



October 8, 2018

Internal Revenue Service
CC:PA:LPD:PR (REG-112176-18)
Courier's Desk
1111 Constitution Avenue, NW
Washington, DC 20044.

RE: IRS REG-112176-18

Dear Sir or Madam:

On behalf of AASA, The School Superintendents Association, representing more than 13,000 public school superintendents across the nation, I write to commend the IRS for its sensible treatment of educational scholarship programs under the State and Local Tax Credit Contribution regulation proposed on August 27, 2018.

Our organization's comments are focused on one specific aspect of the regulation you are contemplating: whether these educational scholarship tax credits have been marketed and exploited by taxpayers seeking to avoid paying their appropriate share of federal taxes with the knowledge and implicit consent of state lawmakers.

As early as 2013, we have found scholarship granting organizations, private schools, tax attorneys, accountants and financial advisors advertising the profit-generating opportunities for taxpayers who donate to certain educational scholarship programs. Numerous examples abound of how this tax shelter has been advertised, but here are a few that we wanted to highlight in particular:

- In 2013, a tax lawyer in Alabama noted on her firm's website that for taxpayers subject to the AMT, "donating" will actually "put money in your pocket."¹
- In 2015, a wealth management firm in Virginia noted that a taxpayer can enjoy a savings that is "more than their original donation" before going on to explain that "There is very little logic to the tax code. Even if you don't agree with the law, you should take advantages of the tax benefits."²
- In 2017, Pay it Forward Scholarships, which describes itself as "the largest, easiest and fastest scholarship organization in Georgia" made clear to donors that stacking state credits and federal deductions on the same donation means that "you will end with more money than when you started."³
- Also in 2017, Pieceful Solutions Schools in Arizona explains to potential donors that "you can make money by donating!"⁴

¹ White, Ashley. "Save On Your Alabama Income Taxes and Reduce your Alternative Minimum Tax by Donating to a Scholarship Granting Organization." Hall Albright Garrison & Associates. November 18, 2013.

² Marotta, David John and Megan Russell. "Education Improvement Scholarship Tax Credits." Marotta Wealth Management. August 16, 2015. Available at: <http://www.emarotta.com/education-improvement-scholarship-tax-credits/>.

³ "Request 2018 Tax Credit." Pay It Forward Scholarships. N.p., n.d. Web. 7 Apr. 2017. <http://www.payitforwardscholarships.com/donate>. "Frequently Asked Questions." Pay It Forward Scholarships. N.p., n.d. Web. 7 Apr. 2017. <http://www.payitforwardscholarships.com/faq>.

⁴ School Tuition Organization (STO). "Pieceful Solutions Schools." N.p., n.d. Web. 11 Apr. 2017. <https://www.piecefulsolutions.com/tuition-resources/>



These types of advertisements grew in prominence following last year's federal tax overhaul. For example:

- In 2018, an accounting firm in Georgia stated that donors can “retain an important deduction and reap a monetary benefit” by contributing.⁵
- Also in 2018, an accounting firm in Alabama steered clients toward a “time-sensitive tax planning opportunity” and walked through a detailed example in which a taxpayer donating \$20,000 would later be repaid with \$27,400 in state and federal tax cuts.⁶

As to the claim that these educational scholarship programs are merely providing an accidental benefit to tax payers we ask that you consider the following. First, Florida's educational scholarship program, which is the second oldest and the largest in the nation, specifically prohibits taxpayers for receiving state and federal tax cuts that exceed their donations to the program. As early as 2001, Florida's legislature was aware of the opportunity for taxpayers to double-dip and receive a generous dollar-for-dollar tax credit as well as a federal tax deduction. Unlike the twelve states with education scholarship programs that would be impacted by this regulation, Florida responsibly designed their educational scholarship program to ensure it would not serve as a tax shelter for donors. Florida's program has grown every year by as much as 20% in some cases. Given the continued and outsized growth of Florida's program, assertions by some school choice proponents that the proposed IRS regulation ending the tax shelter will limit the growth of these programs in states and that this will “reduce the number of scholarships”⁷ and jeopardize the “future of thousands of children from low income families”^{8,9} are false and exaggerated claims that should be soundly rejected.

Second, this regulation is necessary because states are either unwilling or unable to police themselves despite widespread knowledge that a tax shelter is embedded in their education scholarship programs. In May 2017, a report published by my organization and the Institute on Taxation and Economic Policy¹⁰ describing the educational scholarship tax shelter was prominently featured by the *Atlanta-Journal Constitution*.¹¹ Georgia-specific information contained in that report was also published by the *New York Times*.¹² Despite this considerable media coverage, lawmakers expanded the Georgia tax credit in 2018 without making any changes that would shut down the tax shelter. Legislators were aware that keeping the mechanics of the educational tax credit the same would increase profiteering,

⁵Clancy, Tim. “Georgia Taxpayers That Are Limited on State and Local Tax Itemized Deductions Have Options.” Georgia Taxpayers Limited on SALT Deductions, WindhamBrannon, 20 Apr. 2018, <https://www.windhambrannon.com/news/georgia-taxpayers-limited-on-salt-deductions>

⁶ “Are You Taking Advantage of This Alabama Tax Savings Opportunity?” Are You Taking Advantage of This Alabama Tax Savings Opportunity?, CRI | Carr, Riggs & Ingram CPAs and Advisors, 24 Jan. 2018, www.cricpa.com/alabama-time-sensitive-tax-planning-opportunity/.<https://www.cricpa.com/alabama-time-sensitive-tax-planning-opportunity/>

⁷ “American Federation for Children Statement on Proposed IRS Rule.” American Federation of Children. 23 Aug. 2018, www.federationforchildren.org/american-federation-children-statement-proposed-irs-rule/

⁸ “EdChoice on Proposed IRS Rule Limiting the Federal Deductibility of Charitable Contributions.” EdChoice. 23 Aug. 2018, www.edchoice.org/media/edchoice-on-proposed-irs-rule-limiting-the-federal-deductibility-of-charitable-contributions/

⁹ Davis, Carl. “The Other SALT Cap Workaround.” Institute on Taxation and Economic Policy, Jun. 27, 2018, <https://itep.org/the-other-salt-cap-workaround/>.

¹⁰ Pudelski, Sasha, and Carl Davis. 2017. “Public Loss Private Gain: How School Voucher Tax Shelters Undermine Public Education.” AASA, The School Superintendents Association, May.

¹¹ Tagami, Ty. “School superintendents say Georgia's tax credit program is profitable for the rich.” Atlanta Journal-Constitution, 17 May, 2017, <https://www.ajc.com/news/state--regional-education/school-superintendents-say-georgia-tax-credit-program-profitable-for-the-rich/XMdbL2HIWptRwUwodGpmxJ/>.

¹² Green, Erica L. “In Some States, Donating to Private Schools Can Earn You a Profit.” New York Times. 17 May, 2017, <https://www.nytimes.com/2017/05/17/us/politics/in-some-states-donating-to-private-schools-can-earn-you-a-profit.html>.



yet they decided to open the door wider to this behavior. Similarly, in 2018 New Hampshire made changes to their program that expanded the pool of potential donors, but failed to address the well-publicized tax shelter¹³ that existed within their program, despite being discussed on the floor of the New Hampshire House of Representatives.¹⁴ While we would hope that legislatures would be alarmed by the visible profiteering occurring in their education scholarship programs, not a single state has modified their statute to end the tax shelter following our report's issuance and the considerable national and state-level media attention it has garnered. The lack of activity on the part of states to reign in the tax shelter associated with their educational scholarship programs demonstrates that the IRS must step in and force the 12 states¹⁵ with misplaced tax policies to appropriately restructure their programs.

Given the widespread use of educational scholarship programs as profitable tax shelters, and the abject failure of state lawmakers to address those shelters, we urge the IRS to keep its regulation intact. Specifically, we ask that no changes be made to the timeline regarding implementation of the regulation nor should any carve-outs be granted to educational scholarship programs, including those that were in existence prior to the passage of the 2017 Tax Cuts and Jobs Act. The mission of the IRS is to "apply the tax law with integrity and fairness to all," and any action that would enable the continuation of this tax shelter would be unfair to the taxpayers in the states that have chosen to structure their educational scholarship programs fairly as well as to taxpayers across the nation who believe a federal deduction intended to reward charitable giving should not be exploited by taxpayers to turn a profit for themselves from their donations to educational scholarship programs.

Thank you for the opportunity to comment on this important regulation.

Sincerely,

A handwritten signature in black ink that reads "Sasha Pudelski". The signature is written in a cursive, flowing style.

Sasha Pudelski
Advocacy Director
AASA, The School Superintendents Association

¹³ Duffort, Lola. "Researcher: N.H. school choice bill could create 'tax shelter' for rich." Concord Monitor. 18 Feb, 2018, <https://www.concordmonitor.com/Some-warn-bill-could-make-donating-to-ETC-program-profitable-15533972>. Moon, Jason. "With N.H. Lawmakers Focused Elsewhere, Another School Choice Bill Flies Under the Radar." New Hampshire Public Radio, 5 Mar., 2018, <http://www.nhpr.org/post/nh-lawmakers-focused-elsewhere-another-school-choice-bill-flies-under-radar#stream/0>. Moon, Jason. "N.H. Senate Passes Bill to Expand Education Tax Credit Program." New Hampshire Public Radio, 4 May, 2018, www.nhpr.org/post/nh-senate-passes-bill-expand-education-tax-credit-program#stream/0.

¹⁴ http://www.gencourt.state.nh.us/house/caljournals/journals/2018/HJ_8.pdf#page=54

¹⁵ Those states are Alabama, Arizona, Georgia, Kansas, Louisiana, Montana, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Carolina, and Virginia. Davis, Carl. "Twelve States Offer Profitable Tax Shelter to Private School Voucher Donors; IRS Proposal Could Fix This." Institute on Taxation and Economic Policy, 2 Oct., 2018, <https://itep.org/twelve-states-offer-profitable-tax-shelter-to-private-school-voucher-donors-irs-proposal-could-fix-this/>.