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Insights

New Treasury and IRS Regulations Bless SALT Deductions for Pass-through Entities

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Yesterday, the U.S. Department of the Treasury and Internal Revenue Service (IRS) issued a press release and related notice regarding proposed regulations which clarify that the $10,000 cap on state and local tax (SALT) deductions imposed by the Tax Cuts and Jobs Act of 2017 does not apply to pass-through entities (PTEs).

While the primary purpose of a PTE is to allow income to "flow through" the entity to its respective owners (thus being taxed only at the individual level), several states have now passed laws which allow PTEs to pay state income taxes at the entity level. These state laws, which have now essentially been blessed by the Treasury and IRS, provide a way for PTE owners to avoid the $10,000 cap on SALT deductions as the Tax Cuts and Jobs Act of 2017 only applies this cap to individuals.

In addition to stating that "State and local income taxes imposed on and paid by a pass-through entity are allowed as a deduction by [pass-through entities] in computing [their] non-separately stated taxable income or loss for the taxable year of payment," the press release explains that the proposed regulations will be effective as of November 9, 2020, and will also allow taxpayers to elect to apply the rules described in the notice to specified income taxes paid in a taxable year of a [PTE] ending after December 31, 2017, and before the date the forthcoming proposed regulations are published in the Federal Register.

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