August 6, 2018

The Honorable Mick Mulvaney
Director
The White House Office of Management & Budget
725 17th Street, NW
Washington, DC 20503

RE: RIN: 1545-BO89, SALT Credits and Charitable Contributions

Dear Director Mulvaney:

On behalf of 22 national organizations that support public funding for public schools, we write to request that the administration ensure that the regulations you will soon release titled "SALT Credits and Charitable Contributions," RIN: 1545-BO89, close the loophole that would allow donors to receive state tax credit voucher programs ("tuition tax credits") from taking both federal and state tax benefits. [1] Donors should not be granted a full federal charitable deduction when they also receive a significant state tax credit by donating to private schools. In addition, tuition tax credit voucher programs lower federal revenue collections that could be used to support public schools. Any effort to overhaul the regulatory treatment of donations benefiting from state charitable tax credits must not create a special carveout for donations to private schools.

The profiteering facilitated by these tax credit vouchers schemes is neither accidental nor incidental. Tax accountants, private schools, and others in states with tax credit voucher schemes have long marketed these programs as tools for exploiting the federal charitable deduction.[2] In the wake of the new federal tax law, financial advisors are urging clients to take advantage of the voucher tax credit scheme with new vigor, as a way to circumvent the $10,000 cap on state and local tax deductions.[3] Accountants in Alabama and elsewhere are marketing existing state tax credits for private schools using the exact same sales pitch that drew the IRS's attention to newer charitable tax credits in New York and other states.[4] For example, an accounting firm's tax advice that has been promoted by the Medical Association of Alabama explains that making a "donation" to support private school vouchers is "an opportunity to preserve your state tax deduction." In Pennsylvania, meanwhile, a similar tax credit is being touted as a tool for "bypassing the $10k state and local tax deduction limitation." In Alabama, a surge of interest among taxpayers seeking to circumvent the state and local tax cap led to the state's entire allotment of tax credits ($30 million) being claimed more quickly this year than at any time in the program's history.[5] Specifically, we urge the administration to review the tax credit voucher programs in Alabama, Arizona, Georgia, Kansas, Louisiana, Montana, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Virginia. A review of these programs will demonstrate that

[1] Guidance on Certain Payments Made in Exchange for State and Local Tax Credits, Notice 2018-54. (proposed May 23, 2018).
[2] Sasha Pudelski & Carl Davis, Public Loss Private Gain: How School Voucher Tax Shelters Undermine Public Education, AASA the School Superintendents Association, Institute on Taxation and Economic Policy (2017).
[3] Trisha Powell Crain, *$30 Million in AAA Tax Credits Already Claimed for 2018*, AL.com (Apr. 27, 2018).
[4] Carl Davis, The Other SALT Cap Workaround: Accountants Steer Clients Toward Private K-12 Voucher Tax Credits, Institute on Taxation and Economic Policy (2018).
[5] Carl Davis, SALT/Charitable Workaround Credits Require a Broad Fix, Not a Narrow One, Institute on Taxation and Economic Policy (2018).

these states are issuing credits up to 100% of the amount contributed to tax credit voucher programs, and if the IRS allows a federal deduction as well, the tax benefits will often exceed the size of the donation.[6] In other words, some taxpayers—mostly wealthy individuals guided by financial advisors—in these states are turning a profit by making so-called "donations" to voucher organizations. This is a gross misuse of the federal charitable deduction and is ripe for IRS scrutiny.

If the IRS maintains its current stance on tuition tax credit voucher programs while at the same time rejecting the newest charitable tax credits enacted by states such as New York and New Jersey, then it will create a tax preference for donations to support private schools over public schools. Allowing a full tax deduction for donations to private schools, but disallowing the deduction for donations to public schools would be grossly unfair because it would provide a public subsidy for private services while disallowing a public subsidy for public services. This loophole for private schools comes at the expense of general revenues for public education, infrastructure, public health, and other programs.

Please use this opportunity in issuing regulations relating to state charitable tax credits to close the federal tax loophole that allows individuals to turn a profit by "donating" to voucher programs operating in the states. These tax credit shelters are not just a misuse of the federal charitable deduction, but also a federal subsidy for private schools at the expense of public schools and should be nullified.
Sincerely,

AASA, The School Superintendents Association
American Federation of Teachers
American Humanist Association
Americans for Religious Liberty
Americans United for Separation of Church and State
Association of Educational Service Agencies
Center for Inquiry
Council for Exceptional Children
Council of Administrators of Special Education
Freedom From Religion Foundation
GLSEN
Learning Disabilities Association of America
NAACP
National Association of Elementary School Principals
National Association of Secondary School Principals
National Council of Jewish Women
National Disability Rights Network
National Education Association
National Rural Education Association
Network for Public Education
School Social Work Association of America
The Arc of the United States

cc: The Honorable Betsy DeVos, Secretary of Education
The Honorable Steven Mnuchin, Secretary of the Treasury

[6] Carl Davis, Tax Bill Would Increase Abuse of Charitable Giving Deduction, with Private K-12 Schools as the Biggest Winners, Institute on Taxation and Economic Policy (2017).