



TaxNewsFlash

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Final regulations: State and local tax credits and charitable contributions (text of regulations)

The U.S. Treasury Department and IRS this afternoon released for publication in the Federal Register final regulations (T.D. 9864) regarding the availability of charitable contribution deductions under section 170 when a taxpayer receives or expects to receive a corresponding state or local tax credit.

Read the [final regulations](#) [PDF 434 KB] (19 pages) as published in the Federal Register

Overview

Under the 2017 U.S. tax law (Pub. L. No. 115-97 also referred to as the “Tax Cuts and Jobs Act”), in the case of an individual taxpayer, itemized deductions for state and local income taxes, state and local property taxes, and sales taxes are limited to \$10,000 in the aggregate (not indexed for inflation). This cap does not apply to personal or real property taxes incurred in carrying on a trade or business or otherwise incurred for the production of income.

In response, some states acted or proposed to provide relief to their residents affected by the repeal of the uncapped state and local tax (SALT) deduction. Treasury and the IRS in August 2018 issued proposed regulations as guidance concerning the SALT deduction cap provisions under the 2017 tax law and their interaction with claims for charitable contribution deductions. Read [TaxNewsFlash](#)

The preamble to today’s release states that the “final regulations generally retain the proposed amendments set forth in the proposed regulations, with certain clarifying and technical changes.”

Related IRS release

According to a related IRS release—[IR-2019-109](#)—the final regulations apply to contributions made after August 27, 2018, and are effective on August 12, 2019, and largely adopt the rules in the proposed regulations.

- Under the final regulations, a taxpayer making payments to an entity eligible to receive tax-deductible contributions must reduce the federal charitable contribution deduction by the amount of any state or local tax credit that the taxpayer receives or expects to receive in return.
- The regulations also apply to payments made by trusts or decedents' estates in determining the amount of their charitable contribution deductions.
- For example, if a state grants a 70% state tax credit pursuant to a state tax credit program, and an itemizing taxpayer contributes \$1,000 pursuant to that program, the taxpayer receives a \$700 state tax credit. A taxpayer who itemizes deductions must reduce the \$1,000 federal charitable contribution deduction by the \$700 state tax credit, leaving a federal charitable contribution deduction of \$300.
- The regulations provide exceptions for dollar-for-dollar state tax deductions and for tax credits of no more than 15% of the amount transferred. Thus, a taxpayer who receives a state tax deduction of \$1,000 for a contribution of \$1,000 is not required to reduce the federal charitable contribution deduction to take into account the state tax deduction; and a taxpayer who makes a \$1,000 contribution is not required to reduce the \$1,000 federal charitable contribution deduction if the state or local tax credit received or expected to be received is no more than \$150.

Notice 2019-12

The IRS also released an advance version of [Notice 2019-12](#) [PDF 54 KB] providing a safe harbor that allows an individual who itemizes deductions to treat, in certain circumstances, payments that are or will be disallowed as charitable contribution deductions under the final regulations as state or local taxes for federal income tax purposes. Eligible taxpayers can use the safe harbor to determine their SALT deduction on their 2018 return. Those who have already filed may be able to claim a greater SALT deduction by filing an amended return, Form 1040X, if they have not already claimed the \$10,000 maximum amount (\$5,000 if married filing separately).

The release concludes that the Treasury Department and IRS will continue to consider issuing future guidance on a number of issues raised by commenters.

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