



November 26, 2018

The Honorable Charles Grassley
United States Senate
Washington, DC 20510

The Honorable Richard Neal
United States House of Representatives
Washington, DC 20515

Dear Senator Grassley and Representative Neal:

On behalf of the National Council of Nonprofits and our network of more than 25,000 organizational members, we write to congratulate you both for electing to become chairs of the tax-writing committees in Congress and assuming the lead in revising tax policies that work fairly for all Americans. In particular, we express deep appreciation for your public statements in support of working in a bipartisan manner in search of solutions to the many challenges our country faces. We pledge our eagerness to work with you to identify and implement responsible solutions and reforms.

Tax policy does far more than just define the nonprofit sector as tax exempt; whether intentionally or not, it also can promote fairness or its opposite, pick winners and losers, and support or ruin well-managed operations trying their best to improve the lives of others. We believe that the commencement of your chairmanships provides the perfect opportunity to design tax policies that intentionally promote stronger nonprofits and stronger communities. To that end, we offer the following recommendations for your consideration and action. These ideas reflect the perspective of the charitable nonprofit community, a major segment of the U.S. economy that employs more than 14 million taxpayers and interacts in many ways with the Department of Treasury and the Internal Revenue Service. The National Council of Nonprofits works with and through our members – the nation’s largest network of nonprofits – to identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the hundreds of million people they serve in local communities throughout the country.

First, Do No Harm

The longstanding Johnson Amendment must be protected. For 64 years, it has successfully shielded charitable nonprofits, houses of worship, and foundations from the rancor of divisive partisanship and schemes by the unscrupulous to profit from tax deductions for disguised political campaign contributions. The Johnson Amendment accomplishes this by limiting tax-exempt status and the ability to receive tax-deductible charitable donations only to organizations that refrain from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office. The 501(c)(3) nonprofit community – frontline charities, churches, and foundations – stands strongly united in support of the federal law and in opposition to those attempting to politicize the charitable sector in their quest for partisan and financial gains. We ask that you pledge to stand with the broad 501(c)(3) community and state charity regulators by committing to preserving current law and rejecting all efforts to repeal or weaken this vital, and we believe existential, protection. You can learn more at www.GiveVoice.org.

Restoring Balance, Removing Impediments

Nearly 96 percent of America’s charitable nonprofits report annual budgets of less than \$5 million, and 92 percent bring in less than \$1 million per year. Many of these small- and mid-sized charitable organizations already have been struggling financially to advance their missions of improving lives, uplifting faith, and strengthening communities. So, it is quite troubling that the 2017 Tax Cuts and Jobs Act, which significantly reduced taxes for for-profit corporations and wealthier individuals,

attempts to defray some of the tax law's lost revenues by imposing new taxes on tax-exempt organizations. We ask that you lead efforts to correct these unjust outcomes that threaten to undermine the sustainability of community-based charitable organizations:

- **Unrelated Business *Income* Taxes on Nonprofit Transportation Benefits Expenses:** The new tax law, at Section 512(a)(7), imposes a 21 percent unrelated business *income* tax on nonprofits for expenses they incur for providing transportation fringe benefits to their employees, such as parking and transit passes. Reportedly, the justification offered for imposing a new income tax on nonprofit expenses was to ensure “parity” between for-profits and nonprofits regarding qualified transportation benefits. To most people, this rationale is flawed at its core. For-profit employers previously paid taxes on profits at a much higher tax rate and could deduct their expenses for providing transportation benefits to their employees. The tax deduction was an inducement for those employers to provide the employee benefit. The 2017 tax law dramatically lowered the taxes that for-profit businesses will now pay, if and when they have profits, and, as a minor reduction in the cost of the overall tax legislation, repealed the deductibility of the costs of the transportation benefits. Nonprofit employers, on the other hand, never had a deduction for these expenses and, importantly, never provided transportation benefits to gain a tax deduction. Rather, nonprofits have always provided transportation benefits to attract and retain workers, while helping to reduce traffic and air pollution. Nonprofits received little, if any, gains under the Tax Cuts and Jobs Act and yet are now subject to a new, illogical income tax on transportation benefits in the name of “parity.” We and many in the community consider the “parity” argument a false equivalency, and believe that repeal is appropriate. Please read the [National Council of Nonprofits' comments](#) to Treasury and the IRS and [blog posting](#) for more information.
- **Unrelated Business Income Taxes on “Separate” “Trade or Business”:** New Section 512(a)(6) of the tax code directs nonprofits “with more than 1 unrelated trade or business” to somehow compute their unrelated business income (and related losses) earned “separately with respect to each such trade or business.” The law does not define what constitutes a “separate” trade or business, creating uncertainty about how nonprofits are supposed to document, compute, and report unrelated business income and losses. The tax change, which imposes unique liabilities on nonprofit organizations that are not assessed against for-profit businesses, went into effect on January 1, 2018, and has been subject to three separate quarterly estimated payments. Yet, the Treasury Department and IRS have yet to finalize the guidance needed to calculate those payments, and the guidance they have provided – calling on nonprofits to sort through hundreds of possible classification codes in the North American Industry Classification System – would inject further uncertainty, complexity, and expense into an already burdensome tax regime. The new tax is unfair and unjustified; it must be repealed. Please read the [National Council of Nonprofits' comments](#) to Treasury and the IRS and [blog posting](#) for more information.
- **Paid Leave Tax Credit:** The 2017 tax law included new Section 45S, which provides a generous tax incentive for some employers to pay their employees who take family and medical leave. The incentive comes in the form of an income tax credit, something that nonprofit employers cannot utilize as tax-exempt entities. As a result, the tax law once again provides tax cuts and, with this provision, tax credits to for-profit employers, but extends no benefit to the nonprofit employers, which collectively employ more than 10 percent of the U.S. private workforce. This oversight in the law is easily remedied by permitting nonprofits to apply the credit to the payroll and other taxes they do pay. We urge you to include this common sense and fair solution in any tax legislation you advance in the future.

Every dollar taken from nonprofit entities as a tax is a dollar diverted from missions of serving individuals and communities. That's why two other new taxes merit highlighting here, even though

they do not affect most charitable nonprofits. **Taxing compensation** above an arbitrary level undercuts the ability of charitable organizations to hire the most qualified talent to lead the significant work of nonprofits. The new **tax on the endowment returns** of certain institutions of higher education is unsound policy objectionable to all charitable organizations that have the foresight and ability to build reserves that are dedicated to advancing their missions. We ask that the tax committees resist the urge to invade the boardrooms of independent organizations and to refrain from overriding the fiduciary-based decisions of trustees with political judgments that do not take into account the challenges and solutions that these local experts deal with every day.

Strengthening Charitable Giving Incentives

Experts from across the political spectrum agree: the 2017 tax law significantly reduced tax incentives for Americans to give to the important work of charitable organizations across the country. While the law lowered tax rates and, in some cases, simplified future tax filings, there are undeniable adverse consequences. Early data already show declines in charitable giving, findings that likely will be fully documented when data are available in 2019 and beyond. That's why we and nonprofits across America call for immediate tax-law changes to provide stronger tax incentives that help taxpayers give back to good works in their communities. We briefly highlight three potential solutions, all of which are needed:

- **Enable all Americans to Claim Charitable Tax Deductions:** The doubling of the standard deduction means that 21 million fewer taxpayers will receive a tax benefit for giving back to their communities. While individuals give to the charities and missions they believe in, the evidence is clear that people give more because of the tax incentive. The removal of the incentive for 21 million taxpayers threatens to reduce giving by billions of dollars, meaning that giving will decline and community needs will not be met. We believe strongly that all taxpayers – and not just those who itemize – should have equal access to tax incentives to support their communities by donating to the work of charitable nonprofit organizations. Therefore, we urge your support for the creation of a **universal or non-itemizer charitable deduction** in the tax code.
- **Extend the IRA Charitable Rollover to Retirement Security Plans:** Another solution to the expected decline in charitable giving is a proposal to expand the IRA Charitable Rollover to allow seniors to make tax-free rollovers from their IRA accounts to charities through life-income plans (charitable gift annuities or charitable remainder trusts). In addition to providing resources for charitable works, the approach would promote greater retirement security for seniors to help ensure they do not outlive their resources. We believe that the [Legacy IRA Act](#) deserves serious consideration now or in the coming Congress.
- **Modernize the Volunteer Mileage Rate:** Volunteers who drive their vehicles in furtherance of a nonprofit's mission may claim only 14 cents per mile as a charitable itemized deduction, a rate that has been fixed in statute for decades. In contrast, paid employees, whether working for for-profit, nonprofit, or governmental entities, may receive up to 54.5 cents per mile as reimbursement without tax consequences. Even more unfair, volunteers who receive mileage reimbursements from nonprofits must pay income taxes on any amount greater than 14 cents per mile. Congress must update the substandard volunteer mileage rate and shield individuals from tax liability for reimbursement of their reasonable expenses when helping charitable nonprofits serve more people. Learn more about the [volunteer mileage rate](#).

Overseeing Tax Enforcement

Finally, we call your attention to the serious need for your committees to conduct oversight of the Internal Revenue Service. As the primary cop on the nonprofit beat, the IRS needs resources and support of lawmakers in promoting transparency, ethical conduct, and close attention to the laws that protect nonprofits, taxpayers, and the public. Sadly, those resources and support have not been

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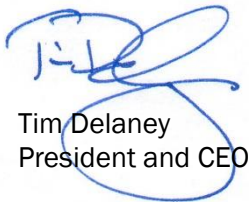
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forthcoming in recent years and, we fear, the charitable community has not received the protection from bad actors masquerading as legitimate charitable organizations that it needs to fulfill the many vital missions that serve the public good.

In our view, the most unfortunate outcome of this neglect of the IRS has been that agency's near abdication of its duties to protect the public by screening out unqualified or unscrupulous individuals who seek charitable tax-exempt status. In 2014, the IRS radically streamlined its application and approval process for certain organizations seeking tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. In doing so, it ignored strong opposition and warnings expressed by its own expert Advisory Committee on Tax Exempt and Government Entities, the National Association of State Charity Officials (state regulators of nonprofit organizations), and the National Council of Nonprofits, among others. The IRS made the change for management reasons of reducing a large backlog of applications for tax-exempt status as 501(c)(3) charitable nonprofits. Due to the adoption of the **Form 1023-EZ**, the [Taxpayer Advocate](#) has found that virtually every entity that applies using the form receives tax-exempt status – thanks in part to erroneous approvals at rates of 37, 26, and 42 percent during 2015, 2016, and 2017, respectively. And the IRS' primary obligation of preventing ineligible organizations and perhaps bad actors from receiving and exploiting tax-exempt status for personal gain is being shirked with every application processed. IRS Form 1023-EZ should be withdrawn immediately. Learn more about the challenges of and the opposition to [IRS Form 1023-EZ](#).

We end with the offer made at the outset of this letter. The charitable community stands ready to work with you both to promote stronger nonprofits and stronger communities. The recommendations we make here would certainly fulfill those dual goals. We welcome the opportunity to explore these in greater detail and to work on additional solutions that benefit the common good.

Sincerely,



Tim Delaney
President and CEO



David L. Thompson
Vice President of Public Policy