

The Charitable Deduction: Then and Now

11.14.19 | Linda J. Rosenthal, JD



There are two intriguing and important recent articles about the history of the U.S. charitable deduction and how it can – and should – evolve in the future.

The first paper is by Dr. Nicolas J. Duquette: *Founders' Fortunes and Philanthropy: A History of the U.S. Charitable-Contribution Deduction* (August 27, 2019), Cambridge University Press. Professor Duquette argues that, despite significant changes in the philosophical underpinnings and textual provisions over the 100 years of the federal charitable deduction, it remains now – as it began – a benefit for the rich. He cautions, though, that this is not a simplistic conclusion; it's much more complicated and nuanced.

The second article is *Charitable Tax Reform for the 21st Century* (September 16, 2019) by noted tax-exemption scholars, Professors Ray Madoff and Roger Colinvaux. They argue that the current – generous – tax incentives for charitable giving are “woefully out of step with their purpose and the realities of charitable fundraising today, resulting in a system that is incoherent, ineffective, and on the verge of failure.”

Charitable Deduction History

Nic Duquette is an assistant professor at the USC Sol Price School of Public Policy with expertise in [nonprofit economics](#), public finance, and economic history. His research “[uses the tools of economics, politics and history](#) to trace the development and behavior of nonprofit organizations, and he teaches courses in nonprofit management informed by an interdisciplinary perspective.”

In *Founders' Fortunes and Philanthropy*, Professor Duquette presents 32 pages of text and charts that trace the century-long history of the federal charitable tax deduction and, more broadly in time and scope, the origins and development of philanthropy in the United States. He describes his objectives as contributing “... to two bodies of literature.” The paper “... incorporates the importance of the U.S. tax system into the literature on the history of philanthropy, and it provides the literature

on the economics of tax policy and charitable giving with the historical context it currently lacks.”

While this is a deep-in-the-weeds scholarly tome, it’s interesting even for casual policy nerds. Happily, for more general readers, there are also reviews and summaries, the most helpful of which is *The charitable deduction is mostly for the rich* (September 3, 2019) by Kelsey Piper writing for Vox . See also: *Why the Rich Get Charitable Deductions and Everyone Else Can Suck Eggs* (September 4, 2019) Ruth McCambridge, *The Nonprofit Quarterly*; *Tax History: Charity Deductions Are for the Rich — and That Was Always the Plan* (September 19, 2019) Professor Nicholas Mirakay of the William S. Richardson School of Law at the University of Hawaii at Manoa.

Charitable Deduction Future

Professors Roger Colinvaux (Catholic University) and Ray Madoff (Boston University) are well known to the nonprofit community for their insightful commentary. They published *Charitable Tax Reform For the 21st Century* (September 16, 2019) at 164 Tax Notes 1867 (paywall). It is now available [online](#), [free-of-charge](#), from the *Stanford Social Innovation Review*.

In this 10-page article, these two experts argue that the expansion of the standard deduction in the Tax Cut and Jobs Act of 2017 along with the dramatic jump in popularity of donor-advised funds have, in recent years, combined to compromise what they assert *should be* the legitimate policy goals of charity tax incentives.

What are these twin “overarching policy” aims? The first goal is the promotion of “actual charitable work”; the second, the fostering of “a strong culture of charitable giving with broad participation.” (Compare these objectives with the *actual* historical record as shown in Dr. Duquette’s paper.) Professors Colinvaux and Madoff explain that charities “play a fundamental role in American society,” doing the job that otherwise would fall to the government. Moreover, they perform this function with “creative solutions to society’s most pressing problems, and serving our highest ideals.”

Nevertheless, the design of the federal government’s current tax scheme is inconsistent with these goals and is badly broken and unfair. They suggest several reforms including:

- Expanding the “giving incentive” in the form of a credit and with a “giving floor”
- Changing the timing of tax benefits to DAF donors; and
- Closing foundation loopholes and fostering more spending.

Conclusion

These days, lots of folks in the nonprofit community have opinions on what to do with the charitable tax deduction. For them, this scholarly research will be helpful background information. And for policymakers and legislators who will be directly involved in decision-making on this issue, these two articles are must-reads.

— Linda J. Rosenthal, J.D., FPLG Information & Research Director