NATIONAL TAXPAYERS UNION

December 10, 2021

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

The Honorable Ben Sasse
The Honorable Tammy Baldwin
U.S. Senate
Washington, DC 20510

Dear Congressman Suozzi, Congressman Buchanan, Senator Sasse, and Senator Baldwin:

On behalf of National Taxpayers Union (NTU), I write to offer our support for HR 4585 and S 3191, the Everyday Philanthropist Act. As NTU noted in its endorsement of a similar version of this legislation in 2020, it is important for Congress to develop additional, adaptable structures to facilitate tax policy goals. 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 4585 and S 3191 deserve an appropriate place in the national conversation over how to best empower private giving. This is especially true in the current Congress.

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]

Nonetheless, passage of the CARES Act of 2020 and the Consolidated Appropriations Act of 2021 created, then extended as well as expanded, a $300 universal charitable deduction. These bills inevitably led to discussions over whether to extend this provision, and what its attendant long-term effects in the tax system might be.

Those discussions over a variety of "extenders" have taken an increasingly urgent turn – and NTU has recommended that possible next steps concerning the universal charitable deduction could include HR 4585 and S 3191. As our recent evaluation of all 30 expiring tax provision currently before Congress determined:

> While this provision [the universal charitable deduction] may be well-intentioned, NTU believes there are better alternatives to encourage charitable giving in a fiscally responsible manner. One such framework could be the one proposed in the Everyday Philanthropist Act … While there are likely other alternatives to the $300 above line deduction, this is one option that would support charitable giving and protect taxpayers' privacy.[2]

Furthermore, despite their exclusion from current versions of the Build Back Better Act, wealth tax proposals continue to be topics of high-level discussion in Congress and at Treasury. Such plans could severely harm some larger charitable gifts

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[1] According to a June 2020 analysis from the Tax Foundation, "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/. In July of 2021, Giving USA released its Annual Report on Philanthropy covering the calendar year 2020, concluding that "[t]otal charitable giving grew 5.1% measured in current dollars over the revised total of $448.66 billion contributed in 2019. Adjusted for inflation, total giving increased 3.8%." See: gusa_2021_press_release_fina.pdf (ymaws.com). Although giving from individuals recorded a smaller percentage increase than this overall figure, which includes foundations and corporations, it should be noted that the universal charitable deduction would only have an impact on tax returns filed during calendar years 2021 and 2022, respectively.

[2] See the full NTU extenders analysis here: Not All Tax Extenders Are Created Equal - 2021 - Publications - National Taxpayers Union (ntu.org).

from individuals. From an administrative perspective, the outlook would be even worse: some lawmakers have even suggested levying such a tax toward charitable foundation assets *associated with* an individual taxpayer.[3]

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 less than two years ago. With a gross federal debt well above 100 percent of current Gross Domestic Product (GDP) and estimated GDP for the next several years, the federal government's unsustainable fiscal trajectory will simply have to be addressed sooner rather than later. 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 certain social services that governments will no longer be able to afford, or at least be able to provide at current levels. It is thus 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 – and HR 4585 and S 3191 can admirably answer to this purpose.

From a practical standpoint, HR 4585 and S 3191 have 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 4585 and S 3191 utilize 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 4585 and S 3191 augment 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.[4]

As HR 4585 and S 3191 move 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 – along with any impacts on those choosing to facilitate contributions through donor-advised funds. More broadly, other legislation will be needed to provide administrability and stability for self-employed individuals who wish to 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.[5]

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 on ensuring that HR 4585 and S 3191 are proper parts of the agenda.

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[3] As a 2020 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." See the Policy Paper at https://www.ntu.org/foundation/detail/the-wealth-taxs-impact-on-private-charities. A subsequent work in 2021 from NTU Foundation examined the impact of how one potential approach to a wealth tax – attributing foundation assets to the "heads" of those organizations – could affect a sample of the most prominent charitable institutions. The author determined that "foundation assets would effectively face a wealth tax that ranges between 6 and 24 percent of their annual expenditures, potentially limiting private altruism." See: Warren's Recycled Wealth Tax Plan Suffers From All the Same Faults as Previous Versions - Foundation - National Taxpayers Union (ntu.org).

[4] See, for example, the IRS's examination approaches toward Section 170 (h) deductions as outlined in the NTU Policy Paper here (https://www.ntu.org/publications/page/shortsighted-how-the-irss-campaign-against-conservation-easement-deductions-threatens-taxpayers-and-the-environment) as well as a 2021 statement from NTU and other organizations to Treasury Secretary Yellen: Coalition Letter: Tax Administration Must Be Clear and Fair For Conservation Easements - Publications - National Taxpayers Union (ntu.org).

[5] 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.

Sincerely,

Pete Sepp, President