



441 G St. N.W.
Washington, DC 20548

B-331162

June 26, 2019

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Contributions in Exchange for State or Local Tax Credits*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled "Contributions in Exchange for State or Local Tax Credits" (RIN: 1545-BO89). We received the rule on June 12, 2019. It was published in the *Federal Register* as final regulations on June 13, 2019. 84 Fed. Reg. 27513. The effective date of the rule is August 12, 2019.

The final regulation provides rules governing the availability of charitable contribution deductions under 26 U.S.C. § 170 when a taxpayer receives or expects to receive a corresponding state or local tax credit. The rule also provides similar rules to payments by a trust or decedent's estate under 26 U.S.C. § 642(c).

Enclosed is our assessment of IRS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Martin V. Franks
Chief, Publications and Regulations Branch
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
“CONTRIBUTIONS IN EXCHANGE FOR STATE OR LOCAL TAX CREDITS”
(RIN: 1545-BO89)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) stated the final rule may result in some increase in compliance costs for taxpayers who make contributions that generate state or local tax credits. The rule would require taxpayers making a contribution to an organization described under 26 U.S.C. § 170(c) to determine the amount of any state or local tax credits they received or expect to receive in order to reduce their charitable contribution deduction. The agency also stated the compliance burden for the recipient organizations may increase under the rule. The recipient would have to provide a contemporaneous written acknowledgment to the donor for gifts of \$250 or more, and the acknowledgement must include any state or local tax credits given by the recipient.

IRS stated the rule would benefit taxpayers by likely reducing economically inefficient choices motivated by the potential tax benefits available if the rule were not promulgated. IRS further stated the rule is expected to make the federal tax system more neutral to taxpayers' decisions regarding making donations to state and local tax credit programs versus making donations to other, similar charitable organizations that do not give rise to state or local tax credits. Finally, the agency stated the final rule provides more certainty to taxpayers by clarifying the rules governing the amount that they can claim as a charitable contribution deduction when they receive or expect to receive a state or local tax credit or exchange for the contribution.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

IRS certified the rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

IRS stated the rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector of \$150 million or more.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551*et seq.*

IRS stated it issued a notice of proposed rulemaking on August 27, 2018. 83 Fed. Reg. 43563. IRS stated it received over 7,700 comments and 25 requests to speak at the public hearing which was held on November 5, 2018. IRS stated it addressed the comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

IRS did not address the PRA in the rule.

Statutory authorization for the rule

IRS stated it promulgated the rule under 26 U.S.C. § 7805.

Executive Order No. 12,866 (Regulatory Planning and Review)

IRS stated the Office of Management and Budget determined the rule was economically significant and subject to review under the Order.

Executive Order No. 13,132 (Federalism)

IRS stated the rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.