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IRS CURTAILS STATES' CONTINUED FIGHT FOLLOWING TAX REFORM: PER IRS LAST DAY FOR CONTRIBUTIONS IS TODAY.

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The Tax Cuts and Jobs Act of 2017 (TCJA) drastically limited the income tax deduction for individuals with respect to state and local taxes to \$10,000. Due to the significant impact of this limitation, especially for those who work and live in high-tax cities such as Manhattan and Philadelphia, several states including New Jersey have enacted legislation which permits residents to contribute to local charitable funds certain amounts that would otherwise have been deductible as state and local tax payments under pre-TCJA law.

However, on August 23, 2018, the IRS and the Treasury Department issued proposed regulations under Internal Revenue Code Section 170 [IR-2018-172, Aug. 23, 2018] that sharply limits the effectiveness of these state programs. Under the **proposed regulations, which would apply to contributions made after August 27, 2018**, a taxpayer who makes payments or transfers property to an entity eligible to receive tax deductible contributions must reduce any charitable deduction by the amount of any state or local tax credit the taxpayer receives or expects to receive.

For example, if a state grants a 70 percent state tax credit and the taxpayer pays \$1,000 to an eligible entity, the taxpayer receives a \$700 state tax credit. The taxpayer must reduce the \$1,000 contribution by the \$700 state tax credit, leaving an allowable contribution deduction of \$300 on the taxpayer's federal income tax return. The proposed regulations also apply to payments made by trusts or decedents' estates in determining the amount of their contribution deduction.

The proposed regulations provide exceptions for dollar-for-dollar state tax deductions and for tax credits of no more than 15 percent of the payment amount or of the fair market value of the property transferred. A taxpayer who makes a \$1,000 contribution to an eligible entity is not required to reduce the \$1,000 deduction on the taxpayer's federal income tax return if the state or local tax credit received or expected to be received is no more than \$150.

In New York, the FY 2019 Budget created a new "Charitable Gifts Trust Fund" to accept donations for the purposes of improving health care and public education in New York State. Taxpayers who wish to donate to this Fund may claim a deduction on their New York State tax returns for a full donation amount of the contribution for the tax year in which the donation is made. Donating taxpayers may also claim a New York State income tax credit equal to 85 percent of the donation amount for the tax year after the donation is made.

It should be noted that the proposed regulations apply to any state or local tax credit related to a charitable contribution, including for example, the Pennsylvania Education Improvement Tax Credit (PA EITC). The Governor of New Jersey has publicly stated that he wants to take some action



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during the public comment period on the proposed rulemaking. Also, there remains a pending lawsuit challenging the constitutionality of the restrictions implemented by the TCJA with respect to the deductibility of state and local taxes that has been led by New York and Governor Cuomo.

If you plan on contributing to any type of state or local tax credits/charitable contribution program, the proposed regulations are not effective until after August 27, 2018, so you have a few more hours (UNTIL MIDNIGHT TONIGHT, AUGUST 27, 2018) to make the contribution without the restrictions of the proposed regulations. The PA EITC only applies to business that have made an application, but pass through entities could benefit from the contributions if made by today.

If you have questions you may contact [John W. Schmehl](#), [Matthew I. Whitehorn](#), or [Stephanie Searles Vogel](#).