Full%20Report_0.pdf.

¹¹Study Questions if Alabama Scholarship Program Shows Gains: By Kim Chandler, Associated Press Sept. 12, 2018, available at: <https://www.usnews.com/news/best-states/alabama/articles/2018-09-12/study-questions-if-alabama-scholarship-program-shows-gains>.

¹²*Id.*

¹³*Id.*



Thomas J. Gentzel
Executive Director & CEO