Letters to the Editors

I read with interest the article "First Look at the Tax Cuts and Jobs Act: Impact on Individual Charitable Giving" in the April 2018 issue (Mark A. Nickerson, http://bit.ly/2LidMOZ), and I congratulate Mr. Nickerson on the analysis of the factors the promote and impede individual charitable giving, especially under the Tax Cuts and Jobs Act of 2018 (TCJA).

The analysis, however, bases its conclusions on past behavior, which in turn is founded on prior tax law that is mostly no longer in effect. For example, Nickerson posits that reduced withholdings will create more disposable income, which in turn increases the likelihood of charitable giving. This, however, would only be true under the pre-2018 tax laws; under the TCJA, there is currently a *disincentive* to spend disposable income on charity because of the reduced personal benefit. In other words, the cited correlation is no longer as strong as in the past. We should then expect that, starting in 2018, individual taxpayers will be more likely to spend the money on personal wishes, not charitable donations.

Smilarly, increasing the charitable contribution limits to 60% of adjusted gross income (AGI) is also a false sense of incentive. I surmise that most donating individual taxpayers do not reach the prior limits of 50%, and as such, the increase to 60% is irrelevant. Furthermore, less of the now-60% will have a tax effect, so in a sense, the increase does nothing to the calculus of donations versus personal spending. Coupled with the increased ceiling of the estate tax—as Nickerson correctly points out—fewer taxpayers would even need to reach 60% of AGI in charitable donations.

In substance, the new tax law is a disincentive to the expected level of donations to charitable contributions. Academic research of the behavioral correlation of individual giving may be pivotal to inform decision makers of this impact.

Yigal M. Rechtman, CPA, CFE, CITP, CISM
Partner, RSZ Forensic Associates
New York, N.Y.

The Author Responds

Mr. Rechtman's first comment, which addresses the fact that conclusions are based upon prior behavior that took place under prior tax law, is correct. Those historical studies, however, also show that individuals who have not received or focused on the tax benefits in the past will continue to donate today. For instance, according to the *The 2016 U.S. Trust Study of High Net Worth Philanthropy,* only 18% of individuals surveyed responded that they donated simply to receive a tax donation. During the same survey in 2015, only 33.4% of high-net-worth individuals indicated that their charitable contributions would decrease if no deduction were in place. While a reduction of this proportion of individual giving from high-net-worth individuals would be extremely detrimental to charitable organizations, no one can predict how a potential lack of tax benefit will ultimately affect overall giving when coupled with the expected increase in personal income and personal consumption. These indicators are both expected to increase under the Tax Cuts and Jobs Act of 2018 (TCJA) and have been shown to be positively correlated with charitable giving.

As detailed in the article, "during the next 10 years, GDP [gross domestic product] is expected to increase by 2.9% from current forecasts, equating to almost $5 trillion. In addition, individual taxpayers are expected to pay $1.1 trillion less in taxes during that same time, providing individuals with an increase in disposable income." I do not believe that simply assuming that increases in disposable income will not continue to correlate with increased charitable contributions due to changes in the itemized deductions is plausible without further research.

Consider the article's reference to the National Center for Charitable Statistics's 2011 statistics of income, which showed a U-shaped relationship between adjusted gross income (AGI) and charitable giving. Individuals with income under $100,000 contribute the most proportionately, at approximately 3.6% of AGI (compared to only 2.6% for taxpayers with income between $100,000 and $200,000, and 3.1% for individuals above $200,000 in income). Only 23.4% of those individuals, however, have itemized under prior tax law and, therefore, received any benefit from their contributions in the past. There is reason to believe, then, that the majority of these individuals will continue to give, regardless of any tax deduction.

In addition, Rechtman references a "false incentive" of increasing charitable contribution limits to 60% of AGI, increased from the prior 50% of AGI. While I again agree that most taxpayers did not reach the 50% limit and will not reach the 60% limit, we need to remember that the tax incentive is not even cited in studies as a top five reason for taxpayers to give. Additionally, I have done some research on the potential benefits of donor-advised funds (DAF) and the increased role they may play in planned giving under the TCJA. These DAFs can ultimately be thought of as a charitable savings account, where the taxpayer contributes into the fund, receiving an immediate tax deduction in the year of contribution, and then directs grants from the fund to nonprofit entities over time, while the earnings accumulate tax free.

Assume that a retired, high-net-worth taxpayer with an AGI of $100,000 is currently looking to draw down liquid assets through charitable giving. If this individual's plan is to donate $10,000 per year, he may not receive any tax benefit moving forward, based upon the revisions of the increased standard deduction under the TCJA. If, however, this individual creates DAFs, he could essentially contribute $50,000—or now $60,000—representing five or six years of planned charitable giving, while receiving an itemized deduction exceeding the standard deduction that he would not otherwise receive.

While I understand that this will not represent the norm and could have been established under the prior 50% limit, the key is that such a planning tool did not make sense under the previous rules, as most taxpayers received deductions via itemizing for any contribution. Deductions now may only receive a tax benefit by lumping several years' worth of contributions together to exceed the standard deduction amount.

While the research still provides little true insight into exactly how the TCJA will impact nonprofits, the idea is to dispel the thought that seemed to exist: nonprofits suffering due to the standard deduction increasing. I believe the reasons for giving, the ultimate economic results of the TCJA, and the potential planned giving will result in individual responses that are far more complicated than that.

Mark A. Nickerson
Owner, Mark Nickerson CPA PLLC
Buffalo, N.Y.