

# NAVIGATING NEW IRS PROPOSED REGULATIONS IMPACTING WV NIP TAX CREDIT PROGRAM

***If a donor plans to itemize on their federal tax return, please have the donor consult her/his tax advisor or CPA to understand the Proposed Federal Regulations.*** The following information is provided to assist a donor in navigating the elements of the proposal as you use WV Neighborhood Investment Program tax credits with giving from your donors.

## BACKGROUND

- As part of the Tax Cuts and Jobs Act (the “TCJA”), Congress placed a \$10,000 cap on the itemized deduction for State and Local Taxes (referred to as the “SALT” deduction).
- In response, some states and localities (especially those with high state income and property taxes) enacted charitable contribution credit programs. By getting a credit for a charitable contribution, the idea was that a taxpayer could reduce the state tax burden, and but increase the federal charitable contribution itemized deduction.
- The IRS is concerned that these states were trying to evade the new \$10,000 SALT deduction cap with these programs. In Notice 2018-54, the IRS indicated that it was looking at the issue and would come out with further guidance.
- On August 27, 2018, the IRS issued broad-ranging Proposed Regulations under Internal Revenue Code Section 170 (the federal charitable contribution deduction) that impacts not only the new charitable tax credit programs passed recently in response to the SALT deduction, but all charitable credit programs (including West Virginia’s NIP Program), regardless of when passed.

## OVERVIEW OF THE PROPOSED REGULATIONS

- The Proposed Regulations explain the availability of a federal charitable contribution deduction when a taxpayer receives a corresponding state or local tax credit.
- If a taxpayer receives a state or local tax credit for a charitable contribution, the amount deductible on the taxpayer’s federal income taxes must be reduced by the amount of the state or local tax credit received.
- The rule applies to both state and local tax credits actually received and credits that are “expected to be received,” but the Proposed Regulations do not further define the term.
- The Proposed Regulations provide for a de Minimis exception when the general rules do not apply. If the tax credit is less than 15% of the of the payment or fair market value of the charitable contribution, then the taxpayer does not have to reduce the amount of a charitable deduction on their federal taxes.
- The Proposed Regulations ask for comments from the public on whether there is an ability to “waive” a credit; however, there is no guidance in the current Proposed Regulations on how a waiver might work.
- This rule does not apply to state or local charitable tax deductions, only tax credits.
- The new rule applies to all charitable deductions made after August 27, 2018 if the taxpayer receives or expects to receive a state or local tax.

## THE WEST VIRGINIA NIP TAX CREDIT PROGRAM:

- For over 20 years, West Virginia has the WV Neighborhood Investment Program (NIP) with charitable tax credits at the state level.
- West Virginia, as part of its budget process, allocates a certain amount of funds in the form of tax credits to the NIP program.
- West Virginia then allocates these tax credits among qualified Section 501(c)(3) organizations in West Virginia, in the form of tax credit vouchers.
- Qualified organizations are public charities that are not government-controlled entities.
- NIP qualified organizations can then give a tax credit voucher to individual donors who make charitable contributions to that organization.
- The minimum eligible donation is \$500. Additionally, the tax credit received would be limited to 50% of the contributed amount.

- There are four limitations on the use of the NIP tax credits.
  - 1) For approved projects, programs, and organizations, serving financially needy citizens and communities.
  - 2) The amount of tax creditable allowable must be taken within a five-year period, beginning with the tax year in which the donation is made.
  - 3) A donor may not receive more than \$100,000 annually in NIP tax credits.
  - 4) A donor may not use a NIP tax credit to reduce total state tax liability by more than 50% annually

## IMPACTS ON DONORS AND CHARITIES PROGRAM:

- There is little in the way of additional guidance available, but the following represents our best guess at how these new Proposed Regulations will apply to the NIP program for both donors and charities; ***please consult your individual tax advisors for specific advice regarding your personal circumstances.***
- A donor who takes the standard deduction for federal income tax purposes (*i.e. does not itemize*) should be able to take the full NIP credit against his or her state taxes. Nothing in the Proposed Regulations purports to reduce the standard deduction for charitable credits.
- A donor who itemizes deductions for federal income tax purposes (*i.e., claims the federal charitable income tax deduction under Code Section 170*)
  - ❖ Should be able to take the NIP credit against the taxpayer's WV income tax liability in full; but
  - ❖ Must reduce the federal charitable income tax deduction by the amount of the credit taken UNLESS the de Minimis exception described above applies.
- A donor may decide that the value of the unreduced federal charitable contribution deduction is more than the value of the NIP credit (*i.e. the taxpayer may be at the highest federal marginal rate but have a low West Virginia state tax liability.*)
  - ❖ Because of the "expected to receive" language in the Regulations, it is unclear whether the donor would be required to reduce the federal charitable deduction by the amount of the credit allocated to the taxpayer by a NIP qualified charity, EVEN IF THE CREDIT IS NOT ACTUALLY TAKEN.
  - ❖ It would be better practice not to allocate NIP credits to any donor who does not intend to take them, although this raises interesting timing issues for contributions and allocations of credit for NIP qualified charities.
  - ❖ It is important for the donor to consult their tax advisor on the best options under the Proposed Regulations. Presently, it is possible for the NIP qualified charities to rescind already awarded tax credit when it is within the same fiscal year. If it is past the fiscal year that the credit is awarded, the organization cannot rescind the credit. It is unclear how the Proposed Regulations would impact such rescinded credit on the individual taxpayer.
  - ❖ While it is possible for NIP-qualified charities to rescind previously awarded tax credits within the same fiscal year under West Virginia law, it is unclear whether the IRS would respect the rescission for purposes of applying these Proposed Regulations to a particular donor. Professor Elaine Waterhouse Wilson, JD, Associate Dean for Academic Affairs & Professor of Law – Tax Law and Philanthropy West Virginia provides this as resource to navigate the proposed IRS regulations associated with SALT credits. Philanthropy WV thanks Professor Wilson in creating this resource for our members.

*A special thanks to Professor Elaine Waterhouse Wilson, JD, Associate Dean for Academic Affairs & Professor of Law – Tax Law and Philanthropy West Virginia in providing this resource to our members in navigating the proposed IRS regulations associated with SALT credits.*

**We advise all donors to consult their tax advisors/CPA on best options on their charitable giving when itemizing and using the WV Neighborhood Investment Program tax credits.**

