



New York State Response to Changes in Federal Tax Law

Local and Government Law Section Spring Forum

Albany, New York

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NYS Response to Tax Changes

Background

- Tax Cut and Jobs Act of 2017 (TCJA) H.R. 1, Pub. L. 115-97
- Substantial Changes
 - States
 - Municipalities
 - Businesses (All varieties)
 - Individuals
- Significant limitations on State and Local Tax Deductions
- Hard to gauge full extent of economic change

NYS Response to Tax Changes

Pre-Effective Date Changes

- New York Tax Receipts increased more than \$314 million
 - Person income tax payments
 - Individuals seeking to take advantage of expiring deductions/credits
- Pre-payment of property tax in 2017
 - In states/counties where pre-assessment is possible
 - Direct effect of limitation state and local tax deduction beginning in 2018
- Increased Charitable giving in 2017

NYS Response to Tax Changes

Opportunity Zones

- Expanded in the TAJC of 2017
- Intended to provide jobs and help local economies
 - Expectation was to help low income and rural areas
 - Concern that it may allow exploitation by unintended beneficiaries
- New York opted in to this expanded program

NYS Response to Tax Changes

Carried Interest

- Not Addressed in TJCA
- States, Including NY Remain Interested in Reform
- No State Wants to be First or Alone
 - Capital Flight is too Easy

NYS Response to Tax Changes

Challenges

- Many Questions Remain at the Federal Level
 - Joint Committee Report Differs in Places from the Language of the Statute
- Some Questions Require Congressional Action to Answer
- Some Questions Require Congressional Action Because of Change in the Direction of Policy
- Few Questions May Be Answered by Treasury or IRS Action

NYS Response to Tax Changes

- State Income Tax, Sales Tax and Real Property Tax Deductions Limited to \$10,000
- New Standard Deductions

	Single / Married Filing Separately	Married Filing Jointly	Head of Household
2018 Returns	\$12,000	\$24,000	\$18,000
2017 Returns	\$6,350	\$12,700	\$9,350



NYS Response to Tax Changes

1. Repeal and Replace:

1. HR 4740: SALT Deductibility Act – Bipartisan Federal Legislation That Amends Internal Revenue Code to Address Cap on SALT Deductions (Rep. Lowey [D-NY-17] and Rep. King [R-NY-2])



NYS Response to Tax Changes

2. Multi-State Coalition Lawsuit Challenging Federal Tax Bill

- New York, New Jersey and Connecticut
- Coalition Arguing that Limiting SALT Preempts States Ability to Govern by Reducing the Ability to Provide for Citizens and Unfairly Targets New York and Similarly Situated States
- Lawsuit Not Yet Filed in Court



NYS Response to Tax Changes

3. Change the Structure of New York State Tax Policy

- Employer Compensation Enrollment Tax (Payroll Tax)
- Chapter 59 of the Laws of 2018 Part MM
- Employer Can Opt in to Payroll Tax to Partially Offset Employee State Income Tax Liability
 - Three Year Phase in to Eventual 5 Percent Payroll Tax
 - Payroll Tax Deductible For Employer
 - State Income Tax Credit to Employee to Offset Income Tax Liability
 - Targeted for Employees with Income Over \$40,000
- IRS Has Not Opined on Deductibility



Charitable Reserve Funds

- **Charitable Gifts Trust Fund: State Level**
- Chapter 59 of the Laws of 2018 Part LL
- Creates Two State Operated Charitable Contribution Funds:
 1. Health Charitable Account
 2. Elementary and Secondary Education Charitable Account
- Taxpayer Donates to These Two Funds (Optional)
- Taxpayer Receives State Personal Income Tax Credit Equal to 85 Percent of Donation After January 1, 2019
- Why? Reduction in Personal Income Liability = Reduction in Amount Claimed Under SALT
- Donation May or May Not Be Deductible - IRS



Charitable Reserve Funds

Charitable Gifts Trust Fund: State Level

Example: Taxpayer with \$15,000 Personal Income Tax Liability

2017: \$15,000 Deduction Under SALT (No Cap)

2019 Without Donation:

- \$15,000 Personal Income Tax Liability
- \$10,000 Deduction Under SALT (itemized) – Threshold Reached (\$5,000 non-deductible)

2019 With \$15,000 Donation to State Charitable Gifts Funds:

- \$15,000 Charitable Donation Deduction*
- \$2,250 Personal Income Tax Liability / SALT Deduction
- Reflects 85% Credit, \$17,250 Output by Taxpayer

*Maybe



Charitable Reserve Funds

- **Charitable Reserve Funds: Local Option**
- Chapter 59 of the Laws of 2018 Part LL
- **Schools**: Optional – Establish by Resolution
 - Taxpayer Makes Donation for Educational Purposes
 - Monies From Fund May Be Transferred To General Fund
- **Counties and NYC**: Optional –
 - General Municipal Law section 6-t
 - Governing Board MUST Transfer Funds Donated to the General or Other Fund to be Used For Charitable Purposes
 - Governing Board Establishes Procedure to Make Contributions to Fund, Including Providing Acknowledgement to Taxpayer



Charitable Reserve Funds

- **Charitable Reserve Funds: Local Option**
- **Towns, Villages and Cities Outside of NYC: Optional**
- General Municipal Law section 6-u
- Governing Board Establishes Charitable Reserve Fund to Receive Charitable Contributions
- Discretion of Governing Board to Transfer Funds Received to General Fund
- Governing Board Establishes Procedure to Make Contributions and Provide Acknowledgement of Donation to Taxpayer



Charitable Reserve Funds

- **Charitable Reserve Funds: Tax Implications**
- **Real Property Tax Law section 980-a: Tax Credits for Contributions to Certain Funds**
- Governing Board May Adopt Local Law Authorizing a Real Property Tax Credit For Contribution to Charitable Reserve Funds
- 95% Credit Against Real Property Taxes For Donations Made During “Associated Credit Year”
 - 12 Month Period That Ends Last Day to Pay Penalty Free
 - Installments – 12 Month Period Ends Last Day to Pay First Installment Penalty Free
- Governing Board Can Reduce Credit By Local Law
 - Must Provide Copy to Collecting Officer



Charitable Reserve Funds

- **Charitable Reserve Funds: Administration**
- Administrator of Reserve Fund Must Provide Taxpayer With Acknowledgement
 - Form Prescribed by Commissioner
- Taxpayer Presents Collecting Officer With Acknowledgement By the Last Day to Pay Penalty Free
- **Collecting Officer Must Reduce The Tax Bill Accordingly**
 - Credit Cannot Exceed Amount Due (Unless Installment-Applied to Future Installment)
- Local Government May Adopt Local Law Requiring Collecting Officer to Reduce Tax Bill Before Mailing if Credit is Presented Prior to Warrant Delivery



Charitable Reserve Funds

- **Charitable Reserve Funds: Administration**
- Escrows: Department of Financial Services will Promulgate Regulations Related to Adjustment of Escrows to Reflect Credit
- If Taxpayer Does Not Present Credit by Last Day to Pay Penalty Free:
 - Taxpayer Presents Credit to Chief Fiscal Officer, Who Grants Refund in Amount of Credit
 - Assuming That Payment Was Made
 - Regulations Will Clarify
- Taxpayer Can Seek Refund Up to Three Years From Last Day to Pay Penalty Free



Charitable Reserve Funds

- **Charitable Reserve Funds: Practical**
- How Will I Satisfy My Warrant?
 - Per DOB and Forthcoming Guidance – Certificates Function as Cash for Purposes of Warrant
- How am I Supposed to Administer Six Different School Districts With Potentially Different Credit Allowances?
 - They Are Required to Provide Collecting Officer With Local Law
- What About Online Payments?
- What About Penalties – What Amount Applies?
 - If Credit is Not Presented in Timely Fashion, Penalty is on Entire Bill



Charitable Reserve Funds

- **Charitable Reserve Funds: Practical**
- What About Improvement Districts?
 - Fire Districts Cannot Opt In- Taxes Will Still Be Levied and Due with No Credits Allowed
 - Other Improvement Districts (Water, Sewer, Lighting, etc) are not Taken into Consideration – Local Government Has Funds in Charitable Reserve
- Will the IRS Allow Taxpayers to Claim These Donations as Charitable Deductions?



Charitable Reserve Funds

Practical Example:

2019 Town and County Tax Bill: \$1,000

- \$500 County
- \$300 Town
- \$200 Fire District

Before Charitable Reserve Fund:

- Collecting Officer Collects \$1,000
- 200 → Fire District
- 300 → Town
- 500 → County



Charitable Reserve Funds

Practical Example

After Charitable Reserve Fund, Town and County Opt In:

- Taxpayer Presents Certificate From Town and County – 95% Credit
- 200 → Fire District → Collect \$200
- 300 → Town → 95% = \$285 Credit = Collect \$15 + Certificate
- 500 → County → 95% = \$475 Credit = Collect \$25 + Certificate
- Total Collected: \$240 + 2 Certificates
- Taxpayer Ultimately Paid \$1,040 (\$800 Donation, \$200 Fire District, \$15 Town, \$25 County)
- \$200 to Fire District, \$40 + Certificates to Town and County
- Certificates Function as Cash Collected for Collecting Officer
- Localities Have Funds In Reserve Fund



Charitable Reserve Funds

Practical Example

After Charitable Reserve Fund, Only Town Opts In:

- Taxpayer Presents Certificate From Town– 95% Credit
- 200 → Fire District → Collect \$200
- 300 → Town → 95% = \$285 Credit = Collect \$15 + Certificate
- 500 → County → Collect \$500
- Total Collected: \$715 + 1 Certificate
 - Taxpayer Ultimately Paid \$1,015 = \$300 Donation, \$200 Fire District, \$15 + Certificate Town, \$500 County



Charitable Reserve Funds

Practical Example

After Charitable Reserve Fund, Only County Opt's In:

- Taxpayer Presents Certificate From County– 95% Credit
- 200 → Fire District → Collect \$200
- 300 → Town → Collect \$300
- 500 → County → 95% = \$475 Credit = Collect \$25 + Certificate
- Total Collected: \$525 + 1 Certificate
 - Taxpayer Ultimately Paid \$1,025 = \$500 Donation, \$200 Fire District, \$300 Town, \$25 + Certificate County





Charitable Reserve Funds

Levy is \$1,000 & Taxpayer Maximizes Reserve Fund Donation

	Pre-Reserve Fund Tax Collected	Town and County Opt In 95% Credit	Only Town Opts In 95% Credit	Only County Opts in 95% Credit	County Opts in 50%, Town Opts in 50%
Fire District Tax	\$200	\$200	\$200	\$200	\$200
Taxpayer Donation	N/A	\$300 Town \$500 County	\$300 Town	\$500 County	\$300 Town \$500 County
Town Tax	\$300	\$15 + 1 Cert	\$15 + 1 Cert	\$300	\$150+ 1 Cert
County Tax	\$500	\$25 + 1 Cert	\$500	\$25 + 1 Cert	\$250 + 1 Cert
Collecting Officer Collects	\$1,000	\$240 + 2 Cert	\$715 + 1 Cert	\$525 + 1 Cert	\$600 + 2 Cert
Taxpayer Pays	\$1,000	\$1,040	\$1,015	\$1,025	\$1,400