Comments Presented for Public Hearing
P. George Tryfiates, Director for Government Affairs
Association of Christian Schools International
Public Hearing, November 5, 2018

Re: Notice of Proposed Rulemaking, *Contributions in Exchange for State or Local Tax Credits*
Docket ID IRS-2018-0025 (REG-112176-18)

Good morning. My name is P. George Tryfiates, Director for Government Affairs of the Association of Christian Schools International (ACSI). ACSI is a nonprofit, non-denominational, 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 has in turn established the ACSI Children's Education Fund (ACEF), a nonprofit Scholarship Granting Organization (SGO) operating in six states and providing 2,010 scholarships to students. The goal of ACEF is to partner with families and schools to provide a better educational experience for students and their families. We seek to help both the scholar and the institution be successful.

We are urging the Treasury to narrowly address its valid concerns outlined in the Notice of Proposed Rulemaking (NPRM) (Docket ID IRS-2018-0025, *Contributions in Exchange for State or Local Tax Credits* (REG-112176-18)) and to preserve federal charitable tax deductions to state tax credit scholarship programs as they are. We believe there is good reason to leave the programs unhindered.

The NPRM came about in large part by the efforts of states to circumvent the lower state and local tax (SALT) deduction in the new Tax Cuts and Jobs Act (TCJA) of 2017. States are doing so by use of newly created state tax credit programs designed to turn tax payments into charitable deductions. However, rather than address this specific challenge, the NPRM applies to all state tax credit programs, including in particular to state tax credit scholarship programs. It thus poses a threat to these valuable programs, which are designed to serve low- and moderate-income families, by discouraging donors from ongoing giving. We urge the Treasury craft its regulations to apply only to the specific offending practice and thus to keep the current tax treatment of tax credit scholarship programs.

Tax credit scholarship programs were not 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 TCJA became law in 2017. Of the twenty-four, only two have been passed since 2017. The oldest was created twenty-one years ago in 1997. They long predate the TCJA.

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States created multiple avenues for donors to receive various forms of state tax credits even beyond the impact of SALT. These avenues include: personal income taxes, corporate income taxes, insurance premium taxes and motor vehicle licensing fees. **Thus, the scholarship programs were created primarily to provide economically and academically disadvantaged students opportunities to find schools that better fit their needs – not to evade SALT deduction limits.**

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

ACSI suggested in its written Public Comment that one approach for the NPRM may be to consider focusing only on IRC Section 170(c)(1) which deals with one particular definition of a charitable contribution defined as:

> *"(c) … a contribution or gift to or for the use of —*
>
> > *(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes."*

The new state SALT "workarounds" typically involve an attempt at creating a way to give a so-called "charitable" gift to a state or political subdivision which will be used "for exclusively public purposes", namely, in order to find a way to *pay state taxes* and yet game the system to avoid the new federal cap on the SALT deduction.

Tax credit scholarship programs which benefit low- and moderate-income families are not efforts to avoid federal taxes. They exist to encourage giving to a private-sector scholarship granting organization (SGO) (not to a state or political subdivision) so that parents may take advantage of private-sector education options, including significantly, faith-based education options which do not receive public/government funding (i.e., and thus are not "exclusively public purposes"). These programs seek to improve the life of a child and positively change their trajectory by giving the child access to schools that are a better fit.

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. The programs provide an option to families that would not otherwise exist. When a child loses a scholarship, the impact is not *de minimis*. The federal government has the means, the capacity and the expertise to craft regulations which can deal with the specific challenge to its authority without harming scholarship programs for low-income families. Every gift left ungiven will cut the number of scholarships available and affects a real child who just wants options and opportunities. Every gift the regulations unnecessarily discourage involves the life of a child. Our contention is simply this, with respect, that if the final rule causes even one child to lose her scholarship, we did it wrong.

Thank you for your consideration.