COUNCIL on FOUNDATIONS

Charitable Deduction

Issue Paper

> ***We Urge You to Demonstrate Your Support for Philanthropy by:***
>
> - Supporting legislation to expand tax incentives for charitable giving, such as allowing all taxpayers to claim the charitable deduction.

Issue

The charitable deduction is tax provision which allows individuals to reduce their taxable income by the amount of the charitable contributions they make if they itemize their deductions. As a result, taxpayers generally are not subject to federal income taxes on money they give away to charities. Some limits may apply depending on the type of gift (cash, stocks, and real property, for example) and the type of organization receiving the gift.

Position

The Council strongly supports enacting a universal charitable deduction to mitigate the unintended negative consequences of tax reform.

Rationale

The year 2017 marked the 100th anniversary of the charitable deduction. This tax provision recognizes the time-honored American tradition of contributing personal wealth to strengthen communities and support those in need.

A calculation of the deduction suggests that for every $1 subject to the charitable deduction, communities receive nearly three times as much in public benefit.

The charitable deduction was not specifically altered under the tax reform legislation that passed in late 2017. However, leaving the structure of the charitable deduction unchanged failed to account for changes made elsewhere in the tax code that will likely have indirect, negative consequences on charitable giving—such as:

- Nearly-doubling the standard deduction;
- Decreasing the top marginal income tax rates; and
- Doubling the threshold for the estate tax.

A number of studies report consistent estimates that enacting such changes to the tax could would decrease charitable giving by anywhere from $13.1 billion to $16 - $24 billion. The congressional Joint Committee on Taxation (JCT) also estimates that number of taxpayers and amount they claim in charitable deductions will decrease by approximately 40% (or, $95 billion) under the House bill.

The nearly-doubling of the standard deduction will decrease the number of taxpayers who itemize. JCT estimates that the number of taxpayers who will itemize their taxes in 2018 will decrease by 61% from 2017 as a result of the tax reform legislation—leaving only 18 million of the predicted 175.8 million taxpayers with access to the charitable deduction.

Doubling the threshold for the estate tax from $5 million to $10 million will also likely have a chilling effect on charitable giving—particularly with regard to use of the charitable deduction with bequests. In 2016, bequests made up 8% (or $30.36 billion) of total charitable giving in the United States. Other estimates suggest that an absence of the estate tax could reduce charitable giving through bequests by anywhere between 12 – 37%.

Relevant Policy & Legislation

War Income Tax Revenue Act of 1917. This piece of legislation—passed by the 65th Congress and signed into law by President Woodrow Wilson—established the charitable deduction.

H.R. 1, Tax Reform Act of 2014. This bill, introduced in December of 2014 by then Chairman of the House Ways & Means Committee Dave Camp (R-MI-4), was the culmination of tax reform discussions during Camp's tenure as Chairman and was intended for use as a discussion draft for sparking momentum toward comprehensive tax reform.

With regard to the charitable deduction, this bill proposed a 2% floor on the charitable deduction; a change to the AGI limitations for certain types of contributions; a repeal of the Pease limitation that reduced certain itemized deductions for high-income tax payers; a phase-out of itemized deductions by increasing the standard deduction; limits to the amount individuals can claim for gifts of property; and an extension of the deadline to claim the charitable deduction to April 15th.

S. 1343/H.R. 2916 CHARITY Act of 2017 (Charities Helping Americans Regularly Throughout the Year).

Senators John Thune (R-SD) and Bob Casey (D-PA), with Pat Roberts (R-KS) and Ron Wyden (D-OR), introduced the Charities Helping Americans Regularly Throughout the Year

(CHARITY) Act in the Senate on June 13, 2017. On June 15, 2017, Reps. Mike Kelly (R-PA) and Earl Blumenauer (D-OR) an identical version of this bill in the House.

The bill includes sense of the Senate language stating that "Congress should ensure that the value and scope of the deduction for charitable contributions is not diminished during a comprehensive reform of the tax code." Additionally, this bill would expand the IRA charitable rollover to allow for distributions to donor advised funds (DAFs), as well as simplifying the private foundation excise tax from the current two-tiered structure to a flat rate of one percent.

H.R. 1, Amendment of 1986 Code (Tax Cuts and Jobs Act)

After the House and Senate passed differing versions of tax reform, the bill underwent the conference committee process to iron-out the differences between the two versions of the bill, and a final version of the bill was reported out of committee on Friday, Dec. 15, 2017. The legislation was subsequently signed into law by President Donald Trump on Dec. 22, and took effect on Jan. 1, 2018.

The overall impact of this bill will likely reduce charitable giving by billions of dollars and weaken the ability of charities across our nation to improve their communities. While this bill maintains charitable contributions as an itemized deduction, the bill increases the standard deduction and disallows certain other present-law itemized deductions. As a result, fewer taxpayers will itemize under H.R. 1 than under previous law, therefore limiting the number of taxpayers who will have access to the benefit of this deduction. Joint Committee on Taxation (JCT) has estimated that this will lead to a reduction of approximately $95 billion in charitable deductions in 2018.

H.R. 5771, Charitable Giving Tax Deduction Act

On May 10, 2018, Reps. Chris Smith (R-NJ) and Henry Cuellar (D-TX) introduced the Charitable Giving Tax Deduction Act to enact a clean, uncapped, above-the-line charitable deduction.

If passed, this bill would help to mitigate the unintended negative consequences of tax reform on charitable giving by expanding the incentive for non-itemizing taxpayers to contribute to charities.

RESOURCES

Indiana University, Independent Sector Research on Tax Policy and Charitable Giving: *https://www.independentsector.org/wp-content/uploads/2017/05/tax-policy-charitable-giving-finalmay2017-1.pdf*

Council on Foundations Summary of Tax Reform Act of 2014: http://www.cof.org/sites/default/files/documents/files/Tax%20Reform%20Act%20of%202014--Public%20Summary_0.pdf

Tax Policy Center Estimates on Charitable Provisions: http://www.urban.org/research/publication/preliminary-estimates-impact-camp-tax-reform-plan-charitable-giving/view/full_report

Charitable Giving Coalition: http://protectgiving.org/

Council on Foundation Summary and Analysis of H.R. 1 (115th): https://www.cof.org/page/council-foundation-summary-and-analysis-tax-cuts-and-jobs-act-hr-1

Congress of the United States Joint Committee on Taxation Memorandum: https://www.cof.org/sites/default/files/documents/files/JCT%20Charitable.pdf

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