



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Honorable Gurbir S. Grewal
Attorney General
Office of the Attorney General
Department of Law and Public Safety
PO Box 080
Trenton, NJ 08625-0080

Dear Attorney General Grewal:

Thank you for your letter dated February 26, 2018, about the December 2017 advisory issued by the IRS concerning the deductibility of prepaid state or local real property taxes. Specifically, you request clarification on whether cash-basis New Jersey residents who paid 2018 local property taxes in 2017 are entitled to a deduction in 2017 for federal income tax purposes.

The Tax Cuts and Jobs Act of 2017 (TCJA) generally limits the deduction for state or local real property taxes (and certain other taxes) in 2018 to \$10,000. In light of this new limitation, New Jersey Governor Chris Christie issued Executive Order 237 on December 27, 2017, essentially requiring municipalities to accept payments for 2018 property taxes in calendar year 2017, and to credit payments postmarked on or before December 31, 2017, as received in calendar year 2017 (NJ Order). The state agency charged with implementing the NJ Order issued a similar requirement in Local Finance Notice 2017-28. The NJ Order cites existing New Jersey law that permit taxes to be received and credited prior to the dates otherwise fixed for payment.¹

¹ N.J. Rev. Stat. §§ 54:4-66(e) and 54:4-66.1(f) provide that taxes may be received and credited as payments at any time, even prior to the dates hereinbefore fixed for payment, from the property owners, their agents, or lien holders.

Prior to passage of the TCJA, the IRS has consistently taken the position during examinations that the deduction for state and local real property taxes is allowable as long as the tax is both paid and imposed (or assessed) in the tax year. Taxpayers have generally accepted this position. On the rare occasions this position has been challenged, courts have upheld the IRS's interpretation. For example, in *Estate of Hoffman v. Commissioner*, 8 Fed. App'x 262 (4th Cir. 2001), the U.S. Court of Appeals for the Fourth Circuit upheld a U.S. Tax Court decision disallowing the deduction for a prepayment of property taxes because the tax had not yet been assessed.

In response to numerous requests for immediate guidance following enactment of the TCJA, we issued an advisory (IR-2017-20) on December 27, 2017, and explained that a 2017 deduction is allowable if the tax was assessed in 2017. State or local law controls the imposition and assessment of real property taxes.

The TCJA did not change Section 164 of the Internal Revenue Code relating to property tax prepayment. As such, the IRS's longstanding position remains the same and is reflected in the advisory. Thus, if a state or local taxing jurisdiction imposed tax on real property by the end of 2017, the amounts paid in 2017 are deductible on a taxpayer's 2017 tax return. If the tax was not imposed by a state or local taxing jurisdiction by the end of 2017, the requirements for the deduction under Section 164 are not satisfied in that year, and the deduction is therefore not allowable in 2017.

I hope this information is helpful. Please call _____ at _____ or me at _____ if you have questions.

Sincerely,

Scott K. Dinwiddie
Associate Chief Counsel
(Income Tax and Accounting)