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Association of Christian Schools International

ACEF
ACSI Children's Education Fund

August 17, 2018

Mick Mulvaney	The Honorable Steven Mnuchin
Director	Secretary of the Treasury
Office of Management and Budget	United States Department of the Treasury
725 17th St., NW	1500 Pennsylvania Avenue, NW
Washington, DC 20503	Washington, DC 20220

Re: IRS Notice 2018-54, "Guidance on Certain Payments Made in Exchange for State and Local Tax Credits."

Director Mulvaney and Secretary Mnuchin:

We ask the IRS to narrowly address its valid concerns outlined in the Notice and to preserve federal charitable tax deductions for state-based tax credits given for student scholarships. We believe there are reasonably justifiable grounds to leave these state-created programs unhindered.

The Association of Christian Schools International (ACSI) is a nonprofit, non-denominational, religious association providing support services to nearly 24,000 Christian schools in over 90 countries. As the world's largest association of Protestant schools, ACSI serves nearly 3,000 Christian preschools, elementary, and secondary schools, and 90 post-secondary institutions in the United States alone. We are a leader in strengthening Christian schools and equipping Christian educators worldwide. ACSI accredits Protestant Pre-K – 12 schools, provides professional development and teacher certification, and offers its member-schools high-quality curricula, student testing and a wide range of student activities. Member-schools educate some 5.5 million children around the world.

ACSI Children's Education Fund (ACEF) is a nonprofit Scholarship Granting Organization operating in six states providing 2,010 scholarships to students. The goal of ACEF is to partner with families and schools to provide a better educational experience. We seek to help both the scholar and the institution be successful.

1. **The Notice indicates states are adopting new proposals <u>in response to</u> "The Tax Cuts and Jobs Act," Pub. L. No. 115-97 to "circumvent" federal tax law and specifically new, lower state and local tax (SALT) limits on individual taxpayers.**

   State tax credit scholarship programs have not been created in response to the recent tax reform law but have in fact been operational for many years. Twenty-four tax credit scholarship programs exist in eighteen states. As an average, the year of enactment was 2010. Collectively they have been in state statutes 171 years before "The Tax Cuts and Jobs Act" (TCJA) became controlling law in 2017. Of the twenty-four, only two have been passed since 2017. The oldest was created twenty-one years ago in 1997. Tax credit scholarship programs have long predated the TCJA.

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States have created multiple avenues for donors to receive various forms of state tax credits beyond the impact of SALT. These avenues include: personal income taxes, corporate income taxes, insurance premium taxes and motor vehicle licensing fees. These programs have not been created to provide taxpayers a path to avoid State and Local Tax (SALT) deduction limits. Rather, these programs were created primarily to provide economically and academically disadvantaged students opportunities to find schools that better fit their needs.

Since these programs have not been designed to evade the TCJA and, in fact, pre-date the TCJA, then any regulations to prevent such evasions should be carefully and clearly drawn to ensure the continued operation of state tax credit scholarship programs. The latter are vital to ensuring low- to moderate-income families have access to the education they choose, especially faith-based options such as those offered by ACSI member-schools.

2. **The Notice indicates the IRS intends to address the, "federal income tax treatment of transfers to funds controlled by state and local governments (or other state-specified transferees)".**

The U.S. Supreme Court addressed the issue of state action when a state tax credit scholarship program was challenged in *Arizona Christian School Tuition Organization v. Winn,* 563 U.S. 122 (2011). The court wrote:

> Here, by contrast, contributions result from the decisions of private taxpayers regarding their own funds. Private citizens create private STOs [School Tuition Organizations]; STOs choose beneficiary schools; and taxpayers then contribute to STOs. While the State, at the outset, affords the opportunity to create and contribute to an STO, the tax credit system is implemented by private action and with no state intervention. *Id*, 143. [STOs are another name for SGOs]

Without a state actor controlling the governance and/or specific expenditures of a SGO there is no state action.

It is unclear what is intended by "other state-specified transferees". As the IRS seeks to provide further guidance on what this phrase means we would encourage that the definition not include independent, tax-exempt 501(c)(3) organizations. Under current state tax credit scholarship programs throughout the states, each state does provide a number of reporting and fiduciary requirements not typically required of other nonprofits within the state's jurisdiction. Many states require these tax-exempt nonprofits, often referred to as Scholarship Granting Organizations (SGO), to conduct some mixture of the following: annual audits, reports to the state of scholarship expenditures, require staff and/or officers meet minimal criminal and financial background checks, assurances the tax exempt nonprofit is not self-dealing by giving staff and officers or their children scholarships, that they do not serve a single school and that they can only hold back a limited amount of the donation for operating cost (most often 5%). This mixture of additional state-specific requirements are good and reasonable and do not implicate the independence of SGOs in state action or in the operation of state functions.

3. **The intent of these programs is not to subvert federal tax law nor function as an arm of state government. The intent is to improve the life of a child and positively change their trajectory by providing access to schools that are a better fit for the student.**

Across the country, nearly 272,000 low- to moderate-income students are in private schools as a result of these programs. A significant majority of programs are for families identified as low- to moderate-income and for students assigned a failing district school. These programs provide an option to families that would not otherwise exist.

We ask that you recognize the potential for overreaching in rulemaking and ask that you not send students back to situations where their trajectory will be shortened.

Thank you for your consideration.

Respectfully submitted,

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Philip Scott
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Cc:
Secretary Betsy DeVos, U.S. Department of Education
Director Maureen Dowling, U.S. Department of Education, Office of Non-Public Education
Acting Director Andrea Ramirez, U.S. Department of Education, Center for Faith and Opportunity Initiatives