

**RAB 1992-2 HAS
BEEN REPLACED
BY RAB 1995-10**

STATE OF MICHIGAN



JOHN ENGLER, Governor

DEPARTMENT OF TREASURY

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REVENUE ADMINISTRATIVE BULLETIN 1992-2

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SINGLE BUSINESS TAX AND MICHIGAN INCOME TAX -
COMMUNITY FOUNDATION CREDIT EXTENDED

(Replaces Revenue Administrative Bulletin 1989-4)

RAB-92-2. This bulletin describes the revised criteria for certification for community foundations for 1992 and other law changes. These changes occur as a result of Public Act 170 of 1991, amending Section 38c of the Single Business Tax Act, and Public Act 171 of 1991, amending Section 261 of the Income Tax Act.

The amendment extends the credit through the 1994 tax year subject to a \$6 million cap, limits eligible contributions to those made to an endowment fund of a certified community foundation, sets an annual filing deadline of April 1 for organizations that seek to qualify, and revises eligibility criteria.

Public Acts 170 and 171 of 1991

The Michigan legislature has extended the community foundation tax credit, a nonrefundable credit under the Income Tax Act and the Single Business Tax Act, through the 1994 tax year subject to a \$6 million cap. Significantly, the legislature has limited the credit to contributions to endowment funds held by a certified community foundation.

The credit limits remain at 50% of the amount contributed by the taxpayer not to exceed the following limits:

1. \$100 for a taxpayer, other than a resident estate or trust, filing singly under the Income Tax Act;
2. \$200 for a husband and wife filing a joint return under the Income Tax Act;
3. The lesser of 10% of the taxpayer's tax liability for the tax year before claiming any credits allowed by the Income Tax Act or \$5,000 for a resident estate or trust;
4. The lesser of 5% of the taxpayer's tax liability for the tax year before claiming any credits allowed by the Single Business Tax Act or \$5,000 for taxpayers filing under the Single Business Tax Act.

The credit is authorized for contributions made in tax years 1989 through 1994. In the case of fiscal year taxpayers, this includes fiscal tax years ending within the calendar years 1989 through 1994. Under Section 10(1) of the Single Business Tax Act, MCL 208.10(1); MSA 7.558(10)(1), tax year is defined as the fiscal year ending during the calendar year. The credit covers contributions made during the taxpayer's tax year to community foundations that become certified for the tax year later in that calendar year.

Example: A fiscal year taxpayer whose tax year ends January 31, 1992, who made contributions in 1991, during its fiscal year, to a certified community foundation may claim a credit on its 1992 tax year return, even though the recipient community foundation is not certified by the Michigan Department of Treasury until June of 1992. If this fiscal year taxpayer made contributions to a certified community foundation on or after February 1, 1994 through December 31, 1994, those contributions would not be eligible for the credit since they were made during the taxpayer's 1995 tax year.

The credit does not apply in a tax year for which the aggregate amount of the credit claimed by all taxpayers for all prior tax years exceeds \$6 million.

The community foundation credit is computed separately from the homeless credit, authorized by Section 261 of the Income Tax Act, MCL 206.261; MSA 7.557(1261), and by Section 38c of the Single Business Tax Act, MCL 208.38c; MSA 7.558(38c). It is also computed separately from the public contributions credit, authorized by Section 260 of the Income Tax Act of 1967, as amended, MCL 206.260; MSA 7.557(1260) and Section 38 of the Single Business Tax Act, as amended, MCL 208.38; MSA 7.558(38), for contributions to public institutions such as a public broadcast system, an institution of higher learning, a public library, a municipality or other authorized recipient.

Contributions to an Endowment Fund

To qualify for the credit, the donor's contribution must be to an endowment fund of a certified community foundation.

An endowment fund is a fund of permanent corpus or principal, the income of which is used for charitable purposes. Only the income is used for charitable purposes.

If the principal is spent, or if either the donor or the foundation's governing board has the right to spend the principal, even if the right to spend the principal is not exercised now or in the future, the fund is not an endowment fund, and the credit will be disallowed.

A certified community foundation may hold a variety of endowment funds. The basic types of endowment funds are:

1. Advised Fund. The donor retains the right to advise the governing board regarding grant recommendations made from the fund's income, and the board remains free to accept or reject suggestions.
2. Field of Interest Fund. The donor limits the discretion of the governing board to make grant choices within a charitable area (i.e., mental health, visual arts).
3. Designated Fund. At the time the gift is made, the donor restricts grants to a specific charitable agency or specific project; the governing body agrees to respect the donor's request as long as the agency or project continues to serve the public interest.
4. Agency Endowment Fund. A charitable agency gives its endowment to the community foundation to manage with the agency receiving the annual earnings.
5. Unrestricted Endowment Fund. The donor gives the governing board full discretion to choose those organizations who will receive the earnings of the fund.
6. Operating Endowment Fund. The foundation may establish an endowment fund, the earnings of which are used to defray the foundation's operating expenses.

Substantiation of the Tax Credit

Applicants are required to submit a list of endowment funds along with their application.

When acknowledging a contribution, a certified community foundation is required to advise its donors, in writing, about the eligibility of each contribution for the state tax credit.

Examples: If a donor makes a contribution to an endowment fund (as that term is defined above) held by the certified community foundation, the certified community foundation will acknowledge the gift in the following way: "Your gift to X Fund, an endowment fund, qualifies for the Michigan income tax or single business tax credit. Please retain this acknowledgment with your state tax records so you can substantiate your claim for the credit in the event of an audit."

If a donor makes a contribution to a certified community foundation without specifying the purpose of the gift, and the certified community foundation deposits the gift into a pass-through fund or other nonpermanent fund or account, the certified community foundation will acknowledge the gift in the following way: "Your gift to Y Community Foundation has been placed in the Z Fund, a nonpermanent fund, and does not qualify for the Michigan income tax or single business tax credit."

Or, the certified community foundation may acknowledge the contribution this way: "Your gift to Y Community Foundation has been placed in the general account to defray the operating expenses of the Foundation, and your gift does not qualify for the Michigan income tax or single business tax credit."

Taxpayers should retain this written notification with their other tax records for the tax year in the event of an audit.

If the certified community foundation errs in acknowledging a gift (i.e., states that a gift is to an endowment fund, when in fact the gift is to a nonpermanent fund), the credit will be disallowed on the taxpayer's tax return and the foundation may lose its certified status.

Procedure for Certifying Community Foundations

Community foundations that submit application form C-1052, with all required information, on or before April 1, 1992, will be considered for qualification. Applications received after the statutory deadline will not be considered for the 1992 tax year. Instead, the application materials will be held for the 1993 tax year and the applicant so notified.

To request form C-1052, call the Treasury Department's Community Foundation Unit ("Unit") at (517) 373-3672.

The Unit will review the applications and notify the applicants of their certification status by mail on or about June 1, 1992. A Revenue Administrative Bulletin will be issued to announce the list of certified community foundations for the 1992 tax year.

A foundation's certification will automatically expire December 31, 1992. Thus, it will be necessary for a foundation to apply for the 1993 tax year. A foundation that is certified in 1992 will automatically be placed on the mailing list for 1993 application materials.

Statutory Criteria for Certification

A community foundation is defined as an organization that the Michigan Department of Treasury certifies as meeting all of the following requirements:

1. Qualifies for exemption from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.
2. Supports a broad range of charitable activities within the specific geographic area of this state that it serves, such as a municipality or county.

Note: Foundations whose charitable activities have a limited number of targeted and specified activities, rather than serving a general charitable purpose of the specific geographic area, do not qualify.

3. Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the community or area served.
4. Is publicly supported as defined by the regulations of the United States Department of Treasury, 26 C.F.R. 1.170A-9(e)(11).
5. Is not a supporting organization as defined under Section 509(a)(3) of the Internal Revenue Code and the regulations of the United States Department of Treasury, 26 C.F.R. 1.509(a)-4 and 1.509(a)-5.
6. Meets the requirements for treatment as a single entity contained in the regulations of the United States Department of Treasury, 26 C.F.R. 1.170A-9(e)(11).
7. Is incorporated or established as a trust before September 1 of the year immediately preceding the tax year for which the credit is claimed.

Note: If an organization seeks certification so that its contributors can claim a credit for the 1992 tax year, the organization must show that it was in existence prior to September 1, 1991.

Additional Information

The Council of Michigan Foundations will respond to questions about community foundations. Call (616) 842-7080 for information.

The Community Foundation Unit of the Department of Treasury will respond to questions about the certification process. Call (517) 373-3672.