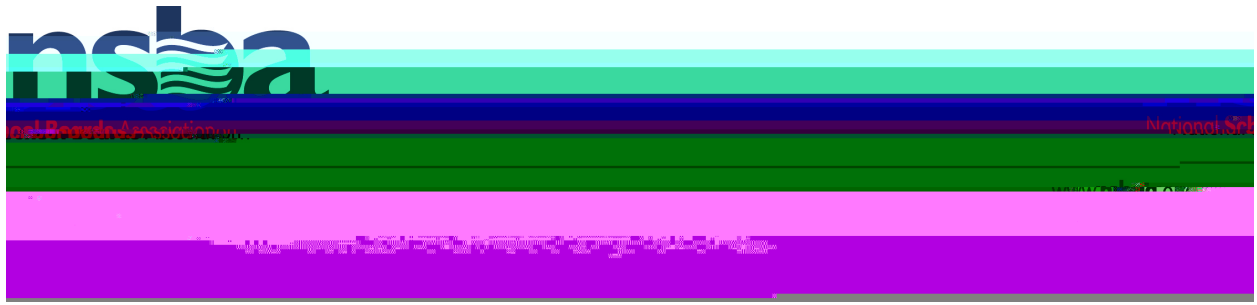




NSBA Comments on IRS Proposed Rule

Via Online Submission October 11, 2018:

www.regulations.gov

To date, there are 22 tax credit *scholarship*³ or tuition programs authorized by 18 states, which offer supersized tax credits of between 50 and 100% of the amount that taxpayers donate to support tax credit *scholarships*.⁴ These programs allow individuals and corporations to allocate a portion of their owed state taxes to private nonprofit *scholarship*-granting organizations that issue *scholarships* to K-12 students.⁵ Students awarded *scholarships* may choose among a list of private schools, and sometimes public schools outside of the district, approved by the scholarship organization. The *scholarship* is used to pay tuition, fees, and other related expenses at the chosen school.⁶ As a result, the state does not have to appropriate per-pupil education funding for those students that receive *scholarships*.⁷

In twelve states (AL, AZ, GA, KS, LA, MT, NH, OK, PA, RI, SC, VA), taxpayers profit by claiming both state tax credits and federal tax deductions. Together, these tax perks are worth more to taxpayers than the amount they initially donated. Following the passage of “The Tax Cuts and Jobs Act,” Pub. L. No. 115-97, this fact has been aggressively advertised by private schools, scholarship organizations, and tax accountants, and it has proven to be a powerful tool for convincing high-income taxpayers to engage in these schemes to redirect public dollars into private schools. It is appropriate for the IRS to scale back or deny the federal charitable tax deduction in cases where the donation is already reimbursed with a state tax credit. Doing so is essential to the integrity of the charitable deduction, which is meant to reward genuine philanthropy, not sophisticated tax planning.

Additionally, if this tax advantage were to continue, the efforts in many states – and through the Every Student Succeeds Act (ESSA) – to close achievement gaps and advance equitable education opportunities would be undermined. Our nation’s public school districts are pioneers of successful choice programs that are not dependent on tax credits, such as magnet schools, dual enrollment programs with public colleges, and charter schools. The IRS should deny the charitable tax deduction for donations that are reimbursed with a state tax credit.

subsidizing private school *scholarship* or tuition tax credit programs. The current regulation effectively provides a profitable tax shelter for wealthy donors that drains federal and state revenues to public schools and accelerates the movement of public funds into private schools. By closing the loophole, donors who see much, or all, of their donations fully reimbursed with state tax credits will no longer be allowed to double dip and receive a federal tax deduction for the same donation. Thus, the proposed regulation would correctly allow public funds to be used for public schools and public educational purposes.

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As a matter of national priority, NSBA urges the IRS to champion reforms that invest in our public schools to help prepare every student for success in higher education and in the workforce. NSBA opposes any exception or carve out to the proposed rule that would permit donors to obtain double tax benefits for contributions to private schools. The diminution of public tax dollars caused by such a carve out effectively reduces funding for public schools and potentially harms 90% of all school-aged children.⁹

If the IRS issues a final regulation denying or reducing the charitable deduction for donors who benefit from state tax credits, that regulation should apply with equal force to those who donate to private schools. In functional terms a federal tax deduction, whether in the form of a private school donation or a state tax credit, is simply a rose by another name. Both function to divert public dollars from public schools. It would be indefensible for the IRS to overhaul its treatment of state charitable tax credits without addressing the longest-running and most egregious tax shelter operating in this area: profiteering by federal taxpayers who financially support private school *scholarship* programs. The IRS should not heed comments and pressure from school choice advocates who seek a *scholarship* or tuition tax credit programs carve out from the proposed regulation.

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NSBA appreciates the value of alternative educational programs within public schools. Yet, such programs should not operate to the detriment of all students. School choice, by itself, is not a guarantee of better student outcomes, and should not be supported by federal funding at higher levels than other initiatives with proven effectiveness. National studies indicate “that school choices

