

**Memo To:** Stamford Board of Representative, L & R Committee

**From:** Barbara L. Coughlan, Assistant Corporation Counsel



**Re:** Public Act 18-49, Opportunities Regarding Community Supporting Organizations and Possible Local Tax Benefits

**Date:** August 20, 2018

I have been asked to review Public Act 18-49, specifically Section 10, and to answer the following questions regarding that provision:

- (1) Assuming that the IRS ultimately disallows [ ] utilizing a contribution to a “community supporting organization” as a charitable deduction, what would be the most likely consequence for a taxpayer?
- (2) Assuming that the IRS disallows contributions [to] “community supporting organizations” as referenced above, what, if any, would be the consequences to the City of Stamford?
- (3) As to both questions (1) and (2) above, how much protection for taxpayers and Stamford is to be afforded by the fact the State of Connecticut passed the enabling legislation for “community supporting organizations”?

As set out in more detail below, I believe it is premature for the City to fully set in place the procedure whereby a taxpayer could make a donation to a “community supporting organization” in lieu of paying residential property taxes.<sup>1</sup> My opinion is based on the uncertainty surrounding the deductibility of such “donations” as acknowledged by Benjamin Barnes, Connecticut’s Director of the Office of Policy and Management, based, in part, on a cautionary Notice issued by the Internal Revenue Service (the “IRS”). Nonetheless, in response to the specific questions asked, if the City were to adopt such a procedure, it is my opinion that the fact that Connecticut passed the enabling legislation for “community supporting organizations” provides no

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<sup>1</sup> The City could, however, take the first step towards enacting a local ordinance that would allow for the creation of a “community supporting organization” as contemplated by the new Connecticut law. By doing this, the City would be in a position to complete the process should the unanswered questions be addressed. For more information regarding this option, see page 5 and f.n. 3.

protection for taxpayers or for Stamford. Moreover, if a procedure were adopted by the City and taxpayers did make the contributions anticipated and those contributions were later disallowed by the IRS, it is my opinion that the taxpayer would be without any recourse against the City. As such, although the City would be unaffected by such disallowance from a monetary prospective, it would certainly garner the ill will of those residential taxpayers who made the charitable donations.

On May 31, 2018 Governor Dannel Molloy signed into law Connecticut Public Act 18-49 ("P.A. 18-49"). Section 10 of P.A. 18-49 specifically authorizes Connecticut municipalities to enact legislation, which would permit municipal taxpayers to make charitable donations to a "community supporting organization" and, in return, receive a credit to be used to pay residential property taxes. The idea is to provide a mechanism by which municipal taxpayers will continue to be able to fully deduct from federal taxable income the amounts paid toward their residential property taxes even when the tax imposed exceeds the \$10,000 cap set in the new federal tax legislation (the federal Tax Cuts and Jobs Act ("TCJA")).<sup>2</sup> It offers municipalities a way to provide taxpayers with the opportunity to maintain the unlimited deduction for local residential property taxes, which was in effect prior to the TCJA. Similar laws have been proposed or enacted in other states, including New York and New Jersey.

A "community supporting organization" is defined under P.A. 18-49 as "an organization that is (A) exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, . . . and (B) organized solely to support municipal expenditures for public programs and services, including public education. . ." Under

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<sup>2</sup> Under the TCJA, itemized deductions for personal state and local tax (SALT) amounts are limited to a combined total of \$10,000 (\$5,000 if you use married filing separately status). The limitation applies to state and local income (or sales) taxes, and property taxes.

the new law, a Connecticut municipality is allowed to “provide a residential property tax credit for the following fiscal year in accordance with the provisions of [the] section.” The municipality shall determine the credit, but under the law, it “shall not exceed the lesser of (A) the amount of property tax owed, or (B) eighty-five per cent of the amount of voluntary, unrestricted and irrevocable cash donations made by or on behalf of the owner of a residential property located in the municipality to a community supporting organization during the calendar year preceding the year in which an application for such tax credit is filed.” *P.A. 18-49, § 10.*

It is clear, given the language used throughout the new law that any donations made are to be “voluntary, unrestricted and irrevocable”. In fact, in order to receive the property tax credit, the taxpayer who made the donation, must submit with his/her application for the tax credit “an affidavit, on a form prescribed by the Secretary of the Office of Policy and Management, affirming that such donations were made in cash and were voluntary, unrestricted and irrevocable.” *P.A. 18-49, Section 10(d)(2).* In other words, the donation is not contingent on anything, including the taxpayer’s ability to deduct the contribution from federal taxable income. As such, I do not believe a taxpayer would have any recourse should the IRS ultimately disallow the contribution made to a “community supporting organization” as a charitable donation.

The IRS has reacted to the enactment or potential enactment of state legislative proposals “that would allow taxpayers to make transfers to funds controlled by state or local governments, or other transferees specified by the state, in exchange for credits against the state or local taxes that the taxpayer is required to pay” where the aim of those proposals “is to allow taxpayers to characterize such transfers as fully deductible

charitable contributions for federal income tax purposes, while using the same transfers to satisfy state or local tax liabilities.” In its May 23, 2018 Notice 2018-54, which is entitled, “Guidance on Certain Payments Made in Exchange for State and Local Tax Credits,” the IRS notes that these legislative enactments are “efforts to circumvent the new statutory limitation on state and local tax deductions” and that “taxpayers should be mindful that federal law controls the proper characterization of payments for federal income tax purposes.” *IRS Notice, attached as Exhibit A, at p. 2.* The Notice states:

“The Treasury Department and the IRS intend to propose regulations addressing the federal income tax treatment of transfers to funds controlled by state and local governments (or other state-specified transferees) that the transferor can treat in whole or in part as satisfying state and local tax obligations. The proposed regulations will make clear that the requirements of the Internal Revenue Code, informed by substance-over-form principles, govern the federal income tax treatment of such transfers. The proposed regulations will assist taxpayers in understanding the relationship between the federal charitable contribution deduction and the new statutory limitation on the deduction for state and local tax payments.” *Id.*

It does not appear that the IRS regulations have yet been enacted, which leaves the question of how the deductions will be treated by the IRS unclear.

Moreover, Benjamin Barnes, Connecticut’s Director of the Office of Policy and Management, in response to questions posed to him by Attorney Mario Coppola of Berchem Moses, a Connecticut law firm, regarding Public Act 18-49, stated in a June 13, 2018 letter that “we are expecting the stated federal pronouncement [regarding proposed regulations or the issuance of a notice to specifically address whether contributions to community supporting organizations controlled by state and local governments are deductible for federal income tax purposes] to be forthcoming.” He advised that, it may, therefore, “be prudent for municipalities and towns to adopt a wait

and see approach before embarking on the creation of the community supporting organizations.”

In conclusion, based on IRS Notice 2018-54 and Director Barnes’ letter to Attorney Coppola, it appears premature for the City to consider fully adopting legislation allowing taxpayers to make charitable donations to a “community supporting organization” in return for a credit to be applied in payment of residential property taxes. I concur with Director Barnes’ suggestion that a “wait and see approach” be adopted with regard to a full implementation of the procedure contemplated by P.A. 18-49, § 10. It may be prudent for the City to take the first step towards the process, however, since the deadline for such step is October 1<sup>st</sup>.<sup>3</sup> By doing so, the City would be a position to take the other necessary steps towards full implementation of the process should the unanswered questions be answered.

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<sup>3</sup> Section 10(b)(1) of P.A. 18-49 requires that the municipality’s legislative body annually approve “on or before October first of each year” the process of providing a residential property tax credit for the following fiscal year and determine what that tax credit should be. “The municipality may include in any such approval a residency requirement or other requirement the municipality deems necessary or desirable.” *Id.* After the approval has been obtained by a vote of the municipality’s legislative body, the next step would be for the municipality to “designate a single community supporting organization to receive cash donations that will qualify for tax credit.” *P.A. 18-49, § 10(c)*. It is this second step, which is premature for the City to take. If, however, the City’s legislative body takes the first step by October 1<sup>st</sup> and approves the process, it will be in a position to take the second step should the uncertainty regarding the deductibility of donations to a “community supporting organization” be resolved by the end of the year. If, on the other hand, the City does not take the first step by October 1<sup>st</sup> and the uncertainty is resolved after October 1<sup>st</sup>, the City cannot fully implement the process until next year.

# **EXHIBIT A**



STATE OF CONNECTICUT  
OFFICE OF POLICY AND MANAGEMENT  
OFFICE OF THE SECRETARY

June 13, 2018

Mario F. Coppola, Esq.  
Berchem Moses PC  
1221 Post Road East  
Westport, CT 06880

RE: Senate Bill 11- Residential Property Tax Credit

Dear Attorney Coppola:

My agency is in receipt of your May 15, 2018 request for information and opinions regarding Senate Bill 11, Public Act 18-49 – *An Act Concerning Connecticut's Response to Federal Tax Reform*. This legislation authorizes a municipality to provide a residential property tax credit in an amount not to exceed the lesser of the amount of property tax owed, or 85% of the amount of voluntary, unrestricted and irrevocable cash donations made by or on behalf of the owner of a residential property located in the municipality to a "community supporting organization" during the calendar year preceding the year in which an application for the tax credit is filed. Furthermore, this legislation requires the Office of Policy and Management ("OPM") to create a form that evidences and affirms such donations.

As you are likely aware, Connecticut is not alone in enacting legislation that attempts to provide relief to taxpayers who may be negatively impacted by the recent changes to the federal tax code. In light of such newly enacted state legislation, OPM and the Department of Revenue Services ("DRS") understand that the Treasury Department and the IRS are expected to propose regulations or issue a notice to specifically address whether contributions to community supporting organizations controlled by state and local governments are deductible for federal income tax purposes. Previously, in IRS Notice 2018-54 (May 23, 2018), the IRS cautioned taxpayers that federal law controls the characterization of payments for federal income tax purposes.

I am not inclined to provide specific responses to your questions as they concern matters that need to be addressed and worked out on the municipal level with the input of local counsel. Notwithstanding this reservation, as we are expecting the stated federal pronouncement to be forthcoming, it may be prudent for municipalities and towns to adopt a wait and see approach before embarking on the creation of the community supporting organizations.

My agency and DRS will continue to monitor the situation as warranted.

Regards,

A handwritten signature in black ink, appearing to read "Benjamin Barnes".

Benjamin Barnes  
Secretary