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New York Tests SALT Deduction Cap Workaround.

NY, NJ pass SALT deduction workaround, IRS acceptance still unclear

New York and New Jersey are still in the process of working out a way around the state and local tax (SALT) deduction limits included in the 2017 tax reform bill, while legislation to circumvent the cap has stalled in California.

New York is the furthest ahead, having passed its plan as part of the state budget that was signed by Gov. Andrew Cuomo (D). The plan creates charitable funds to which property owners would pay their property taxes, without the \$10,000 cap on the SALT deduction. Taxpayers could then receive federal tax deductions and state tax credits from their charitable contributions.

Cuomo's plan includes an option that would convert the state income tax to a payroll tax. Steve Acquario, executive director of the New York State Association of Counties, said the counties were waiting for guidance from both the state and federal government as to how the trusts would be implemented.

"The \$1 million question is whether the Internal Revenue Service will accept the deduction through the use of the locally-enacted charitable trusts," he said. "The state's congressional delegation has formally asked the IRS for an opinion and guidance."

Shortly after Cuomo signed the budget, Jared Walczak from the Tax Foundation suggested that the "legally suspect workaround" could end up increasing tax payments and the likelihood of an audit.

"The IRS is highly unlikely to go along with this charade, as these so-called contributions bear none of the hallmarks of genuine charity," he wrote. "New York could be setting its residents up for a fall. They could face audits; they might be exposed to tax penalties; and their tax liability could actually go up."

He said the payroll tax might be more likely to pass legal muster but would benefit fewer taxpayers, given the variety of contracts and wage laws to deal with.

Cuomo has also announced that New York, New Jersey and Connecticut will sue the federal government, claiming the SALT deduction cap violates the Equal Protection Clause and the 10th Amendment. Walczak wrote that a judge was unlikely to rule that the cap violates either.

Meanwhile, the New Jersey Legislature has passed a bill that creates a similar system of charitable trusts, and it awaits the signature of Gov. Phil Murphy (D), who has championed the bill. But John Donnadio, executive director of the New Jersey Association of Counties, is not holding his breath on the measure's passing muster with the IRS. "We never took a position on the bill, but there are so many other issues (as an association) that we're working on, that we're not worrying about what the real impact of this legislation is going to be," he said. "None of our county officials were asking for this bill, and not many municipalities were clamoring for it."

Former California Senate President Pro Tempore Kevin de Leon had sponsored a similar bill in the

state Assembly, but after leaving the Senate leadership to run for the U.S. Senate, he does not have the same political capital to push the bill as he once did, said Dorothy Johnson, a legislative representative for the California State Association of Counties.

“It has pretty much zero legs at this point,” she said.

NATIONAL ASSOCIATION OF COUNTIES

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