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## IRS Issues Final Regulations on SALT Limitation Workarounds

The IRS issued [final regulations \(TD 9907\)](#) on workarounds whereby taxpayers make contributions to charities in return for state-provided state and local tax (SALT) credits. Section 164(b)(6), as added by the 2017 Tax Cuts and Jobs Act (TCJA), states that an individual's deduction for SALT paid during a calendar year is limited to \$10,000. The \$10,000 limit applies to: (1) real property taxes; (2) personal property taxes; (3) income war profits, and excess profits taxes; and (4) general sales taxes. This limitation applies to tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026. The \$10,000 SALT limit does not include foreign taxes or state and local taxes that are paid or accrued in carrying on a trade or business or an investment activity.

In response to the limitation in Section 164(b)(6), some taxpayers considered tax planning strategies to avoid or mitigate its effects including, strategies that rely on SALT credit programs under which states provide tax credits in return for contributions to certain charitable entities.

In August 2018, the IRS proposed amending regulations to provide, in general, that if a taxpayer makes a payment or transfers property to or for the use of a governmental entity and/or charity and the taxpayer receives or expects to receive a SALT credit in return for such payment or transfer, the tax credit constitutes a return benefit to the taxpayer and reduces the taxpayer's charitable contribution deduction. In December 2018, the IRS issued Revenue Procedure 2019-12, which provides that, to the extent a C corporation receives or expects to receive a SALT credit in return for a payment to a governmental entity or charity, it is reasonable to conclude that there is a direct benefit and a reasonable expectation of a commensurate financial return to the C corporation's business in the form of a reduction in the state or local taxes the C corporation would otherwise be required to pay. Thus, the procedure provides a safe harbor that allows a C corporation engaged in a trade or business to treat the portion of the payment that is equal to the amount of the credit received or expected to be received as meeting the requirements of an ordinary and necessary business expense under Section 162.

In June 2019, the IRS issued Notice 2019-12, which provides a safe harbor under Section 164 for certain individuals who make a payment to, or for the use of, a governmental entity or charity in return for a SALT credit.

In December 2019, the IRS issued proposed regulations (REG-107431-19) that included the safe harbors provided under Rev Proc 2019-12 and Notice 2019-12, updated certain regulations, and clarifying the application of the quid pro quo principle under Section 170 to benefits received or expected to be received from third parties.

The final regulations adopt the 2019 proposed regulations with clarifications. The regulations retain the proposed amendments to the regulations under Section 170 to reflect past guidance and case law regarding the application of the quid pro quo principle under Section 170 to a donor who receives or expects to receive benefits from a third party. However, to reflect existing law, the final regulations amend the rules in Treasury Regulation Section 1.170A-1(h) that address a donor's payments in exchange for consideration. Specifically, the final regulations revise Treasury Regulation Section

1.170A-1(h)(4) to provide definitions of “in consideration for” and “goods and services.” Under the final regulations, a taxpayer will be treated as receiving goods and services in consideration for a taxpayer’s payment or transfer to an entity described in Section 170(c) if, at the time the taxpayer makes the payment or transfer, the taxpayer receives or expects to receive goods or services in return. For additional clarity, the final regulations amend the language in Treasury Regulation Section 1.170A-1(h)(2)(i)(B) to state that the fair market value of goods and services includes the value of goods and services provided by parties other than the donee.

### **IRS Issues List of Required Modifications for Pre-Approved Retirement Plans**

The IRS issued an information package containing a [list of required modifications](#) for providers of pre-approved qualified retirement plans who are drafting or redrafting plans to conform to applicable law and regulations.

### **IRS SB/SE Division Publishes Annual Report**

The IRS’s Small Business/Self-Employed (SB/SE) Division released its [annual report](#) covering the fiscal year 2019. The report includes discussions of SB/SE’s accomplishments and enforcement priorities.



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