Dear Secretary Mnuchin and Commissioner Rettig:

We write to you today to express our concerns about the Internal Revenue Service’s (IRS’s) recently proposed rule entitled, Contributions in Exchange for State or Local Tax Credits, and its potential to adversely affect Georgia taxpayers who utilize state tax credits that were specifically designed by Georgia lawmakers to address public policy concerns, and in turn, have benefitted many of our constituents.

Let us begin by saying that we certainly commend the IRS for taking the necessary steps to modernize respective regulations in the wake of the Tax Cuts and Jobs Act (TCJA) to ensure that both states and taxpayers clearly understand and can abide by the new law.\(^1\) More so, we recognize that there are legitimate and complex questions that need to be addressed as a result of the changes made by Congress, and we applaud the IRS’s work in seeking public input and implementing timely guidance.

That said, our offices have heard from parents, educators, school officials, and rural hospital workers about how the recently proposed rule would put a number of Georgia’s tax credit programs – programs that were in place prior to the Tax Cuts and Jobs Act – in a peculiar situation. That’s because the proposal treats such tax credit programs that pre-date the TCJA in the same manner as those newly created programs that were specifically designed to allow those who choose to itemize a means to circumvent the new federal limitation on state and local taxes (SALT).

While it is true that a number of high-tax states have crafted such workarounds to the SALT limitation, and those schemes should rightly be thwarted, there are a number of state tax credit programs, such as the Qualified Education Expense Tax Credit Program and the Qualified Rural Hospital Organization Expense Credit Program, which were passed by the Georgia General Assembly and signed into law by Georgia’s Governor in 2008 and 2016 respectively. Undeniably, these programs have benefitted many students and rural hospitals across our districts and continue to serve as crucial funding mechanisms for these families and entities. In fact, the Georgia Qualified Education Expense Tax Credit Program assisted in awarding more than 13,200 students with scholarships from Student Scholarship Organizations in calendar year 2017.\(^2\)

More so, we are confident that these Georgia tax credit programs were never established with the intention of aiding taxpayers in eluding or reducing tax liabilities owed to the federal government. As you know, the IRS used taxpayer return data and forecasts to determine the number of taxpayers affected by the proposed rule. It is our understanding that of the 10% of taxpayers that the IRS has

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estimated will continue to itemize, 5% will itemize but will not have SALT deductions that exceed the new cap. Subsequently, those taxpayers that find themselves in this 5% population could see an increase in their federal tax liability under the proposed rule if they contribute to an organization that entitles them to state tax credits of greater than 15 percent.\(^3\)

According to 2015 IRS data, the average SALT deduction in Georgia amounted to $9,073.\(^4\) What’s more, when you consider those payers earning less than $200,000, where typically speaking only 0.5% of those filers pay the Alternative Minimum Tax (AMT), the average SALT deduction for non-AMT payers in Georgia amounted to approximately $6,000 – an amount well below the newly imposed cap of $10,000.\(^5\) Though it is unclear in either instance the number of payers who chose to contribute to Georgia state tax credit programs in the 2015 tax year, as the proposed rule recognizes, the fact that the average SALT deduction in both situations does not exceed the new limit raises a valid concern of whether Georgia taxpayers who do choose to contribute to state tax credit programs could see an increase in their federal tax liability under the proposed rule where they once did not.

As such, we respectfully ask you to carefully review and consider all comments on the proposed rule, and we recommend that any final rule include a method that clearly differentiates pre-TCJA state tax credit programs from those newly created tax credit programs that have been adopted or are being considered for the sole purpose of aiding taxpayers in side-stepping the newly imposed SALT limitations.

We sincerely thank you for taking time to consider our concerns and recommendations consistent with applicable statutes, regulations, and House Ethics rules, and we look forward to learning of the IRS’s progress on developing a final rule.

Sincerely,

Rob Woodall
Member of Congress

Karen L. Handel
Member of Congress

Jody B. Hice
Member of Congress

Earl L. “Buddy” Carter
Member of Congress

Tom Graves
Member of Congress

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\(^3\) See Example 2: Taxpayer is below the SALT cap and not subject to the AMT. 83 FR 43563. https://www.federalregister.gov/d/2018-18377/p-51


\(^5\) Id.