Finally, Sullivan argues that because the credit has never been made permanent, its utility is diminished and therefore it should be eliminated. Of course, one answer to that complaint is for the opponents to advocate for permanency. But even assuming that Congress is unwilling to make the research credit permanent, it doesn’t mean that it isn’t effective, only that it could be even more effective if it were permanent. The elasticities cited above make it clear that it is effective.

In short, corporate tax reform can produce some economic gains, but not if it comes at the expense of pro-growth incentives like the research credit. For those critics of the credit like Sullivan, who understand the economic rationale of the credit, I call on them to focus their efforts to, in the words of Bill Clinton, “mend it, not end it.”

When it comes to tax reform, the charitable deduction is a hot topic. After all, it costs Treasury an estimated $38 billion a year\(^1\) and largely benefits upper-income individuals,\(^2\) while its incentive effects are hard to pin down.\(^3\) Efforts to decrease the deduction’s cost to the fisc, make it fairer, and better target its incentives have resulted in numerous reform proposals, ranging from replacing it with a credit, capping its value at 28 percent, instituting adjusted gross income floors, or some combination of these.\(^4\)

Not surprisingly, reform proposals face widespread resistance. In January, a bipartisan group of

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senators wrote to outgoing Senate Finance Committee Chair Max Baucus, urging that the charitable deduction be untouched.\(^5\) According to the senators, "The charitable deduction is unique. It is the only provision that encourages taxpayers to give away a portion of their income for the benefit of others. For this reason, it is not a loophole, but a lifeline for millions of Americans in need... Weakening the charitable deduction would hurt the adults and children who receive vital charitable services from organizations like soup kitchens, after-school programs, and medical research projects, just to name a few."\(^6\)

It is true that weakening charitable organizations that serve the poor and help create opportunities would be disastrous. So we should do the opposite. Let’s more closely align charitable tax subsidies with the goal of creating opportunities for the poor. Given the bipartisan consensus that inequality and poverty are growing problems that deserve attention,\(^7\) perhaps the time is ripe for reform.

To begin, we must recognize that not all charitable giving is created equal when it comes to benefiting others, especially the disadvantaged. Studies repeatedly show, for example, that taxpayers of different income classes donate to different types of organizations. According to the Congressional Budget Office, 25 percent of donations by upper-income taxpayers are to education organizations, another 25 percent to health organizations, 15 percent to arts organizations, and only 4 percent to organizations devoted to meeting the basic needs of the disadvantaged.\(^8\) A large portion of charitable donations, therefore, aren’t really benefiting the disadvantaged at all. In some cases, these donations stick close to home, essentially benefiting the donor’s family, such as a donation to a private school the donor’s child attends or to the parent-funded foundation of a public school in a wealthy neighborhood. The same goes for many arts organizations that benefit from wealthy donors who enjoy not only the art but also the enhanced social status that comes from being a patron of the opera. In these cases, tax-subsidized philanthropy may actually exacerbate inequality of opportunity.\(^9\)

In other cases, charitable giving may benefit individuals other than the donor or her family, but not necessarily needy individuals. Gifts to elite colleges largely (although not exclusively) benefit the already advantaged. Likewise, there is no requirement that tax-subsidized hospitals and health organizations assist the financially disadvantaged. This is not to say that donations to private colleges never help the poor; many provide some scholarship assistance to lower-income students. Nor is it to suggest that donations to hospitals and medical and environmental research groups are not beneficial to society; they certainly are. The point, however, is that proponents of maintaining the status quo often argue that most charitable giving helps the poor and disadvantaged when in fact, the opposite is true.

Of course, redistribution to the poor is not the only task of the nonprofit sector, nor should it be. The charitable world also fosters experimentation and pluralism and provides a welcome alternative and counterweight to governmental power. But like it or not, the charitable deduction is also redistributive. It takes from some to help others.\(^10\) When it comes to other tax expenditures, nobody questions the propriety of identifying the recipients of the tax benefits to evaluate their worth. For example, there is widespread agreement that the home mortgage interest deduction largely benefits upper-income homeowners, and that fact rightly plays a role in the debate surrounding its propriety.\(^11\)

A full discussion of the charitable deduction should also take into account who benefits — not just who receives the tax benefits from claiming the deduction but who the ultimate charitable beneficiaries are. Once we recognize that most charitable giving, especially by the wealthy, does not assist the poor and disadvantaged, what should we do? First, we should stop using the poor as an excuse for not discussing reforms such as turning the deduction into a credit or instituting a rate cap or AGI floor. To truly evaluate these proposals, we need to recognize which institutions (education, arts, and health organizations) might suffer and determine whether any fiscal savings are worth potential drops in


\(^{6}\)Id.


\(^{8}\)CBO, "Options for Changing the Tax Treatment of Charitable Giving," 6 Figure 3 (2011) (chart based on data from the Center on Philanthropy at Indiana University, Patterns of Household Charitable Giving by Income Group, 2003 (2007)).
donations to those types of charities. They may not be, but that’s a different question from talking about harm to the sector in general or harm to the poor from those proposals.

More ambitiously, we should grant larger tax benefits to contributions to organizations that provide basic needs to the poor. You want to help education? Let’s provide more incentives for donations to a tutoring program in a low-income area than we do for donations to your kid’s school (which you would probably do anyway). To that end, I propose that donations to organizations that provide basic services to the poor be treated more generously for tax purposes than other donations. Let’s say that you donate $100 to a soup kitchen. If the deduction remains a deduction, perhaps you are treated as if you had donated $200 (thus triggering a government subsidy of $80 instead of $40). If an AGI floor is implemented, perhaps those contributions are not subject to the floor. If the deduction is changed to a credit of, say, 15 percent, maybe you would receive a 30 percent credit for those types of donations.

By emphasizing donations to organizations helping the neediest, we’d be putting our money where our mouths are when it comes to charitable giving. We routinely use charity for the poor not only as a justification for continuing the tax status quo but also to excuse less government aid to the poor. For example, the bipartisan letter to Baucus argued that if the deduction were reformed, “the government would be required to step in and fund those services now being provided through private generosity. Accordingly, preserving the charitable deduction is also prudent as a matter of broad fiscal policy.”12 There are very valid reasons for wanting charity to do more, and government less, when helping the poor. Quite often, charities can find more efficient, more responsive, and more creative ways of assisting the poor than the government can. So let’s structure the tax incentives for charitable giving to reflect these values. Perhaps it’s an area in which Republicans and Democrats can find common ground.

12See supra note 5.

Revitalizing the Estate Tax: 5 Easy Pieces

By Paul L. Caron and James R. Repetti

Paul L. Caron is a professor at Pepperdine University School of Law, and James R. Repetti is the William J. Kenealy, S.J. Professor of Law at Boston College Law School.

In this article, Caron and Repetti advance five estate and gift tax reform proposals that would generate needed revenue, reduce inequality, and contribute to economic growth.

This article was presented on January 17 at a symposium in Malibu, Calif., sponsored by Pepperdine University School of Law and Tax Analysts. Twenty of the nation’s leading tax academics, practitioners, and journalists gathered to discuss the prospects for tax reform as it is affected by two crises facing Washington: dangerously misaligned spending and tax policies, resulting in a crippling $17.4 trillion national debt; and the IRS’s alleged targeting of conservative political organizations. A video recording of the symposium is available at http://new.livestream.com/pepperdinesol/taxreform.

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Introduction

In a previous article,1 we argued that contrary to the state of the law over 35 years ago — when George Cooper wrote his seminal article on the estate tax2 — taxpayers today generally “can reduce the value of assets subject to transfer tax in many instances only if they are willing to assume the risk that the reduction may be economically real and reduce the actual value of assets transferred to heirs or, alternatively, in narrow situations if they are willing to incur some tax risk.”3 We showed that the estate tax helps reduce wealth concentration when


3See Caron and Repetti, supra note 1, at 162.