

Tax reform chronicles: The SALT deduction cap saga carries on



David M. Kall | Thursday, September 13, 2018

Last month [we reported](#) on proposed regulations that the Treasury Department issued in an effort to put a lid on debate over the new limit on federal deductions for state and local taxes. The effect has been anything but, as the controversy faces more issues and the IRS moved to clarify the proposed regulations soon after they were issued.

IRS CLARIFIES PROPOSED REGULATIONS

The Tax Cuts and Jobs Act limited the federal deduction for state and local taxes \$10,000 for most taxpayers (\$5,000 for married taxpayers who file separately). Some states attempting to circumvent the cap established “charitable” funds that residents could “donate” to in exchange for credits against state taxes, essentially in lieu of paying taxes. The idea was that the residents contributing to the fund could make federal charitable deductions for the payments.

[The proposed regulations](#) that the Treasury Department and IRS issued last month prohibit taxpayers from taking charitable deductions to the extent the taxpayer receives a state tax credit in return. But the proposed regulations only raised more controversy among businesses concerned that they would limit their ability to take ordinary and necessary business expenses under [I.R.C. § 162](#).

On Sept. 5, 2018, the IRS issued a [press release](#) to clarify that the proposed regulations do not affect ordinary and necessary business expenses under I.R.C. § 162. The press release provides, in relevant part, as follows:

Responding to taxpayer inquiries, the IRS clarified that this general deductibility rule is unaffected by the recent notice of proposed rulemaking concerning the availability of a charitable contribution deduction for contributions pursuant to [state SALT cap workaround] programs. The business expense deduction is available to any business taxpayer, regardless of whether it is doing business as a sole proprietor, partnership or corporation, as long as the payment qualifies as an ordinary and necessary business expense. Therefore, businesses generally can still deduct business-related payments in full as a business expense on their federal income tax return.

TAX REFORM 2.0 PLOWS AHEAD

Meanwhile, the controversy over the SALT deduction limit is disrupting efforts in Congress to pass more tax reform legislation. We reported [last month](#) that the so-called “Tax Reform 2.0” bill may be on hold until after the midterm elections due to debate over the SALT deduction limit.

On Sept. 10, 2018, however, GOP leaders in the U.S. House [introduced](#) the Tax Reform 2.0 bill. The bill preserves the SALT deduction cap, would make individual tax cuts permanent, expand the medical expense deduction, and make several changes [affecting retirement savings](#).

House Speaker Paul Ryan announced that there will be a floor vote on the measure before the end of September. But even if it passes, there is little chance that the Senate will approve the bill. And Republican members of Congress in high-tax states may be uneasy with the House vote, as they attempt to please both party leaders and constituents angry with curbs on their federal tax deductions. We will keep you posted with the latest developments.



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