



April 15, 2015

Comments of the National Council of Nonprofits

Submitted to the Senate Finance Committee:

Individual Income Tax Working Group Business Income Tax Working Group

The National Council of Nonprofits welcomes this opportunity to provide input, data, and information from the perspective of the charitable nonprofit community to assist Senate Finance Committee Working Groups as you analyze existing tax law and examine policy trade-offs and available reform options within each group's designated area.

We understand that a hope of Committee leadership is that by "opening up our bipartisan working groups to public input," Working Group members can "gain a greater understanding of how tax policy affects individuals, businesses, and civic groups across our nation."¹ Before discussing several tax issues, we proffer to the Working Groups a question that addresses this aspiration and that we feel should be asked at the beginning and end of the consideration of any tax policy proposal affecting the work of charitable nonprofits:

How does a potential tax policy change enhance, or undermine, the ability of individuals to secure essential services, to enjoy the programs and activities that enhance their quality of life, and uplift the spirit of faith, innovation, and inspiration in local communities across America?

It is our sincere belief that the tax policy questions before you are not about the interests of nonprofits, donors, or tax administrators. Rather, we ask that you keep individuals and communities – the beneficiaries of the work of charitable nonprofits – in the forefront of your concerns. By following this guiding principle, we believe that the members of the Working Groups will quickly find common ground that supports the common good.

Charitable Giving Incentives: Empowering Community Solutions through Nonprofits

Charitable nonprofit organizations throughout the United States are dedicated to the public good; their work improves lives, strengthens communities and the economy, and lightens the burdens of government, taxpayers, and society as a whole. Consistent tax policies at the federal, state, and local levels are critical to the success of charitable nonprofits in pioneering and implementing solutions to community problems and aspirations.

The National Council of Nonprofits is committed to preserving the tax-exempt status of organizations contributing to the well-being of their communities and strengthening and expanding incentives for individuals to give their time and money to the organizations whose missions they support. In practice, this commitment means supporting existing, enhanced, and new tax and other incentives at the federal, state, and local levels that encourage individuals to volunteer their time and contribute money to the missions of all charitable nonprofits.

¹ ["Hatch, Wyden Launch New Effort to Seek Input on Bipartisan Tax Reform,"](#) news release (March 11, 2015).

Charitable Deduction

In recent years, President Obama, Senators, Representatives, bi-partisan commissions, think tanks, and academics have all put forward plans that propose changing the charitable deduction in one way or another. Yet no one knows the true impact that any of these proposals will have on the ability of charitable nonprofits to raise the resources needed to provide the programs and services that fulfill their missions. It is imperative that Congress make no change to the charitable deduction that could endanger the ability of nonprofit organizations to serve those most in need and to continue to strengthen local communities across America.

The debate over the charitable deduction has been misdirected by equal parts esoteric economic theory and partisan class-consciousness. From the outside it appears that too many economic scholars enjoy proposing competing theoretical forecasts without regard to the deep human need in local communities. Meanwhile, partisans appear to want to either protect or punish the wealthy, without focusing on underlying community needs, such as how to provide essential resources for services to people in need. The hungry child, shivering senior, and homeless veteran do not care what tax break a donor received so long as someone donated to the nonprofit that fed them their meal, paid for their heat, or provided temporary shelter when they were in desperate need. Much of the federal debate has focused on the wrong end of the equation: the benefits or burdens on the donor.

Capping all itemized deductions, including charitable giving, would effectively take away incentives for donations to churches and synagogues, domestic violence shelters, early childhood programs, food banks, school alumni groups, and all other charitable nonprofits, and would further reduce the ability of charitable organizations to meet the increasing need for services in their communities. An alarming 80 percent of nonprofits responding to the 2014 Nonprofit Finance Fund survey reported increased demand for their services and – for the second straight year – more than half (56%) acknowledged they could not meet the increasing demands.² We are further concerned that even an unintended change could undermine the ability of nonprofits to maintain the current level of programs and services, much less to expand them to meet those increased needs as a result of the lagging economy and policy choices being made at all levels of government.

Charitable nonprofits across America must be able to count on the current tax incentives for charitable giving if there is to be any validity to the presumptions by policymakers that nonprofit organizations will be there to fill the gaps when governments at all levels cut programs that serve people. Congress should take action to *encourage charitable giving* rather than *discourage* individuals from giving to organizations that are making a real difference in our communities – thereby reducing the burdens on government as a result.

In conclusion, we believe the views expressed in January 2014 by 33 Senators in support of the work of charitable nonprofits in communities remain equally true today: “The charitable deduction is unique. It is the only provision that encourages taxpayers to give away a portion of their income for the benefit of others. For this reason, it is not a loophole, but a lifeline for millions of Americans in need.”³ We urge the Working Groups to support retention of the charitable deduction as core to the ability of Americans to help each other and to give back to their communities.

Other Charitable Giving Incentives

While these comments are submitted to the Working Groups empanelled to consider elements of a bipartisan *comprehensive* tax reform package, a broad cross-section of the charitable nonprofit

² [2014 State of the Nonprofit Sector](#), Nonprofit Finance Fund (April 2014).

³ [Letter to Senate Finance Committee Leadership](#) “to underscore the importance of protecting the full value and scope of the charitable deduction during a comprehensive rewrite of the tax code.” (January 23, 2014)

community urges all Senators on the Senate Finance Committee to recognize that there is no legitimate reason to delay enactment of the charitable giving incentives incorporated in the House-passed America Gives More Act (H.R. 644).⁴ The components of the America Gives More Act are needed to promote and ensure support for the work of charitable nonprofits, especially when demand for nonprofit services continues to rise and donations are not keeping up with demand. Each incentive has proven to be effective, yet Congress has repeatedly let them expire, creating uncertainty around giving due to the on-again/off-again nature of temporary extenders:

- The **enhanced food donation tax deduction** provision would raise the cap on giving and allow small businesses donating wholesome excess food to a qualified nonprofit to take the same enhanced tax deduction C corporations have been permitted to take since 1976. Yet, further delay in restoring the giving incentive means that nutritious food available today will end up in landfills rather than on dinner tables because it is often cheaper to discard excess produce, meat, and fish than to refrigerate and transport it to food banks. To be direct, hungry children who could be fed this month with food donations incentivized by this tax provision will suffer until Congress restores the incentive in December, as happened in 2014 and 2012.
- The **enhanced tax deduction for conservation easement donations** has helped America's land trusts work with farmers, ranchers, and other modest-income landowners to increase voluntary land conservation by a third, to over a million acres a year, when the tax incentive is in effect. The process for making the donation of conservation easements is expensive and time consuming, sometimes taking up to 18 months to complete. Clearly a retroactive or short-term window of opportunity to make donations is not helpful to those unwilling to incur expenses of hiring the required surveyors, lawyers, and other professionals, and gamble on whether Congress will renew the incentive in a timely manner.
- The **IRA charitable rollover** option, which allowed individual taxpayers aged 70½ and older to donate up to \$100,000 from their individual retirement accounts (IRAs) directly to charitable nonprofits, has provided needed support for the work of social service programs, religious organizations, arts and cultural institutions, schools, healthcare providers, and other charitable organizations – all of which benefit Americans across the country. Repeated delays in restoring the incentive take their toll. A recent survey by the Urban Institute found that more than two-thirds (68.9%) of community foundations report that donations have been lost, delayed, and/or reduced as a result of the uncertainty of the IRA Charitable Rollover provision being renewed by Congress.⁵

The America Gives More Act would also provide needed simplification to the excise tax that private foundations pay, thereby making more funds available for the work of charitable nonprofits in communities.

By failing to make permanent the IRA rollover, and the enhanced deductions for donations of food inventories and land conservation easements and instead only passing them on a temporary basis late in the year, Congress has been undermining communities by creating grave uncertainty and disincentives for charitable giving. Consequently, communities needlessly suffer. Fortunately, the nearly two-thirds of the Representatives who voted for the America Gives More Act in February, and a majority of the Senators who say they will support the bill if leaders will bring it up for a vote, recognize the harm that congressional inaction inflicts on the work of charities.

⁴ [Nonprofit Letter in Support of Passage of the America Gives More Act, H.R.644](#), (March 20, 2015).

⁵ [Survey of community foundations and the IRA Charitable Rollover provision](#), Urban Institute (March 2015).

We encourage the members of the Working Groups to quickly come to the same conclusion as millions of Americans and insist on a swift vote on the America Gives More Act (H.R. 644). In keeping with the question we asked at the outset of these comments, the people who benefit from the work of nonprofits in your communities need your support and action today.

Advocacy Rights: Promoting Civic Engagement

Advocacy is a core component of the mission of charitable nonprofits to address problems and have impacts in their communities. The nonprofit sector is vital for democracy to be successful; the rights of the people to gather through nonprofits to speak freely about public policies must be preserved. From before the time our nation was formed through today, individuals have assembled in groups to advocate for the advancement of the issues and concerns of their times. As safe havens for people to gather to amplify their collective voices, charitable nonprofits have a duty to stand up and speak out for the public good and promote a more just and equitable society. Charitable nonprofits often provide a voice for those individuals and groups who are unable to speak for themselves. Likewise, nonprofits share the responsibility to promote greater engagement of the citizenry, open elections, and open government. Therefore, the National Council of Nonprofits opposes new restrictions on the advocacy rights of charitable nonprofits.

We remain steadfast in our support for the tax-law ban on electioneering and partisan political activities because we believe that nonpartisanship is essential to ensuring the public's trust in charitable nonprofits. A 501(c)(3) nonprofit organization does not have to wade into the political morass and take sides on candidates – positive or negative – in order to affect policies that have an impact on mission. In our hyper-politicized society, the charitable nonprofit community is, and should remain, the safe, neutral place where citizens can give, volunteer, and experience the services and missions free from ulterior motives. For this reason, we believe that the existing ban on political activity is in the best interest of individual charitable nonprofits, the nonprofit community as a whole, and the people and communities we serve.

Raise the Lobbying Expenditure Threshold: In one area of nonprofit advocacy regulation, we do recommend a change in current law. Presently, charitable nonprofits that take the 501(h) election are barred from spending more than certain graduated amounts – with expenditure ceilings that were set way back in 1976 when President Ford was in the White House. Obviously, those artificially low amounts are woefully out of date and need to be increased. Therefore, we urge the Finance Committee to update the financial threshold for nonprofit lobbying activities by increasing the levels at least to a rate adjusted for inflation, and then ensure that the threshold is automatically updated.

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In conclusion, we end as we started, by urging Working Group members to keep in the forefront of your minds those who benefit from and rely on the work of charitable nonprofits as you reconsider the many aspects of the Internal Revenue Code that touch on nonprofit resources, operations, and impact. The National Council of Nonprofits, and the many networks with and through which we operate, stand ready to assist the Working Groups and the Committee in advancing those interests.

Respectfully submitted,

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National Council of Nonprofits

The National Council of Nonprofits (Council of Nonprofits) is a trusted resource and advocate for America's charitable nonprofits. Through our powerful network of State Associations and 25,000-plus members – the nation's largest network of nonprofits – we serve as a central coordinator and mobilizer to help nonprofits achieve greater collective impact in local communities across the country. We identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the communities they serve.