

## Uncertainty Surrounding SALT Deduction Workarounds

In the wake of federal tax reform, i.e., the passage of the Tax Cuts and Jobs Act of 2017 (the “Tax Act”), specifically, the new \$10,000 cap on itemized deductions for state and local taxes (i.e., SALT deductions), several states are fighting back. New York, Connecticut, New Jersey, Massachusetts and a growing list of other states have proposed or enacted legislation attempting to provide alternative federal tax benefits for their residents in lieu of SALT deductions (i.e., “SALT deduction cap workarounds”). One proposed New York SALT deduction cap workaround establishes a public fund to which taxpayers may contribute and claim an income tax charitable deduction while also receiving a corresponding credit against local property taxes equal to 85% of the contributed amount for the tax year in which the contribution is made.

It is uncertain whether these SALT deduction cap workarounds are viable options. It is expected that the Internal Revenue Service (“IRS”) will closely scrutinize such arrangements. In fact, on May 23, 2018, the IRS issued Notice 2018-54 (the “Notice”) in which the IRS warned that it intends to issue regulations addressing states’ efforts to minimize impacts of the Tax Act. The Notice specifically discusses arrangements similar to New York’s SALT deduction cap workaround, whereby taxpayers may transfer money to a fund controlled by a state or local government in exchange for credits against state or local taxes. The Notice cautions, “[t]he 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 Notice creates a dark cloud over SALT deduction cap workarounds and will likely stifle taxpayer participation in them, at least until further guidance is provided. It remains to be seen whether some state strategies will survive the proposed regulations. Unfortunately, it may be some time before the IRS issues any proposed regulations on this topic. Pending issuance of further IRS guidance, state and local governments and individuals should proceed with caution and with the understanding these SALT deduction cap workarounds may be too good to be true.

If you have any questions about this information memo, please contact [Erika D. Wood](#), any of the [attorneys](#) in our [Tax Practice Group](#), or the attorney in our firm with whom you are regularly in contact.

