



ALLIANCE FOR CHARITABLE REFORM LETTER TO W&M CHARITABLE/EXEMPT ORGANIZATIONS WORKING GROUP

To: tax.reform@mail.house.gov

CC: Zachary.Rudisill@mail.house.gov, Miguel.Martinez@mail.house.gov

Subject: Comments: Charitable/Exempt Organizations Tax Reform Working Group

April 15, 2013

The Honorable Dave Camp
Chairman, Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Sander Levin
Ranking Member, Committee on Ways & Means
1106 Longworth House Office Building
Washington, DC 20515

Dear Chairman Camp and Ranking Member Levin:

The Alliance for Charitable Reform (ACR) was founded in 2005 as a project of The Philanthropy Roundtable, which represents over 600 private donors and foundations across the United States. ACR educates legislators and policymakers about the central role of private giving in American life and the importance of protecting philanthropic freedom – the ability of individuals and private organizations to determine how and where to direct their charitable assets. Active in Washington, D.C. and throughout the states, ACR seeks to prevent policies that would diminish private giving, limit the diversity of charitable causes Americans support, or place undue government regulations on philanthropic organizations.

The charitable sector benefits from a generous nation. Of the nearly \$300 billion given to charitable causes in 2011, individuals donated nearly \$218 billion and, according to The Foundation Center, foundations gave almost \$42 billion to charities.

As Congress moves towards tax reform, our members are hopeful Congress will strongly consider policies that will lead to more giving while carefully guarding against policies that could unintentionally thwart giving. Towards those ends, ACR has the following recommendations in three areas that affect private giving: the charitable deduction, the Pease limitation, and the private foundation excise tax.

Charitable Deduction

Recently, the biggest threats to philanthropic freedom at the federal level are proposals to limit the charitable deduction. These proposals are estimated to result in significant decreases in private giving. ACR urges Congress to, at a minimum, in the absence of significant tax reform, do no harm and preserve the charitable deduction.

The charitable deduction is unique and should be considered separately from all other tax deductions and credits. It is the only tax provision that encourages individuals to give away a portion of their income to those in need. Every other tax policy encourages individuals to consume more or save more for themselves.

Further, charitable giving is at the core of our American values. While the income tax system was adopted in 1913, and tax rates raised in 1917 to help pay for World War I, the charitable deduction was simultaneously created. Understanding the unique nature of private giving, lawmakers exempted contributions to these charities in the form of the charitable deduction. Lawmakers worried that as tax rates rose Americans would have less to give to charities and without an exemption (or charitable deduction), those most in need would bear the brunt.

Just as those who came before us, Americans today believe we must preserve the deduction. A United Way survey last November found that nearly 80 percent of Americans believe that reducing or eliminating the charitable tax deduction would have a negative impact on charities and the people they serve. The study also found that two-thirds of Americans oppose reducing the charitable tax deduction in any way. The IRS recently released data showing that of those Americans who itemized and took the charitable deduction, 43.9% had adjusted gross income (AGI) of \$50,000 to \$100,000, 33% had AGI between \$100,000 and \$200,000 and 11% had AGI over \$200,000.

Furthermore, charities provide goods and services more quickly, effectively, and efficiently than government. Historically, the government has relied upon the nonprofit community during times of need, such as natural disasters. This was made abundantly clear during the relief efforts for Hurricanes Katrina and Sandy. In fact, understanding the importance of charitable giving, Congress has in the past enacted temporary tax incentives to encourage private giving to those charities involved in targeted relief efforts.

Yet in the last few years, policymakers and President Obama have repeatedly considered limits or caps on the value of the charitable deduction as a way to solve our government's fiscal crisis. Estimates show capping the charitable deduction at 28 percent (which is again proposed in President Obama's FY14 budget) would reduce giving by up to \$9.4 billion a year, according to the American Enterprise Institute. Again, ACR urges Congress to, at a minimum, do no harm and preserve the charitable deduction.

Pease Limitation

While cuts, caps or limits to the charitable deduction are ill-advised, so are other taxes on charitable giving, like the Pease limitation. This tax reduces the amount of itemized deductions, including the charitable deduction, that certain taxpayers are allowed. This provision affects those taxpayers with adjusted gross incomes that exceed \$250,000.

While it is too early to discern the full effect of the recent law change that reinstated the Pease limitation, preliminary feedback from donors suggests that Pease is affecting both the timing and size of charitable gifts.

The Pease limitation is also an excellent example of needless complexity in the tax code. It requires taxpayers to make a series of calculations on a 10-line worksheet, specifically Form 1040 Schedule A. At a time when lawmakers are trying to simplify the tax code and reduce compliance cost, this provision does the exact opposite.

Finally, ACR believes that Pease sets a dangerous precedent because it covertly chips away at the charitable deduction. This hidden tax could be an easy target for raising more revenue from charities in the future, either by increasing the amount of the Pease haircut on deductions or by lowering the applicable income thresholds. We strongly urge Congress to carve out the charitable deduction from the Pease limitation.

Private Foundation Excise Tax

Current law requires private foundations to pay an annual excise tax equal to 2 percent of their net investment income. However, the tax is reduced to 1 percent in any year in which a foundation's distributions exceeds the average payout rate of the foundation, calculated over the preceding five years.

This two-tiered tax provision is simply a disincentive for foundations to increase the overall size of grants in any one year -- due to disasters, recessions or compelling projects -- because the higher level of giving binds the foundation to higher levels of giving in the future. And if the higher levels are unsustainable because, for example, of the foundation's weaker investment returns, the foundation may not qualify for the lower 1% tax rate.

Moreover, many foundations hire staff and outside auditors to manage the level and timing of their grantmaking to avoid the higher level of tax so as to preserve their funds for charities' needs. These foundations hire experts to ensure compliance and accurately estimate the fair market value of assets throughout the applicable tax year. One level of tax for all private foundations would eliminate this uncertainty and complexity.

ACR supports establishing a flat rate of 1 percent, which will eliminate the perverse incentive that often deters foundations from increasing grantmaking in times of greater need.

Conclusion

In sum, philanthropy is an indispensable laboratory for innovation and entrepreneurship, addressing many of society's greatest challenges. Foundations, nonprofits, and charities offer creative solutions to meet the multitude of unique and diverse needs of America's communities. Philanthropy is and will

continue to be a vital part of our society and our economy, and ACR urges Congress to do everything they can to protect, promote and expand charitable giving.

Sincerely,

Sandra Swirski
Executive Director
The Alliance for Charitable Reform