

Special Issue Briefing

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Division of Local Government Services Issues Local Finance Notice on SALT Charitable Contribution Law

On September 25 the Division of Local Government Services (DLGS) issued Local Finance Notice 2018-23 providing guidance on the implementation of the SALT Charitable Contribution Law. As you may recall, in response to the 2017 Federal Tax Reform, which included a \$10,000 limit on the State and Local Taxes (SALT) deduction, Governor Murphy signed into law P.L. 2018, c. 11, commonly referred to as the Charitable Trust legislation. It took effect on July 3, 2018.

The law permits municipalities, counties and/or school districts to establish a charitable trust. In turn taxpayers can receive a credit for a charitable donation on their property tax bill. In theory, the property taxpayer would be able to use 90% of the charitable donation as a tax deduction on their federal income taxes. However, the IRS has issued proposed regulations to reduce the deductions available for charitable contributions by the amount of any state or local tax credit the taxpayer receives or expects to receive in return. In response, both Governor Murphy and State Attorney General Gurbir Grewal expressed opposition to the proposal and said that the State will challenge the IRS proposal in Court if necessary.

In its notice the Division notes that it “makes no representations with respect to how the IRS will treat property tax creditable contributions to a charitable fund”.

Please note that a county and/or school district **can** establish a charitable trust without independent approval from the municipality, which is responsible for applying the property tax credit.

Municipal governing bodies that establish a charitable trust for their community have ongoing responsibilities that should be reviewed with your professional staff.

Municipal Implementation

Any charitable trust (“trust”) established by a municipality must have a specific public purpose that is more limited than the general purpose of the municipality. The purpose must be described in publicly available documents and records.

N.J.A.C. 5:30-18.2 permits the following specific public purposes:

- Public Safety;
- Capital Improvements;

- Public Works;
- Public Health;
- Social Services;
- Housing & Code Enforcement;
- Redevelopment & Economic Development;
- Recreation;
- Open Space;
- Public Library; *and*
- The operation, management or administration of another service with approval of the DLGS Director.

To establish a trust the municipality must adopt an ordinance creating the fund for a specific public purpose of that public body. Multiple specific purposes may be incorporated into a single trust and multiple trusts may be established by a single ordinance.

The ordinance must include specific provisions and limits. However, the creation of a spillover fund is optional.

A copy of the adopted ordinance must be provided to the DLGS within five days of adoption. The DLGS has prepared a model ordinance to establish a trust.

The creation of a trust fund and spillover fund does not impact a municipal property tax levy calculation. The funds are equivalent to tax revenues for state aid formula, revenue calculations, bonding capacity and similar state or municipal computations.

The annual credit donation cap

The annual credit donation cap is a cap on the total value of local charitable donations that are eligible for the local property tax credit. This is the maximum amount of credit eligible money the fund may collect. The annual credit donation cap must be established prior to the beginning of each fiscal year based on the tax levy from the prior calendar year. The annual credit donation cap cannot exceed 85% of the prior year's budget, unless otherwise authorized by the DLGS. For 2018, the cap must be established no later than the date on which each charitable fund begins accepting donations.

The annual credit donation cap is calculated using a formula found in the Local Finance Notice.

It is important to note that the annual credit donation cap is not construed to limit all donations just the donations that are property tax credit eligible.

The municipality must also establish an individual credit eligible donation cap for each trust which establishes the maximum dollar amount or percentage in credit that an individual person or entity may receive toward their property taxes in a given year. **No more than 90% of an individual donation may be credited towards a donor's property taxes. Given the uncertainty with the proposed IRS regulations, the DLGS' regulations permit a donor to opt to cap their donations to 15% credit on their property taxes. In addition, the DLGS has been authorized to promulgate another alternate percentage through a future Local Finance Notice.**

The spill over fund

- The spill over fund is optional but must be established by ordinance. This fund temporarily holds donations that have reached their annual credit eligible donation cap to a given fund.

Creditable donations carried into a spillover fund must be applied to consecutive annual property tax bills until exhausted, except that donations in a spillover fund cannot be credited for more than five consecutive annual property tax bills issued for a specific property. Any funds remaining after the five years must be refunded to the donor.

Funds in the spillover fund must be used solely for the budget year in which the taxpayer will receive the credit. The purpose of this requirement is to prevent the spillover fund from facilitating de facto borrowing against future anticipated revenue.

Deadline for Application of Charitable Fund Contributions

On an annual basis the municipality must adopt a resolution setting the deadline by which municipal, county and school district creditable donations must be reported to the tax collector to apply to the next upcoming annual property tax bill. The municipal governing body has the sole discretion to permit trust donations to be credited against an annual property tax bills that have already by issued.

The deadline for crediting property tax installments shall be no earlier than one month prior to the installment date, except for 2018 which may be sooner, regardless of whether the municipality has established a grace period. Donations reported after the deadline must be applied to the property tax bill issued for the following year or the next quarterly due date, as applicable.

Fund Administrator of Charitable Trust

The Chief Financial Officer is the fund administrator for municipal trust funds and spillover fund.

The trust cannot be administered jointly by more than one local unit. However, a school or county may enter into a shared service agreement with a municipality to have its trust fund contributions collected and processed by the tax collector's office and in turn deposited into the bank account of the county's or school district's trust or spillover fund. Any amount charged by the municipality to provide this service must come from the non-creditable portion of the county or school trust. This amount is over and above the 2% that a municipality can charge a county or school for the processing of crediting trust donations against donor property tax bills. The bank accounts for the county or school trust funds and any associated spillover funds must be kept in one of the municipality's depositories.

Intake of Donations to the Charitable Trust Fund; Crediting Donations Against Property Taxes

Any person or entity may donate to the trust regardless of whether the donor seeks a credit towards their property tax obligation. If a donor seeks a credit against their municipal property tax obligation the donor must provide the specific information to the fund.

In order for the donation to be credited towards the person's property tax bill, the donation must come directly from the property owner or one of their agents.

Please note that the donor cannot place additional restrictions on the use of trust funds.

No credit can be issued to any owner of local real property if the owner owes local property taxes or other delinquent municipal charges at the time of donation. If an otherwise creditable donation cannot be applied due to the delinquent property taxes or municipal charges, the donor has at least 10 business days to seek a refund. If the donor does not make such a request within the timeframe, the entirety of the donation must be refunded to the donor minus a 10%. The 10% may be used for the purpose of the specific fund to which the donation was made and for administrative costs associated with said fund.

The municipality cannot make any representations to a donor or prospective donor concerning how the IRS may treat donations made to a trust. Donors must also sign a statement acknowledging that a municipality makes no such representations concerning how the IRS may treat donations made to a trust. A model donor form will be provided shortly on DLGS' website.

At the discretion of the municipality the donor may make contributions in the form of cash, money order, check (including personal check), automated clearing house (ACH) transfer, wire transfer, credit card or debit card.

Credit donations are applied to the parcel of property and not an individual person or entity. No cash refund of property taxes can be issued until the amount of the property tax refund due exceeds the amount of tax credit issued for the property.

The property tax bill must include the value of the tax credits that apply to the property tax bill and the value of tax credits that apply to future bills.

Please note that no mortgagee or servicing organization is entitled to hold a local property owner liable for electing to meet their obligation to a local unit by means of a charitable donation and resulting property tax credit.

Circumstances when Maximum Creditable Amount is Met; Refunds of Charitable Donations

The donor must provide written authorization for either of the following options when an otherwise creditable donation to a municipal or county trust exceeds the amount that can be credited toward the donor's annual property tax bill:

- Refund the excess portion of the donation;
- Authorize transfer of the balance of the donation to another trust within the local entity, if one exists. Donor must provide instructions on how to apply the balance to multiple parcels, in any;
- Authorize the transfer of the balance of the donation to spillover fund, if one exists; or
- Allow the trust to retain the non-creditable portion of the donation.

Outside the above referenced circumstances, all creditable trust donations are final and shall not be refunded to the donor, including those deposited into a spillover fund. A credit from one parcel cannot be transferred to another parcel after the credit has been applied.

Receipt to Donor from Charitable Fund

Following the receipt of a local charitable donation, the fund administrator must issue a receipt to the donor that contains specific information.

Application of Charitable Fund Contribution; Crediting toward Donor Property Tax Obligation

The tax collector must be notified and the chief financial officer within five business days of the amount of the donation and credit made as a result of the donation, unless a differing time period or arrangement is agreed upon. School and County fund administrators must also notify the municipal Chief Financial Officer within five business days. The trust must provide the tax collector with the information provided by the donor, along with a copy of the donor's property tax bill. The tax collector shall apply the credit against the first local property tax bill that is charged upon confirming the donor is not delinquent on property taxes and/or municipal charges.

If the tax collector applies the credit to an annual property tax bill that has not yet been issued, the credit must be included on the tax bill. If the credit is applied to tax bills already issued, the tax collector must provide an electronic or paper statement to the donor.

Once county or school district trust donations are credited towards the donor's annual property tax bill, the municipal chief financial officer shall enter the creditable donation as a debit against the county or school tax levy, and as a credit against property taxes receivable. The county or school district must reduce the amount of tax dollars sought from the municipality in proportion to the property tax credits applied in the municipality.

The Local Finance Notice also includes step by step directions on establishing a trust along with Frequently Asked Questions. We suggest you review the Local Finance Notice and IRS notice with your Chief Financial Officer, Tax Collector, and municipal auditor.

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