



August 6, 2020

The Honorable Vern Buchanan
The Honorable Tom Suozzi
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Buchanan and Congressman Suozzi:

On behalf of National Taxpayers Union (NTU), I write to offer our support for HR 4002, the Everyday Philanthropist Act. Much in the way that employer-facilitated Flexible Spending Accounts (FSAs) allow Americans to fund medical and dependent care expenses on a pre-tax basis, your bipartisan legislation would provide a convenient way for workers to set aside tax deductible contributions (up to \$2,700 annually) for the charities of their choice from their own compensation as it is earned. Along with other forward-looking proposals affecting the charitable sphere, HR 4002 deserves an appropriate place in the national conversation over how best to empower private giving.

Public policy toward charitable gifts has undergone significant changes in the past few years, and many more could be on the horizon. The passage of the Tax Cuts and Jobs Act (TCJA), for example, elicited predictions that the law's lower income tax rates, reductions in death tax burdens, and expanded standard deduction would cut into giving. These fears have largely not come true, and one of NTU's top priorities is defending TCJA's achievements.¹ More recent passage of the CARES Act, which created a \$300 universal charitable deduction for contributions made in 2020, has inevitably led to discussions over whether to extend this provision, and what its attendant long-term effects in the tax system might be.

At the same time, several high-profile federal candidates are raising the volume of discourse over imposing a steep wealth tax, which could severely harm some larger charitable gifts. From an administrative perspective, the outlook would be even worse: some office seekers have suggested levying such a tax toward any charitable foundation assets associated with an individual taxpayer.²

Looking further ahead, it is clear the massive deficit spending employed to ameliorate the economic effects of COVID-19 will place federal finances in peril far sooner than most budget experts had predicted only six months ago. This means not only greater pressure for fiscal counter-adjustments, but also greater reliance on community-based and other private charitable entities. These organizations will be needed more than ever to deliver the types of health care, elder care, anti-poverty, education, and other social services that governments will no longer be able to afford, or at least be able to provide at current levels.

Given these and other challenges, it is imperative for Congress to muster all available policy tools that can make charitable giving more economically and administratively feasible for as many Americans as possible. The Everyday Philanthropist Act is, in NTU's opinion, one tool that can answer to this purpose.

From a practical standpoint, HR 4002 has the benefit of several "knowledge bases" that can help to ameliorate unknowns often arising from proposals to revise the Tax Code. The legislation draws upon the successful infrastructure that has already been established to support Flexible Spending Accounts, which were created by law in 1978 and have subsequently been refined by IRS guidance. Furthermore, HR 4002

utilizes the existing definitions under Section 170 (c) of the Tax Code for what would qualify as a tax-advantaged charitable contribution, thereby reducing the potential for administrative confusion.

Additionally, HR 4002 augments administrability in the sense that if they so choose, employers can provide part of the framework for taxpayers to make donations to charities whether in place of, or as a complement to, any other tax-deductible contributions they may wish to make on their returns. The Flexible Giving Accounts envisioned in the bill should effectively be less susceptible to audit because of the documentation trail they establish, giving some peace of mind to those taxpayers who opt solely for making gifts directly out of their employer-provided compensation. This is no fanciful concern, given recent IRS tactics in auditing certain charitable deduction claims – tactics that could someday be adapted and wielded against millions of others in the taxpaying population.³

As HR 4002 moves through the legislative process, consideration should be given to how its implementation can protect the privacy of every donor's giving decisions and minimize the employer's access to any sensitive data. More broadly, other legislation will be needed to provide administrability and stability for self-employed individuals who wish give without itemizing – or, for those who simply would prefer to make donations without a workplace-provided means of doing so. Some have suggested a 100 percent income exclusion for such giving.⁴ Another path is HR 7324/S 4032, the Universal Giving Pandemic Response Act, which would create an above-the-line deduction for charitable contributions (up to one-third of a taxpayer's standard deduction) made in 2019 or 2020.

Ensuring that future changes to tax law operate in a way to support rather than undermine charitable giving is an important policy area in which NTU will take greater interest and involvement during the days ahead. Toward this end, we look forward to working with you in ensuring that HR 4002 is a proper part of the agenda.

Sincerely,



Pete Sepp
President

¹ According to a June 2020 analysis from the Tax Foundation of charitable contribution data, giving took a slight dip of 2 percent in 2018 after enactment of TCJA but came roaring back to a near-record inflation-adjusted level in 2019. As Tax Foundation's Scott Hodge noted, "there would seem to be an inverse correlation between tax rates and giving: lower rates mean increased giving." Thus, from NTU's perspective, defending TCJA is compatible with, and central to, charitable giving. See the analysis at <https://taxfoundation.org/tax-cuts-jobs-act-affect-charitable-giving/>.

² As a Policy Paper from NTU's research affiliate noted, such an approach "would also introduce yet another layer of complication to a tax scheme that is already arguably impossible to enforce effectively. The complication arises from the incredible difficulty in attributing foundation assets for tax purposes. Presumably, assets would only be commingled for a taxpayer and foundations in which they have some sort of control, like a role as a trustee. But determining how to attribute assets held by such foundations gets complicated very quickly." See the Policy Paper at <https://www.ntu.org/foundation/detail/the-wealth-taxes-impact-on-private-charities>.

³ See, for example, the IRS's highly troubling examination approaches toward Section 170 (h) deductions as outlined in the NTU Policy Paper "Shortsighted: How the IRS's Campaign Against Conservation Easements Threatens Taxpayers and the Environment" (<https://www.ntu.org/publications/page/shortsighted-how-the-irss-campaign-against-conservation-easement-deductions-threatens-taxpayers-and-the-environment>) and Issue Brief, "Environmental Tax Deduction at Risk Due to Overzealous IRS" (<https://www.ntu.org/publications/detail/environmental-tax-deduction-at-risk-due-to-overzealous-irs>).

⁴ See, for example, Dr. Donald P. Racheter, cited in an NTU letter of support for H.R. 3407 (114th Congress), available at <https://www.ntu.org/publications/detail/ntu-endorses-hr-3407-a-bill-to-help-restore-the-charitable-deduction>.