FACT SHEET

Questions & Answers: Understanding the New Charitable Gifts Trust Fund

Fact Sheet 18-05 **April 2018**

Question 1: Why did New York State adopt the Charitable Gifts Trust Fund?

Answer: On December 22, 2017, President Trump signed into law the "Tax Cuts and Jobs Act." This new law placed a limitation on the federal income tax deduction for state and local taxes, commonly referred to as SALT. Under the new federal law, itemized tax filers will now be limited to only deduct up to $10,000 in state and local property and income taxes. Previously, there was no limitation placed on the SALT deduction.

New York State residents will be among the hardest hit by this $10,000 limitation. According to the Tax Policy Center, tax filers from New York State led all other states with the highest average deduction for state and local taxes— the average SALT deduction in New York State in 2015 was $22,169.

In order to possibly help mitigate the impact of the SALT deduction limitation, the recently enacted state budget created the Charitable Gifts Trust Fund.

Question 2: How does the new Charitable Gifts Trust Fund address the SALT limitation?

Answer: Because there continues to be no limitation on the federal income tax deduction for charitable donations, the creation of the Charitable Gifts Trust Fund is an attempt to allow a taxpayer to shift their federal income tax deduction from SALT to the charitable donations deduction.

Question 3: Who will create a Charitable Gifts Trust Fund?

Answer: School districts and other local governments are granted the authority to create a Charitable Gifts Trust Fund, but they are not required to do so. A formal vote of the governing trustees is required for the creation of these trust funds.

In addition, New York State will create a Charitable Gifts Trust Fund that will have two separate accounts—the Health Charitable Account and the Elementary and Secondary Education Charitable Account. Funds in the health account would be used by the state for services related to primary, preventive, inpatient care, mental, vision, hunger prevention, and nutritional assistance. Funds in the education account would be used by the state for the support of elementary and secondary education of children in public schools.

Question 4: If a school district chooses to create a Charitable Gifts Trust Fund, how will it work?

Answer: Taxpayers would be able to make a monetary donation to their school district's Charitable Gifts Trust Fund and they would receive a 95 percent credit (or less as determined by the school board) against their property tax liability for the amount of that donation and they would be able to claim that donation as a charitable deduction on their federal income taxes.

The school board would then transfer these donations from the trust fund to the district's general fund.

Question 5: *Will the utilization of these trust funds generate extra funding for school districts?*

Answer: Yes. Because a taxpayer that makes a donation to their district's trust fund will only receive a 95 percent credit, the extra 5 percent will become additional funding for the district. For example, a taxpayer that makes a $5,000 donation to the district's trust fund will only receive a credit of $4,750 on their school property tax bill.

Question 6: *How will the Charitable Gifts Trust Fund administered by New York State work?*

Answer: Taxpayers would be permitted to choose to make monetary donations to one or both of the state's Charitable Gifts Trust Fund accounts and then be able to deduct those donations against their federal income tax and they would then receive an 85 percent credit against their state income tax liability. Taxpayers could also choose to donate to the SUNY Impact Foundation or the CUNY Research Foundation and those donations would be treated the same as donations to the state's Charitable Gifts Trust Fund accounts. The SUNY Foundation and the CUNY Foundation would develop policies and procedures to ensure that all contributions were used to support programs benefiting students, but could not be used for scholarships or tuition assistance.

Question 7: *Is there an annual limitation on these trust funds?*

Answer: Yes. The state's Charitable Gifts Trust Fund, the SUNY Impact Foundation, and the CUNY Research Foundation can each only receive a total of $10 million in contributions per year. School districts and local governments may each establish their own annual limitation.

Question 8: *When does this begin?*

Answer: School districts and other local governments would be able to establish their Charitable Gifts Trust Fund in time for their upcoming fiscal year.

For the trust funds administered by the state, applications for contributions will be developed and will be due by September 30, 2018. If the annual limitation is not reached a second round of contribution applications will be available from October 1st to November 15th.

Question 9: *Has the Internal Revenue Service issued an opinion regarding the legality of a new Charitable Gifts Trust Fund?*

Answer: The IRS has not yet issued any guidance or a formal opinion as to whether contributions to a New York state-authorized trust fund or locally authorized trust fund will be considered deductible for federal tax purposes. Some have argued that based on existing federal law and regulations that donations to these trust funds are not legitimate charitable contributions and therefore would not qualify as a federal deduction. However, others argue that in 2011 the IRS determined in an official memo that a charitable donation would be federally deductible, even if a state tax credit was issued in return for the donation.

Other states such as New Jersey, Connecticut and California are currently working on similar legislative solutions to help mitigate the impact of the $10,000 SALT limitation.

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