

April 15, 2015

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Frey Foundation

The Honorable John Thune
Co-Chairman
Business Income Tax Reform Working Group
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Benjamin L. Cardin
Co-Chairman
Business Income Tax Reform Working Group
219 Senate Office Building
Washington, DC 20510

Dear Senator Thune and Senator Cardin:

On behalf of the 330 members of the Council of Michigan Foundations (CMF), we thank you for your work with the Senate Finance Committee Business Income Tax Reform working Group. Michigan is fortunate to have a robust foundation community with annual charitable giving exceeding \$1 billion, but while we cannot replace government, we can thanks to the charitable giving tools in the Federal Tax Code can be an effective partner in reducing the burden of government in communities throughout Michigan.

We encourage you to consider changes to the tax code that would further help the ability of foundations – both private and public – to fulfill their diverse missions. We offer three priorities for your consideration, which we feel would contribute to more charitable giving.

1. Simplify the Excise Tax on Private Foundations

The current two tier system in the Internal Revenue Code Section 4940 serves as a disincentive for foundations to give more. Research conducted by Cambridge Associates confirms that foundations do respond to natural disasters and emergencies by giving more. However, in the following year foundations will reduce their giving in order to maintain the lower tax rate. And the current two tier system is difficult to calculate. One foundation shared that they could outfit an entire elementary school in their community with winter clothing instead of pay the annual fee to their accountants to calculate the excise tax owed the government.

Simplifying the excise tax enjoys broad bi-partisan support, and we encourage the Senate Finance Committee to move HR 644 – the America Gives More Act to the floor of the Senate for a vote as soon as possible. This Act includes the three charitable tax extenders as well as simplifying the excise tax to a flat one percent. Yes, there is a cost to doing this. However, the increase in charitable giving by private foundations will further help to reduce the burden of government in communities across America.

2. Simplify the regulations on Mission/Impact Investing and Program Related Investments (PRIs)

Attached is a letter that we have filed each year with the IRS and Treasury asking for simplification of the regulations on Mission/Impact Investing and Program Related Investments by foundations. We do not believe these requested changes require legislation and would provide new philanthropic capital to help distressed rural, suburban and urban communities in making the essential public private partnerships required for thriving communities more doable. At a time when patient capital is required, foundations need guidance from treasury that making mission investments with a charitable purpose will not be considered jeopardy investments in violation of their fiduciary responsibilities. In addition, the sharing of one determination letter from Treasury would allow for more foundations to collaborate in making PRIs on complex redevelopment efforts that support their missions and provide the long term investments required to make these public private partnerships sustainable and successful.

3. Preserve current law on Donor Advised Funds (DAFs)

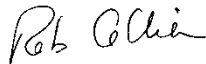
Also attached is the letter we have submitted to the Individual Income Tax working Group co-chaired by our Senator Stabenow. While DAFs are an important individual giving tool, DAFs also represent a vital tool for community foundations to engage the next generation in long term community investment. These community foundation DAFs are enabling communities to respond quickly to emergency needs while providing the long term investments to plan for future needs as well.

Please let us know how we can assist you in your analysis of tax reform opportunities. We thank you for your leadership on tax policy and for your support of a strong nonprofit charitable sector that employs one of every ten Michiganders.

Sincerely,



Ellen Crane
CMF Board Chair
Trustee, Harvey Randall Wickes Foundation



Rob Collier
President & CEO

Attachments:

IRS Letter of March 19, 2015
Letter to Stabenow, Grassley and Enzi

cc: Sarah Shive, Senator Stabenow

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March 19, 2015

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2014-18)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: **2015-2016 Guidance Priority List**

Sir/Madam:

This letter is submitted in anticipation of the Department of Treasury and the Internal Revenue Service's invitation for public comment on recommendations for items that should be included on the 2015-16 Guidance Priority List. The Council of Michigan Foundations (CMF) is a Section 501(c)(3) membership association encompassing more than 330 charitable grantmaking organizations with a more than 25 year history of supporting public private partnerships for the benefit of the public good.

CMF appreciates the inclusion of program related investments as item 12 in the Exempt Section on page 13 of the January 29, 2015 Second Quarter Update to the 2014-15 Priority Guidance plan. However, "CMF" strongly urges the Department and Service to include guidance relating to both the definition of a jeopardy investment by a private foundation and expansion of the April 2012 proposed regulations on program related investments ("PRI" or "PRIs") on its 2015-16 Guidance Priority List.

First, we request that the Service issue guidance that a mission-related investment ("MRI") made primarily for charitable purposes is not a jeopardizing investment under Section 4944 of the Code. A "mission-related investment" is a commonly used term among grantmakers and refers to an investment made by a charitable organization to further one or more social objectives. Often, mission-related investments are made primarily for charitable purposes, and as such, are similar to PRIs in that the primary purpose of the investment is to accomplish one or more of the purposes described in Section 170(c)(2)(B).

However, MRIs differ from program related investments in that the decision to make the investment is treated primarily as an investment decision rather than a programmatic decision by the foundation. Also, an MRI, whether or not made primarily for charitable reasons, is not treated as a qualifying distribution under Section 4942 of the Code.

Section 4944 of the Code and the regulations thereunder impose taxes on investments made by private foundations which jeopardize charitable purposes. 26 C.F.R. § 53.4944-1 contains care and prudence standards for making a determination as to whether an investment is a jeopardizing one. The Uniform Prudent Management of Institutional Funds Act of 2006 (“UPMIFA”), which establishes duties and obligations of nonprofits in the management, investments and use of funds held for charitable purposes, also provides standards for investments. We request guidance to clarify that a mission-related investment made primarily for charitable purposes, or more broadly, any investment, the primary purpose of which is to accomplish one or more of the purposes described in Section 170(c)(2)(B), is not a jeopardizing investment under Section 4944 of the Code. We request guidance to further confirm that if a foundation is investing consistent with UPMIFA, it should not be treated as a jeopardy investment.

Under UPMIFA, a board may take into account “an asset’s special relationship or special value to the charitable purposes of the institution.” In addition, management and investment decisions about an individual asset shall not be made in isolation, but rather in the context of the institution’s portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the investment and to the institution. See for example, Section 3 of UPMIFA. Under UPMIFA, other factors that a foundation may consider, if relevant, include general economic conditions; the possible effect of inflation or deflation; the expected tax consequences, if any, of investment decisions or strategies; the role that each investment or course of action plays within the overall investment portfolio; the expected total return from income and the appreciation of investments; other resources of the institution; and the needs of the institution and the fund to make distributions and to preserve capital.

Most foundations limit the proportion of their portfolio available for MRIs consistent with prudent investor standards. Section 4944 regulations similarly provide that the determination of whether an investment is a jeopardy investment is made on an investment by investment basis, in each case taking into account the foundation’s portfolio as a whole. Under the regulations, no category of investments shall be treated as a per se violation of Section 4944. See 26 C.F.R. § 53.4944-1. Therefore, if the foundation is investing consistent with UPMIFA, it should not be treated as a jeopardy investment.

A recent example of the need for this type of ruling on MRIs is my recent visit to the City of Pontiac Michigan – a city known as an oasis of urban blight and crime that the traditional capital investment markets have ignored for years. I recently met with a group of investors ready to lead the redevelopment of Pontiac. However, they need foundation investment partners as long term patient capital that can help make their revitalization efforts a success for all residents of Pontiac, especially those most in need. When I explained the PRI process, they asked if there wasn’t a most flexible tool that could help them attract foundation investment dollars in light of their long term charitable goals. They quickly realized that the timeliness of the PRI process would not be helpful to them in their efforts.

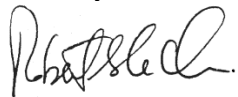
In 2012, the IRS issued proposed amendments to 26 C.F.R. § 53.4944-3 concerning PRIs. We expressed our comments to the amendments in a letter dated July 16, 2012, a copy of which is attached. We request that the Department and Service consider our recommended course of action in this letter for strengthening the guidance on PRIs as part of the 2015-16 Guidance Priority List. The Code and revenue procedures currently indicate that a taxpayer may not rely on a letter ruling issued to another taxpayer or use another taxpayer’s written determination as precedent. This prohibition on reliance is especially frustrating with respect to PRIs. Our legal counsel’s analysis is that the Service has the regulatory authority without new legislation to amend the regulations to allow rulings relating to PRIs to be relied upon by other parties.

Often with economic development projects where a project cannot be financed on traditional commercial terms, multiple foundations may make substantially identical PRIs in the same project. We recommend that the Service adopt a procedure which would allow a ruling or determination issued to one foundation to be shared among, and relied upon by, foundations investing in the same project so long as the investments are made on substantially similar terms. For example, assume XYZ Foundation applies for a private letter ruling that its investment in an urban investment fund (fund) will qualify as a PRI. The fund will make loans to growth-oriented businesses in target urban core areas. The target businesses face obstacles to traditional financing by being above the credit risk threshold for commercial bank loans and below the size and return threshold for other mezzanine financing. The fund’s principal purpose in making the loans is charitable, and more specifically, is intended to promote economic development by creating jobs for the underprivileged, eliminate prejudice and discrimination and combat community deterioration. The loans significantly further the accomplishment of XYZ Foundation’s exempt activities and would not have been made but for such relationship between the loans and XYZ Foundation’s exempt activities. The fund is organized as a limited partnership and governed by a limited partnership agreement. Each private foundation investor will execute the limited partnership agreement of the fund and participate in the investment on substantially identical terms.

Assuming that the Service makes a determination that XYZ Foundation's investment constitutes a PRI, we request that this ruling be relied upon by other private foundations that invest in the fund pursuant to the limited partnership agreement. Alternatively, each private foundation may make a loan to the urban investment fund utilizing template loan documents. Assuming that the Service makes a determination that XYZ Foundation's loan to the fund constitutes a PRI, we request that this ruling be relied upon by other private foundations that loan to the fund utilizing the template loan documents.

On behalf of CMF, and our member foundations, we thank you for the opportunity to provide these recommendations for guidance on MRI investments and PRIs for inclusion on the 2015-16 Guidance Priority List. We welcome the opportunity to discuss these recommendations further and appreciate your consideration.

Sincerely,



Robert Collier
President and CEO
Council of Michigan Foundations

Enc.

cc: Sue Santa, Vice President, Council on Foundations
Ruth Madrigal, Office of Tax Policy, U.S. Department of Treasury
Representative Sander Levin, House Ways and Means Committee
Senator Debbie Stabenow, Senate Finance Committee

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The Honorable Debbie Stabenow
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219 Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Co-Chairman
Individual Income Tax Reform Working Group
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Enzi
Co-Chairman
Individual Income Tax Reform Working Group
219 Senate Office Building
Washington, DC 20510

Dear Senator Stabenow, Senator Grassley, and Senator Enzi:

On behalf of the 330 members of the Council of Michigan Foundations (CMF), we thank you for your work with the Senate Finance Committee Individual Income Tax Reform Working Group. We support the priorities set forth in the April 15 letter submitted by the Council on Foundations and summarized below.

While individual and foundation giving cannot replace government, our 44 years of experience in Michigan confirms that the charitable giving tools in the Federal Tax Code allow the nonprofit charitable sector to be an important partner in helping to relieve the burden of government in communities throughout our Michigan. As you consider changes in tax policy, we encourage you to consider how tax policy can encourage all Americans to give more for a thriving America.

1. Maintain the full value of the Charitable Tax Deduction

CMF's top legislative priority is to maintain the full value of the charitable deduction – unique among tax incentives because the end beneficiary is not the giver but unrelated persons, communities and society as a whole. While giving is often first inspired by the heart, research confirms that tax policy does impact how much we give as Americans. Research has also documented that reducing the value of the charitable deduction – whether by imposing a dollar cap on the amounts which may be deducted, capping at marginal rate the value of the deduction, or imposing a floor on the ability to deduct charitable contributions – would lead to a significant reduction in contributions benefitting Michigan communities.

2. Making the IRA Rollover and other charitable extenders permanent

We are excited about the passage of the America Gives More Act by the House and urge the Senate Finance Committee to bring HR 644 to the floor of the Senate for a vote as soon as possible. Passing HR 644 would provide donors greater certainty when planning the timing and amount of their charitable gifts. Certainty is especially vital for middle class givers, whom research has confirmed are the big users of the IRA Charitable Rollover.

3. Preserve Current law on Donor Advised Funds (DAFs)

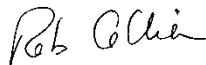
When Michigan was in the midst of a 12 year prolonged recession and community needs were highest, community foundations were able to work with donors to DAFs they hold to make gifts for emergency needs and workforce development – to give just two examples. Our community foundations covering all 83 counties have demonstrated on many occasions that DAFs are a remarkably flexible and nimble giving tool. We have learned and research has confirmed that DAFs are a unique tool being used in rural, small town and urban Michigan for attracting and engaging younger donors and providing an entry point for long term community investment. And DAFs were used by the Community Foundation for Southeast Michigan in its leadership of the remarkable public – private partnership known as the Grand Bargain that helped Detroit get out of bankruptcy. In sum, changes to the tax code on DAFs have the likely result of reducing donor options and reducing giving.

We welcome the opportunity to provide you with the research mentioned above conducted by the Center on Nonprofits and Philanthropy at the Urban Institute, and with whatever other information would be helpful in your deliberations. Thank you for your leadership on tax policy and for your support of a strong nonprofit charitable sector that employs one of every ten Michiganders.

Sincerely,



Ellen Crane
CMF Board Chair
Trustee, Harvey Randall Wickes Foundation



Rob Collier
President & CEO