DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

September 18, 2018

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CC:ITA
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Attention:

Dear :

This letter responds to your request for information, dated September 13, 2018, relating to amounts paid by business taxpayers pursuant to a state tax credit program in your state that provides credits against business taxes, such as insurance premium tax, direct pay sales and use tax, corporate income tax, alcoholic beverage excise tax, oil and/or gas production tax, and state sales tax due on rent or license fee payments. Specifically, you requested information regarding the potential effect of Notice of Proposed Rulemaking (NPRM) REG-112176-18, 83 FR 43563, issued by the Treasury Department and Internal Revenue Service (IRS) and published in the Federal Register on August 27, 2018.

The NPRM provides proposed rules regarding the availability of a charitable contribution deduction under § 170 of the Internal Revenue Code (IRC) when the taxpayer receives or expects to receive a corresponding state or local tax credit. Generally, § 170(a) allows as a deduction any charitable contribution paid within the taxable year. Subsection (c) of section 170 provides that the term “charitable contribution” means a contribution or gift to or for the use of one of the types of entities listed in that subsection, including a state or political subdivision of a state, corporation, trust, community chest, fund or foundation that is organized and operated exclusively for religious, charitable, literary, scientific or educational purposes and that is otherwise qualified. Under the NPRM, a taxpayer that makes a payment or transfers property to an entity described in §170(c) must reduce its charitable contribution deduction by the amount of any state or local tax credit the taxpayer receives or expects to receive.

The NPRM addresses whether certain amounts may be deducted as charitable contributions under § 170 (or § 642, if the payments are made by a trust or decedent’s estate) and the regulations thereunder and does not propose to change existing tax treatment under any other provisions of the IRC or the Treasury Regulations. Thus, the NPRM does not impact a business taxpayer’s payments made as part of your state’s tax credit program described above that are deductible under a Code section other than § 170.

We welcome your written comments on the NPRM and your participation in the public hearing scheduled for November 5, 2018. Feel free to address any issues that you believe should be addressed in the final regulations.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. <u>See</u> section 2.04 of Rev. Proc. 2018-1, 2018-1 I.R.B. 1.

We hope you find this letter helpful. If you have any additional questions, please contact me at .

Sincerely,

Scott Dinwiddie
Associate Chief Counsel
(Income Tax & Accounting)