Council of Michigan Foundations

Growing the impact of Michigan philanthropy

Adopted CMF 2020 Government Relations Goals

FEDERAL LEGISLATIVE GOALS

Background:

Congressional leaders and the Administration have been looking at possible changes to the 2017 Tax Reform Act. That examination has taken three forms. The first, deals with promoting even more reforms that the 2017 Act did not accomplish to lower the tax burden on businesses. A second, is working to change the current law to increase revenues from high net worth individuals and businesses to address various inequities in government services. The final, and most likely to advance, is a technical fix bill that would address several unintended consequences as a result of the rapid nature by which Tax Reform policy was created. This would include changes to the unrelated business income tax (UBIT) provisions that shifted the unrelated revenue tax to a benefits and compensation tax for nonprofits. There are many for-profit provisions that the business community would like to see changed as well, making for a possible path forward for this tax reform strategy. Also included in the discussion are policy changes related to several legacy reforms sought by philanthropy including the excise tax on foundations.

Key Policy Maker Insight

Congressman Dan Kildee, as a member of the House Ways and Means Committee, and Senator Debbie Stabenow, as a member of the Senate Finance Committee, continue to be an important ally for the sector.

1. **Action Goal: Support simplification of the excise tax on private foundations**

   The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (H.R.3301) includes a provision that would swap the current two-tier tax on the net investment income of private foundations for a flat 1.39% tax. That rate was picked because its revenue score is zero. Congressman Davis pushed for the swap and the Ways and Means Committee agreed. A 1 percent flat rate is preferred by the field (including the Alliance for Charitable Reform and the Council on Foundations), but some are advocating for moving with the reform that is "on the table" and pushing for a change in the future that would be more in keeping with a lower flat rate.

   Those with reservations about the 1.39 percent have pointed out that it would result in a higher tax bill for foundations that qualify for the 1 percent rate under the two-tiered system.

   Cambridge Associates' CMF sponsored research on the excise tax was shared with members of Congress and the Administration. The research confirms that about 55,000 private foundations with assets of under $10 million each are paying approximately $66 million in excise tax but having to pay more than $100 million to professional advisors to calculate the tax to be paid.

   Key Policy Makers

Congressman Davis has communicated that he strongly urges that the sector come together on a clear and unified position and would not want to move forward should there be opposing positions from the sector.

2. **Action Goal: Support the repeal of Unrelated Business Income Tax (UBIT)**
The House Ways and Means Committee passed an extenders bill by a 21-17 vote in June that included already expired tax provisions as well as those that are set to expire later this year. The legislation included a repeal of the expansion of UBIT on nonprofits' transportation benefits. In addition to UBIT repeal, the bill would restore expired tax provisions through 2020, provide disaster relief provisions, and expand the Earned Income Tax Credit and other refundable tax credits.

As background, the 2017 Tax Cuts and Jobs Act (TCJA) made two changes to the tax code regarding the UBIT that negatively affect foundations and other tax-exempt organizations.

- First it requires that tax-exempt organizations pay a new 21% federal tax on fringe benefits offered to their employees, such as parking and transportation benefits. Nonprofits have never been subject to such a tax before.
- Second, it requires that tax-exempt organizations calculate unrelated revenue streams separately or "in silos." No longer allowing tax-exempt organizations to aggregate the profits and losses of unrelated business activities, but rather requiring that taxes be paid separately for each activity. This change increases the tax burden for impacted organizations.

Key Policy Makers
In the Senate, U.S. Senate Finance Committee Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) have organized bipartisan taskforces to examine the tax provisions and provide recommendations for how to proceed. It is expected the Senate Finance Committee will debate its own version of a tax extender bill.

3. **Action Goal: Support legislation and regulatory changes that would permit private foundations to participate fully in community development reinvestment opportunities.**
CMF has been working with several national infrastructure organizations to promote legislation that would ease restrictions regarding business holdings while ensuring self-inurement restrictions remain. CMF staff were invited to provide a white paper to a new forum presented by Independent Sector and ARNOVA where several new public policy issues were presented as a way of forming a national agenda for tax policy. CMF proposed amending section 4943 of the tax code to include a new subsection that exempts certain philanthropic business holding from the tax on excess business holding of private foundations if a foundation invests in low-income communities as defined by section 45D(e).

By way of background, current law, enacted in the Tax Reform Act of 1969, prohibits private foundations from holding more than a 20 percent interest in any business. Any holding in excess of 20 per cent are subject to a 200 percent penalty tax. However according to a white paper from Duke University School of Law Professor Richard Schmalbeck, the excess business holdings rules are redundant and the concerns about turning a taxable business into a tax-exempt business simply by setting up a private foundation are guarded against through other laws.

Key Policy Makers
To be determined. Active discussions are underway, but too nascent to announce at this time.

4. **Advocacy Goal: Support legislation that would incentivize all Americans to be charitable givers**
   Several bills have been introduced this Congress to address the decline in charitable giving amplified by the increased standard deduction in the 2017 Tax Cuts and Jobs Act. There are two active bills in the House and a bicameral bill from last Congress that would create a universal charitable deduction for all taxpayers, not just itemizers. A group of national organizations formed the Charitable Giving Coalition (CGC) in 2009 to ensure the charitable tax deduction was preserved in the tax code. The CGC's focus is to protect and advance policy proposals, like the universal charitable deduction, that encourage charitable giving. While there are other policy ideas that the charitable sector is looking into to increase charitable giving, the CGC has coalesced around advancing a universal charitable deduction and in their advocacy efforts they have promoted research and data that shows the 10-year decline in the number of givers. Through 2020, CMF will be soliciting information from members on year-over-year tends in giving. In June 2019, Giving USA found inflation-adjusted individual giving dropped 3.4 percent in 2018 compared to 5.2 percent growth a year prior.

   Key Policy Makers
   Senators Lankford, Coons and Klobuchar have expressed interest in universal charitable giving proposals in the Senate, and Representatives Davis, Smith and Cuellar have introduced universal charitable deduction bills in the House.

5. **Action Goal: Oppose legislation to repeal or amend the Johnson Amendment, which prohibits 501(c)(3) charitable organizations from endorsing, opposing or contributing to political candidates and engaging in partisan campaign activities.**
   In 2018 CMF signed on with more than 5,000 other charitable nonprofits to a letter originated by the National Council on Nonprofits urging Congress to not support efforts by the White House and Congress to repeal or amend the Johnson Amendment. Despite collective success in having efforts thwarted in the passing of the 2017 Tax Act, the issue will likely be raised again. CMF will continue to work with sector partners including Independent Sector and the United Philanthropy Forum and lawmakers to ensure that the Johnson Amendment remains intact and that the nonprofit sector is protected from partisan politics.

   Key Policy Makers
   While no bill or active measures to repeal the Johnson Amendment are being advanced by Congress currently, there is active advocacy by the Trump Administration to discourage the IRS from fully enforcing this regulatory provision in the sector.

6. **Action Goal: Permit tax-free distribution from individual retirement accounts (IRAs) to community foundation donor advised funds and support bipartisan legislation to accomplish that goal.**
   While the IRA Charitable Rollover is now a permanent giving incentive – a major accomplishment for our sector, gifts from IRA's are still not permitted to donor advised funds of any type. Many community foundations would like to have this restriction lifted. Concern has been raised by some nonprofit leaders that Congress may require some form of additional payout by the foundation community to compensate for the cost to the government.

   Staff of both Members of the Michigan Congressional Delegation and the House Ways and Means Committee and Senate Finance Committee have acknowledged the utility of the CMF funded special survey by the Urban Institute of community foundations and the IRA Charitable Rollover in the first quarter of 2015, which confirmed the value of the Charitable Rollover as a pipeline giving tool for middle class givers and that the average gift is less than $20,000.

   Key Policy Makers
   Senator Stabenow serves on the Senate Finance Committee and Representative Kildee serves on the House Ways and Means Committee.

7. **Action Goal: To promote talent retention in rural and urban communities by supporting a legislative amendment to the Tax Code that would make scholarship payments to reduce student debt non-taxable to the ultimate beneficiary – the student who has incurred such debt.**
   Student debt continues to be a Michigan and national concern with bi-partisan interest in Washington in securing a solution. The Community Foundation of St. Clair County with legal support provided in part by CMF is piloting the Come Home Scholarship Program. Staff at Treasury has been briefed in each of the past two years and this opportunity has been included in CMF's Annual Letter to the IRS. CMF and other partners like Philanthropy West Virginia have hosted educational webinars for others in the sector to secure cross-state support and have drafted documents to advance bill support.

   Key Policy Makers
   This Congress, Representative LaHood again introduced the Workforce Development through Post-Graduation Scholarships Act of 2018 (H.R. 4038). Congressman Collin Peterson who chairs the House Agriculture Committee has expressed interest in the concept. Senator Gary Peters has introduced legislation in the Senate (S. 676) we are waiting for the right vehicle bill to have language added to for passage. CMF is also working with counterparts in West Virginia and Ohio to engage their House and Senate delegations in supporting this measure.

8. **Advocacy Goal: Support legislation to allow tax-exempt entities to invest in securities and commodities that involve indebtedness without being subject to UBIT. This legislation would also eliminate the classification of realized gains and income, derived from leveraged real estate investments by foundations, as unrelated business taxable income.**

Because of bi-partisan interest in eliminating off-shore tax havens as part of Tax Reform, there is bi-partisan interest in introducing legislation that would mirror Congressman Levin's 2009 Bill – H.R. 3497 to create an exception to the debt finance income rules that would allow all tax-exempt entities to invest directly in domestic hedge funds without being subject to UBIT. Private foundations should be treated in the same manner as educational organizations and qualified pension plans, which since 1980 have been exempt from the debt-financed property rules with respect to the acquisition of certain real property

The original intent of UBIT was to prevent nonprofits from competing against for-profit entities in a business that is not substantially related to its exempt purpose. However, over the last twenty years, foundations and universities have invested in hedge funds and other alternative investments to increase their investment returns and reduce the volatility of their investment portfolio. Many times, these investments involve leverage (debt) that would subject the foundation to UBIT. In addition, income derived from leveraged real estate investments, owned directly or through partnerships, is currently taxed as UBIT. Based on Private Letter Rulings from the IRS, foundations are able to invest in this area through offshore corporations as limited partners and avoid UBIT. There may be an opportunity to examine this as part of an overall UBIT reform or repeal of the 2017 Tax Act provisions.

Key Policy Makers
While no active legislation is at play at this time, Michigan is well positioned to support efforts with the Senate Finance and House Ways and Means committees.

9. **Advocacy Goal: To support legislation and regulatory reform that will make it easier for foundations to make program related investments (PRIs).**
Progress was been made in 2016 on updated PRI examples and new regulations offered by the IRS. However, the two recommendations from CMF: a private letter ruling that all investors could rely on one large regional or statewide project, and an expedited process have still not been considered**.** CMF and our partners share the belief that these issues can be addressed with regulatory changes and do not require new legislation. CMF again filed a letter with the IRS and met with Elinore Ramey in Treasury to discuss these recommendations.

Key Policy Makers
CMF has been working with the requisite leadership in the U.S. Treasury Department.

10. **Advocacy Goal: Oppose efforts to repeal the Estate Tax and promote reinstatement of the federal state estate tax credit.**
Gross charitable bequests in 2010 the year the federal estate tax was repealed dropped 37% from $11.9 billion to $7.49 billion. The tax returned in 2011 and bequests increased to $14.3 billion. While the House version of the Tax Act included elimination of the federal estate tax, the Senate version and final 2017 Tax Act did leave a limited federal estate tax in place.

Therefore, reinstatement of the Federal Credit to the States – lost in 2012 - seems remote at this time given a projected cost to the Treasury of $8 billion. Concern continues that with so many states having budgetary problems, new inheritances taxes will be reinstated as a form of revenue raiser, pitting states against each other and resulting in a potential loss to Michigan of wealthy estates as was evidenced in 2007 when an effort was made to reinstate a State Inheritance Tax – opposed by CMF.

Key Policy Makers
While no active legislation is at play at this time, Michigan is well positioned to support efforts with the Senate Finance and House Ways and Means committees.

11. **Advocacy Goal: Protect the value of endowed philanthropy in part by maintaining the private foundation payout rate at not more than 5 percent to protect the real value of foundations' grantmaking capability.**
CMF retained Cambridge Associates in 2017 to update its 40-year study of the real investment returns of a group of 30 Michigan foundations. The Study confirmed a real return of 5.2% and recommended no change in the require payout rate of private foundations.

The Study has been shared with members of the Michigan delegation. With continued scrutiny on charitable distributions from active and inactive donor advised funds (DAFs), there is concern that members of Congress from both parties are questioning the value of endowed philanthropy as evidenced by the new taxes on large endowments of private colleges and universities in the 2017 Tax Act.

Key Policy Makers
While no active legislation is at play at this time, Michigan is well positioned to support efforts with the Senate Finance and House Ways and Means committees.

STATE LEGISLATIVE GOALS

Background:
CMF's members have access to engagement structures with the Office of Foundation Liaison, Michigan Nonprofit Caucus, and the Nonprofit Council for the Charitable Trust in the Office of Attorney General that can help ensure that the sector's interests are expressed, understood and advanced. These combined with our partnership with the Michigan Nonprofit Association and others provides a strong public policy and government relations infrastructure at the state level. Michigan experienced a significant change after the 2018 election including new faces and party affiliation in the offices of the Governor, Secretary of State, Attorney General. In the House and Senate, the party splits remain essentially where they have been for several election cycles with majorities in both houses remaining the same. In divided government there are both opportunities and challenges in moving agendas.

Key Policy Makers
House Speaker Chatfield and Senate Majority Leader Shirkey have been working with CMF members on tax policy matters. Sen. Chang, Sen. Schmidt, Rep. Guerra, and Rep. Calley are the co-chairs of the Michigan Nonprofit Caucus.

1. **Action Goal: Restore Charitable Tax Credits**
   Two bills have been introduced to restore the charitable tax credit for contributions to community foundations—SB 55 and HB 4388. Substitute language has been offered that would make the tax credits exclusive to endowed funds. Other bills that would restore the charitable tax credits for homeless shelters and food banks have been introduced. CMF has been partnering with these sectors to advance movement. No fewer than 12 tax credit bills have been introduced in both chambers placing the Charitable Tax Credit in a crowded marketplace for state policy reforms, but with the agreement having been reached on the budget, we are hopeful that action will take place prior to the end of the year.

   By way of background, Michigan repealed tax credits for donations made to the endowed funds of nonprofits held at community foundations, homeless shelters, food banks, and public institutions such as museums, public radio and television, and colleges and universities. The repeal of the state tax credits resulted in significant decreases in contributions to these funds that support nonprofits across the state. For example, a report from the Johnson Center at Grand Valley State University found that donations to endowed funds in the key donation amount of $200 decreased by 44 percent and decreased by 76 percent in the key donation amount of $400. Restoring the tax credit would be the first step towards restoring all of the charitable tax credits cut in 2012 and expanding the tax credit for donations to all 501(c)(3) public charities in future budget years.

   Key Policy Makers
   Both the leadership in the Michigan House and Senate oversight committees have expressed support for this legislation. Representative Witwer introduced the House Bill and Senator Runestad sponsored the Senate Bill.

2. **Advocacy Goal: Support efforts to oppose scholarship displacement**
   In response to the policy position recommended and adopted by the Board to oppose scholarship displacement in Michigan, CMF staff continue to identify ways to advance and address the issue. CMF is currently capturing data from community foundations on scholarship displacement to further elucidate the issue in Michigan. With the help of OFL, CMF staff and PPC leadership have engaged in conversations with members of the Governor's policy team on this issue and have made some connections between this and the Governor's proposals, the Michigan Opportunity Scholarship and Michigan Reconnect, scholarship programs to help increase the percentage of Michigan residents with post-secondary degrees.

   Key Policy Makers
   CMF and OFL continue to engage in conversations with the Governor's policy team. At their recommendation, CMF and OFL are meeting with higher education financial aid officers to discuss non-legislative solutions to address the issue.

3. **Advocacy Goal: Support property tax exemption and oppose mandatory and coercive demands for payment in lieu of taxes (PILOTS)**
   CMF continues to partner with MNA on preserving the tax-exempt status of nonprofit organizations and opposing any practice that imposes new taxes, fees or PILOTs on charitable nonprofit organizations. There has been an increase in the number of cases where local tax assessors are challenging the tax-exempt status of charitable nonprofits. Additionally, the way that assessors are interpreting the law has been inconsistent.

   In June of 2017, the Michigan Supreme Court revisited Wexford when it reviewed a charitable tax exemption in the Baruch case. Wexford was a landmark case on real and personal property tax exemptions outlining six factors a taxpayer must satisfy to qualify for a charitable property tax exemption. The Michigan Supreme Courts' ruling in the Baruch case validated its charitable nonprofit status and serves as a precedent for nonprofits. As a result, a legislative solution is not being sought at this time, but with MNA's leadership we continue to work with key stakeholders representing all the subsectors of the nonprofit community, the Charitable Trust Section of the Attorney General's Office and the Department of Treasury.

   Key Policy Makers
   TBD.

4. **Advocacy Goal: Promote Volunteerism and Service**
   CMF continues to advocate for the annual state appropriation to fund the Michigan Community Service Commission (MCSC). CMF and MNA joined more than 20 years ago in partnering with the State to create the Michigan Community Service Commission. Previously part of the Department of Health and Human Services, under this administration, MCSC has transitioned to the Department of Labor and Economic Opportunity. MCSC requires an annual appropriation from the State of about $900,000 to leverage annually more than $12 million in federal funds –primarily for AmeriCorps. A number of CMF members leverage these resources and AmeriCorps members to address critical needs ranging from urban safety to home foreclosure prevention. MNA runs the largest AmeriCorps VISTA program in Michigan.

   CMF and MNA both recognize the value of this public private partnership to the nonprofit sector and the need to educate new policy makers on an ongoing basis. Efforts to eliminate the Corporation for National and Community Service at the federal level have been unsuccessful, and CMF has helped MNA and partners with bi partisan support from the Michigan Congressional Delegation advocate for its continuation.

   Key Policy Makers
   Engaging Governor Whitmer has been key to the advancement of Michigan's efforts. Currently the Governor has appointed her daughter to serve on the MCSC to maintain the tradition of "first family engagement" in the state's support and advocacy for volunteerism and service.

5. **Monitor Goal: Ensure prompt access to data on employment**

Unlike other industries the State does not regularly release data on nonprofit employment, which represents more than 10 percent of the workforce in Michigan. MNA continues to lead efforts to convince the State to produce these data reports on a regular schedule without special charges to the nonprofit sector. In the interim, MNA works with Public Sector Consultants to update every other year for new data.

6. **Monitoring Goal: Monitor new forms of public-private financing of public services, such as Social Impact Bonds, SIBs now called Pay for Success in which philanthropy may play a part and inform/educate members as appropriate.**
   There continue to be several pilot programs involving philanthropy – most recently in Kent County involving foster care. This issue will be monitored by staff working with CMF's Impact Investing Committee.

7. **Monitoring Goal: Monitor recent legislation introduced that would repeal the Michigan Estate Tax Act.**
   This law authorizes the State to collect an amount equal to the maximum credit state inheritance taxes paid allowed on the Federal estate tax return. It does not increase the taxes paid by a Michigan estate but merely diverts a portion of the Federal estate taxes paid from the Federal government to the State. It is a pure revenue sharing statute as if the taxes are not paid to Michigan they are still owed to the Federal government.

   Currently, the Federal estate tax does not provide for this state estate tax credit. While repeal of the Michigan estate tax credit could be seen simply removing a statute that has no current application, the Act could be very meaningful to the State in the event the Federal government reinstates this credit. The credit used to annually generate more than $200 million in unrestricted tax revenue to the State – again, at no additional tax burden to Michigan estates. The repeal of the Michigan Estate Tax Act now would mean the need to pass new legislation to secure this revenue source for the State in the event the Federal credit is ever reinstated. Leaving the Michigan Estate Tax Act in place costs nothing to do and ensures this revenue source to the State in the event of the reinstatement of the Federal credit.

   CMF has had as a legislative agenda item the reinstatement of the Federal estate tax credit for state estate taxes paid for several years. The reason for this agenda item is that reinstatement of the Federal credit could provide significant resources to be deployed by the State for the benefit of the residents of Michigan without imposing any additional tax burdens on Michigan decedent estates.