



Borough of Hillsdale

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John J. Ruocco, Mayor

May 11, 2018

The Honorable Steven Mnuchin
United States Treasury Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington D.C. 20220

The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington D.C. 20224

Dear Secretary Mnuchin and Acting Commissioner Kautter:

I am writing to urge the Internal Revenue Service to issue guidance expeditiously on the tax treatment of donations to charitable trusts that have recently been authorized for local governmental entities in New Jersey.

The NJ State Legislature and Governor have enacted and signed legislation intended to help mitigate the impact of the new federal tax law which caps the exemption of state & local income taxes (SALT) to \$10,000 for taxpayers who itemize deductions. It authorizes (but does not require) counties, municipalities and school districts to create charitable trusts into which taxpayers could “donate” funds that would be used to offset most if not all of their property tax liability. Since the new federal tax law did not place a cap on itemized charitable donations, this latest action by New Jersey is intended to help our NJ residents mitigate the effect of the cap on SALT deductibility.

Although the NJ legislation specifies that the charitable trusts should be maintained in separate bank accounts for specific public purposes of the local unit, and must be materially narrower than the local unit’s general purpose, it does not specify what an appropriate public purpose might be. The NJ enacting legislation does not address other typical structural requirements for charitable organizations, nor does it address how these charitable funds are to meet the legal, governance, and operational requirements normally required of 501(c)(3) organizations. It does charge both the NJ Department of Community Affairs Division of Local Government Services and the NJ Department of the Treasury with the responsibility for developing and implementing regulations. However, the framework for the charitable trusts as laid out in the NJ legislation is extremely complicated. It could result in the creation of thousands of new organizations to carry out the intent of the bill, each with its own fund administrator, administrative requirements, and fund management.

As the Mayor of Hillsdale, a town with a population of approximately 10,500, I am concerned that implementation requirements of this bill may prove to be burdensome, confusing, and costly for our residents. While those costs may well be worth the effort if they provide relief to NJ taxpayers who itemize their deductions, many tax experts believe the bill is not on sound legal ground. In particular, there is doubt over whether payments intended to satisfy local property taxes can be viewed as charitable "donations." Mayors across the state are concerned with the prospect that, after incurring one time and continuing expenses to set up and maintain the new charitable trusts, the IRS may rule that the structures are illegal. Not only would this prove costly for municipalities and school superintendents who spent resources to establish & maintain these trust funds, it could place our residents in jeopardy of significant tax liabilities and penalties after their tax returns have been filed. Local units would also face the costs of unwinding the arrangements. Of course, all these set-up and unwinding costs will be borne by our taxpayers.

All this can be avoided if the IRS expeditiously rules on the validity (or lack thereof) of the charitable trust arrangement under federal tax law. That would provide NJ residents with certainty about their tax treatment as itemized deductible expenses when filing federal tax returns. In the same way that businesses abhor uncertain economic and tax requirements and therefore cut back on investments, individuals likewise restrain their spending and investment plans for the same reason. This is unhealthy for them as well as for the general economy. It also harms future tax revenue at both the federal and state levels. I urge you to move as quickly as possible in deciding whether donations made in lieu of property tax payments to these newly authorized NJ charitable trusts qualify as charitable deductions under federal tax regulations for those who itemize their deductions.

Respectfully,

John J. Ruocco
Mayor, Borough of Hillsdale

Cc: The Honorable Josh Gottheimer
NJ 5th Congressional District

Hillsdale Borough Council