

SPECIAL ADOPTION

COMMUNITY AFFAIRS

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Unit Charitable Funds

Special Adopted New Rules and Concurrent Proposed New Rules: N.J.A.C. 5:30-8.9 and 18 and 5:33-1.9

Special Adopted Amendments and Concurrent Proposed Amendments: N.J.A.C. 5:33-1.6 and 4.5

Special Amendments and New Rules Adopted and Concurrent Proposed Amendments and New Rules Authorized: September 21, 2018, by the Division of Local Government Services, Melanie R. Walter, Acting Director.

Filed: September 21, 2018, as R.2018 d.188.

Authority: N.J.S.A. 54:4-66.12 and P.L. 2018, c. 11.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2018-101.

Effective Date: September 21, 2018.

Expiration Date: June 28, 2019.

Please submit written comments on the notice of proposal by January 4, 2019, via e-mail to dlgs@dca.nj.gov or by regular mail to:

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Division of Local Government Services

Department of Community Affairs

PO Box 803

Trenton, NJ 08625-0803

For comments submitted via e-mail, please include the subject heading “Proposed Regulations - Local Unit Charitable Funds.”

Pursuant to P.L. 2018, c. 11, the Division of Local Government Services (Division) has adopted the following amendments and new rules pertaining to property tax credits for certain, specific charitable donations. These amendments and new rules became effective on September 21, 2018, upon acceptance for filing by the Office of Administrative Law (OAL). The specially adopted amendments and new rules shall be effective for a period not to exceed 360 days from the effective date of P.L. 2018, c. 11 (May 4, 2018), that is, until June 28, 2019.

Concurrently, the provisions of these amendments and new rules are being proposed for adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted amendments and new rules will become effective upon acceptance for filing by the OAL (see N.J.A.C. 1:30-6.4), if filed on or before June 28, 2019.

The agency special adopted and concurrently proposed new rules and amendments follows:

Summary

P.L. 2018, c. 11 permits a municipality, county, or school district (referenced collectively as “local units”) to establish by ordinance or resolution, as appropriate, one or more charitable funds for specific public purposes. Donations to a charitable fund, which must come from the property owner or their agent, may be credited toward a person’s or entity’s annual property tax obligation, subject to certain limitations (see N.J.A.C. 5:30-18.15). A municipality’s or

county's creation of a charitable fund shall not impact their respective property tax levy cap calculations.

The special adopted new rules and amendments, concurrently proposed herein, implement aspects of P.L. 2018, c. 11, to which the regulatory authority of the Director of the Division of Local Government Services extends. In addition to the 90 percent credit established by the statute, the rules allow a 15 percent credit, in recognition of the Internal Revenue Service rule proposal issued on August 23, 2018, which would limit Federal tax credits to 15 percent. See the Federal Standards Statement below.

The new rules, proposed under P.L. 2018, c. 11, permit municipalities and counties to establish one or more charitable funds for specific public purposes, such as public safety, capital improvements, and social services, and permits certain donations to those charitable funds to be credited toward the donor's annual property tax obligation. The charitable fund would be administered by the municipality's or county's chief financial officer, whose responsibilities would include, but are not necessarily limited to, the disbursement of funds donated to charitable funds and any spillover funds in accordance with their specified public purposes, investing donated funds pursuant to the municipality's or county's cash management plan, and ensuring compliance with applicable State rules. Local units may not jointly administer a charitable fund or spillover fund; however, a chief financial officer who serves a municipality by virtue of a shared services agreement shall be the fund administrator for the charitable and spillover funds of the municipality receiving the service. A county or school district may enter into a shared services agreement with a constituent municipality to have the municipal tax collector's office collect donations and deposit said funds into the county or school district charitable fund

account, so long as the charitable fund account is with one of the municipality's depositories. (See N.J.A.C. 5:30-18.2 and 18.7)

Local units establishing a charitable fund shall allow donors the option of receiving a property tax credit amount of either 15 percent or 90 percent of a charitable donation toward a donor's property tax obligation. The Director may promulgate another alternate percentage through a local finance notice. A municipal or county charitable fund shall utilize the remaining non-creditable balance of the donation, and all other non-creditable donations not transferred to a spillover fund, for the specific purpose(s) of the charitable fund and for the cost of administering the fund. The non-creditable portion utilized for a charitable fund's specific purpose shall be either: recorded as a special item of revenue pursuant to N.J.S.A. 40A:4-87 and transferred into the general fund dedicated to the charitable fund's specific purpose(s); or brought into the following year's budget as revenue for the specific purpose, which shall be spent on the specific purpose in that budget year and shall not be permitted to lapse into surplus. The non-creditable portion utilized for a charitable fund's administrative costs shall be recorded as Municipal Revenue Not Anticipated (MRNA), except that in subsequent years, historical use can be relied upon to record such revenue as miscellaneous revenue. (See N.J.A.C. 5:30-18.2 and 18.13)

Proposed new N.J.A.C. 5:30-18.1 and the proposed amendment to N.J.A.C. 5:33-1.6 contains definitions pertaining to the new program.

Pursuant to N.J.A.C. 5:30-18.3, prior to the beginning of each budget year, the governing body of a local unit that has established a charitable trust fund shall establish an annual property tax credit cap for each charitable fund for the upcoming budget year based on the prior year certified levy, except that for 2018, the governing body may use the final 2018 levy to establish a property tax credit cap no later than the date on which each charitable fund begins to accept

donations. Starting in 2019, counties and those municipalities with calendar year budgets may amend a charitable fund's annual property tax credit cap upon certification of a current-year tax levy. The annual property tax credit cap does not limit all donations to the charitable fund; but rather the cap only limits the dollar amount of credits that can be applied toward annual property tax bills.

Pursuant to N.J.A.C. 5:30-18.3, the maximum cumulative credit-eligible donation cap for the subsequent budget year for all local unit charitable funds shall not exceed 85 percent of the tax levy. The maximum cumulative credit-eligible donation cap for the 2018 budget year shall not exceed 85 percent of the total tax levy in the 2018 budget year. When calculating the annual property tax credit cap, the percentage of the appropriation attributable to the tax levy shall not exceed 85 percent unless the Director approves the use of a greater percentage.

The annual property tax credit cap shall be calculated as follows:

Step one: $\text{tax levy} \div \text{local unit budget} = \text{percentage of appropriation attributable to tax levy.}$

Step two: $(\text{appropriation(s) for specific purpose(s) of charitable fund}) \times (\text{percentage of appropriation attributable to tax levy}) = \text{cap on credit-eligible donations to charitable fund.}$

Step three: $(\text{cap on credit-eligible donations to charitable fund}) \times 90\% = \text{annual property tax credit cap for charitable fund.}$

Pursuant to N.J.A.C. 5:30-18.5, a municipality, county, or school district may apply to the Director to change from 85 percent, the percentage by which the total tax levy is multiplied, or from 90 percent, the percentage by which the cap on credit-eligible donations to the charitable fund is multiplied. Pursuant to N.J.A.C. 5:30-18.4, the governing body of a local unit shall also establish an individual credit-eligible donation cap for each charitable fund, which sets the

maximum dollar amount or percentage of credit that an individual person or entity may receive toward their property taxes in a given year. As with the annual property tax credit, the individual credit-eligible donation cap shall not be construed to limit all donations to the charitable fund. Rather, the cap only limits the amount of donations that are credit-eligible in relation to property tax payments.

Pursuant to N.J.A.C. 5:30-18.6, if all or a portion of a creditable contribution to a charitable fund cannot be credited towards a donor's property tax obligation because the annual property tax credit or individual credit-eligible donation caps have been reached and the municipality or county does not have another available charitable fund, the municipality or county has the option of creating a spillover fund; the approved uses of which shall be set forth in the ordinance establishing the spillover fund, which may include, but are not limited to, the payment of debt service, funding of capital reserves, the reserve for uncollected taxes, emergency expenses, and operating expenses generally. The spillover fund proceeds would then be credited toward consecutive annual property tax bills in future years until exhausted; except that donations in a spillover fund shall not be credited against more than five consecutive annual property tax bills issued for a specific parcel; any funds remaining after the five years shall be refunded to the donor.

Pursuant to N.J.A.C. 5:30-18.8, on an annual basis, the governing body shall adopt a resolution setting a deadline by which local unit creditable donations must be reported to the tax collector in order to be applied to the next upcoming annual property tax bill. For example, if the municipality sets a deadline of May 1, 2019, all creditable donations made to municipal, county, and fire district charitable funds must be reported to the tax collector no later than May 1, 2019, in order to be applied to 2019 property tax bills. The municipal governing body has the sole

discretion to permit the application of creditable donations against an annual property tax bill that has already been issued, in which case the governing body shall adopt on an annual basis a resolution setting the deadline by which creditable donations must be reported to the tax collector in order to be applied to the next upcoming quarterly property tax installment; this deadline shall be no earlier than one month prior to the installment due date, except for 2018, which may be sooner, regardless of whether the municipality has established a grace period for quarterly tax payments. Donations reported after the deadline set by the governing body must be applied to the annual property bill issued the following year or the next quarterly due date, as applicable.

Pursuant to N.J.A.C. 5:30-18.9, when making a donation to a municipal, county, or school district charitable fund, the donor must provide the local unit's fund administrator or the administrator's designee with certain information to ensure that any property tax credit is properly reported to and applied by the municipal tax collector. Along with the requisite information, donors shall provide their annual tax bill or an advice copy thereof, as well as a certification that the donor is not delinquent on property taxes and municipal charges; delinquent taxpayers are ineligible to receive credit against their property tax obligation. The municipality or county will have the discretion to allow the donor to donate through a variety of means including, but not limited to, by check, credit card, or automated clearing house (ACH) transfer. Donors may not place any additional restrictions on the use of creditable charitable fund contributions.

Proposed N.J.A.C. 5:30-18.10 sets forth the options a donor has when an otherwise creditable charitable donation exceeds the annual donation cap or an individual donation cap, or if the tax collector finds that the credit received should be adjusted downward. The donor can elect whether to rescind the non-creditable portion of the donation and receive a refund,

authorize transfer of the balance of the donation to another charitable fund or a spillover fund, or allow the municipality or county to retain the non-creditable portion of the donation if no spillover fund has been established. Refunds of charitable donations shall be authorized pursuant to N.J.S.A. 40A:5-17 and, where applicable, 40A:5-17.1 of the Local Fiscal Affairs Law. Refunds shall not be issued where the donation has already been credited toward a property tax obligation.

Pursuant to N.J.A.C. 5:30-18.11, a municipality or county shall not make representations to donors or prospective donors concerning Internal Revenue Service treatment of donations made to a charitable fund, and donors shall sign such an acknowledgement when making a charitable donation.

N.J.A.C. 5:30-18.12 lists information that must be provided to donors on a receipt provided by the municipality or county, including, but not limited to, the breakout of the creditable portion of the donation, the date on which the contribution cleared (if applicable), and the percentage and dollar amount of the administrative fee as a component of the donor's charitable fund contribution. A separate receipt will be provided for donations deposited into a spillover fund. N.J.A.C. 5:30-18.14 addresses the reporting of creditable donations to the tax collector by a county or school district and requires that the chief municipal finance officer shall enter the creditable donation as a debit against the county or school district tax levy, and as a credit against property taxes receivable.

N.J.A.C. 5:33-1.9 sets forth requirements regarding the tax collector's application of the credit to the donor's next upcoming annual property tax bill or, if the municipality permits, to a tax bill that has already been issued, in which case a statement must be made accessible to the donor with information concerning the contribution and the creditable portion thereof. The

amount of the credit shall be confirmed with the local unit's fund administrator. Once a credit has been applied, the donor cannot rescind the donation. N.J.A.C. 5:33-4.5 is proposed for amendment to set forth requirements for reporting to tax collectors' charitable donations made from mortgage escrow accounts.

Municipal and county charitable fund contributions shall be transferred from the charitable fund account or spillover fund account to a dedicated trust fund without independent spending authority, unlike a standard dedication by rider. For a municipality's or county's current year property tax levy, the Annual Financial Statement shall report any property tax credits attributable to charitable fund donations as an offset to the current year property tax levy, including any spillover fund proceeds that may be credited toward the current year property tax levy. For county and school district taxes payable by a municipality, the municipality's Annual Financial Statement shall reflect any offset resulting from a county or school district charitable fund, including any spillover fund proceeds. (See N.J.A.C. 5:30-8.9)

Any form or forms containing required donor information pursuant to N.J.A.C. 5:30-18.9, along with any receipt issued to the donor pursuant to N.J.A.C. 5:30-18.12, are exempt from disclosure under the N.J.S.A. 47:1A-9 of the Open Public Records Act.

As the Division has provided a 60-day comment period on the notice of concurrent adoption of specially adopted new rules and amendments, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules and amendments will have a positive social impact for those New Jersey taxpayers whose Federal tax burden will increase as a result of the Federal

government's limitation of the \$10,000 cap on the Federal income tax State and Local Tax (SALT) deduction. According to a 2015 study conducted by the Rockefeller Institute of Government at the State University of New York in Albany, out of all 50 states, New Jersey receives the least amount in Federal spending when compared to the amount in Federal taxes paid by New Jersey taxpayers. New Jersey receives only 74 cents back on every dollar sent to Washington and is a net "donor state" disproportionately subsidizing other states, such as, but not limited to, Alabama, Mississippi, and New Mexico. The result is a penalty that diminishes the ability of New Jersey municipalities, counties, and school districts to fund vital public purposes and invest in public infrastructure. These rules implement the charitable fund law in such a way as to promote transparency and fiscal accountability, ensuring that sufficient funds continue to be available for public purposes while safeguarding those funds donated to municipal and county charitable funds against waste, fraud, and abuse.

Economic Impact

The proposed new rules and amendments will have a positive economic impact by establishing a framework through which local property taxpayers can make a charitable fund donation. The taxpayers may receive a credit against their municipal, county, and/or school district property tax obligations. According to the nonpartisan Tax Policy Center, the Federal government's capping of the SALT deduction to \$10,000 results in New Jersey taxpayers experiencing an average per capita loss of \$630.00. By implementing the charitable fund law, the rules will help reduce the net tax burden on those New Jersey taxpayers experiencing a net tax increase as a result of the Federal Tax Cuts and Jobs Act of 2017.

Federal Standards Statement

On August 23, 2018, the Internal Revenue Service (IRS) proposed new regulations under section 170 of the Internal Revenue Code regarding the treatment of payments and property tax transfers under state and local credit programs. The proposed IRS regulations would limit the amount that a donor could claim as a charitable donation against Federal income taxes to only the portion of the donation not credited toward the donor's state and local tax obligation. For example, if a donor contributed \$10,000 to a municipal charitable fund and received property tax credit of \$9,000, the donor would only be eligible to receive a charitable deduction of \$1,000, which was not credited. However, the proposed IRS regulations include an exception or "safe harbor" provision wherein a donor may claim the full amount of their donation as a charitable deduction against Federal income taxes if the donor receives a credit of no more than 15 percent or some other lesser amount against state and local taxes. If adopted as proposed, these IRS regulations would be effective after August 27, 2018.

The specially adopted and concurrently proposed new rules and amendments by the Director are consistent with the proposed IRS regulations, insofar as any local unit charitable fund would be required to incorporate the permitted 15 percent *de minimus* exception as an option for potential donors to elect, along with an option for donors to elect a percentage of 90 percent by which charitable contributions would be credited against the donor's property tax obligation. If the proposed IRS regulations are adopted, such donors electing the 90 percent option would not be able to claim the entirety of their credited donation as a charitable contribution deduction on the Federal tax return against their Federal income tax obligations.

The Division maintains that the proposed regulations constitute regulatory overreach on the part of the IRS, and that the IRS proposed regulations are arbitrary and capricious. As tax

law experts have identified, 33 states collectively have 100 programs under which taxpayers receive such credit. Pursuant to a February 4, 2011 Memorandum from the IRS Office of the Chief Counsel (No. 201105010), a payment of cash in the form of a charitable contribution to a state or local agency for which the taxpayer is entitled to a transferable state tax charitable credit is a proper deduction pursuant to section 170 of the Internal Revenue Service Code. A long history of judicial decisions has found that the tax benefit of a Federal or state charitable contribution deduction is not regarded as a return benefit that negates charitable intent, and tax credits are viewed as indistinguishable from tax deductions for purposes of charitable intent; the amount of the donor's charitable contribution deduction is not reduced by the value of state tax benefits. The Division also notes that the alleged "quid pro quo" argument raised by the IRS clearly applies to donations to school voucher programs, which are not impacted by the proposed IRS regulations.

Jobs Impact

The Division of Local Government Services does not anticipate that the proposed new rules and amendments will result in the creation or loss of any jobs, except to the extent that an indeterminate number of individual employees could be hired by local units for purposes of administering the charitable contribution process.

Agriculture Industry Impact

The Division of Local Government Services does not anticipate that the proposed new rules and amendments will have an impact on the State's agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules and amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The proposed new rules and amendments are not expected to evoke a change in housing production costs, nor will they affect the affordability of housing in New Jersey, as the rules merely permit New Jersey homeowners with a combined State and local tax burden of greater than \$10,000 annually to continue receiving the benefit of a Federal income tax deduction.

Smart Growth Development Impact Analysis

The proposed new rules and amendments are not expected to evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan as the rules merely permit New Jersey homeowners with a combined State and local tax burden of greater than \$10,000 annually to continue receiving the benefit of a Federal income tax deduction.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed new rules and amendments will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the

proposed amendments and new rules concern the implementation of municipal, county, and school district charitable funds.

Full text of the specially adopted and concurrent proposed new rules and amendments follows (additions indicated in boldface **thus**):

CHAPTER 30

LOCAL FINANCE BOARD

SUBCHAPTER 8. FINANCIAL ADMINISTRATION

5:30-8.9 Annual Financial Statement; reporting requirement for charitable funds

(a) For a municipality's or county's current year property tax levy, the Annual Financial Statement shall report any charitable fund donations that are creditable toward the current year property tax levy as an offset to the same, including any spillover fund proceeds that may be credited toward the current year property tax levy. Pursuant to N.J.A.C. 5:30-18.3, municipal or county charitable contributions shall be deposited into a dedicated trust fund without independent spending authority.

(b) For county and school district taxes payable by a municipality, the municipality's Annual Financial Statement shall reflect any offset resulting from a county or school district charitable fund, including any spillover fund proceeds.

SUBCHAPTER 18. MUNICIPAL AND COUNTY CHARITABLE FUNDS

5:30-18.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Administrative costs” means costs attributable to operating a municipal or county charitable fund.

“Annual property tax credit cap” means the annual credit-eligible donation cap establishing the maximum total dollar amount of donations in a particular charitable fund that may be credited against an annual property tax bill.

“Charitable fund” means a fund established pursuant to N.J.S.A. 54:4-66.7 for one or more specific public purposes.

“Custodian of public funds” means the chief financial officer of a municipality or county or the person designated as the custodian of public funds for a school district.

“Delinquent property” means a property that has delinquent property taxes and/or municipal charges billed by the municipality. This term includes a property that has had delinquent taxes and/or municipal charges purchased by a lien holder at a tax sale.

“Director” means the Director of the Division of Local Government Services in the Department of Community Affairs.

“Individual credit-eligible donation cap” means the maximum dollar amount or percentage of a property tax bill that may be credited against the municipal, county, or school property taxes of an individual property owner.

“Local unit” means a municipality, county, or school district.

“Maximum cumulative credit-eligible donation cap” means the local unit budget multiplied by 85 percent, unless the Director approves a different percentage upon application by a local unit.

“Spillover fund” means a fund that holds donations for application against future annual property tax bills.

5:30-18.2 Creation of a charitable fund; specified public purposes

(a) A municipality may establish one or more charitable funds by ordinance; a county may establish one or more charitable funds by resolution or ordinance, as appropriate.

Multiple charitable funds may be authorized by a single ordinance. The resolution or ordinance shall set forth:

- 1. The name of the charitable fund;**
- 2. The specific purpose or purposes of the fund; and**
- 3. The initial annual property tax credit cap and the individual credit-eligible cap, which may be amended by resolution or ordinance, as appropriate.**

(b) A charitable fund shall be dedicated to one or more of the following public purposes:

- 1. Public safety;**
- 2. Capital improvement;**
- 3. Public works;**
- 4. Public health;**
- 5. Social services;**
- 6. Housing and code enforcement;**
- 7. Redevelopment and economic development;**
- 8. Recreation;**
- 9. Open space;**
- 10. Public library; and**
- 11. The operation, management, or administration of other services, with the approval of the Director of the Division of Local Government Services.**

(c) A charitable fund dedicated to the purpose of public safety may be utilized for expenses relating to police, fire, emergency medical services, first aid squads, office of emergency management, 9-1-1 and dispatch, and lifeguards, as well as volunteer fire and emergency medical services. A county may also fund its sheriff's office and county prosecutor's office through a public safety charitable fund.

(d) A charitable fund dedicated to the purpose of capital improvement may be utilized for any construction, reconstruction, demolition, or alteration work that has a useful life of at least five years, along with the payment of any debt service connected with same. Such a fund may also be utilized for any acquisition and/or development of land; acquisition of major equipment, furniture, or other personal property; acquisition, construction, improvement, and/or renovation of buildings, roads, utilities, structure improvements, or public works; or any other matter described in N.J.S.A. 40A:2-22 of the Local Bond Law, with an expected useful life of five years or more and a prospective individual or cumulative cost in any year of \$25,000 or more, regardless of the financing sources.

(e) A charitable fund dedicated to the purpose of public works may be utilized for the routine maintenance of infrastructure and public facilities, including, but not limited to, trash and/or recycling collection, within the municipality or county.

(f) A public library or open space charitable fund may be utilized for the same purposes as funds raised through a library tax or open space tax. Creditable donations made for said purposes shall be applied against the municipality's or county's open space tax or library tax.

(g) A charitable fund may not be established for a public purpose that is solely funded by revenues other than municipal or county property taxes.

(h) The proceeds deposited into a charitable fund shall be utilized toward the specific purposes of the fund and for reasonable expenses attributable to administering the fund; however, only those funds attributable to non-creditable portions of charitable fund donations may be utilized for administrative expenses.

(i) Each municipality or county that creates a charitable fund, and a spillover fund if any, shall:

1. Have its own dedicated bank account, which shall be with a depository subject to the Governmental Unit Deposit Protection Act, P.L. 1970, c. 236 (N.J.S.A. 17:9-41 et seq.);

2. The bank account shall be in the name of the municipality or county establishing the charitable fund; and

3. If a county or school district shares services with a municipality to have contributions collected by the tax collector's office and deposited into the bank account of the county's or school district's charitable fund or spillover fund, the bank accounts for the county's or school district's charitable funds and any associated spillover funds shall be kept in one of the municipality's depositories.

(j) If a municipality or county has more than one charitable fund, donations to said funds shall be made to the specific fund, rather than by a single payment for multiple funds.

(k) If a single charitable fund has multiple purposes, donors may not restrict the use of their donations to select purposes of the fund.

(l) Any interest or investment income generated from charitable fund proceeds shall be utilized for the specific purpose or purposes of the charitable fund and for reasonable expenses attributable to administering the fund.

(m) Any interest or investment income generated from spillover fund proceeds is to be utilized for the purposes supported by the levy that are authorized under subsection (e) of N.J.S.A. 54:4-66.7.

(n) Each municipality or county creating a charitable fund shall provide the Division of Local Government Services with a copy of the adopted ordinance or resolution within five days of adoption.

5:30-18.3 Annual cap on property tax credits

(a) Prior to the beginning of each budget year, the governing body of a municipality or county that has established a charitable trust fund shall establish an annual property tax credit cap for each charitable fund; except that for 2018, the governing body may establish an annual property tax credit cap no later than the date on which each charitable fund begins to accept donations. Starting in 2019, county budgets and municipalities with calendar year budgets may amend a charitable fund's annual property tax credit cap upon certification of the current-year budget tax levy.

(b) The maximum cumulative credit-eligible donation cap for the subsequent budget year for all local unit charitable funds shall not exceed 85 percent of the tax levy. The maximum cumulative credit-eligible donation cap for the 2018 budget year shall not exceed 85 percent of the total tax levy in the 2018 budget year. When calculating the annual property tax credit cap, the percentage of the appropriation attributable to the tax levy shall not exceed 85 percent, unless the Director approves the use of a greater percentage.

The annual property tax credit cap shall be calculated as follows:

Step one: tax levy ÷ local unit budget = percentage of appropriation attributable to tax levy.

Step two: (appropriation(s) for specific purpose(s) of charitable fund) x (percentage of appropriation attributable to tax levy) = cap on credit-eligible donations to charitable fund.

Step three: (cap on credit-eligible donations to charitable fund) x 90% = annual property tax credit cap for charitable fund.

A municipality, county, or school district may apply to the Director to change from 85 percent, the percentage by which the total tax levy is multiplied, or from 90 percent, the percentage by which the cap on credit-eligible donations to the charitable fund is multiplied.

(c) The property tax credit cap shall not be construed to limit all donations to the charitable fund; rather the caps under (b) above shall only limit the amount of donations that are credit-eligible in relation to property tax payments.

5:30-18.4 Cap on individual donation to charitable fund creditable toward property taxes

The governing body of a municipality or county shall establish an individual credit-eligible donation cap for each charitable fund, which shall set the maximum dollar amount or percentage that an individual or entity may be credited toward property taxes in a given year. The individual credit-eligible donation cap shall not be construed to limit all donations to the charitable fund; rather the cap shall only limit the amount of total donations creditable toward property tax obligations.

5:30-18.5 Percentage of donation that may be credited toward property taxes

(a) Ninety percent of an individual charitable contribution is creditable toward a donor's property tax obligation; however, the local unit shall permit donors the alternate option of having their individual charitable contributions creditable towards 15 percent of the donor's property tax obligation. If this calculation results in a repeating decimal number, the creditable portion shall be rounded up to the nearest cent. The Director may promulgate another alternate percentage through a Local Finance Notice.

(b) A municipal or county charitable fund shall utilize the remaining non-creditable balance of the donation, and all other donations not transferred to a spillover fund, for the specific purpose(s) of the charitable fund and for the cost of administering the fund. The non-creditable portion utilized for a charitable fund's specific purpose shall be either: recorded as a special item of revenue pursuant to N.J.S.A. 40A:4-87 and transferred into the general fund dedicated to the charitable fund's specific purpose(s) or brought into the following year's budget as revenue for the specific purpose, which shall be spent on the specific purpose in that budget year and not permitted to lapse into surplus. The non-creditable portion utilized for a charitable fund's administrative costs shall be recorded as Municipal Revenue Not Anticipated (MRNA), except that in subsequent years, historical use can be relied upon to record such revenue as miscellaneous revenue.

(c) The municipality may charge a county or school district an administrative fee to defray administrative expenses attributable to the tax collector's office and municipal finance officer's office as a result of applying property tax credits associated with the county or school district's charitable fund or funds. This administrative fee shall be set by ordinance and shall not be greater than two percent of the donation creditable to an annual property

tax bill or quarterly installment thereof, as applicable. The county or school district shall pay any administrative fee charged to it by a municipality from the non-creditable portion of the donation.

5:30-18.6 Spillover fund

(a) The ordinance or resolution creating a charitable fund may establish a separate spillover fund to be utilized for the purpose supported by the levy that is authorized under subsection (e) of N.J.S.A. 54:4-66.7, in the event the amount of the donation exceeds the amount that can be credited toward the donor's annual property tax obligation. The approved uses of a spillover fund shall be set forth in the ordinance establishing the spillover fund.

(b) Creditable donations in a spillover fund shall be applied to consecutive annual property tax bills until exhausted, except that donations in a spillover fund shall not be credited against more than five consecutive annual property tax bills issued for a specific parcel; any funds remaining after the five years shall be refunded to the donor. Spillover fund proceeds shall be reported on the balance sheet as a separate pre-paid tax line from the charitable fund.

(c) Monies in a spillover fund shall be utilized by a municipality or county solely for the budget year corresponding to the year in which a taxpayer will receive a credit against their municipal or county purposes property taxes.

5:30-18.7 Administration of charitable and spillover funds; chief financial officer as fund administrator

(a) The chief financial officer shall administer a municipality's and county's charitable funds and spillover funds, if any. Responsibilities shall include, but are not necessarily limited to:

1. Disbursement of funds donated to charitable funds and any spillover fund in accordance with their specified public purposes;

2. Investing donated funds pursuant to the cash management plan adopted by the municipal or county governing body, so long as the investments do not interfere with the ability to use the donated funds for their specified public purpose; and

3. Ensuring compliance with applicable State rules governing accounting, audits, budgeting, and financial administration.

(b) Local units may not jointly administer a charitable fund or spillover fund; however, a chief financial officer who serves a municipality by virtue of a shared services agreement shall be the fund administrator for the charitable funds and spillover fund of the municipality receiving the service.

(c) A county or school district may enter into a shared services agreement with a constituent municipality to have the municipal tax collector's office collect donations and deposit said funds into the county or school district charitable fund account, so long as the charitable fund account is with a depository of the municipality providing the service.

5:30-18.8 Reporting charitable fund donations for application to annual property taxes

(a) On an annual basis, the governing body of a municipality shall adopt a resolution setting a deadline by which local unit creditable donations must be reported by a local unit to the tax collector in order to be applied to the next upcoming annual property tax bill.

(b) The municipal governing body has the sole discretion to permit the application of creditable donations against an annual property tax bill that has already been issued. In order to permit the application of creditable donations against an annual property tax bill that has already been issued, the governing body shall adopt, on an annual basis, a resolution setting a deadline by which creditable donations must be reported to the tax collector in order to be applied to the next upcoming quarterly property tax installment. The deadline shall be no earlier than one month prior to the installment due date, except for 2018, which may be sooner, regardless of whether the municipality has established a grace period for quarterly property tax payments.

(c) Donations reported after the deadline set by the governing body must be applied to the annual property tax bill issued the following year or the next quarterly due date, as applicable.

5:30-18.9 Information donors must provide in connection with their donation; payment method

(a) When making a donation to a charitable fund, the donor must provide the local unit's fund administrator or the fund administrator's designee with, at minimum, the following information:

- 1. Name, mailing address, e-mail address, and telephone number of the donor;**
- 2. The name of the charitable fund or funds to which the donation is being made;**
- 3. For each charitable fund:**
 - i. The total amount of the contribution;**

ii. The total creditable portion of the contribution and, if the donor seeks a credit against multiple parcels within the municipality, the amounts that the donor seeks to credit against each parcel;

iii. The block, lot, qualifier, and property address of each parcel located within the local unit for which the donor seeks a credit against the annual property tax obligation, along with a copy of the most recent tax bill, or advice copy thereof, for each parcel;

iv. A certification that the donor is not delinquent in payment of property taxes or municipal charges;

v. The annual tax bill, or advice copy thereof, and, if applicable, the quarter or quarters, against which the credit should be applied; and

vi. The disposition of the balance of a creditable donation in excess of the amount that can be credited against the annual property tax bill; and

4. If the donation will be funded from the donor's mortgage escrow, the contact information of the mortgagee, servicing organization, or property tax processing organization, as defined by N.J.A.C. 5:33-4.2, that will be making the donation to the charitable fund on behalf of the donor.

(b) At the discretion of the municipality or county, the donor may make a donation by any of the following means:

1. Cash;

2. Money order;

3. Check, including cashier's check, certified check, electronic check, or personal check;

- 4. Automated clearing house (ACH) transfer;**
- 5. Wire transfer; or**
- 6. Credit or debit card.**

(c) The donor may not place any additional restrictions on the use of creditable charitable fund contributions.

5:30-18.10 Circumstances when a creditable charitable donation exceeds the amount that can be credited against a donor's annual local property tax bill; refunds to donors

(a) When an otherwise creditable donation to a municipal or county charitable fund exceeds the amount that can be credited against a donor's annual local property tax bill, the donor shall elect one of the following options:

- 1. Rescind and elect a refund on the excess portion of the donation;**
- 2. Authorize transfer of the balance of the donation to another charitable fund, if one exists, with instructions on how to apply the balance to multiple parcels, if any;**
- 3. Authorize the transfer of the balance of the creditable donation to a spillover fund, if one exists, with instructions on how to apply the balance to multiple parcels, if any; and/or**
- 4. If no spillover fund exists, allow the municipality or county charitable fund to retain the entirety of the non-creditable portion of the donation.**

(b) At the time a donation is made, the donor shall instruct the municipality or county on the treatment of the portion of the donation that is not creditable.

(c) Any refund of a charitable donation to a donor by a municipality or county shall be authorized pursuant to N.J.S.A. 40A:5-17, except that the governing body of a municipality

or county may, pursuant to N.J.S.A. 40A:5-17.1, authorize the fund administrator to refund to a donor sums of less than \$10.00.

(d) In the event an otherwise creditable donation cannot be applied to a donor's local property tax obligation due to the donor being delinquent on their property taxes or other municipal charges, the donor shall have at least 10 business days to seek a refund. If the donor does not make such a request within the required timeframe, the entirety of the donation shall be refunded to the donor minus 10 percent. The 10 percent may be used for the specific purposes of the fund and for administrative costs associated with the fund.

(e) If the tax collector finds that the credit toward a donor's annual property tax obligation should be adjusted downward, the donor may elect any of the options set forth in (a) above, as applicable.

(f) Request for refunds of charitable donations, including donations that have been applied to a donor's annual property tax obligation or deposited into a spillover fund for said purpose, shall not be honored by a municipality or county to the donor.

5:30-18.11 No representations as to Internal Revenue Service treatment of charitable fund contributions

(a) A municipality or county may not make any representations to a donor, or prospective donor, concerning Internal Revenue Service treatment of donations made to a charitable fund.

(b) When donating to a charitable fund, the donor shall sign a statement acknowledging that the municipality or county makes no representations with respect to the treatment of charitable fund donations by the Internal Revenue Service.

5:30-18.12 Receipt to donor from a charitable fund regarding donation

(a) A donor must be provided, by the municipality or county, with a receipt in connection with their donation to a municipal or county charitable fund. This receipt must contain, at minimum, the following information:

- 1. Name and mailing address of the donor;**
- 2. Name of fund or funds to which donation was made;**
- 3. The total amount of the charitable contribution;**
- 4. The date on which the contribution was made and, if applicable, the date on which the contribution cleared;**
- 5. The percentage and dollar amount of the administrative fee as a component of the donor's charitable fund contribution;**
- 6. The block, lot, qualifier, and property address of each parcel located within the local unit, if any, for which the donor seeks a credit against the annual property tax obligation;**
- 7. The donation amount that is creditable against the donor's annual municipal or county property tax obligation;**
- 8. A statement that no goods or services were provided in exchange for this donation; and**
- 9. A statement that the municipality or county makes no representations with respect to the treatment of charitable fund donations by the Internal Revenue Service.**

(b) A municipality or county may elect to provide a summary receipt at the request of the donor featuring, at a minimum, only the information set forth in (a)1, 2, 3, 4, and 8 above.

(c) If a portion of a charitable donation gets deposited into a spillover fund established by the municipality or county, the receipt shall so state and also contain the following information in addition to that required under (a) above:

1. The dollar amount of the portion of the donation deposited into the spillover fund;

2. The block, lot, qualifier, and property address of each parcel located within the local unit, if any, for which the donor seeks a credit against the annual property tax obligation from the portion of the donation deposited into the spillover fund; and

3. A statement that the donation, or portion thereof, in the spillover fund may be carried over to be applied against no more than the next five consecutive annual property tax bills.

5:30-18.13 Charitable funds to function as dedicated trust fund without independent spending authority; impact on property tax levy cap

(a) The fund administrator of a municipal or county charitable fund shall deposit charitable fund contributions into a dedicated trust fund without independent spending authority, wherein monies cannot be spent directly from the fund.

(b) The creation of a charitable contribution fund shall not impact a municipality's or county's property tax levy cap calculation.

5:30-18.14 The reporting of creditable donations to the tax collector and municipal finance officer; fund administrator having online access to municipal tax records

(a) If a local unit charitable fund takes charitable fund donations directly instead of delegating the task to the tax collector, the donation shall be reported to the tax collector within five business days unless the municipality assents to a differing period and arrangement (for example, periodic batch upload). In any case in which the medium used to make the donation requires a certain period to clear, the donation shall not be reported to the tax collector (or posted to the charitable fund if being handled directly by the tax collector) until the transaction clears.

(b) The information provided pursuant to N.J.A.C. 5:30-18.12, along with a copy of the tax bill or bills for the parcels to be credited, shall be provided to the tax collector when a donation is reported by the charitable fund.

(c) A county or school district operating a charitable fund shall have access to the property tax records of donors to such an extent as to ascertain whether said donors are delinquent in their property taxes and/or municipal charges.

(d) Once county and school district charitable contributions are credited toward the donor's annual property tax bill by the tax collector, the municipal finance officer shall enter the creditable portion of the donation as a debit against the county or school district tax levy, and as a credit against property taxes receivable. The county or school district shall reduce the amount of tax dollars sought from the municipality in proportion to the property tax credits applied in the municipality.

5:30-18.15 Creditable donation must come from property owner or agent thereof

In order to be eligible for a property tax credit, the donation must come from the property owners or their agents. A purchaser of a tax sale certificate pursuant to N.J.S.A.

54:5-114.1 et seq., may not receive property tax credit against a property on which the purchaser holds a tax sale certificate. Nothing in this section shall preclude a person or entity from donating to a local unit charitable fund.

5:30-18.16 Certain documents exempt from disclosure under the Open Public Records Act

(a) In addition to the exemptions in N.J.S.A. 47:1A-1 et seq., the following records are exempt from disclosure under the Open Public Records Act:

1. Any form or forms containing donor information required pursuant to N.J.A.C.

5:30-18.9; and

2. Any receipt issued to the donor pursuant to N.J.A.C. 5:30-18.12.

CHAPTER 33

TAX COLLECTION ADMINISTRATION

SUBCHAPTER 1. TAX COLLECTION PROCEDURES

5:33-1.6 Definitions

The words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

“Charitable fund” shall have the meaning defined in N.J.S.A. 54:4-66.6 and N.J.A.C. 5:30-18.1.

...

5:33-1.9 Applying charitable fund donation credits to a taxpayer’s property tax obligation

(a) A local unit fund administrator shall report to the tax collector the amount of credits resulting from a donor's charitable fund donation to be applied to the donor's next upcoming annual property tax bill or, if the municipality so permits, an annual property tax bill already issued by the municipality. Once a local unit has reported a creditable charitable fund contribution to the tax collector, the tax collector shall apply the credit to the taxpayer-donor's annual property tax obligation upon confirming that the donor is not delinquent to the municipality for property taxes and/or municipal charges.

1. If a tax collector applies the credit to an annual property tax bill that has yet to be issued, the amount of the credit shall appear on said bill.

2. If a tax collector applies the credit to an annual property tax bill that has already been issued, the credit shall appear on a statement to be made available to the donor online and/or on paper.

(b) The statement issued to a donor by a tax collector must contain, at minimum, the following information:

1. Name and mailing address of the donor;

2. The total amount of the contribution;

3. The date on which the contribution was made and, if applicable, the date on which the contribution cleared;

4. The total creditable portion of the contribution against either the annual tax bill, or the quarterly installment thereof, and, if the donor sought a credit against multiple parcels within the municipality, the amounts credited against each parcel; and

5. The block, lot, qualifier, and property address of each parcel located within the local unit for which a credit has been applied against the annual property tax obligation.

(c) Any donation deposited into a spillover fund for credit against a donor’s future annual property tax obligation or obligations shall be reported in its entirety to the tax collector, and the municipal finance officer if the local unit is a county or school district, concurrently with the reporting of the charitable fund donation to be credited against the current tax bill or in advance of the next upcoming property tax bill.

(d) A tax collector shall report to the fund administrator and, in the case of a county or school district charitable fund, the municipal finance officer, the amount of the credit applied to the donor’s property tax obligation. If the amount of the credit applied differs from the amount reported as creditable by the charitable fund, the tax collector shall provide the reason therefor. The tax collector’s monthly report to the chief financial officer shall include all charitable fund contributions made.

(e) Credits applied to a donor’s annual property tax obligation, or spillover fund donations reported to and recorded by the tax collector as “pre-paid” shall not be rescinded.

(f) Tax bill vendors shall establish a designated identifier code for each local government charitable fund.

SUBCHAPTER 4. MORTGAGE ESCROW ACCOUNT TRANSACTIONS

5:33-4.5 Escrow account transactions

(a)-(c) (No change.)

(d) If a donor is a mortgagor whose mortgagee servicing organization or property tax processing organization pays the property taxes on the mortgaged parcel, and the donor makes a donation to the charitable fund, the creditable portion thereof shall be reported by the tax collector to the mortgagee, servicing organization, or property tax processing

organization. If a credit has been applied to the donor's property tax obligation, the tax collector shall report the credit to the mortgagee, servicing organization, or property tax processing organization and any tax payment made by the mortgagee, servicing organization, or property tax processing organization toward the credited amount shall be refunded to the mortgagee, servicing organization, or property tax processing organization by the municipality.

(e) If a mortgagor elects to have a portion of his or her mortgage escrow account paid to a local unit charitable fund in lieu of property taxes, the mortgagor shall provide the following information to the mortgagee, servicing organization, or property tax processing organization handling such payments:

- 1. The name of the local unit or units, and the charitable fund or funds being donated to;**
- 2. Total contribution amount to each charitable fund; and**
- 3. The amount of the contribution creditable toward the mortgagor's property taxes.**

(f) If a mortgagor elects to have a portion of his or her mortgage escrow account paid to a local unit charitable fund in lieu of property taxes, the mortgagee, servicing organization, or property tax processing organization shall provide the charitable fund with the information required under N.J.A.C. 5:30-18.9, except for the copy of the tax bill required under N.J.A.C. 5:30-18.9(a)3v.

(g) If a mortgagor elects to have a portion of his or her mortgage escrow account donated to a local unit charitable fund in lieu of property taxes, the mortgagee, servicing

organization, or property tax processing organization shall provide the following information to the tax collector:

- 1. Name of property owner;**
- 2. Address of property;**
- 3. Contact information of the mortgagee, servicing organization, or property tax processing organization;**
- 4. Property block, lot, and qualifier;**
- 5. The mortgagee's legal interest in the property;**
- 6. Payment amount;**
- 7. The identity of the charitable fund or, if payment is to be made to multiple charitable funds of the local unit, the identity of each such local unit charitable fund and the amount of payment to be made to each such charitable fund; and**
- 8. The portion of the charitable fund donation creditable toward the property tax obligation.**