

Guidance on Certain Payments Made in Exchange for State and Local Tax Credits

NOTICE 2018-54

SECTION 1. PURPOSE

This notice informs taxpayers that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to propose regulations addressing the federal income tax treatment of certain payments made by taxpayers for which taxpayers receive a credit against their state and local taxes.

SECTION 2. BACKGROUND

Section 11042 of “The Tax Cuts and Jobs Act,” Pub. L. No. 115-97, limits an individual’s deduction under § 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. This new limitation applies to taxable years beginning after December 31, 2017, and before January 1, 2026.

In response to this new limitation, some state legislatures are considering or have 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 aim of these proposals is to allow taxpayers to characterize such

transfers as fully deductible charitable contributions for federal income tax purposes, while using the same transfers to satisfy state or local tax liabilities.

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.

SECTION 3. GUIDANCE TO BE ISSUED

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.

SECTION 4. DRAFTING INFORMATION

The principal authors of this notice are Mon Lam and Merrill Feldstein of the Office of Associate Chief Counsel (Income Tax & Accounting). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Ms. Lam or Ms. Feldstein at (202) 317-5100 (not a toll-free call).