



# TaxNewsFlash

## United States

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### **Notice 2018-54: Future regulations to address state and local tax deductions**

The IRS today released an advance version of Notice 2018-54 stating that the IRS and Treasury Department intend to propose regulations to address the federal income tax treatment of certain payments made by taxpayers for which taxpayers receive a credit against their state and local taxes.

#### **Background**

A provision of the new federal tax law (Pub. L. No. 115-97, enacted December 22, 2017) limits an individual's deduction under section 164 for the aggregate amount of state and local taxes paid during the calendar year to \$10,000 (\$5,000 in the case of a married individual filing a separate return). State and local tax payments in excess of those amounts are not deductible. The new limitation applies to tax years beginning after December 31, 2017, and before January 1, 2026.

#### **Notice 2018-54**

[Notice 2018-54](#) [PDF 29 KB] explains that in response to the new limitation on state and local tax payments, some state legislatures are considering (or have already adopted) legislative proposals that would allow taxpayers to make transfers to funds controlled by state or local governments, or other transferees specified by the state, in exchange for credits against the state or local taxes that the taxpayer is required to pay. The IRS notice states that the aim of these proposals is to allow taxpayers to characterize these transfers as fully deductible charitable contributions for federal income tax purposes, while using the same transfers to satisfy state or local tax liabilities.

According to the IRS notice, "...despite these state efforts to circumvent the new statutory limitation on state and local tax deductions, taxpayers should be mindful that

federal law controls the proper characterization of payments for federal income tax purposes.”

The notice continues:

*The Treasury Department and the IRS intend to propose regulations addressing the federal income tax treatment of transfers to funds controlled by state and local governments (or other state-specified transferees) that the transferor can treat in whole or in part as satisfying state and local tax obligations. The proposed regulations will make clear that the requirements of the Internal Revenue Code, informed by substance-over-form principles, govern the federal income tax treatment of such transfers. The proposed regulations will assist taxpayers in understanding the relationship between the federal charitable contribution deduction and the new statutory limitation on the deduction for state and local tax payments.*

Read a related [IRS release \(IR-2018-122\)](#)

## **KPMG observation**

To date, New York and Oregon have enacted legislation allowing a state income tax credit for donations to certain funds, and Connecticut and New Jersey have authorized local governments to establish certain funds and provide a credit against property taxes for donations to the funds. Other states have or are considering similar measures.

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