

Council for American Private Education

CAPE outlook

Voice of America's private schools

Treasury Amends Proposed Rule Affecting Donations to Scholarship Programs

Almost ten months after issuing proposed regulations that drew the concern of school choice advocates, the US Treasury Department has issued a final rule on the tax treatment of payments made under state and local tax credit programs. Despite the appellation “final,” it includes guidance that will necessitate further rulemaking in the coming months.

Backstory

In 2017, Congress passed a major overhaul of the federal tax code which included a new \$10,000 cap on state and local tax deductions. In response, a handful of high tax states passed laws that would allow government agencies to accept certain state and local taxes as “charitable” contributions, thus permitting taxpayers to circumvent the new federal tax law by continuing to claim a deduction for those tax payments on their federal return.

On August 23, 2018, the Internal Revenue Service (IRS) issued proposed regulations designed to thwart those “workarounds.” Under that proposal, if a state grants a 70 percent state tax credit and the taxpayer donates \$1,000 to an eligible entity, the taxpayer, having received a \$700 state tax credit, would have only the remaining \$300 eligible for a federal tax deduction. Previously, the entire \$1,000 contribution was deductible on the federal return. As explained by the Wall Street Journal, this new policy would treat “donations for state tax credits like tickets to charity galas, where donors claiming a tax deduction have to subtract the value of their surf-and-turf dinners from their contributions.”

The Concern

The proposed crackdown also applied

to donations to tax credit scholarship programs, which, unlike the “charities” set up to circumvent the new tax law, have existed for years without IRS concern. A [Heritage Foundation](#) analysis indicated that the proposed rule would punish donors to tax credit scholarship programs “who choose to itemize their deductions but do not reach their SALT cap.” For them, “the cost of donating to existing tax credit programs [would] increase significantly.”

School choice advocates pushed for changes to the proposed rule, fearing that, by making the tax treatment of donations to these programs less favorable, the proposed policy would mean fewer donations and therefore fewer scholarships for children from low-income families.



Final Rule

On June 11, the Treasury Department announced that individual taxpayers will be allowed to treat donations to tax credit scholarship programs as payments of state or local taxes for federal income tax purposes, up to the \$10,000 cap. In other words, individual donors under the cap will be able to claim the federal deduction as well as the state tax credit. Above the \$10,000 cap, donors will only be able to claim a federal deduction on amounts

beyond the state tax credit.

Sources at the Treasury Department believe that for most donors, the final policy largely amounts to a “reset” to the situation that prevailed before the 2017 tax bill, the exception being the relatively small number (approx. 150,000 taxpayers) of high earners subject to the alternative minimum tax (AMT).

This “safe harbor” provision for individual donations under the SALT cap, as well as some other aspects of the new policy concerning donations by business entities (including the new treatment of donations to tax credit scholarship programs as “ordinary and necessary business expenses”), will need to be finalized in the coming months through yet further rulemaking.

Reaction

Leslie Hiner, Vice President of Legal Affairs for EdChoice, said in a statement that “the promise of a new proposed rule to alter today’s final rule is a positive step forward,” but “the rule adopted today remains an unwelcome change in tax law that works against those who generously give to charities.” John Schilling, President of American Federation of Children, also issued a statement, saying, “We are very pleased to see the Treasury Department follow up on the special rules issued last December for corporate contributions with new guidance, in the form of a Notice, allowing individual contributors to tax credit scholarship programs to continue to receive a full deduction on the value of their donations up to \$10,000.” Meanwhile, Education Secretary Betsy DeVos called the final rule “fair to students and taxpayers alike.”

With further rulemaking on the horizon, this is a discussion that will continue.

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 - American Montessori Society
 - Association Montessori International—USA
 - Association of Christian Schools International
 - Association of Christian Teachers and Schools
 - Association of Waldorf Schools of N.A.
 - Christian Schools International
 - Council of Islamic Schools in North America
 - Council on Educational Standards and Accountability
 - Evangelical Lutheran Church in America
 - Friends Council on Education
 - Islamic Schools League of America
 - Jesuit Schools Network
 - Lutheran Church—Missouri Synod
 - National Association of Episcopal Schools
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First Lady of Puerto Rico Addresses AFC Summit

The First Lady of Puerto Rico, Beatriz Rosselló, spoke at the American Federation for Children's (AFC) tenth annual National Policy Summit in Chicago on May 1. Her primary order of business was to accept the AFC School Choice Policymaker of the Year Award on behalf of her husband, Governor Ricardo Rosselló. Governor Rosselló was forced to return to Puerto Rico because of the death of former Puerto Rico Governor Rafael Hernández Colón.

An Island Hit Hard

Ms. Rosselló was introduced by Hergit "Coco" Llenas, Director of Latino Outreach for AFC. Llenas spoke movingly of the challenges faced by Puerto Rico following Hurricane Maria, a devastating storm that made landfall on Puerto Rico on September 20, 2017. Llenas observed that there "was not a single leaf left on a tree, and this is not a metaphor, after the hurricane." It's been reported that 175,000 people left the island in the days and weeks after the storm.

Llenas pointed out that that Governor Rosselló is the son of a former governor of Puerto Rico (Pedro Rosselló), who tried years ago to pass school choice legislation. Where Rosselló *père* fell short, however, Rosselló *fils* achieved success, "against all odds," according to Llenas. In 2018, Puerto Rico approved education legislation, signed by Governor Rosselló, that included a new voucher program.

School Choice in Puerto Rico

According to the EdChoice [website](#), the voucher program in Puerto Rico "is scheduled to launch for the 2019–20 school year. The program allows students who have been enrolled in either traditional public or charter schools for at least two years to use vouchers to attend the private or public school of their choice." In addition, "The department of education will prioritize vouchers for low-income families, students with severe disabilities, gifted students, students who have been adopted or are in shelters or foster homes, and victims of bullying or sexual

harassment. The program's total enrollment is capped at 3 percent of Puerto Rico's total student population in 2019–20, which is estimated at 8,790 students."

A lawsuit against the new law was rejected by the Puerto Rico Supreme Court in August 2018. According to AFC, opponents "argued that the program 'supported' private schools in violation of the Puerto Rico Constitution's 'Support Clause.' This clause was the reason the Puerto Rican Supreme Court had invalidated a similar program in 1994. In upholding the program, the Court agreed with the families that the Free School Selection Program is constitutional because it 'supports' needy families, not schools, and any benefit to private schools under the program is merely incidental."

PR First Lady

In her remarks, Rosselló thanked Education Secretary Betsy DeVos for "her continuous support for the education system in Puerto Rico."

She went on to say that "school choice ensures all children have the opportunity to learn and put their education in the hands of all parents instead of the state." Additionally, "the education of our youth and the preservation of a school system that best fits the needs of the island is essential for the future."

Rosselló declared that "the development of all our students is

what will ensure that the new Puerto Rico will rise."

Other speakers at the summit included Secretary DeVos, who laid out the case for the proposed Education Freedom Scholarships; Father Gregory Boyle, a Catholic priest who founded Homeboy Industries, the largest gang-intervention, rehabilitation, and re-entry program in the world; school choice advocate and legend Virginia Walden Ford; and Tim Keller, an attorney who leads the Institute for Justice's Educational Choice Team. Next year's summit will be May 18-19, 2020, in Milwaukee, WI.



Beatriz Rosselló, the First lady of Puerto Rico, speaks at AFC's National Policy Summit May 1 in Chicago, IL (AFC photo)

StateUpdate

Illinois

Against long odds, school choice advocates proved successful in protecting Illinois' tax credit scholarship program. After opponents, including Governor J.B. Pritzker, declared their intention to phase out the program, advocates launched a "Save My Scholarship" campaign. During the month of May, program supporters unleashed a blitz of nonstop advocacy, maintaining a constant presence in the Legislature. Their hard work paid off. According to the *Prairie State Wire*, One Chance Illinois President Myles Mendoza was quoted as saying, "Faced with the threat of an attempt to phase out the tax credit scholarship program, Empower Illinois, in conjunction with our allies at the Catholic Conference, Agudath Israel, and statewide Lutheran, Muslim and secular school leaders, together led an even larger coalition of parents, grandparents, foster parents, educators, donors, private trade unions and, most importantly — scholarship recipients to fight back against an effort to end the TCS program — and they won."



West Virginia

The West Virginia Senate has passed legislation that would allow for Education Savings Accounts (ESA) in the state. According to the American Federation for Children, "The Education Savings Accounts provision would provide 90% of the average state per-pupil funding to an Education Savings Account controlled by most West Virginia families. Those funds can be used on K-12 educational expenses ranging from tutoring to private school tuition to special needs therapies, among other approved items." The bill now heads to the House for consideration.

Wisconsin

The Wisconsin Institute for Law & Liberty issued its third annual "Apples to Apples" study on the academic performance of Wisconsin's schools across sectors. Among the key findings: On average, Milwaukee's Parental Choice Program outperforms Milwaukee Public Schools in math proficiency by 3.9% and in ELA by

4.6%. Parental Choice Schools outperform public schools statewide: proficiency exceeds traditional public schools by 3.05% in the Racine Parental Choice Program and Wisconsin Parental Choice Program schools. Finally, Parental Choice Schools have higher growth than public schools statewide: growth rates exceed that of traditional public schools by 6.8 points.

Tennessee

Governor Bill Lee signed Tennessee's historic Education Savings Account (ESA) legislation into law. As explained by the *Wall Street Journal*, "Beginning in the 2021-22 school year, the measure will provide debit cards averaging \$7,300 each year for low-income families to use for education-related expenses. The money can pay for private-school tuition, textbooks or a tutor, among other things." The program is capped at 15,000 students and participation is restricted to Shelby and Davidson counties, home to the state's two largest cities: Memphis and Nashville.

Pennsylvania

Both chambers of the Pennsylvania Legislature approved legislation that would raise the cap on the state's tax credit scholarship program from \$100 million to \$210 million, only to have it vetoed by Governor Tom Wolf. The bill also contained an "escalator" that would have automatically raised the cap by 10% whenever the program reached 90% usage. The *Pennsylvania Capital-Star* quoted the governor as saying, "It distracts from what we ought to be focusing on, which is educating every child through our public school system."

Nebraska

School choice advocates again came up short in Nebraska this year. From the *Lincoln Journal-Star*: "For the second year in a row, opponents of a bill creating a tax credit for Nebraskans who donate to a scholarship fund for private and parochial schools mounted a successful filibuster. Under the Opportunity Scholarships Act (LB670) from Sen. Lou Ann Linehan of Elkhorn, individual and corporate taxpayers could receive a credit equal to their contribution to a state-approved scholarship granting organization. Taxpayers could receive credits up to 50 percent of their income tax liability each year under Linehan's plan, with the scholarships going toward tuition and fees for low-income students who elect to attend a private school. Debate crossed the three-hour threshold, and LB670 fell off the agenda this year, with Linehan promising she would bring the proposal back in 2020."

DOJ Weighs in on Maine Case

The US Department of Justice has announced its support for a lawsuit against the Maine law that does not allow parents to access a state tuition program if they choose a religious school for their children. From a DOJ release:

"The Department of Justice today filed a Statement of Interest in the U.S. District Court for the District of Maine supporting students who claim that the State discriminated against them in violation of the Free Exercise Clause of the U.S. Constitution when it barred them from a program paying the public or private school tuition of students who do not have public schools in their school districts, because the students wish to use the tuition to attend private religious schools that otherwise satisfy State education requirements.

"The case, *Carson v. Makin*, was brought by students and their parents challenging their exclusion from the Maine tuition program. In Maine, 143 of the State's 260 school districts do not operate their own high schools. Such school districts may arrange for another school to teach all of their students, or these school districts may provide tuition payments to allow families to go to the public school or private school of their choice. The State, however, forbids students in the tuition program to attend 'sectarian' schools.

"Under the Constitution, governments may not exclude students from education programs solely because of their religious status or their religious choices," said Assistant Attorney General Eric Dreiband. "The Department of Justice is committed to ensuring that all children and their families may participate in benefit programs without discrimination based on their faith."

See the October 2018 edition of *Outlook* for more information on the situation in Maine.

CAPE notes

★ In May, the US Department of Education (USDE) released the list of its 2019 Green Ribbon Schools. According to USDE, “Across the country, 35 schools, 14 districts, and four postsecondary institutions are being honored for their innovative efforts to address the three “Pillars” of the program: reducing environmental impact and utility costs, improving health and wellness, and ensuring effective sustainability education.”

“I want to congratulate this year’s U.S. Department of Education Green Ribbon School honorees,” said U.S. Secretary of Education Betsy DeVos. “They have truly embraced the challenge to create healthy, safe, sustainable and efficient learning environments for students, faculty, and staff. Their innovative approaches to learning will help students prepare for the opportunities and challenges of the 21st Century.”

Ten private schools made the list: St. James Academy, Solana, CA; The Jefferson School, Georgetown, DE; Saint Agnes School, Louisville, KY; Interlochen Arts Academy, Interlochen, MI; Raintree School, St. Louis, MO; Saint Leo the Great School, Lincroft, NJ; Immaculata Catholic School, Durham, NC; State College Friends School, State College, PA; The Northwest School, Seattle, WA; Schlitz Audubon Nature Preschool, Milwaukee, WI.

★ The results of the NAEP 2018 Technical and Engineering Literacy (TEL) assessment were released on April 30. This is a nationally representative assessment of technology and engineering literacy. Eighth-grade students were presented with real-world scenarios involving technology and engineering challenges. Students were asked to respond to questions

aimed at assessing their knowledge and skill in understanding technological principles, solving technology and engineering-related problems, and using technology to communicate and collaborate.

Although overall private school participation rates did not meet reporting benchmarks, the participation of private schools contributed to national results, and results for Catholic school students were reportable and compared very favorably to that of public school students. The overall private school participation rate was 45%, whereas 70% is needed to report results. The participation rate for Catholic schools was 87%.

Catholic school students had an average score of 167, as opposed to 151 from public schools. The percentage of Catholic school students who scored at least at a “basic” level was 95% (83% for public school students). Sixty-four percent of Catholics school students scored at or above “proficient” (45% for public school students). Seven percent of students from Catholic schools scored in the “advanced” category (4% in public schools). More information on the TEL assessment can be found at: www.nationsreportcard.gov/tel.

★ The recently released evaluation of the DC Opportunity Scholarship Program (DCOSP) contained some encouraging news. As described by Corey DeAngelis in the *Washington Examiner*, “Students that won the voucher lottery to attend a private school were 34% more likely to report being in a very safe school than their peers in public schools.” Moreover, “The DC voucher program also increased students’ satisfaction with their schools by 18% and decreased chronic absenteeism by 27% after three years.” DeAngelis

points out that “Public schools in D.C. spend around \$28,000 per student each year, while the average private school voucher amount is only around \$9,600 per student each year in DC. That means a K-12 education costs around \$364,000 for each child in D.C. public schools, but only about \$125,000 for each voucher student.”

★ The New York Legislature has voted to eliminate religious exemptions for immunizations. As reported by the *New York Times*: “Lawmakers in New York, the epicenter of the nation’s measles outbreak, moved on Thursday to end religious and other nonmedical exemptions for immunizations, overcoming vocal opposition from vaccine skeptics and advocates for religious freedom. . . The Legislature’s approval would add New York to a small handful of states that do not allow exemptions on religious grounds, including California, West Virginia, Mississippi and Arizona. The floor debate on Thursday was unusually contentious, with lawmakers giving impassioned speeches weighing health concerns against parental and First Amendment rights.” Governor Andrew Cuomo immediately signed the bill.

★ In July, members of the State Cape Network (SCN) will be gathering in Jackson, Mississippi for their annual Summer Institute. The fine folks at the Mississippi Association of Independent Schools, working with SCN leaders, have an outstanding agenda set that will undoubtedly prepare the assembled education leaders for another year in the trenches supporting the work of private schools.