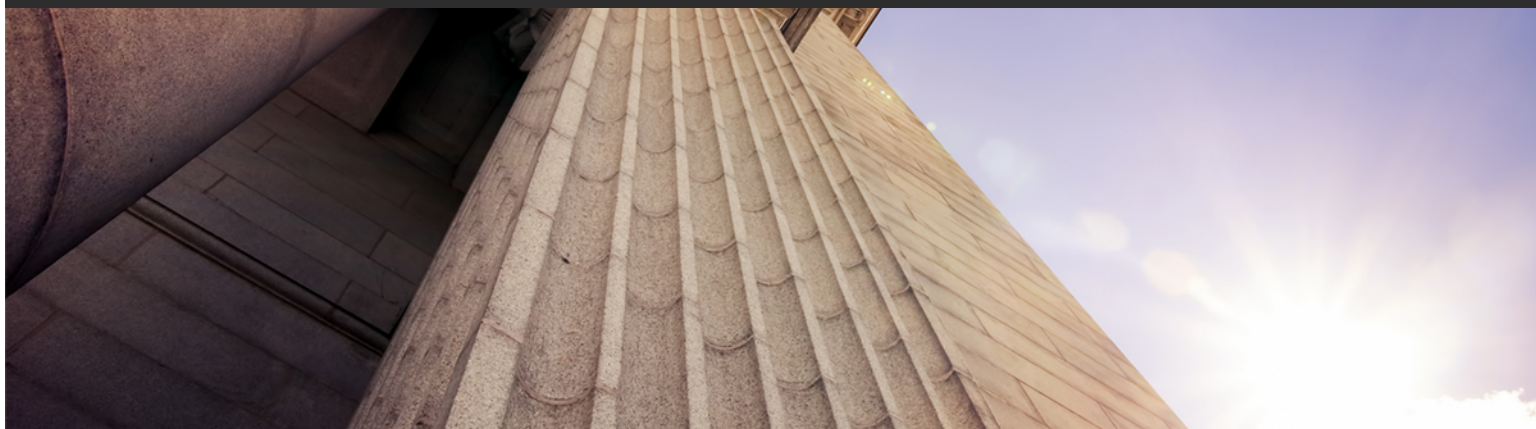


Alert | State & Local Tax



August 2018

Limitations for Charitable Deductions and SALT Credits

The Tax Cuts and Jobs Act (TCJA) placed a \$10,000 annual limit on the deductibility of state and local taxes (SALT). In response to and attempting to work around that limitation, several states enacted programs that create charitable entities, contributions to which would entitle the donor to a credit reducing their property tax. This would reduce the amount of SALT paid by a taxpayer and allow the full deduction of the charitable contribution. New York's legislation allows a credit of 85 percent of the amount donated to the charity; New Jersey's law provides for a credit of 90 percent of the donated amount. The idea behind these statutes is to permit a taxpayer to deduct the entire amount of the donation and reduce their property tax substantially and, it was hoped, stay within the \$10,000 federal SALT limitation.

On Thursday, Aug. 23, 2018, the IRS proposed regulations to substantially eliminate the benefit of such charitable donations. The proposed regulations require the charitable donation to be reduced by the SALT benefit received. For example, if \$1,000 is contributed to the charity, and the state provided a 90 percent credit, the charitable donation would be reduced by the \$900 credit, and only \$100 would be available as a charitable deduction for federal tax purposes.

The proposed regulation provides a de minimis exception where the SALT credit is less than 15 percent of the amount donated. In that circumstance, the full charitable donation will be allowed for federal tax purposes.

The IRS proposed regulation is open for comments that may or may not be adopted by the IRS. Once the regulation is final, it is likely to be challenged in court by the states that enacted the workaround and other states that had similar programs that predated the TCJA such as Arizona that has provided a credit for contributions to certified school tuition organizations since 2013. Taxpayers should watch developments closely and consult with their tax advisors when considering such a contribution.

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