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# State Responses to Federal Tax Reform: Charitable Tax Credits

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# State Responses to Federal Tax Reform: Charitable Tax Credits

**by Joseph Bankman, David Gamage, Jacob Goldin, Daniel Hemel, Darien Shanske, Kirk J. Stark, Dennis J. Ventry Jr., and Manoj Viswanathan**

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In this report, the authors explain how a long-standing principle of federal tax law provides authority for donors to claim a full charitable contribution deduction for gifts entitling them to a state tax credit. They argue that it thus may be possible for states to give their residents a way to preserve the effects of a state and local tax deduction, at least in part, by granting a charitable tax credit for federally deductible gifts, including gifts to the state or one of its political subdivisions.

For a partial inventory of state charitable tax credits, see the appendix to the version of this report published in a coming *State Tax Notes* issue. The appendix describes more than 100 state charitable tax credits in 33 states.

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## I. Introduction

Many states provide tax incentives for charitable giving, typically to encourage private donations to targeted activities, such as natural resource preservation,[1] private school tuition

[1] *See* Jeffrey O. Sundberg, "State Income Tax Credits for Conservation Easements: Do Additional Credits Create Additional Value?" Lincoln Institute of Land Policy, at 26, Table 1 (2011) (Table 1 lists state tax credits as of 2011).



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scholarships,[2] college financial aid, shelters for victims of domestic violence, and various other state-supported programs. Under these programs, taxpayers receive state income tax credits for donations to governments, government-created funds, and nonprofits.

Before the enactment of the Tax Cuts and Jobs Act (P.L. 115-97) in late December, state charitable tax credits operated largely under the radar. Subsequently, these programs garnered new attention because of the tax advantage of making federally deductible gifts that reduce one's state tax liability. This tax advantage derives from the fact that the TCJA imposes new limits on the deductibility of state and local taxes, capping them at a maximum of $10,000 per return.[3] However, the law imposes no such limits on the deductibility of charitable contributions. This disparity in treatment — between nondeductible taxes and deductible gifts — raises a critical legal question for funding state and local governments after the TCJA: Can donors claim a full charitable contribution deduction for gifts entitling them to a state tax credit?

If the answer is yes, as we believe it is, it may be possible for states to provide their residents a means of preserving the effects of a SALT deduction, at least in part, by granting a charitable tax credit for federally deductible gifts, including gifts to the state or one of its political subdivisions. This is a highly controversial conclusion, one that Treasury Secretary Steven Mnuchin has derided as "ridiculous."[4] As we explain, however, legal authority on this matter does not support Mnuchin's view. Under current law, expressed through both court opinions and IRS rulings, the amount of the donor's charitable contribution deduction is not reduced by the value of state tax benefits. We refer to this feature of current law as the "full deduction rule."

The full deduction rule has been applied to credits that completely offset the pretax cost of the contribution. In most cases, however, the state credits offset less than 100 percent of the cost. We believe that, at least in this latter and more typical set of cases, the full deduction rule represents a correct and long-standing trans-substantive principle of federal tax law. According to judicial and administrative pronouncements issued over several decades, nonrefundable state tax credits are treated as a reduction or potential reduction of the credit recipient's state tax liability rather than as a receipt of money, property, contribution to capital, or other item of gross income. As discussed in greater detail later, the full deduction rule is supported not only by decades of precedent but also by a host of policy considerations. Those considerations include federal respect for state initiatives and allocation of tax liabilities, and near-insuperable administrative burdens posed by alternative rules.

It is possible to devise alternatives to the full deduction rule that would require donors to reduce the amount of their charitable contribution deductions by some or all of the federal, state, or local tax benefits generated by making a gift. Whether those alternatives could be accomplished administratively or would require legislation depends on the details of any such proposal. We believe that Congress is best situated to balance the many competing interests that changes to current law would necessarily involve. We also caution Congress that a legislative override of the full deduction rule would raise significant administrability concerns and implicate important federalism values. Congress should tread carefully if it seeks to alter the full deduction rule by statute.

## II. The Charitable Contribution Deduction

### A. Availability of Deduction

Section 170(a) provides for a deduction for charitable contributions as defined in section 170(c). Deductible contributions include donations not only to familiar nonprofit organizations, such as those qualifying for tax-exempt status under section 501(c)(3), but also "a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for

[2] *See* Carl Davis, "State Tax Subsidies for Private K-12 Education," Institute on Taxation and Economic Policy (Oct. 2016).

[3] TCJA section 11042 (amending section 164(b) to limit the SALT deduction for tax years 2018 through 2025).

[4] Augree Eliza Weaver, "Mnuchin: Deducting Property Tax as Charity Is 'Ridiculous,'" *Politico*, Jan. 11, 2018.



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exclusively public purpose."[5] Donations can be made in either cash or property.

### B. Amount of Deduction

The amount of the deduction is generally the amount of cash or the fair market value (or in some instances the basis) of property contributed to the qualifying entity. Treasury regulations provide that the amount deductible may not exceed the excess of:

> (A) the amount of any cash paid and the fair market value of any property (other than cash) transferred by the taxpayer to an organization described in section 170(c); over
>
> (B) the fair market value of the goods or services the organization provides in return.[6]

Because of this quid pro quo provision, a taxpayer who makes a $100 gift to public radio and receives a tote bag in return must reduce the amount of the deduction by the FMV of the tote bag. For example, if the value of the tote bag is estimated to be $20, the taxpayer may claim a deduction of only $80.[7]

### C. Federal Deduction for Charitable Contributions

The basic logic underlying the quid pro quo regulation is that the deduction should be limited to the actual net cost of the gift to the taxpayer — that is, the gross amount of the gift minus the value of goods or services received in exchange for the gift. Although this "net cost to the taxpayer" principle makes intuitive sense, federal tax law ignores (and has always ignored) the value of the federal charitable contribution deduction itself. These tax savings are often substantial. For a taxpayer subject to a 37 percent marginal tax rate, a $100 gift results in a $100 deduction, even though that deduction reduces the net cost of the gift to $63. In other words, in making the quid pro quo determination, federal tax law ignores the $37 of tax savings arising from the gift. If instead of cash the taxpayer donates $100 value property with a zero basis, she not only secures a $100 deduction but also avoids federal income tax on the $100 of built-in gain, saving her (assuming the property is a capital asset held for more than a year) another $20 in federal income tax liability. In this case, the net cost of the gift to the taxpayer — after backing out the federal tax savings — would be only $43. And yet federal tax law allows (and has always allowed) a deduction for $100, even though the net cost to the taxpayer is only $43. In effect, because of the long-standing rule that tax savings do not constitute a quid pro quo requiring the donor to reduce the amount of the deduction, the taxpayer ends up satisfying $57 of her otherwise nondeductible federal income liability[8] by making a deductible charitable gift.

### D. State Tax Benefits for Charitable Contributions

Like the federal government, state governments commonly provide tax benefits for charitable gifts. These benefits take many forms, including both deductions and credits allowable in calculating the taxpayer's state income tax liability. Like the FMV of goods or services received in return for making a gift, as well as the federal charitable contribution deduction, state tax benefits reduce the net cost of the gift to the donor. The availability of these benefits raises the question of what effect, if any, these state tax benefits should have on the amount of the taxpayer's federal deduction for the gift. Should they be treated like "the value of goods and services the organization provides in return" under the quid pro quo analysis? Or should they be ignored in the same way that federal tax benefits are ignored?

## III. State Tax Benefits and the Federal Deduction

Under current law, a donor is not required to reduce the amount of a federal charitable contribution deduction by the value of state tax benefits generated by the gift. This treatment is evident in the fact that taxpayers have never been required to reduce the amount of a federal

[5] Section 170(c)(1).

[6] Reg. section 170A-1(h)(2)(i).

[7] This example assumes that the cost of the tote bag exceeds $10.90 and thus is not treated as an "insubstantial benefit" under Rev. Proc. 90-12, 1990-1 C.B. 471, as adjusted for inflation under Rev. Proc. 2017-58, 2017-45 IRB 489, section 2.30(2).

[8] Section 275(a)(1).



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charitable contribution deduction by the value of any state deduction to which the contribution may also entitle them. Thus, for example, if a taxpayer makes a donation of $100 that entitles her to a charitable contribution deduction on both her federal and state income tax returns, the amount of the federal deduction is $100, undiminished by the reduction in tax liability flowing from either the federal or state charitable contribution deduction. The result is the same when the state tax benefit takes the form of a credit rather than a deduction. Thus, if a taxpayer makes a $100 donation to a charitable organization, including a state or its political subdivision, and the donation entitles the taxpayer to a $70 credit against her state income tax liability, the amount of the federal charitable contribution deduction would be $100, undiminished by the value of the tax credit.

The legal authority supporting the full deduction rule is summarized in ILM 201105010, an IRS memorandum published in early 2011. The facts presented in the memorandum concern contributions to a state agency or other qualifying organization, in a state (apparently Missouri[9]) where four separate programs entitle donors to state tax credits with unspecified credit percentages. For each of the four programs considered, donors may contribute cash or other property.

The legal analysis in ILM 201105010 is straightforward. It first provides an overview of the treatment of charitable contributions when the donor receives some benefit in return, noting (consistent with the analysis above) that the deduction is allowable "only to the extent the amount transferred exceeds the fair market value of the benefit received, and only if the excess amount was transferred with the intent of making a gift."[10] Citing judicial holdings in *McLennan*,[11] *Skripak*,[12] and *Allen*,[13] the memorandum reaffirms the well-established conclusion that the "tax benefit of a federal or state charitable contribution *deduction* is not regarded as a return benefit that negates charitable intent, reducing or eliminating the deduction itself" (emphasis added). Also, citing *Browning*,[14] the memo observes that the value of the deduction "has not been treated as an item of income under section 61, in the form of an amount realized on the transfer under section 1001."[15]

In each of the court cases cited in ILM 201105010, the value of a state tax deduction is not treated as a payment from the state or as property received from the state but rather as a reduction or potential reduction of state tax liability. In other words, when a charitable gift entitles the donor to a state charitable contribution deduction, the full deduction rule applies and the donor is not required to reduce the amount of the federal charitable contribution deduction under reg. section 170A-1(h)(2)(i)(B).

The central question ILM 201105010 aims to address is whether "a state tax benefit in the form of a state tax credit, or a transferable state tax credit, is distinguishable from the benefits of a state tax deduction."[16] This was not an issue of first impression for the IRS Office of Chief Counsel; it faced the issue in at least two previous advisory memoranda. In 2002 chief counsel

[9] Although Missouri is not named in the memorandum, the addressee is the associate area counsel in Kansas City, and Missouri has several tax credit programs that match the descriptions in the memorandum. *See* Missouri Department of Revenue, "Miscellaneous Tax Credits" (Jan. 2, 2017).

[10] ILM 201105010 at 4.

[11] *McLennan v. United States*, 23 Cl. Ct. 99 (1991), subsequent proceedings, 24 Cl. Ct. 102, 106 n.8 (1991), *aff'd*, 994 F.2d 839 (Fed. Cir. 1993) (noting that "a donation of property for the exclusive purpose of receiving a tax deduction does not vitiate the charitable nature of the contribution").

[12] *Skripak v. Commissioner*, 84 T.C. 285, 319 (1985) (noting that "a taxpayer's desire to avoid or eliminate taxes by contributing cash or property to charities cannot be used as a basis for disallowing the deduction for that charitable contribution").

[13] *Allen v. Commissioner*, 92 T.C. 1, 7 (1989) (quoting *Skripak*, 84 T.C. at 319).

[14] *Browning v. Commissioner*, 109 T.C. 303, 325 (1997) ("Respondent's argument suggests that a taxpayer making a gift of stock worth $100 to a charitable organization may be entitled to a charitable contribution deduction of some lesser amount on account of the economic value of the deduction. That suggestion is untenable. The regulations provide explicitly that, if a charitable contribution is made in property, the amount of the contribution is the fair market value of the property.").

[15] ILM 201105010 at 4.

[16] *Id.*



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issued a memorandum concerning the treatment of the Colorado conservation easement credit, which entitles a donor of a conservation easement to a credit up to $260,000 against Colorado income tax liability.[17] And in 2004 chief counsel issued a memorandum concerning the treatment of the Oregon child care tax credit program, which entitles a donor to the Oregon Child Care Division to a credit against Oregon income tax liability.[18] In both cases, the IRS cited the long-standing rule that a state charitable contribution deduction "is not viewed as a return benefit that reduces or eliminates a deduction under section 170, or vitiates charitable intent."[19] However, both memoranda declined to address whether the same rule should apply for state tax credits, instead concluding that this issue should be addressed by the IRS National Office.

ILM 201105010 concludes that the full deduction rule applies not only to state charitable contribution deductions but also to state charitable contribution credits, noting that "taxpayers may take a section 170 deduction for the full amount of their charitable contributions of cash and appreciated stock, assuming the requirements of section 170 are otherwise met." The memorandum summarizes the legal basis for that conclusion as follows:

> Based on our analysis of existing authorities, we conclude that the position reflected in *McLennan*, *Browning*, and similar case law generally applies. There may be unusual circumstances in which it would be appropriate to recharacterize a payment of cash or property that was, in form, a charitable contribution as, in substance, a satisfaction of tax liability. Generally, however, a state or local tax benefit is treated for federal tax purposes as a reduction or potential reduction in tax liability. As such, it is reflected in a reduced deduction for the payment of state or local tax under section 164, not as consideration that might constitute a quid pro quo, for purposes of section 170, or an amount realized includible in income, for purposes of sections 61 and 1001.

Beyond the *McLennan* and *Browning* decisions, ILM 201105010 specifically refers to two additional sources of authority for the full deduction rule: (1) Rev. Rul. 79-315, 1979-2 C.B. 27, Holding 3; and (2) the Sixth Circuit's decision in *Snyder*.[20] Both of those precedents represent instances in which a state tax credit was treated as a reduction or potential reduction in tax liability (rather than as a payment from the state) and thus support the full deduction rule.

### A. Rev. Rul. 79-315, Holding 3

In Rev. Rul. 79-315, the IRS described the federal income tax treatment of income tax rebates paid by Iowa to its residents in 1979. Because of legislation enacted in May 1979, Iowa determined that individuals subject to the state's income tax in 1978 should receive a rebate of a portion of their 1978 state income tax liability. Holdings 1 and 2 concern taxpayers for whom the 1979 rebate took the form of a refund of 1978 taxes paid on returns that had already been filed. In those cases, the treatment of the refund turned on the application of the familiar tax benefit rule under which the refund was (1) taxable if the taxes refunded were deducted on the individual's 1978 federal income tax return, but (2) not taxable if the taxes refunded were not deducted on the individual's 1978 federal income tax return.

Holding 3 — the one relevant to the current analysis — concerns taxpayers for whom the Iowa rebate took the form of a credit against 1978 income taxes not yet paid:

> If all or a portion of an individual's refund is credited against tax due for 1978, *the amount credited is treated as a reduction of the outstanding tax liability*. The amount credited against unpaid 1978 tax is neither includible in the individual's gross income for 1979 nor deductible under section

[17] ILM 200238041.

[18] ILM 200435001.

[19] ILM 200238041 at 5-6; ILM 200435001 at 4 ("The fact that states typically provide for a similar deduction in determining the taxable income base for state tax purposes does not affect the federal deduction under I.R.C. section 170.").

[20] *Snyder v. Commissioner*, 894 F.2d 1337 (6th Cir. 1990) (unpublished opinion), *vacating and remanding* T.C. Memo. 1988-320.



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164(a)(3) of the Code as a state income tax paid in 1979.[21]

The intuition underlying Holding 3 is that when a state grants a taxpayer an income tax credit on the state tax return, that credit is not treated as the receipt of cash or other item of value; instead, it merely represents an adjustment to the taxpayer's as-yet-undetermined state income tax liability. This may seem like a formal distinction, but there are many instances throughout all of U.S. tax law in which substantive outcomes turn on formal distinctions.[22] In this case, the formality of being granted a state tax credit rather than receiving a cash refund from the state results in the taxpayer simply treating the amount as a reduction or potential reduction in as-yet-undetermined tax liability rather than going through the process of applying the tax benefit rule.

In effect, Holding 3 concludes that for taxpayers receiving a credit instead of a cash refund, the final amount of their 1978 state income tax liability is not yet known and the credit is simply applied in making that determination. Accordingly, Holding 3 supports the conclusion of ILM 201105010 that the granting of a state tax credit is not treated as the payment of money, or receipt of property, that might be regarded as a quid pro quo, but rather merely represents an adjustment of the taxpayer's as-yet-undetermined tax liability.

### B. *Snyder*

The Sixth Circuit's 1990 opinion in *Snyder*[23] adopted the same logic as Holding 3. *Snyder* involved a taxpayer who was a partner in a partnership that operated a horse racing track near Cleveland. Under Ohio law in effect at the time, all racetracks were required to collect and remit to the state parimutuel taxes based on the gross amount wagered at the track each day. Ohio law also provided for a credit against those taxes equal to 70 percent of the amount of specified capital improvements made to the racetrack property as certified by the state. The partnership made certified capital improvements to its racetrack in an amount sufficient to entitle it to a tax credit of $534,712, which was used to reduce its parimutuel tax obligations in 1976 ($252,826) and 1977 ($281,886).

The question addressed by the court in *Snyder* was how the partnership should treat those state tax credits for federal income tax purposes. In proceedings before the Tax Court, the government argued that because the partnership was an accrual-method taxpayer, it was required to include the full value of the tax credits in income in the year the credits were certified. Under that view, the partnership would be entitled to deduct the full amount of the parimutuel taxes rather than treat the tax credits as a reduction in the amount of tax owed. The Sixth Circuit rejected that approach, concluding instead that the proper treatment of the tax credits was simply "to reduce the deductions available to the [the partnership] for its pari-mutuel tax obligations, which reduced deductions accrued as those taxes become due."

The Sixth Circuit's decision on this question expressly rejected two alternative views: (1) the value of the tax credits was income to the partnership;[24] and (2) the partnership's basis in the improvements should be reduced by the amount the credits.[25] In rejecting those alternatives, the court embraced the same logic that later formed the basis of the 2011 memorandum on charitable tax credits — that state tax credits are not treated as a payment from the government but instead merely represent an adjustment or potential adjustment to the recipient's state tax obligations.

## IV. Court Cases Supporting the Full Deduction Rule

When ILM 201105010 was issued, there was no judicial authority directly addressing the full deduction rule. Although the *Snyder* holding embraced the underlying logic of the full

[21] Rev. Rul. 79-315, Holding 3 (emphasis added).

[22] *See*, *e.g.*, section 199A(d)(2)(A).

[23] *Snyder*, 894 F.2d 1337.

[24] The view that the tax credits were income to the partnership was advanced by the government and accepted by the Tax Court, but that position was ultimately rejected not only by the Sixth Circuit but also by the government ("The Commissioner concedes that he and the Tax Court were wrong on this point, and the Snyders were right.").

[25] The taxpayers initially maintained that the partnership's basis in the capital improvements (the completion of which generated the credit) should be reduced by the amount of the tax credit. However, as the Sixth Circuit noted, all the parties agreed that this treatment was erroneous ("It is undisputed that the partnership's treatment of the pari-mutuel tax reduction was wrong.").



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deduction rule (that state tax credits are not a payment from the state but merely an adjustment to state tax owed), the case concerned state tax credits granted in exchange for making specified capital improvements, rather than the charitable gift context. More recently, however, the Tax Court (in *Tempel*,[26] *Route 231*,[27] and *SWF Real Estate*[28]) and at least two federal courts of appeals (the Tenth Circuit in *Esgar*[29] and the Fourth Circuit in *Route 231*[30]) have effectively endorsed the full deduction rule, fortifying the legal underpinnings of the conclusion reached by the IRS in its 2011 memorandum.

### A. *Tempel*

*Tempel* involved taxpayers who had donated a conservation easement on 54 acres in Colorado in 2004. Under state law, the donation of a perpetual conservation easement entitled the donor to a transferable state income tax credit. For 2004 the amount of the charitable tax credit was equal to 100 percent of the value of the donation, up to $100,000, plus 40 percent of the value exceeding $100,000, up to a maximum allowable credit of $260,000. Because the value of the perpetual conservation easement donated by the taxpayers was $836,500, they claimed the maximum allowable credit of $260,000. In the two weeks immediately after their receipt of the credits from the state, the taxpayers sold a portion of them (representing $110,000 of credits) to unrelated third parties for $82,500. The central question raised in *Tempel* was the appropriate federal income tax treatment of the sale of the Colorado tax credits, in particular whether the gain from that sale was capital gain or ordinary income.

The court's focus on the tax consequences of selling the credits is important because it reveals the parties' (and the court's) agreement on the logically prior question of how to treat the *receipt* of state charitable tax credits. As the Tax Court noted early in its opinion, the government asserted (and the taxpayers agreed) that the taxpayers' "receipt of State tax credits as a result of their conservation easement contribution was neither a sale or exchange of the easement *nor a quid pro quo transaction*."[31] This is, of course, the exact view expressed in ILM 201105010, so it is no surprise that the government would advance this position in litigation. Since there was no disagreement on this point, the court devoted little of its analysis to the quid pro quo question, focusing instead on its holding that the credits were capital assets whose sale gave rise to short-term capital gain equal to the sale proceeds received by the taxpayers in exchange for the credits. Nevertheless, in reaching that conclusion, the Tax Court offered some relevant legal guidance regarding the federal income tax treatment of the receipt of state charitable tax credits. Two elements of the Tax Court's holding in *Tempel* deserve mention.

First, in considering one of the government's arguments regarding the character of the gain from the sale of the credits, the court offered its own view of the tax consequences of the receipt of a state charitable tax credit. It was necessary for the court to address this question because the IRS maintained that the tax credits represented the "economic equivalent of ordinary income." The agency's theory was that "if an individual taxpayer who sells credits itemizes deductions (ignoring phase-outs), that taxpayer's section 164 Federal income tax deduction is greater than it would have been had the taxpayer retained and used the credits." In other words, the IRS was arguing that because the taxpayer's failure to use the credits preserved a deduction that would reduce ordinary income, the sale of the credit should be treated as giving rise to ordinary income.

Importantly, the Tax Court not only rejected that argument but also used the opportunity to emphasize that the receipt of a state charitable tax credit is a nonevent and that the reduction in state tax liability that the credit enables does not create income. The court first observed that a "reduction in a tax liability is not an accession to wealth.

[26] *Tempel v. Commissioner*, 136 T.C. 341 (2011), *aff'd sub nom*, *Esgar Corp. v. Commissioner*, 744 F.3d 648 (10th Cir. 2014) (a consolidated appeal of *Tempel* and *Esgar*, T.C. Memo. 2012-35).

[27] *Route 231 LLC v. Commissioner*, T.C. Memo. 2014-30, *aff'd*, 810 F.3d 247 (4th Cir. 2016).

[28] *SWF Real Estate LLC v. Commissioner*, T.C. Memo. 2015-63.

[29] *Esgar*, 744 F.3d 648 (affirming *Tempel*).

[30] *Route 231*, 810 F.3d 247 (affirming the Tax Court).

[31] *Tempel*, 136 T.C. at 344 (emphasis added).



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Consequently, a taxpayer who has more section 164 deductions has not received any income." Citing Rev. Rul. 79-315, the court noted that "even [the commissioner] recognizes that a reduction in taxes does not create income." The court then observed that "the parties and this Court agree that the receipt of a State tax credit is not an accession to wealth that results in income under section 61." In two additional passages, the court further underscored that point:

> It is without question that a government's decision to tax one taxpayer at a lower rate than another taxpayer is not income to the taxpayer who pays lower taxes. A lesser tax detriment to a taxpayer is not an accession to wealth and therefore does not give rise to income.
>
> And:
>
> Credits do not increase a donor's wealth, as long as they are used to offset or reduce the donor's own State tax responsibility. A reduced tax is not an accession to wealth. It is only, as occurred in the instance case, when the donor sells or exchanges a State tax credit to a third party for consideration that an accession to wealth has occurred.

Those passages reflect the same logic underlying Rev. Rul. 79-315 and *Snyder*. As *Tempel* confirms, when a state grants a taxpayer a tax credit, the state is not regarded as making a payment to the taxpayer or transferring an item of value to the taxpayer, but rather is merely exercising its sovereign power to "tax one taxpayer at a lower rate than another taxpayer." The tax credit is simply the mechanism by which a state government decides to impose a "lesser tax detriment" on one party because of its actions or attributes. The credit does not involve a reduction of a past or even existing liability but rather is one of the many variables that the state, in its sovereign capacity, has decided to consider in determining the final amount of the taxpayer's as-yet-undetermined tax liability.

The second element of the *Tempel* holding relevant to the quid pro quo analysis is the Tax Court's discussion of the taxpayers' basis in the tax credits granted to them by virtue of the charitable gift. Because the taxpayers eventually sold the credits rather than using them to reduce their own tax liability, it was necessary to determine their basis in the credits to calculate the amount of any gain or loss on the sale.[32] Again, the holding endorses the full deduction rule in finding that the taxpayers' basis in the charitable tax credits was zero. Recall that the value of the donated easement was $836,500 and the amount of the credits granted by Colorado was $260,000. Under a quid pro quo analysis, that transaction would be regarded as (1) a gift of property worth $576,500 and (2) a purchase of state tax credits for $260,000. That is the essence of the quid pro quo analysis — a bifurcation of the transaction into its gift and non-gift components. Recall that when a donor of $100 to public radio receives a tote bag worth $20, she is treated as making a gift of $80 and purchasing a tote bag for $20. In that situation, the donor's basis in the tote bag is $20.

Consistent with the view that the receipt of a state charitable tax credit is not a quid pro quo transaction, the Tax Court in *Tempel* rejected the quid pro quo approach, concluding instead that the taxpayers "did not acquire the State tax credits by purchase"[33] and that they therefore had no basis in their state tax credits. In reaching that conclusion, the court emphasized that "it was the State's *unilateral* decision to grant [the taxpayers] the State tax credits as a consequence of their compliance with certain State statutes."[34] In other words, the Tax Court's view is that a state charitable tax credit is not regarded as consideration for the gift, but rather flows from the unilateral decision by the state government to confer a lesser tax detriment on those who make qualifying gifts of conservation easements. The Tax Court's decision in *Tempel* was later affirmed by the Tenth Circuit.[35]

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[32] Section 1001(a).

[33] *Tempel*, 136 T.C. at 353.

[34] *Id*. (emphasis added).

[35] *Esgar*, 744 F.2d 648.



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## B. *Route 231*

In another case involving state charitable tax credits, the Tax Court and the Fourth Circuit also touched on whether those credits should be regarded as a quid pro quo. *Route 231*[36] involved a limited liability company formed in 2005 by Raymond E. Humiston III and John D. Carr to acquire and operate real property in Albemarle County, Virginia. The LLC acquired real property in June 2005. Carr and Humiston then engaged a consultant to determine whether and how to devote some portion of the property to conservation purposes. On December 27, 2005, the parties amended the LLC's operating agreement to admit a new member, Virginia Conservation Tax Credit FD LLLP (Virginia Conservation) in exchange for a capital contribution of $3,816,000. On December 30, 2005, the LLC made charitable contributions, including two gifts of conservation easements (one to the Nature Conservancy and the other to the Albemarle County Public Recreational Facilities Authority, which is a governmental body of Albemarle County and a political subdivision of the Commonwealth of Virginia) and a gift of a fee interest (to the Nature Conservancy). Under Virginia law in effect at the time, the donor of a conservation easement was entitled to a state charitable tax credit equal to 50 percent of the FMV of the property donated. Based on an appraisal undertaken at the time of the gift, the taxpayers were allocated state tax credits totaling roughly $7.4 million. Under the terms of the amended LLC operating agreement, $7.2 million of those credits were allocated to Virginia Conservation.

The central tax question in *Route 231* was whether the combined capital contribution by Virginia Conservation and the subsequent allocation of the lion's share of the tax credits to it should be treated as a disguised sale of the credits under section 707 of subchapter K. The Tax Court determined that this was indeed a disguised sale, and the Fourth Circuit agreed. For our purposes, the relevant aspect of the *Route 231* outcome concerns the federal income tax consequences of that sale. That is, once the determination is made that the substance of the transaction is a sale of the credits from Route 231 LLC to Virginia Conservation on December 30, 2005, what are the federal income tax consequences of that sale to the LLC?

We know that the LLC reported that it had made noncash charitable contributions for tax year 2015 of $14,831,967, representing the full value of the three charitable gifts, undiminished by the $7,415,983 worth of state charitable tax credits granted by Virginia because of the gifts. We also know that the IRS did not challenge that return position but rather took the view that the taxpayer sold tax credits with a zero basis on December 30, 2005. Here again we see the same analysis as applied in the *Tempel* opinion. When a donor makes a gift entitling her to a state charitable tax credit, (1) the amount of the federal charitable contribution deduction is the full value of the gift, undiminished by the state tax credits, and (2) any subsequent sale of the credits is treated as a sale of a zero-basis asset, because the credits are not acquired by purchase but rather result from the unilateral action of the government to confer a lesser tax detriment on the party who has chosen to make the charitable transfer. In summary, this application accords with the full deduction rule expressed in ILM 201105010 and *Tempel*.

## C. *SWF Real Estate*

In a separate but virtually identical case, the Tax Court in *SWF Real Estate*[37] addressed the same issues raised in *Route 231*. As with *Route 231*, the taxpayer purchased real estate in Albemarle County. Relying on the same Virginia statute (the Virginia Land Preservation Tax Credit Program), on December 29, 2005, SWF Real Estate LLC executed a deed of conservation easement conveying the easement to the Albemarle County Public Recreational Facilities Authority. According to an appraisal undertaken in early December 2005, the easement had a value of $7,398,333, meaning that its donation to the government would generate state tax credits of $3,699,167. On its federal income tax return for 2005, SWF reported a noncash charitable contribution of $7,398,333 — that is, the full

[36] *Route 231*, T.C. Memo. 2014-30, *aff'd*, 810 F.2d 247.

[37] *SWF Real Estate*, T.C. Memo. 2015-63.



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amount of the gift, undiminished by the state tax credits generated by the gift.

As in *Route 231*, the primary question in *SWF Real Estate* concerned whether an allocation of the tax credits to a new partner (again, Virginia Conservation) should be treated as a disguised sale under section 707. Also as in that prior case, the court determined that there was in fact a disguised sale of the state tax credits to Virginia Conservation. For our purposes, however, the more relevant holding of *SWF Real Estate* concerns the amount of the charitable contribution deduction allowed for 2005. While the taxpayer had claimed a noncash contribution of $7,398,333, the Tax Court considered alternative appraisals and determined that the appropriate amount of the charitable contribution deduction was $7.35 million. Although this allowed deduction was slightly lower than the claimed amount, it is noteworthy that the court did not reduce the amount of the deduction by the state tax credits. Thus, as in *Tempel* and *Route 231*, the Tax Court in *SWF Real Estate* applied the full deduction rule in determining the amount of the allowable charitable contribution deduction.

### D. *Maines*

One final post-ILM 201105010 judicial opinion deserves mention. Although it does not involve charitable contributions, the Tax Court's opinion in *Maines*[38] is significant because of its discussion of the federal income tax treatment of state tax credits. The taxpayers in *Maines* owned interests in an S corporation and a partnership, both of which had made investments in New York entitling them to three state tax credits: the Empire Zones (EZ) investment credit, the EZ wage credit, and the Qualified Empire Zone Enterprise (QEZE) credit for real property taxes. Eligibility for those credits required investment in impoverished areas designated by the state. While eligibility depended on the entity's meeting the investment requirements, the credits passed through to the taxpayers on their individual returns.

The EZ investment credit, equal to 8 percent of specified qualifying investments in tangible property, could be claimed against income tax or corporate franchise tax, and the taxpayer could carry forward any unused portion or receive half the excess as a refund. Similarly, the EZ wage credit was first used to reduce corporate franchise or income tax liability, with any excess credit either carried forward or partially refunded at the taxpayer's election. Finally, the QEZE real property tax credit was calculated by reference to real property taxes previously paid by the qualifying business, but the credit was claimed by the taxpayers on their individual income tax returns.

The Tax Court's holdings in *Maines* are consistent with the approach outlined in Rev. Rul. 79-315. First, when a credit entitles the taxpayer to a refund of a prior year's tax liability, the taxability of the refund is determined under the tax benefit rule. That holding, which applied to the QEZE real property tax credit, is consistent with holdings 1 and 2 of Rev. Rul. 79-315. Second, when a credit is applied to reduce the current year's tax liability, the credit is not taxable or otherwise treated as an item of income but rather simply reduces a tax obligation. That holding, which applied to the nonrefundable portions of the EZ investment credit and the EZ wage credit, is consistent with Holding 3 of Rev. Rul. 79-315. The court also concluded that the taxpayers must include in income the refundable portion of the credits.[39]

Thus, the holdings in *Maines* illustrate an important limitation on the principle underlying the full deduction rule: If a state charitable tax credit is refundable, entitling a donor not only to reduce her state tax liability but also to secure a refund to the extent that the credit exceeds tax owed, the refundable portion of the credit might be treated as a payment from the state rather than as a mere reduction or potential reduction in tax liability.

### E. *Randall*

To our knowledge, the Supreme Court has addressed the federal income tax treatment of tax

[38] *Maines v. Commissioner*, 144 T.C. 123 (2015).

[39] *Id*. at 136 (holding that the "excess portion that remains after first reducing state-tax liability and that may be refunded is an accession to the Maineses' wealth, and must be included in their federal gross income under section 61").



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credits in only one case: *Randall*.[40] The petitioners purchased interests in a limited partnership formed by the respondent to build and operate a motel. The respondent marketed the scheme as a tax shelter and promised substantial after-tax returns for investors in the top income tax brackets. Although the partnership generated tax benefits for the petitioners in its early years, the enterprise ultimately failed, and the petitioners successfully sued the respondent for securities fraud. The issue before the Supreme Court concerned the damages to which the petitioners were entitled. The relevant provision of the Securities Act of 1933, section 12(2), provides for recovery in some cases equal to "the consideration paid for such security with interest thereon, less the amount of any income received thereon."[41] The question for the Court was whether the petitioners' damages should be reduced by the value of the tax benefits they received from their investment.[42]

By an 8-1 vote, the Court found for the petitioners. According to the Court, "section 12(2)'s offset for 'income received' on the security does not encompass the tax benefits received by defrauded investors by virtue of their ownership of the security, because such benefits cannot, under any reasonable definition, be termed 'income.'"[43] The Court went on to say:

> The "receipt" of tax deductions or credits is not itself a taxable event, for the investor has received no money or other "income" within the meaning of the Internal Revenue Code. See 26 U.S.C. section 61. Thus, we would require compelling evidence before imputing to Congress an intent to describe the tax benefits an investor derives from tax deductions or credits attributable to ownership of a security as "income received thereon."[44]

*Randall*'s holding is about a provision of securities law, and thus this passage about the income tax treatment of credits is dicta. Further, *Randall* does not address the central question of whether a tax credit should be treated as a quid pro quo return benefit for purposes of section 170. Nevertheless, *Randall* clearly addresses — and clearly dismisses — the possibility that the amount of a credit should be includable in income for purposes of section 61. In this respect, the case provides solid support for the conclusion common to Rev. Rul. 79-315, *Snyder*, *Tempel*, *Maines*, and ILM 201105010 that tax credits are not an item of income. Put another way, the Court's statement that tax benefits "cannot, under any reasonable definition, be termed 'income,'" although dicta, would loom large over any effort by the IRS to argue otherwise. As we explain later, there are good reasons for so many authorities to reach the same conclusion.

### F. *Winn*

One additional Supreme Court decision deserves mention because of its extended discussion of state charitable tax credits. *Winn*[45] involved an establishment clause challenge to Arizona's system of providing 100 percent charitable tax credits for donations to school tuition organizations (STOs) that fund tuition scholarships to private schools, including religious schools. A group of Arizona taxpayers challenged the constitutionality of this program, but the Supreme Court dismissed their challenge on the basis that the taxpayers lacked the required standing under Article III of the Constitution. The Court's analysis of the standing issue involved considering an earlier standing case, *Flast*.[46] In making their argument that they had standing under *Flast*, the respondents in *Winn* alleged that Arizona's 100 percent tax credits were "best understood as a governmental expenditure" and that by making donations entitling them to 100 percent state income tax credits, donors to STOs were "in effect . . . paying their state income tax to STOs."

[40] *Randall v. Loftsgaarden*, 478 U.S. 647 (1986).

[41] 15 U.S.C. section 771(a).

[42] *Randall*, 478 U.S. at 649-655.

[43] *Id*. at 656.

[44] *Id*.

[45] *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011).

[46] *Flast v. Cohen*, 392 U.S. 83 (1968).



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In his opinion for the majority, Justice Anthony M. Kennedy rejected both of those arguments. Whether state tax credits should be understood as a government expenditure, the Court noted simply "that is incorrect" and said instead that tax credits are an instance of "the government declin[ing] to impose a tax." The Court did not characterize the granting of state tax credits as a transfer of money or other property to the taxpayer (the essential elements of a quid pro quo transfer). Rather, Kennedy wrote, "when Arizona taxpayers choose to contribute to STOs, they are spending their own money, not money the State has collected from respondents or from other taxpayers." The Court also emphasized that donations to Arizona STOs were fully voluntary, concluding that "respondents and other Arizona taxpayers remain free to pay their own tax bills, without contributing to an STO" or, alternatively, they could "contribute to an STO of their choice, either religious or secular" or "other charitable organizations, in which case respondents may become eligible for a tax deduction or a different tax credit." Significantly, the point here seems to be that when an individual makes a gift to an STO, the Supreme Court regards that act as a wholly voluntary private decision, even though the gift generates a 100 percent tax credit, reducing the donor's tax liability dollar for dollar.

The second element of the Court's analysis is perhaps even more relevant to the full deduction rule. Recall that in ILM 201105010, when the IRS embraced the full deduction rule, it noted that "there may be unusual circumstances in which it would be appropriate to recharacterize a payment of cash or property that was, in form, a charitable contribution as, in substance, a satisfaction of tax liability." In *Winn*, the Supreme Court appears to express the view that donations generating a 100 percent state tax credit are not one of those circumstances:

> Like contributions that lead to charitable tax deductions, contributions yielding STO tax credits are not owed to the State and, in fact, pass directly from taxpayers to private organizations. Respondents' contrary position [that a tax credit donation constitutes a satisfaction of a tax liability] assumes that income should be treated as if it were government property even if it has not come into the tax collector's hands.

While one might argue that the Court's characterization of STOs as "private organizations" is an essential element of its analysis here, the "private" aspect of these organizations cannot be essential to the holding. First, Congress has determined that both public and private organizations are entitled to receive deductible charitable donations under section 170(c). There is no favored "private" category. Second, treating tax credits as a quid pro quo only in the case of donations to public entities (but not in the case of donations to private organizations) would run afoul of long-standing precedent that the "return benefit" in quid pro quo transfers need not come directly from the donee organization but can also consist of indirect benefits.[47] The tax credits in *Winn* and other such cases were given only to organizations that satisfied extensive state criteria, as the Court clearly understood.[48] If a credit for donations to a state-established fund is a problem (and it is not), why should a credit for donations to a state-blessed fund not also be a problem? In both cases, the donated resources are directed to services and activities determined by the state. Thus, any claim that state charitable tax credits constitute a quid pro quo only in the case of gifts to public entities is inconsistent with current law, and any claim that those credits should be uniquely disfavored does not rest on a solid analytic distinction. Finally, and most crucially, as explained above, federal tax law has addressed this specific issue and has never regarded any tax benefits, either federal or state, and whether in the form of deductions or credits, as a quid pro quo benefit requiring a reduction in the taxpayer's federal charitable contribution deduction.

Thus, *Winn* confirms two essential insights regarding the fundamental nature of state charitable tax credits: (1) When the government grants charitable tax credits to a donor, it is not transferring money, property, or anything of value to the donor; and (2) a voluntary donation of the donor's resources to a state-designated

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[47] *See, e.g.*, *Singer Co. v. United States*, 449 F.2d 413, 422 (Ct. Cl. 1971).

[48] *Winn*, 563 U.S. at 130-131.



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organization does not constitute the "satisfaction of tax liability," even when the donation results in a dollar-for-dollar state tax credit.[49] Although *Winn* is not a tax case, it should be clear that these two insights are in full accord with all the other judicial and administrative pronouncements supporting the full deduction rule.

## V. State Tax Credits as a 'Lesser Tax Detriment'

Beyond the several cases discussed above, there are many other situations in which a taxpayer is entitled to a state tax credit for one reason or another. In all those instances, it is necessary to determine the federal income tax consequences of a taxpayer's receipt of the state tax credit. Because the situations are so numerous and varied, it is impossible to describe them here. It bears noting, however, that in each of these instances the IRS has relied on the exact same principle underpinning the full deduction rule — the principle that nonrefundable tax credits should be regarded merely as conferring a "lesser tax detriment" rather than as a payment from the state.

For example, the IRS concluded that the nonrefundable portion of a Minnesota state income tax credit granted to any resident that is or was in active military service should be treated as a reduction in state tax liability rather than as a payment from the state.[50] Similarly, the IRS concluded that the nonrefundable portion of a Massachusetts state income tax credit granted to some low-income taxpayers who paid real estate taxes or rent should be treated as a reduction in state tax liability rather than as a payment from the state government.[51] In another memorandum concerning Massachusetts, the IRS considered the federal income tax consequences of five separate state tax credit programs: (1) the brownfields tax credit, (2) the motion picture tax credit, (3) the historic rehabilitation tax credit, (4) the low-income housing tax credit, and (5) the medical device tax credit. Here again the IRS recited the long-standing principle discussed above:

> The taxpayer that originally receives — that is, qualifies for — one or more of the described credits is not viewed as having received property in a transaction that results in the realization of gross income under section 61. Generally, a state tax credit, to the extent that it can only be applied against the original recipient's current or future state tax liability, is treated for federal income tax purposes as a reduction or potential reduction in the taxpayer's state tax liability, not as a payment of cash or property to the taxpayer that is includible in gross income under section 61.[52]

In one particularly revealing passage, appearing in the first footnote of ILM 201147024, the IRS stated:

> We do not agree that a such a reduction in a taxpayer's potential tax liability is the equivalent of a payment to the taxpayer . . . ; instead, as stated in the text, *in the hands of the taxpayer that originally qualifies for the benefit, it simply enters into the computation of the taxpayer's state or local tax liability and is reflected in the amount of the taxpayer's section 164 deduction.*[53]

It should be apparent that this italicized passage is not anomalous. Rather, this principle has surfaced repeatedly throughout federal tax law, in a variety of settings, whenever a question concerning state tax credits arises. This is the sense in which the principle is trans-substantive — that is, it applies not only in the context of charitable contributions generating state tax credits but in a wide range of other contexts as well.

## VI. Policy Supports the Full Deduction Rule

As noted above, the full deduction rule is discussed and supported in cases involving odd fact patterns, such as the sale of tax credits in

[49] As explained later, we have some doubts whether that second point is a reasonable conclusion. Nevertheless, the Supreme Court's views on this issue are certainly relevant in determining the circumstances when a voluntary gift generating state credits should be regarded as, in substance, the payment of a tax.

[50] ILM 200708003.

[51] ILM 201423020.

[52] ILM 201147024.

[53] *Id*. at 4 n.1 (emphasis added).



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*Tempel*, *Route 123*, or *SFW Real Estate*. There are no cases challenging the rule in its common application: when a taxpayer takes a full federal deduction despite state tax credits that offset some but not 100 percent of the cost. The rule in that situation appears to be too obvious to be challenged or to need defense. ILM 201105010 confirms the rule but does not discuss its justification. This is also consistent with a view that the rule is well-settled law.

We can think of at least three policy considerations underlying the full deduction rule in those circumstances.

First, the rule reduces arbitrariness and significant computational and administrative difficulties. The most likely alternative rule would limit the deduction by the amount of state tax benefit. Under that rule, the amount of the federal tax charitable deduction would vary from state to state, and from taxpayer to taxpayer within each state. That alone would be arbitrary and cause practical difficulties for taxpayers and tax agencies. A taxpayer would learn the amount of her federal deduction only by doing simulations at the time of filing; first simulating her state tax liability with the contribution and then without it. She would not know the amount of her deduction when making the contribution. The simulations would be burdensome and confusing to taxpayers, and the fact that the amount of deduction could not be known at the time of the contribution would create uncertainty that would likely limit contributions. This alternative rule would also be burdensome to the IRS, because the agency could challenge a deduction only by making similar simulations of the taxpayer's state tax liability.

Those difficulties would be magnified if states adopted the federal approach, such that state benefits were limited by the federal benefits, just as federal benefits were limited by state benefits. At that point, determining the amount of federal or state benefit would require the use of an algebraic formula that took the limitation of both benefits into account. That calculation would be beyond the comprehension of all but a few taxpayers or return preparers. Variants of this alternative rule — such as denying a deduction when the state tax benefit reached a specified point — would require similarly confusing calculations and have the further disadvantage of arbitrariness, creating a cliff effect for taxpayers who fell just short of the acceptable benefit.

Second, the full deduction rule is consistent with the fundamental principles that underlie the concept of taxable income. The federal tax laws have historically recognized the entirety of some state taxes as a deduction. However, federal law has never tried to go beyond those easily determined figures by inquiring whether the internal calculations of state tax liability generate federal taxable income. There is a good reason for this: It is impossible to know whether the combination of rates, deductions, credits, and state services a taxpayer receives makes her better or worse off in a way that can be recognized by a concept such as federal taxable income. Theories on which to base taxable income, such as the Haig-Simons definition of income, have never been understood to incorporate this determination. The numerous judicial and administrative authorities cited above likewise reflect a judgment not to regard the various credits and deductions allowed in computing state tax liability as producing taxable income.

Finally, the full deduction rule is supported by considerations of federalism. State credits in this context are used to stimulate contributions that affect state programs and state residents. For example, the Colorado conservation credits described earlier put land in the public trust for the benefit of residents (and visitors). Contribution-related credits enacted at the state level serve various goals affecting not only the taxpayers who qualify for the credits but also the wider public. The full deduction rule is properly neutral toward these state initiatives.

In some circumstances states have enacted tax credits that offset 100 percent of the cost of contributions. That is true for school tuition tax credits adopted in several states, as well as the cultural trust credit adopted by Oregon. Those donee organizations appear to take the position that the contributions qualify under the full

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deduction rule.[54] Many of the arguments behind the full deduction rule apply to these credits. For example, the credits increase spending in targeted areas and affect the lives of state residents. Also, the credits would be supported by considerations of federalism. However, other policy considerations supporting full deduction might not apply. For example, a rule that treated these fully offset contributions as the equivalent of a tax would avoid many of the difficult calculation issues described above. (It would, however, create an arbitrary cliff effect because 100 percent offset contributions would be treated as taxes, while other creditable contributions would qualify for a deduction of the full amount, undiminished by the value of the credit.) The administrative considerations supporting the full deduction rule in other cases might not apply here.

Contributions that offset state taxes on a one-to-one basis and that are not targeted to taxpayer-directed areas (such as conservation or education) might also be subject to recharacterization as a tax under common law tax doctrines such as substance over form. In its 2011 memorandum embracing the full deduction rule, the IRS stated, "There may be unusual circumstances in which it would be appropriate to recharacterize a payment of cash or property that was, in form, a charitable contribution as, in substance, a satisfaction of tax liability."[55] We have no way of knowing what sort of unusual circumstances the IRS may have had in mind when it included that passage in ILM 201105010. One could imagine the IRS taking the position that state charitable tax credits set to 100 percent of the amount donated should be treated as, in substance, a satisfaction of tax liability. But since the IRS and the courts have consistently allowed a full deduction for charitable contributions, with no reduction for state tax credits, we are left to speculate about what the IRS might have meant.

We take no position on whether the IRS would try to challenge a deduction for a contribution that was 100 percent offset by tax credits or on whether that challenge would be successful. For state charitable tax credits with less than 100 percent offset, more difficult line-drawing questions arise. There is no clear legal basis for differentiating among state charitable tax credits with varying credit percentages and treating all charitable tax credits as a quid pro quo. Requiring the donor to reduce the amount of her federal deduction by the value of the credit would not only be inconsistent with the legal precedent but also entail considerable complexity, both for taxpayers and tax administrators.

Thus, we believe current law supports the full deduction rule for donations when the donor qualifies for state charitable tax credits equal to less than 100 percent of the donation. While legal challenges to charitable contribution deductions arising from those donations cannot be ruled out, in our view those challenges should fail because of the decades of legal precedent supporting the full deduction rule. And although Congress could, of course, reject those legal precedents and require a new approach through changes to the Internal Revenue Code, the policy considerations analyzed above should give Congress pause before doing so. At the very least, lawmakers should think carefully about administrability concerns, federalism values, and the practical effect on the more than 100 existing state charitable tax credit programs in 33 states before upending the well-settled full deduction rule. ■

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[54] *See*, *e.g.*, South Carolina Exceptional SC Fund ("Individuals and corporations who pay South Carolina taxes can make a donation to Exceptional SC and claim a dollar for dollar tax credit against their overall South Carolina income tax liability (personal corporate income tax). Donors can deduct contributions made to Exceptional SC on their federal income taxes under IRC Section 170).") For the 100 percent tax credit for donations to the Oregon Cultural Trust, the language is a bit more hedged ("Under IRC Section 170(c)(1), donations to the Oregon Cultural Trust qualify as deductible charitable contributions on the Federal tax return. Oregon taxpayers should consult with their accredited tax preparer regarding the availability to take the deduction on the Federal return while also taking a credit on the Oregon return for the same donation.").

[55] ILM 201105010.



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# State Response to Federal Tax Reform

**by Joseph Bankman, David Gamage, Jacob Goldin, Daniel Hemel, Darien Shanske, Kirk J. Stark, Dennis J. Ventry Jr., and Manoj Viswanathan**

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This appendix is part of the special report "State Responses to Federal Tax Reform: Charitable Tax Credits," *State Tax Notes*, Apr. 30, 2018, p. 433.

**Charitable Tax Credits by State**

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Alabama | Credit for contributions made to a scholarship granting organization | Contributions to scholarship granting organizations (SGOs), nonprofits that provide private school scholarships to students in need. | 100% of the total contributions up to 50% of the tax liability of the taxpayer, not to exceed $50,000; a taxpayer may carry forward a tax credit for up to three years; statewide cumulative $30 million per year. | Ala. Code section 16-6D-9. |
| Alabama | Credit for contributions made to the Career-Technical Dual Enrollment Program | Contributions to the Department of Postsecondary Education for qualifying educational expenses directly associated with the Career-Technical Dual Enrollment Program, a program for eligible high school students to enroll in college-level career technical education courses offered at Alabama Community College System institutions. | 50% of the total contributions up to 50% of the tax liability of the taxpayer, not to exceed $500,000; a taxpayer may carry forward a tax credit for up to three years; statewide cumulative $5 million per year. | Ala. Code section 16-60-351. See also definitions at Ala. Code section 16-60-350. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Alabama | Growing Alabama credit | Contributions to approved local economic development organizations. The growing Alabama credit is repealed following the close of fiscal year 2020. The repeal will not cause a reduction or suspension of any credits awarded for years during which the credit was in effect. | 100% of the total contributions up to 50% of the tax liability of the taxpayer; a taxpayer may carry forward a tax credit for up to five years; statewide cumulative $10 million per year. To the extent that a growing Alabama credit is used by a taxpayer, the taxpayer will not be allowed any deduction which would otherwise been allowed for the taxpayer's contribution. | Ala. Code section 40-18-413. |
| Alabama | Neighborhood infrastructure authority project credit | Voluntary assessments paid under the Neighborhood Infrastructure Incentive Plan Act of 2011 for neighborhood infrastructure projects. Note that this Act expired Dec. 31, 2015. However, all local neighborhood infrastructure authorities created under the act, in existence as of Dec. 31, 2015, must continue in existence until all existing projects of the authority are completed and the authority seeks dissolution. | 10% of the amount of assessment paid, not to exceed $1,000 in any tax year, for a period not exceeding 10 successive tax years. | Ala. Code section 11-71-11. See also definitions at Ala. Code section 11-71-2 and sunset provision at Ala. Code section 11-71-12. |
| Arizona | Contributions to qualifying charitable organizations | Contributions to a qualifying charitable organization other than a qualifying foster care charitable organization. | Up to $400 for a single individual or head of household or $800 for a married couple filing jointly; unused credit may be carried forward up to five years. | Ariz. Rev. Stat. Ann. section 43-1088(A). |
| Arizona | Contributions to qualifying foster care charitable organizations. | Contributions to a qualifying foster care charitable organization. | Up to $500 for a single individual or head of household or $1,000 for a married couple filing jointly; unused credit may be carried forward up to five years. | Ariz. Rev. Stat. Ann. section 43-1088(B). |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Arizona | Contributions to private school tuition organization. | Contributions to a school tuition organization (STO). | For tax year 2016, up to $545 for a single individual or head of household or $1,090 for a married couple filing jointly; these figures are adjusted annually for inflation. | Ariz. Rev. Stat. Ann. section 43-1089. |
| Arizona | Contributions to certified school tuition organization — individual. | Contributions to an STO, if the taxpayer's contribution to an STO exceeds the maximum contribution allowed for the credit for contributions to private STO. | For tax year 2016, up to $542 for a single individual or head of household or $1,083 for a married couple filing jointly; these figures are adjusted annually for inflation; unused credit may be carried forward for up to five years. | Ariz. Rev. Stat. Ann. section 43-1089.03. |
| Arizona | Pro rata credit for contributions by an S corporation to school tuition organizations. | Pro rata amount of contributions made by an S corporation under Ariz. Rev. Stat. Ann. section 43-1183(F) or Ariz. Rev. Stat. Ann. section 43-1184(F) or both (section 43-1183 provides a corporate income tax credit for voluntary cash contributions to a certified school tuition organization, and section 43-1184 provides a corporate income tax credit for voluntary cash contributions to certified school tuition organizations for displaced students or students with disabilities). | Co-owners of the S corporation may each claim the pro rata share of the credit allowed under the relevant corporate tax statutes based on their ownership interests; the total credits allowed to all the owners may not exceed the amount that would have been allowed a sole owner of the corporation; unused credit may be carried forward up to five years. | Ariz. Rev. Stat. Ann. section 43-1089.04. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Arizona | Contributions made or fees paid to public schools | Contributions made (or fees paid) to a public school in Arizona for: (1) standardized testing for college credit or readiness offered by a educational testing organization; (2) career and technical education industry certification assessment; (3) prep. courses and materials for standardized testing; (4) CPR training; (5) extracurricular activities; or (6) character education programs. | Up to $200 for a single individual or head of household or $400 for a married couple filing jointly; unused credit may be carried forward to up to five years. | Ariz. Rev. Stat. Ann. section 43-1089.01. |
| Arizona | Credit for donation of a school site | Donation of real property and improvements to a school district or charter school for use as a school or as a site for the construction of a school. | 30% of the FMV of real property and improvements donated. | Ariz. Rev. Stat. Ann. section 43-1089.02 |
| Arizona | Credit for donations to the military family relief fund | For tax years Dec. 31, 2007, through Dec. 31, 2018, credit for donations made to the Military Family Relief Fund. | Up to $200 for a single taxpayer $400 for a married couple filing jointly or the amount of tax liability after all other allowable credits are applied, whichever is lowest. | Ariz. Rev. Stat. Ann. section 43-1086. |
| Arkansas | Contributions in aid of construction of public roads | Contributions in aid of construction of public roads project to the Public Roads Incentive Fund. | 33% of the contribution, not to exceed 50% of the net Arkansas state income tax liability after all other credits and reductions have been calculated; unused credit may be carried forward for three years. | Ark. Code Ann. section 15-4-2306. |
| Arkansas | Wetland and riparian zone conservation tax credit | Donations of wetland and riparian zone qualified real property interest. | 50% of the donated property's FMV (excluding short term capital gain), up to $50,000; the credit for a tax year cannot exceed the lesser of tax due or $5,000; unused credit may be carried forward for nine years. | Ark. Code Ann. section 26-51-1505(b). |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| California | College access tax credit (Prior statute repealed as of Dec. 1, 2017, but new statute authorizing the credit through 2022 became effective Jan. 1, 2018. See the statutes cited at the right.) | Contributions to the College Access Tax Credit Fund, as allocated by the California Educational Facilities Authority. | 50% of the contribution; capped at $500 million statewide. | Cal. Rev. & Tax. Code section 17053.87 (current version). See also Cal. Rev. & Tax. Code section 17053.86 (repealed Dec. 1, 2017). |
| California | Credit for donated agricultural products. | Donation of fresh fruits or vegetables to a food bank located in California. | 15% of the qualified value of the fruits or vegetables. | Cal. Rev. & Tax. Code section 17053.88.5. |
| California | Credit for transportation of donated agricultural products | Costs incurred in connection with the transportation of agricultural products donated to a nonprofit charitable organization. | 50% of the cost paid or incurred in connection with the transportation of the donated products; if the credit is claimed, any deduction otherwise allowed is reduced by the amount of the credit allowed; excess credits may be carried over until exhausted. | Cal. Rev. & Tax. Code section 17053.12. |
| California | National heritage preservation tax credits (This credit is scheduled to expire June 30, 2020.) | Contribution of property that has been approved for acceptance by the Wildlife Conservation Board. | 55% of the FMV of the property; this credit is in lieu of any other credit or deduction; excess credits can be caried over for up to 15 years. | Cal. Rev. & Tax. Code section 17053.30. |
| Colorado | Child care contribution credit (This credit is schedule to expire Jan. 1, 2020.) | Monetary contributions to a qualifying child care facility or program to promote child care in Colorado for children aged 12 or under; in-kind contributions are not eligible for credit. | 50% of the total qualifying contribution up to $100,000 or the taxpayers actual tax liability, whichever is less; excess credit can be carried forward for up to five years. | Colo. Rev. Stat. Ann. section 39-22-121. |
| Colorado | Credit for donation to food banks (This credit is scheduled to expire Jan. 1, 2020, and the credit is repealed effective Jan. 1, 2025.) | Food donated to hunger relief charitable organizations; the credit may not be claimed by taxpayers who have claimed the corporate tax credit for crop or livestock contributions or who claim a deduction for the food donation as permitted under state law. | 25% of the wholesale market price or 20% of the most recent sale price, not to exceed $5,000; excess credit may be carried forward for up to five years. | Colo. Rev. Stat. Ann. section 39-22-536. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Colorado | Credit for contributions to enterprise zone administrators | Monetary or in-kind contribution to implement the economic development plan for an enterprise zone to the designated enterprise zone administrator or to a program or organization certified to receive contributions by the zone administrator; no certification is required if the contribution is less than $250. | 25% of the total value of the contribution as certified by the zone administrator up to $100,000 or the total income tax due, whichever is less; in-kind contributions cannot exceed 50% of the total credit claimed, i.e. the credit for in-kind contributions is no more than 12.5% of the value of the contribution up to a maximum credit of $50,000; excess credits can be carried forward up to five years. | Colo. Rev. Stat. Ann. section 39-30-103.5. |
| Colorado | Gross conservation easement credit | Donations of all or part of the value of a perpetual conservation easement in gross on property they own to a governmental entity or charitable organization created at least two years before receipt of the conservation easement; the donation must be of a perpetual conservation easement in gross on real property located in Colorado and must qualify as a qualified conservation contribution. | 75% of the first $100,000 of the FMV of the donated portion of the conservation easement in gross when created and 50% of all amounts of the donation over $100,000, up to a credit cap of $1.5 million per donation; if a charitable deduction is claimed for federal income tax purposes, the amount deducted from federal taxable income must be added back to federal taxable income to determine Colorado taxable income. | Colo. Rev. Stat. Ann. section 39-22-522. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Colorado | Water resource conservation and development (Not available as of Jan. 1, 2015; statute is repealed effective Dec. 31, 2024.) | Subject to available funding, the Colorado Water Conservation Board can approve an instream flow incentive tax credit of water rights for income tax years beginning Jan. 1, 2009, and ending before Jan. 1, 2015; the credit is only for permanent transfers of water rights on a finding that the proposed donation will preserve the environment; the credit is not available for a water right that is for irrigation on land for which a conservation easement tax credit is claimed unless the water rights is specifically excluded from the terms of that easement. | The amount of credit is determined by the Colorado Water Conservation board and may not exceed one-half the value of the water right proposed to be donated; the Board cannot issue a credit certificate if the aggregate sum of credits approved and not yet eligible to be taken exceeds $2 million; excess credit cannot be carried forward. | Colo. Rev. Stat. Ann. section 39-22-533. |
| Colorado | High Technology Scholarship Program (Repealed July 1, 2010.) | Before the repeal — Monetary contributions to the Colorado High Technology Scholarship Program; donations of stocks and bonds did not qualify. | 25% of the total monetary contributions up to 15% of the income taxes due for the year the credit was claimed; excess credit could not be carried forward. | Colo. Rev. Stat. Ann. section 39-22-523. |
| Delaware | Land and historic resource conservation tax credit | Permanent gifts of land or interest in land to public agencies and qualified private non-profit charitable organizations for purposes of open space, natural resource, biodiversity conservation or historic preservation. | 40% of the gift's appraised value; $50,000 per taxpayer; Statewide $1 million per year. | 30 Del. Code Ann. section 1804. |
| Delaware | Neighborhood assistance credit | Credit for providing "neighborhood assistance" and for making contribution to neighborhood organizations that provide neighborhood assistance in an impoverished area or for low- and moderate- income families. | 50% of the amount contributed; may not exceed $50,000 per taxpayer, per year and no taxpayer can receive more than $100,000 in tax credits during any three-year period; capped at $500,000/year statewide. | 30 Del. Code Ann. section 2004. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| District of Columbia | Farm to food donation credit (Repealed effective Apr. 7, 2017.) | Before the repeal — credit for food commodity donations to a District of Columbia food bank or shelter recognized as a tax-exempt organization. | Before the repeal — 50% of the value of the contributions up to $2,500 per taxpayer; it the taxpayer elects to claim the credit, a charitable donation deduction will not be allowed; unused credit may be carried forward for five years. | D.C. Code Ann. section 47-1806.14 (repealed). |
| Georgia | Credit for donation of real property for conservation purposes | Donation of fee-title lands or permanent conservation easements to a government entity or qualified organization. | 25% of the fair market appraised value (or the difference between the FMV and the amount paid to the donor); not to exceed $500,000; statewide $30 million per year. | Ga. Code Ann. section 48-7-29.12. |
| Georgia | Tax credit for donations to public schools | Donations to the Public Education Innovation Fund Foundation for awarding grants to public schools in Georgia (effective Jan. 2018). | The lower of the amount donated or $1,000 (single individual or head of household), $2,500 (married couple filing jointly), or $10,000 (individual who is a member of a limited liability company, a shareholder of a S corporation, or a partner in a partnership; but only on portion of the income on which the tax was actually paid by the individual member of the pass through entity). Capped at $5 million statewide per year. | Ga. Code Ann. section 48-7-29.21. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Georgia | Georgia qualified education expense tax credit | Eligible private citizens and corporations receive tax credits for donations to student scholarship organizations (SSOs) who provide student scholarships to parents of eligible children who plan to attend private schools. Amount of credit can be carried forward for five years. | Corporations are limited to a credit worth 75% of the its total income tax liability. Individuals are limited to a credit worth up to $1,000 for an individual, $2,500 for a married couple, or $10,000 for an owner for a pass-through business entity. Capped at $58 million statewide per year. | Ga. Code Ann. section 48-7-29.16. |
| Hawaii | School repair and maintenance credit | Contributions of in-kind services for the repair and maintenance of public schools in Hawaii. | 10% of the value of contributions of in-kind services to the Hawaii school repair and maintenance fund for that tax year. Credit is limited to $4,000 in credits per taxpayer, and $250,000 in credits statewide. | Haw. Rev. Stat. section 235-110.2(a). |
| Idaho | Tax credit for contributions to educational entities | Qualified cash contributions that taxpayers make to qualified educational entities. | 50% of the qualified contributions to qualified educational entities, capped at the lesser of $500 ($1,000 for joint returns) or 50% of the taxpayer's total income tax liability for the year. (For corporations, capped at lesser of $5,000 or 10% of total income or franchise tax liability.) | Idaho Code section 63-3029A; Idaho Admin. Rules section 35.01.01.705(01). |
| Idaho | Tax credit for contributions to youth and rehabilitation facilities, centers for independent living, and nonprofit substance abuse centers | Cash or good donations a qualified youth or rehabilitation facility (or the facility's foundation) located in Idaho, to a qualified center for independent living in Idaho, or to a nonprofit substance abuse center licensed by the Idaho Department of Health and Welfare. | 50% of the amount contributed, limited to the lesser of 20% of the taxpayer's Idaho tax liability or $100 per taxpayer ($200 on a joint return). | Idaho Code section 63-3029C(1); Idaho Admin. Rules section 35.01.01.730(02). |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Illinois | Tax credit for affordable housing donations | Donation (money, securities, or real or personal property) under the Illinois Housing Development Act for the development of affordable housing in Illinois is entitled to a credit. | 50% of the value of the donation. | 35 Ill. Comp. Stat. Ann. 5/214. |
| Illinois | Invest in kids credit | A taxpayer who makes authorized contributions to scholarship granting organizations may take a credit against Illinois income taxes under the Invest in Kids Act for tax years beginning on or after Jan. 1, 2018, and ending before Jan. 1, 2023. | 75% of the total amount of qualified contributions made by the taxpayer during a tax year, not to exceed a credit of $1 million per taxpayer. The aggregate amount of all credits the Illinois Department of Revenue may award in any calendar year may not exceed $75 million. | 35 Ill. Comp. Stat. Ann. 5/224; 35 Ill. Comp Stat. Ann. 40/10. |
| Indiana | Credit for contributions to Indiana institutions of higher education | Contributions to colleges located in Indiana; corporations or foundations organized and operated solely for the benefit of such colleges; and Associated Colleges of Indiana. | 50% of contributions (not exceed $100 in the case of a single return or $200 in the case of a joint return). Corporations have credit capped at the lesser of 10% of total adjusted gross income or $1,000. | Ind. Code section 6-3-3-5. |
| Indiana | Credit for contributions to the 21st Century Scholars Program (Repealed effective Jan. 1, 2017.) | Contributions made by the taxpayer during the tax year to Indiana's 21st Century Scholars Program support fund. | 50% of contributions (not exceed $100 in the case of a single return or $200 in the case of a joint return). Corporations have credit capped at the lesser of 10% of total adjusted gross income or $1,000. | Ind. Code section 6-3-3-5.1. |
| Indiana | School scholarship tax credit | Donations to SGOs that provide vouchers for low-income students to attend private schools. | Tax credit worth 50% of donation. Statewide limit $9.5 million in the state fiscal year beginning July 1, 2016, and ending June 30, 2017. | Ind. Code section 6-3.1-30.5-7. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Indiana | Neighborhood assistance tax credit | A neighborhood assistance tax credit is available to a taxpayer that:<br>(1) contributes to a tax-exempt "neighborhood organization" performing community services in an economically disadvantaged area;<br>(2) provides neighborhood assistance, job training, or education for individuals not employed by the taxpayer;<br>(3) provides community services or crime prevention services in an economically disadvantaged area; or<br>(4) provides community services, education or job training to individuals who are ex-offenders who have completed the individuals' criminal sentences or are serving a term of probation or parole. | 50% of the amount invested in the neighborhood assistance program (limited to $25,000). | Ind. Code section 6-3.1-9-3. |
| Indiana | Individual development account credit | Donations to Individual Development Account Fund. | 50% of the contribution, capped statewide at $200,000. | Ind. Code section 6-3.1-18-6. |
| Iowa | Endow Iowa tax credit | Contributions made to an endow Iowa qualified community foundation for a permanent endowment fund established to benefit a charitable cause in Iowa. | 25% of the gift. For each individual, capped at 5% of the statewide cap. Capped at $6 million per year statewide, plus a percentage of the tax imposed on the adjusted gross receipts from gambling games. | Iowa Code section 15E.305. |
| Iowa | Charitable conservation contribution tax credit | Donations of qualified real property for conservation purposes. | 50% of FMV, capped at $100,000. | Iowa Code section 422.11W. |
| Iowa | School tuition organization tax credit | Contribution made by a taxpayer to an STO. | 65% of contribution amount. | Iowa Code section 422.11S. |
| Iowa | Farm to food donation tax credit | Donations of food commodities to Iowa food banks. | 15% of value, capped at $5,000. | Iowa Code section 190B.104. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Kansas | Capital investment/ capital company investment | Aside from investment-related items, this credit includes: credit for contributions to the Kansas Center for Entrepreneurship; and credit for amounts contributed to a regional foundation. (There is also a credit for investing in a technology-based venture capital corporation, which includes a possible credit for gifts, donations, or grants.) | 75% of the contribution amount; $50,000 cap per contributor for contributions to the Kansas Center for Entrepreneurship; there are also caps of about $2 million for total credits in any one fiscal year. | Kan. Stat. Ann. section 74-99c02; Kan. Stat. Ann. section 74-99c09(c)-(d); Kan. Stat. Ann. section 74-50,154(a)-(e). |
| Kansas | Temporary assistance to families contribution credit | For tax years before 2014, income tax credit for providing financial support to a person who would otherwise be eligible to receive aid to families with dependent children and who has entered into an agreement with the secretary for children and families. After 2014, available to corporations only. | 70% of the amount of financial assistance. | Kan. Stat. Ann. section 79-32,200(e). |
| Kansas | Credit for contributions made to law enforcement training center (Repealed on and after Jan. 1, 2013.) | Until Jan. 1, 2013, any business firm or individual that contributes, gifts, or donates to the Kansas law enforcement training center to be used for providing programs and courses of instruction for full-time police officers and law enforcement officers designed to fulfill continuing education and training requirements will be allowed a credit against the tax imposed by the Kansas income tax act. | The credit amount cannot exceed 50% of the total amount contributed, gifted or donated during the tax year. | Kan. Stat. Ann. section 79-32,242. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Kansas | Credits for contributions to state higher education infrastructure improvements and maintenance projects | Taxpayers making contributions to state higher education infrastructure improvements and maintenance projects are able to apply tax credits against their income tax. Taxpayers who make prescribed contributions to a community college located in Kansas for capital improvements, a technical college for deferred maintenance or the purchase of technology or equipment, or a postsecondary educational institution located in Kansas for deferred maintenance, are allowed a credit against their income tax. | The credit amount allowed cannot exceed 60% of the total amount contributed during the tax year to a community or technical college and cannot exceed 50% to a postsecondary educational institution. After tax year 2008, contributions can be made for tax years 2009, 2010, 2011, and 2012 during the entire tax year. | Kan. Stat. Ann. section 79-32,261(a). |
| Kansas | Individual development accounts | For tax years prior to 2013 and after 2014, a person or entity who contributes to an individual development account reserve fund administered by a community-based organization may claim a refundable tax credit. | Up to 75% (50% before Jan. 1, 2011) of the contribution amount. Total tax credits to all taxpayers may not exceed $500,000 in any fiscal year. | Kan. Stat. Ann. section 74-50,208. |
| Kansas | Historic property preservation credit | For tax years beginning on or after Dec. 31, 2006, and until June 2012, taxpayers that contribute, gift or donate at least $1,000 to a state-owned historic site or historic site owned or operated by a tax-exempt nonprofit organization are entitled to a refundable income tax credit. | The amount of the credit is equal to 50% of the contribution, gift or donation but not exceeding $2,500 for any one taxpayer in any one tax year. The total amount of credits allowed in any one fiscal year must not exceed $200,000. | Kan. Stat. Ann. section 79-32,211. |
| Kansas | Center for entrepreneurship credit | Contributions to the Kansas Center for Entrepreneurship. | 75%, capped at $50,000 annually per taxpayer ($2 million statewide). | Kan. Stat. Ann. section 74-99c09. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Kentucky | Agriculture or husbandry-related credits — food donation credit | Applicable to tax years beginning on or after Jan. 1, 2014, and before Jan. 1, 2018, a nonrefundable credit is available against the corporate income tax, the personal income tax and the limited liability entity tax to qualified taxpayers who donate, free of charge, edible agricultural products to a nonprofit food program operating in Kentucky. | The credit is equal to 10% of the value of the donated edible agricultural products. | Ky. Rev. Stat. Ann. section 141.392. |
| Kentucky | Endow Kentucky credit | Taxpayers who donate money to permanent endowment funds of qualified community foundations, county-specific component funds, or affiliate community foundations may claim a credit against the corporate or personal income taxes and the limited liability entity tax. | The nonrefundable credit will be equal to 20% of the value of the endowment gift provided by the taxpayer, not to exceed $10,000. | Ky. Rev. Stat. Ann. section 141.438. |
| Louisiana | Dedicated Research Investment Fund donations (Repealed.) | Before June 17, 2013, a tax credit could be claimed for a taxpayer's cash donation to the Dedicated Research Investment Fund if the initial donation was at least $200,000. | The credit was equal to 35% of the cash donation. Unused credit can be carried forward until it is fully used. | La. Rev. Stat. Ann. section 51:2203. |
| Louisiana | Donations, contributions, or sales below cost to certified community development corporations or financial institutions | Effective July 10, 2007, until Aug. 15, 2010, a tax credit is allowed in an amount equal to 25% of the amount donated, contributed, or represented by a sale below cost by the taxpayer to a certified community development corporation or a certified community development financial institution, as approved by the Department of Economic Development. | 25% of the amount donated, contributed, or represented. | La. Rev. Stat. Ann. section 47:6031. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Louisiana | Credit for donation of high-technology equipment | A taxpayer who contributes, donates, or sells tangible movable property to educational institutions, below cost, is allowed a credit against Louisiana personal income tax. | The credit is computed at the rate of 29% of the property's value, or in case of sale below cost, 29% of the difference in price received for tangible movable property by the taxpayer and the value of the property. | La. Rev. Stat. Ann. section 47:37. |
| Louisiana | Rebates (effective Jan. 1, 2018, credits) for donations to school tuition organizations | Taxpayers who file Louisiana income tax returns can claim a rebate (effective Jan. 1, 2018, a credit) for donations they make during the tax year to an STO that provides scholarships to qualified students to attend a qualified school. | The amount of the rebate (effective Jan. 1, 2018, the credit) is equal to the amount of the taxpayer's donation used by a STO to fund a scholarship to a qualified student, excluding administrative costs. Effective for donations made on or after Jan. 1, 2018, the rebate is converted to a nonrefundable income tax credit. | La. Rev. Stat. Ann. section 47:6301. |
| Louisiana | Family Responsibility Program | Individuals are allowed a credit against tax in an amount equal to 24% of amount contributed to the Family Responsibility Program under La. Rev. Stat. Ann. section 46:449. | 24%, up to $144 per year or taxpayer's total tax liability. | La. Rev. Stat. Ann. section 47:297(F). |
| Louisiana | Playground donations | Credit for cash, equipment, goods, or services donated to a qualified playground. | Equal to the lesser of $720 or 0.36 of the value of the cash, equipment, goods, or services donated. The total amount of the credits taken by any taxpayer during any tax year must not exceed $1,000. | La. Rev. Stat. Ann. section 47:6008. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Maryland | Neighborhood and Community Assistance Program | An individual or business entity can claim a credit against the income tax for contributions to neighborhood and community assistance projects. | The contributions to an approved project must be worth $500 or more in goods, money, or real property. The credit is 50% of the contributions to the Neighborhood and Community Assistance Program that are approved by the Department of Housing and Community Development. The credit cannot exceed the lesser of $250,000 or the total amount of the tax otherwise payable for the tax year. | Md. Code Ann. Tax-Gen. section 10-704.6. |
| Maryland | Qualified Permanent Endowment Fund donations | Applicable to all tax years beginning after Dec. 31, 2014, a taxpayer can claim a credit against the state income tax equal to the amount of 25% of a proposed donation to a qualified permanent endowment fund at an eligible community foundation. | 25% of the proposed donation value; the amount must be stated in the credit certificate issued by the Maryland Department of Housing and Community Development. | Md. Code Ann. Tax-Gen. section 10-736. |
| Maryland | Preservation and conservation easements | An individual or, applicable to all tax years beginning after Dec. 31, 2015, a passthrough entity, may claim a credit against the state income tax for an easement conveyed to the Maryland Environmental Trust or the Maryland Agricultural Land Preservation Foundation or the Department of Natural Resources for the purpose of preserving open space, natural resources, agriculture, forest land, watersheds, significant ecosystems, viewsheds, or historic properties. | For any tax year, the credit may not exceed the lesser of the state income tax for that tax year or $5,000. | Md. Code Ann. Tax-Gen. section 10-723. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Massachusetts | Tax credit for qualified donation of land to public or private conservation agency | Qualified donations of certified land to a public or private conservation agency. | Refundable income tax credit equal to 50% of the FMV of the qualified donation, not exceeding $75,000. | Mass. Gen. L. Chapter 62 section 6(p). |
| Massachusetts | Credit against taxes imposed for qualified donation of certified land to public or private conservation agency | A taxpayer making a qualified donation of certified land to a public or private conservation agency shall be allowed a refundable credit against the taxes imposed by this chapter. | The credit shall be equal to 50% of the FMV of the qualified donation. The amount of the credit that may be claimed by a taxpayer for each qualified donation shall not exceed $75,000. | Mass. Gen. L. Chapter 63 section 38AA. |
| Massachusetts | Low-income housing tax credit | Effective for tax years beginning on or after Jan. 1, 2017, the low-income housing credit is allowed against the personal income tax for real or personal property donated to a tax exempt nonprofit organization that has control over the purchase, construction, or rehabilitation of a qualified Massachusetts low-income housing project and that is a certified Massachusetts community development corporation or organization, or that is determined to have a history of successful development of affordable housing projects in Massachusetts. | The total tax credit available to a taxpayer for a qualified donation is equal to 50% of the donation's value as determined by the department, which may be increased to not more than 65% if deemed necessary for the project's viability. | Mass. Gen. L. Chapter 62 section 6 l(a); l(b)(4); l(c)(1); l(c)(3). |
| Michigan | Credit for automobiles donated for "Wheels to Work" programs | Until Dec. 31, 2011, a taxpayer may claim a credit against the income tax equal to 50% of the FMV of an automobile donated by the taxpayer to a qualified organization that intends to provide the automobile to a qualified recipient. | 50% of FMV. | Mich. Comp. Laws Ann. section 206.269. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Michigan | Charitable contributions credit | Until Dec. 31, 2011, a credit is allowed against a taxpayer's Michigan personal income tax liability for charitable contributions made to the following:<br>(1) Michigan, under the Faxon-McNamee Art in Public Places Act, of an artwork created by the taxpayer for display in a public place;<br>(2) the state Art in Public Places Fund;<br>(3) a municipality in Michigan of an artwork created by the personal effort of the taxpayer for display in a public place;<br>(4) either a municipality of Michigan or a nonprofit corporation affiliated with both a municipality and an art institute located in that municipality, of money or artwork, if for benefiting an art institute located in that municipality;<br>(5) a public library;<br>(6) a public broadcast station that is not affiliated with an institution of higher education located in Michigan;<br>(7) an institution of higher learning in Michigan;<br>(8) the Michigan College Foundation;<br>(9) the state museum;<br>(10) the Department of State for preserving the state archives; or<br>(11) a nonprofit corporation, fund, foundation, trust, or association operated for the benefit of institutions of higher learning in Michigan. | 50% of the charitable contribution made to an eligible institution. | Mich. Comp. Laws Ann. section 206.260. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Michigan | Credit for contributions to community foundation | Until Dec. 31, 2011, a taxpayer could claim a credit against the Michigan personal income tax for 50% of the amount contributed during the tax years to an endowment fund of a community foundation, up to $100 for taxpayers other than a resident estate or trust or $200 for a husband filing a joint return. For a resident estate or trust, the allowable credit could not exceed the lesser of 10% of the taxpayer's liability for the tax year before claiming this credit or $5,000. For a resident estate or trust, the credit amount could not have been deducted in arriving at federal taxable income. | 50% of the amount contributed. | Mich. Comp. Laws Ann. section 206.261. |
| Michigan | Contributions to a homeless shelter, food kitchen, food bank, etc. (homeless credit) | Until Dec. 31, 2011, a taxpayer could claim a credit against the Michigan personal income tax for 50% of the sum of the cash amount and, if the food items were contributed in conjunction with a program in which a vendor made a matching contribution of similar items, the value of those food items contributed during the tax year to a shelter for homeless persons, food kitchen, food bank, or other entity, the primary purpose of which was to provide overnight accommodation, food, or meals to persons who were indigent. | 50% of the amount contributed. | Mich. Comp. Laws Ann. section 206.261. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Mississippi | Land conservation credit | An income tax credit for taxpayers who donate land or an interest in land for specific conservation purposes. | The credit is 50% of the allowable transaction costs involved in the donation that were incurred during the tax year. Allowable transaction costs consist of appraisal costs and engineering, surveying, maintenance, monitoring, and legal fees, including document preparation, title review, and title insurance costs. The credit is limited to the lesser of: (1) $10,000 or (2) the tax liability for the year reduced by the sum of all other allowable credits except credits for tax payments. Any unused portion of the credit may be carried forward for 10 succeeding tax years. Further, there is a maximum limit on the use of the credit of $10,000 over the lifetime of the taxpayer. | Miss. Code Ann. section 27-7-22.21. |
| Missouri | Agricultural product utilization contributor tax credit | Taxpayers who contribute to the Missouri Agricultural and Small Business Development Authority are entitled to tax credits. | 100% of their contributions. | Mo. Rev. Stat. section 348.430(3); Mo. Rev. Stat. section 348.430(4); Mo. Rev. Stat. section 348.436. |
| Missouri | Youth opportunities credit | Taxpayers that contribute property or money to public or private programs authorized by the Department of Economic Development for Youth Opportunities and Crime Prevention are allowed a tax credit against personal income tax. | 30% of property contribution or 50% of monetary contribution. The credit, however, cannot exceed $200,000 per tax year, per taxpayer. | Mo. Rev. Stat. section 135.460. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Missouri | Residential treatment agency credit | Taxpayers are allowed a credit against personal income tax for an eligible donation made to a qualified residential treatment agency. | 50% of the amount of an eligible donation. | Mo. Rev. Stat. section 135.1150(2)(3); Mo. Rev. Stat. section 135.1150(2)(5); Mo. Rev. Stat. section 135.1150(3); Mo. Rev. Stat. section 135.1150(6); Mo. Rev. Stat. section 135.1150(8); Mo. Code Regs. 13 section 35-100.010(1); Mo. Code Regs. 13 section 35-100.010(2)(B); Mo. Code Regs. 13 section 35-100.010(11). |
| Missouri | Champion for children tax credit | Taxpayers are allowed a nonrefundable tax credit against personal income tax for verified contributions to a CASA, child advocacy center, or crisis care center. | 50% of verified contributions. The contribution must be at least $100. The minimum amount of the champion for children tax credit is $50. | Mo. Rev. Stat. section 135.341(2); Mo. Rev. Stat. section 135.341(5), effective Mar. 29, 2013. |
| Missouri | Developmental disability care provider tax credit | Taxpayers are allowed a nonrefundable tax credit against individual income tax. An "eligible donation" is a donation, which may include cash, publicly-traded stocks and bonds and real estate, received from a taxpayer by an agency that is used solely to provide direct care services to children who are Missouri residents. The amount of the tax credit claimed must not exceed the amount of the taxpayer's state income tax liability in the tax year for which the credit is claimed. | 50% of the amount of an eligible donation. | Mo. Rev. Stat. section 135.1180(2)(3); Mo. Rev. Stat. section 135.1180(3); Mo. Rev. Stat. section 135.1180(5); Mo. Rev. Stat. section 135.1180(7). |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Missouri | Credit for donations to local food pantries | Taxpayers are allowed a credit against personal income tax for donations of cash or unexpired food to local food pantries. | 50% of the value of donations of cash or unexpired food to local food pantries, to the extent that such amounts that have been subtracted from federal taxable income are added back in the determination of Missouri taxable income, up to a maximum credit of $2,500 per taxpayer. | Mo. Rev. Stat. section 135.647(2); Mo. Rev. Stat. section 135.647(3); Mo. Rev. Stat. section 135.647(6). |
| Missouri | Maternity home credit | Taxpayers who donate at least $100 to a facility determined by the director of public safety as a maternity home are entitled to a credit against personal income tax. | 50% of the donation. | Mo. Rev. Stat. section 135.600(3); Mo. Rev. Stat. section 135.600(4); Mo. Rev. Stat. section 135.600(8). |
| Missouri | Pregnancy resource center credit | Individual taxpayers, partners, shareholders in S corporations doing business in Missouri subject to personal income tax are entitled to a nonrefundable income tax credit against personal income tax for contributions made to qualified pregnancy resource centers. | 50% of contributions made. | Mo. Rev. Stat. section 135.630(1)(5); Mo. Rev. Stat. section 135.630(2); Mo. Rev. Stat. section 135.630(3); Mo. Code Regs. 13 section 35-100.020(1); Mo. Code Regs. 13 section 35-100.020(3); Mo. Code Regs. 13 section 35-100.020(6); Mo. Code Regs. 13 section 35-100.020(12)(B). |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Missouri | Donations to shelters for victims of domestic violence | Taxpayers who donate at least $100 to a facility determined by the director of public safety as a shelter for victims of domestic violence are entitled to a credit against personal income tax. The credit claimed, however, must not exceed the taxpayer's state tax liability for the year that the credit is claimed and the maximum credit that may be claimed is $50,000 per tax year. Any unused credit may be carried forward for four years. The contribution to a shelter is defined to include cash, stocks, bonds or other marketable securities or real property. | 50% of the donation. | Mo. Rev. Stat. section 135.550; Mo. Code Regs. 13 section 40-79.010(3); Mo. Code Regs. 13 section 40-79.010(6); Mo. Code Regs. 13 section 40-79.010(10)(B). |
| Missouri | Innovation campus tax credit | A taxpayer is allowed a nonrefundable tax credit for donations to innovation campuses to be used solely for projects that advance learning in the areas of science, technology, engineering, and mathematics. Innovation campus is an education partnership between a Missouri high school, a 4-year higher education institution, a business, and a 2-year higher education institution. | 50% of the amount of an eligible donation. | Mo. Rev. Stat. section 620.2600(2)(4); Mo. Rev. Stat. section 620.2600(3); Mo. Rev. Stat. section 620.2600(7). |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Montana | College contribution credit | A taxpayer is allowed a tax credit in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to a foundation or a general endowment fund of: (1) the Montana university system or any unit or campus of the Montana university system; (2) a Montana private college; (3) a Montana community college that is part of a community college district; or (4) a tribal college located in Montana. | 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to a foundation or a general endowment fund of: (1) the Montana university system or any unit or campus of the Montana university system; (2) a Montana private college; (3) a Montana community college that is part of a community college district; or (4) a tribal college located in Montana. The maximum credit claimed is equal to $500 or the Montana personal income tax liability, whichever is less. | Mont. Code Ann. section 15-30-2326(1). |
| Montana | Credit for contributions to qualified endowments | Taxpayers are entitled to a credit for contributions to a qualified endowment through a planned giving program. The credit expires Dec. 31, 2019. | A taxpayer is allowed a tax credit against income taxes in an amount equal to 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the individual taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is $10,000. | Mont. Code Ann. section 15-30-2328. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Montana | Credit for providing access to state lands | Under the "credit for unlocking state lands program," Montana allows a credit to taxpayers who provide "qualified access to state land," meaning an access or corridor established through a taxpayer's property to a parcel of public land for recreational use and certified by the Department of Fish, Wildlife, and Parks. | The amount of the credit is $750 ($500 before Jan. 1, 2016) for each qualified access to state land that is provided. The maximum credit that a taxpayer may claim in a year under this provision is $3,000 ($2,000 before Jan. 1, 2016). | Mont. Code Ann. section 15-30-2380. |
| Montana | Innovative educational program credit | Donations to educational improvement accounts, which provide supplemental funding to public schools for "innovative educational programs and technology deficiencies." | 100%; capped at $150 annually per taxpayer ($3 million statewide). | Mont. Code Ann. section 15-30-3110. |
| Montana | Tax credit scholarship program | Donations to school scholarship organizations that fund private school K-12 scholarship. | 100%; capped at $150 annually per taxpayer ($3 million statewide cap in 2016, subject to change in later years). | Mont. Code Ann. section 15-30-3111. |

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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Nebraska | Community Development Assistance Act credit | Under the Community Development Assistance Act, a credit is available against the corporate income tax, personal income tax, financial institutions franchise tax and insurance tax for contributions to a community betterment program in community development areas, which are areas that the Department of Economic Development has certified as an area of chronic economic distress. These programs are administered by nonprofit community service organizations, business development organizations, or local government units. Eligible programs involve such activities as job training, crime prevention, medical services and recreational activities. | The maximum credit is 40% of the amount it contributed to an approved program during its tax year. Credits are not allowed for activities that are a normal part of a taxpayer's business. | Neb. Rev. Stat. section 13-203. |
| Nebraska | Credit for volunteer responders | Each city, village, or rural or suburban fire protection district must file with the Department of Revenue a certified list of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters for the immediately preceding calendar year of service no later than Feb. 15. Effective for tax years beginning on or after Jan. 1, 2017, each volunteer on this list will receive a refundable $250 credit against income tax imposed beginning with the second tax year in which the volunteer is included on the list. | $250. | Neb. Rev. Stat. section 77-3105; Neb. Rev. Stat. section 77-2715.07(2)(d). |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| New York | Conservation easement tax credit | Donation of conservation easement. | 25% of the school district, county, and town real estate tax paid on the easement property (village and city taxes are not used to calculate the credit and special assessments are also not considered) available each year. Limited to $5,000 per year. | N.Y. Tax Law section 606(kk) (McKinney). |
| North Carolina | Nonitemizer charitable contributions tax credit (Repealed 2014.) | Taxpayers electing the standard deduction under N.C. Gen. Stat. section 105-134.6(a2) are allowed a credit equal to 7% of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the tax year that would have been deductible under IRC section 170 if the taxpayer had not elected the standard deduction exceed 2% of the taxpayer's adjusted gross income. | 7% of the taxpayer's excess charitable contributions. | N.C. Gen. Stat. section 105-151.26. |

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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| North Carolina | Real property donated for public or conservation purposes (Repealed 2014.) | For tax years before 2014, an individual or passthrough entity that makes a qualified donation of an interest in real property located in North Carolina during the tax year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, forestland or farmland conservation, watershed protection, conservation of natural areas, conservation of natural or scenic river areas, conservation of predominantly natural parkland, or historic landscape conservation is allowed a credit against the personal income tax. | For tax years beginning on or after Jan. 1, 2007, the aggregate amount of credit allowed to an individual in a tax year for one or more qualified donations, whether made directly or indirectly as owner of a passthrough entity, may not exceed $250,000. In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed may be claimed only if the spouses file a joint return. The aggregate amount of credit allowed to a husband and wife filing a joint tax return may not exceed $500,000. | N.C. Gen. Stat. section 105-151.12(a), repealed effective for tax years beginning on or after Jan. 1, 2014. |
| North Carolina | Oyster shell tax credit (Repealed 2014.) | Effective for tax years beginning on or after Jan. 1, 2006, and expiring for tax years beginning on or after Jan. 1, 2014, taxpayers who donate oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources are eligible for a tax credit against personal income tax. | $1 per bushel of oyster shells donated. | N.C. Gen. Stat. section 105-151.30(a); N.C. Gen. Stat. section 105-151.30(f). |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| North Carolina | Donation of gleaned crops (Repealed 2014.) | For tax years before 2014, a grower who donates unharvested crops located in North Carolina to a qualifying charitable organization is allowed a credit of 10% of the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service or the average price of the crop in the nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price. | 10% of the season average price of the crop. | N.C. Gen. Stat. section 105-151.14(a), repealed effective for tax years beginning on or after Jan. 1, 2014. |
| North Dakota | Qualified endowment credit | A credit is allowed for making a charitable gift to a qualified endowment. | The credit is equal to 40% of the charitable gift. The maximum credit that may be claimed for charitable gifts made in a tax year is $10,000 for an individual or $20,000 for married individuals filing a joint return. The credit may not exceed the taxpayer's income tax liability. A charitable gift used as the basis for claiming this credit may not be used as the basis for the claim of a credit under any other provision. | N.D. Cent. Code section 57-38-01.21(2). |
| Oklahoma | Energy Conservation Assistance Fund credit (Repealed.) | Any person or corporation may contribute monies to the Energy Conservation Assistance Fund. | Income tax credit against the state personal or corporate income tax liability of 50% of the amount contributed to the fund for the tax year in which it was made. | Okla. Stat. Revenue & Taxation 68 section 2357.6 (2010). Repealed by Laws 2013, c. 363, section 4, Jan. 1, 2014. |



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**Charitable Tax Credits by State *(Continued)***

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Oklahoma | Credit for contributions to SGOs | Contributions made by individuals or corporations to an SGO. | 50% of the contribution, capped at $1,000 ($2,000 for joint filers). If total annual credits exceed $1.75 million (either for individuals and married filers or for all other filers), the credit allowed will be adjusted to a percentage of total credits earned. | Okla. Stat. section 2357.206(B). |
| Oklahoma | Credit for contributions to educational improvement grant organizations | Contributions by individuals or corporations to an educational improvement grant organization. | 50% of the contribution, capped at $1,000 ($2,000 for joint filers). If total credits claimed annually exceed $1.5 million annually, the credit allowed will be adjusted to a share of $1.5 million. | Okla. Stat. section 2357.206(C). |
| Oregon | Credit for contributions to Trust for Cultural Development Account | A credit is available for amounts contributed to the Trust for Cultural Development Account. | The credit is 100% of contributions to the account that are matched by an equal contribution to an Oregon cultural organization. The credit is limited to the lesser of the taxpayer's tax liability or $500 ($1000 for joint filers). | Or. Rev. Stat. section 315.675. |
| Oregon | University research tax incentives | State public universities are authorized to establish venture development funds to provide capital grants for entrepreneurial programs and "proof of concept" funding for commercially viable products and services. | The total amount of the credit allowed to a taxpayer must equal 60% of the contribution amount stated on the tax credit certificate, but may not exceed $600,000. The credit allowed under this section in any one tax year may not exceed the tax liability of the taxpayer for the tax year. | Or. Rev. Stat. section 315.521. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Oregon | Oregon capital Corp. investment credit (Repealed.) | A taxpayer is allowed a credit for 20% of direct cash investment in the Oregon Capital Corp. | A taxpayer is allowed a credit for 20% of direct cash investment in the Oregon Capital Corp. Not more than 50% of the tax credit can be claimed in the tax year in which the investment is made. In any one year, the tax credit cannot exceed the taxpayer's tax liability. | Or. Rev. Stat. section 315.504. Repealed Jan. 1, 2006. |
| Oregon | Child care contribution tax credit | Contribution to the Child Care Contribution Tax Credit Program, used to financially support improvements for child care businesses. | 50% of contribution (capped statewide at $500,000). | Or. Rev. Stat. section 315.213. |
| Oregon | Credit for payments made to qualified scholarship programs | Credit is available to Employers that fund scholarship programs for employees and dependents. | 50% of disbursements from the employer's scholarship program (capped at $50,000 per employee). | Or. Rev. Stat. section 315.237. |
| Rhode Island | Credit for contributions to scholarship organizations | Rhode Island provides a credit for donations to SGOs, nonprofits that provide private school scholarships. | Tax credits are worth 75% of the contribution, or 90% if donated for two consecutive years and the second year's donation is worth at least 80% of the first year's donation. Each donor can receive only $100,000 in tax credits each year, and cannot use surplus donations in one year to generate tax credits in future years. | R.I. Gen. Laws section 44-62-1. |
| South Carolina | Credit for qualified contribution to Industry Partnership Fund | Qualified contribution by taxpayer (individual or corporate) to the Industry Partnership Fund at the South Carolina Research Authority or an authority-designated affiliate. | 100% of a qualified contribution, limited to $2 million annually per taxpayer ($6 million statewide). | S.C. Code Ann. section 12-6-3585. |

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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| South Carolina | Credit for qualified contribution to South Carolina Hydrogen Infrastructure Development Fund (For tax years beginning after 2007 and before 2012.) | Qualified contribution by taxpayer (individual or corporate) to the South Carolina Hydrogen Infrastructure Development Fund. | 25% of a qualified contribution. | S.C. Code Ann. section 12-6-3630. |
| South Carolina | Qualified conservation contribution credit | Donations of land or qualified property interests (conservation easement) for purposes of conservation. | 25% of the total amount of the federal deduction claimed; capped at $250/acre and $52,500 per taxpayer per year (when combined with all other tax credits). | S.C. Code Ann. section 12-6-3515. |
| South Carolina | Educational credit for exceptional needs children | Individuals and businesses are awarded a tax credit for contributions to nonprofit scholarship funding organizations dedicated to providing scholarships to children with exceptional needs. | Taxpayers can claim a credit up to 60% of their total tax liability for a given year; annual statewide cap of $11 million. | Proviso 109.11, State Fiscal Year 2017-2018 Appropriations Act, 2017 S.C. Acts 97. |
| Utah | Credit for Achieving a Better Life Experience account contributions (Effective for tax years starting on or after Jan. 1, 2016.) | Contributions by individuals, estates, and trusts to accounts set up under the Achieving a Better Life Experience Savings Account program, which allows states to establish tax-advantaged savings accounts for certain individuals with disabilities for their disability-related expenses. | 5% of contributions. | Utah Code Ann. section 59-10-1035. |
| Utah | Qualified sheltered workshop cash contribution credit | Contributions made by claimants, estates, or trusts to a qualified nonprofit rehabilitation sheltered workshop facility for the handicapped operating in Utah and certified by the Department of Human Services. | 50% of contributions, to maximum of $200/ year. | Utah Code Ann. section 59-10-1004. |



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## Charitable Tax Credits by State *(Continued)*

| State | Title of Credit | Description | Amount of Credit | Statute |
|---|---|---|---|---|
| Virginia | Land preservation tax credit | Donations of conservation land or easements conveyed for the purpose of historical or conservation preservation, agricultural and forest use, open space, or natural resource and biodiversity conservation. | 40% of FMV of the donation, capped at $100,000 per taxpayer annually, and $75 million statewide. | Va. Code Ann. section 58.1-512. |
| Virginia | Food crop donation tax credit | Donations of food crops grown by the taxpayer (whether individual or corporate) in Virginia to a nonprofit food bank. | 30% of the FMV of the food crops, capped at $5,000 per taxpayer annually, and $250,000 statewide. | Va. Code Ann. section 58.1-439.12:12(B). |
| Virginia | Neighborhood Assistance Act tax credit | Monetary donation or a donation of marketable securities to an approved neighborhood organization. | 65% of the value of the donation; the minimum donation is $500 and the maximum donation for which a credit can be obtained is $125,000 per year. No more than $500,000 in tax credits may be approved per year. | Va. Code Ann. section 58.1-439.24. |
| Virginia | Education improvement scholarships tax credit | Donations of cash or marketable securities to approved scholarship foundations that provide scholarships to eligible students for nonpublic schools. | 65% of the donation. For individuals, donation must be at least $500, and no credit will be provided for donations above $125,000. | Va. Code Ann. section 58.1-439.26. |
| West Virginia | Neighborhood Investment Program tax credit | Cash, personal or real property, or stock contributions (by an individual or business) to a qualified charitable community-based organization that establishes projects to assist neighborhoods and local communities through such services as healthcare, counseling, emergency assistance, crime prevention, education, housing, job training and physical and environmental improvements. | Up to 50% of the taxpayer's eligible contribution (valued at FMV for personal or real property or stock, 75% for in-kind professional services). Capped at $100,000 per taxpayer annually, and $3 million statewide. | W. Va. Code section 11-13J-1-12. |

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