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Congress of the United States
House of Representatives
Washington, DC 20515-3005

January 12, 2018

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Mnuchin:

I am writing about one aspect of my Tax Cut Plan – that is, the notion that states and local governments look for opportunities to provide tax credits to taxpayers who make voluntary contributions to benefit such areas as infrastructure, hospitals, schools, scholarships and public safety.

It was reported yesterday that you called the idea “ridiculous” and an attempt to “evade taxes”.

I was hoping you might clarify your remarks.

According to the IRS, Case Law and the Practices of 30 States since 1987, the proposed Tax Cut Plan is Legal. The Tax Cut Plan has been thoroughly researched and, properly structured, is fully compliant with the law. Tax credit programs of the kind described in the Tax Cut Plan have been used for more than 30 years, and there are already over 100 similar credits in place, adopted in over 30 states. The credits support tuition for schools in states such as Arizona, Alabama and South Carolina, as well as conservation in Colorado and college scholarships in California. If the IRS were to attempt to change its long-standing policy, there would be repercussions far and wide, in states red and blue.

A group of the most prominent tax law professors in the country on Monday released a paper analyzing these programs and supportive of the Tax Cut Plan. A copy of the paper is available at <https://gottheimer.house.gov/news/documentsingle.aspx?DocumentID=524>. Calling the plan consistent with “a correct and long-standing trans-substantive principle of federal tax law,” the scholars note that “under current law, expressed through both court opinions and rulings from the Internal Revenue Service, the amount of the donor’s charitable contribution is not reduced by the value of state tax benefits” and that “[t]he effect of [this rule] is that a taxpayer can reduce her state tax liability by making a charitable contribution that is deductible on her federal income tax return.”

Noting that the rule “is supported not only by decades of precedent but by a host of policy considerations,” the analysis concludes that “changes to the [rule] would require legislation.”

The ink on the tax bill is hardly dry; if Congress had intended to eliminate these well-known programs, it surely would have included language to that effect in the law.

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The Accusation of "Tax Evasion" is Frivolous. In 1935, the great Judge Learned Hand of New York wrote:

"Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes.

Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands."

Similarly, during the 2016 presidential campaign, then-candidate Donald Trump's campaign released a statement that said

"Mr. Trump is a highly-skilled businessman who has a fiduciary responsibility to his business, his family and his employees to pay no more tax than legally required."

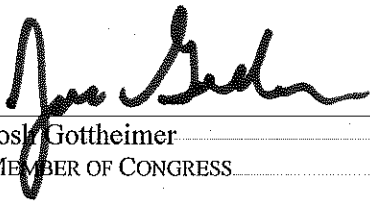
It's not tax evasion if states are now finding provisions of existing law to lower the taxes of our residents.

Finally, a New Yorker and Californian yourself, you should know better than most about high taxes in New York, New Jersey and other States. We should all look for any way to cut taxes and make life more affordable for our people and businesses.

Since 1913, Congresses led by both parties have found that states are entitled to set their own policies for financing their internal affairs and so taxed only citizens' income *after* they paid their state taxes. This bedrock principle of federalism acknowledging states' rights was broken for one reason only – to take money from my state and yours and shift it to what I call "Moocher States."

If you would like to learn more about our Tax Cut Plan or about the legal premises of what we proposed, I would be honored to sit down with your or your team. Happy New Year.

Sincerely,



Josh Gottheimer
MEMBER OF CONGRESS