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Universal Charitable Deduction Gains Influential Support

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There's been talk for many years about expanding the charitable deduction. But since the enactment of the Tax Cuts and Jobs Act of 2017 (TCJA), interest has picked up in expanding it beyond those taxpayers who itemize deductions. This jump in support – or at least a willingness to consider such a major change – is in large part because the TCJA unexpectedly broadened the standard deduction. Now, many former itemizers are ineligible for that choice.

In the spring of 2019, the Democratic members of the influential Joint Economic Committee of Congress issued a report proposing significant changes to the TCJA including the matter of the standard deduction. More significantly, though, in November 2019, the GOP members issued their *own* formal report on the issue: *Reforming the Charitable Deduction*.

Charitable Deduction Reform Needed

After the 2017 tax act was signed into law, many experts and observers feared that taxpayers who suddenly fell out of the itemizer category might cut down on charitable giving. Early anecdotal and raw data reports reinforced this concern. By the middle of 2019, the Internal Revenue Service issued hard figures for 2018; the prediction of a decline in individual giving was officially confirmed. Additional data for the first two quarters of 2019 showed continuation of the trend.

The are wide-ranging suggested fixes for the charitable deduction; for instance: (1) restoring the pre-TCJA status quo; (2) extending the deduction to all taxpayers regardless of itemizer status; or enacting a charitable tax *credit* for all taxpayers.

Input from Congress

The Joint Economic Committee (JEC) is a "bipartisan, bicameral body" with ten members each from the Senate and House of Representatives. It dates back to the Employment Act of 1946 which established two advisory panels: the President's Council of Economic Advisers (CEA) and this Joint Economic Committee. Their primary tasks are to review economic conditions and to recommend improvements in economic policy." The chair duties of the Joint Economic Committee alternate between the Senate and the House of Representatives. The current chair is Senator Mike Lee (R-UT). The vice-chair is New York Democratic Representative Carolyn Maloney.

In April 2019, the Democratic members of the JEC issued their 9-page report titled *The Economic Impact on Charities of the 2017 Tax Act.* This document points out which provisions they see as the most troublesome for the nonprofit sector. It also identifies concurrently filed Democratic-sponsored legislation in the House proposing to address some of the worst TCJA provisions including the new rules for unrelated business income. This 2019 legislation omits any *specific* remedies for the standard-deduction issue because the Democrats prefer to address that item in a free-standing bill. In their Report, though, the Democratic representatives describe a "suggested solution": namely, amending the tax law to include at least some limited amount of above-the-line deductions for charity. That change would allow all taxpayers regardless of itemizer status to claim charitable deductions.

Universal Charitable Deduction Urged

On November 3, 2019, Senator Lee, on behalf of the Republican members of the Joint Economic Committee, issued the 18-page document titled *Reforming the Charitable Deduction*. In this report, the GOP legislators point to hard data and observations indicating problematic trends and developments in charitable giving in the United States.

First, in this report, Republican JEC members point to research that "confirms a decline in charitable deductions since the TCJA broadened the standard deduction range." Though this decrease in giving had begun "many years before the 2017 tax law took effect," the trend has been exacerbated by the abrupt contraction in the number of taxpayers allowed to itemize deductions. The lawmakers also reference a related – more long-term – development: Although total giving is up, the percent of individual Americans making charitable donations has dropped about ten percentage points from 2000 to 2014 and continues this downward trend to the present. More money is "… coming from a shrinking share of the population."

Second, the GOP legislators mention the hard numbers indicating that "giving patterns differ greatly depending on the income level of the giver." They cite a major university study that, while from a decade ago, remains valid and relevant. A majority of donations from households with incomes below $200,000 go to religious institutions, followed in second place to organizations that "help meeting basic needs." In sharp contrast, the highest-income taxpayers direct their philanthropy primarily to arts, education, and healthcare institutions. As fewer individual taxpayers can take tax deductions for donations, this disparity in the types of charities supported will only grow deeper.

Third, these members of Congress note that the United States is experiencing "long-term decline in its associational life … that is impacting giving and most forms of charitable interaction." They believe that "there should be policy reform so that less of the charitable giving by Americans is subject to taxation. Doing so would be more consistent with the principle that people should not be taxed on money they give away."

The suggested fix by the Joint Economic Committee Republican members is "replacing the current charitable deduction with either an 'above-the-line' charitable tax deduction or a charitable tax credit that applies equally to all taxpayers." They assert that "either policy reform could be expected to increase US charitable contributions by over $20 billion a year."

Conclusion

This November 2019 GOP policy statement is an important step forward in the ongoing debate and discussion about the future of charitable giving in the United States, adding to the earlier – April 2019 – support for change in the Democratic policy-position report.

In *The Charitable Deduction: Then and Now* (November 14, 2019), we discussed two other recent entries in this national conversation about the charitable deduction: (1) Dr. Nicolas J. Duquette's in-depth study, *Founders' Fortunes and Philanthropy*: *A History of the U.S. Charitable-Contribution Deduction* (August 27, 2019), and (2) *Charitable Tax Reform for the 21st Century* (September 16, 2019) by noted tax-exemption scholars, Professors Ray Madoff and Roger Colinvaux, who assert 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.'"

Since then, there has been another development. In December 2019, Representative Mark Walker (R-NC) formally introduced new legislation, *The Universal Charitable Giving Act,* with broad support including from the nonprofit sector.

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