Land Trust Alliance
Together, conserving the places you love

SALT Explained: Proposed IRS Rule Erodes State Conservation Incentives

In August 2018, the IRS issued a proposed rule regarding contributions in exchange for state or local tax credits. This rule, if made permanent, could drastically erode state tax incentives for landowners who donate land or conservation easements to land trusts.
The proposed rule is intended to prevent states from bypassing a cap on state and local taxes that was included in the tax bill that was signed into law in December 2017. However, it also impacts other tax credits, including those for conservation.

The proposed rule directly undermines state tax credits created to provide an incentive for donations of land and conservation easements. Our analysis shows the proposed rule would impact Alabama, Arkansas, Colorado, Delaware, Georgia, Iowa, Maryland, Massachusetts, Mississippi, New Mexico, New York, South Carolina and Virginia and Puerto Rico. In addition, many local governments have created tax incentives that will be undermined by the proposed rule.

The proposed rule does not impact federal wetland or mitigation credits; it is solely focused on state and local tax credits.

Under the proposed rule, a donor who takes a federal tax deduction for the value of the gift and also receives a state tax credit would have to reduce their federal tax deduction by the amount of the state credit. Importantly, the donor would have to reduce their federal deduction regardless of whether or not they actually use the state credit or whether that state credit accrues to them immediately or over a number of years. This will result in wildly differing outcomes for individual donors, even in the same state.

Conservation donations are not donations in lieu of a state tax bill – they are entirely voluntary donations. Moreover, these deductions are for real property interests, not cash. The unnecessary breadth of the proposed rule, as currently drafted, will result in fewer conservation donations.

The proposed rule would make any state tax credit for a charitable donation a “quid pro quo” that must be deducted from the donor’s federal deduction. This means if the proposed rule is made permanent, the rule would undermine state and local tax credits ***even if Congress repealed the SALT limitation***.

It is unclear when or if the IRS will finalize this rule but as released it will apply to all donations made after August 27, 2018. The uncertainty created by the release of this rule is harming conservation donations.

Federal and state tax incentives for land conservation are important tools that can often mean the difference between lands being conserved or being converted to another use. It’s important that we ensure these incentives are not harmed.

Please help conservationists in your area maintain states’ ability to have their own conservation incentives by educating your congressional delegation about this issue. If the rule goes into effect as drafted, the only solution would be for Congress to exempt conservation donations.

Examples of how the proposed rule would impact four states.

Assume a $1 million donation in each case.

Virginia

- Donor gets a $400,000 state tax credit. Their federal deduction is reduced to $600,000.
- Something to keep in mind: The average Virginia tax credit in 2016 was $368,000.
- A $1 million federal deduction is worth up to $370,000; the $600,000 deduction is worth $222,000. **Expected benefit reduction = $148,000.**

Colorado

- Donor gets a $525,000 state tax credit. The first $100,000 of the gift is given a 75 percent state tax credit; the remainder of the gift is given a 50 percent state tax credit. Their federal deduction is reduced to $475,000.
- Something to keep in mind: The average Colorado tax credit in 2017 was $366,000.
- A $1 million federal deduction is worth up to $370,000; a $475,000 deduction is worth $176,000.

Expected benefit reduction = $194,000.

Georgia

- Donor gets a $250,000 state tax credit. Their federal deduction is reduced to $750,000.
- Something to keep in mind: The Georgia credit is capped at $250,000 for individuals, and $500,000 for corporations and partnerships.
- A $1 million federal deduction is worth up to $370,000; the $750,000 deduction is worth $277,500. **Expected benefit reduction = $92,500.**

New York

- The state tax credit for conservation easements is 25 percent of the parcel's property tax bill, every year, up to $5,000 per year.
- The average annual property tax in the state is 1.6 percent of value.
- Though the annual credit is small, the rule appears to say the IRS counts it all up and subtracts the total from the value of the donation. Since a New Yorker who donates a conservation easement eventually receives 100 percent of the value of that gift back from the state in tax credits, they lose their entire federal deduction -- despite the fact that it will take 244 years for their state tax credits to add up to the full value of the gift . In short, **the proposed rule could preclude New Yorkers from taking any federal deduction for donating a conservation easement.**

  Potential benefit reduction = $370,000.