

NOT FAKE NEWS: CONGRESS SHUTS DOWN PRE-PAYMENT OF 2018 STATE INCOME TAXES!

Tax Alert

December 18, 2017

On Friday afternoon we emailed many clients and friends regarding the possibility of a “last chance” to claim a disappearing federal income tax deduction by paying 2018 state income tax estimates at the end of 2017. Apparently some of you didn’t get the email until Sunday. Sad! More on that below.

Well, you can put your check books away because among the more-gratuitous provisions of the Tax Bill, Congress buried the following lump of coal:

SEC. 11042. LIMITATION ON DEDUCTION FOR STATE AND LOCAL, ETC. TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 is amended by adding at the end the following new paragraph:

“(6) LIMITATION ON INDIVIDUAL DEDUCTIONS FOR TAXABLE YEARS 2018 THROUGH 2025.—In the case of an individual and a taxable year beginning after December 31, 2017, and before January 1, 2026—

“(A) foreign real property taxes shall not be taken into account under subsection (a)(1), and

“(B) the aggregate amount of taxes taken into account under paragraphs (1), (2), and (3) of subsection (a) and paragraph (5) of this subsection for any taxable year shall not exceed \$10,000 (\$5,000 in the case of a married individual filing a separate return).

The preceding sentence shall not apply to any foreign taxes described in subsection (a)(3) or to any taxes described in paragraph (1) and (2) of subsection (a) which are paid or accrued in carrying on a trade or business or an activity described in section 212. **For purposes of subparagraph (B), an amount paid in a taxable year beginning before January 1, 2018, with respect to a State or local income tax imposed for a taxable year beginning after December 31, 2017, shall be treated as paid on the last day of the taxable year for which such tax is so imposed.”**

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2016.

So, assuming the Tax Bill is enacted in its current form, there will be no federal income tax deduction for 2018 state estimated income tax payments made in 2017. The legislative language refers only to “income taxes”, but some media outlets are reporting that Treasury has issued guidance prohibiting the deductibility of state and local property tax pre-payments too.

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We found out about the lump-of-coal provision late Friday night, just a few hours after we issued what we thought was a timely Alert about the New York Tax Department's early release of estimated tax forms. Shame on us for trying to keep you up to date! Worse yet, our outside email vendor decided to send out our Alert in batches, for reasons unknown, so many of you did not read the Friday afternoon email until Sunday. Oops. Many of you pointed this out to us, which we appreciate, since it shows us people actually read the stuff we send out! In any case, we apologize for any confusion (or unrealistically high expectations) this may have caused.

And now we return to our previously-scheduled ruminations over whether to convert our favorite law partnership to a C corporation.