

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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Honorable Cynthia Bauerly
Commissioner
Minnesota Department of Revenue
600 N. Robert St.
St. Paul, MN 55146

Dear Commissioner Bauerly:

Thank you for your letter dated March 28, 2018, about the deductibility of prepaid state or local real property taxes. Specifically, you request clarification on whether cash-basis Minnesota 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 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.

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.

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.

The determination of when real property taxes are imposed or assessed on a cash basis taxpayer under a particular state law, such as Minnesota, requires a thorough examination of all provisions relevant to the assessment and levy process.

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

Sincerely,

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