

## Practice Update

# Tax Reform: With Massive Overhaul Now Law, Prepayment of 2018 Property Tax May Benefit New York Property Owners

December 28, 2017

On December 22, 2017, President Donald J. Trump signed the Tax Cuts and Jobs Act (Act), which beginning in 2018 caps at \$10,000 the allowable deduction for payment of state and local income, sales, and property taxes. While the Act prohibits 2017 deductions for prepayment of 2018 state and local income taxes, such prohibition does not expressly limit 2017 deductions for prepayment of 2018 property taxes. On December 27, 2017, the Internal Revenue Service issued an Advisory (IR-2017-210) stating: “A prepayment of anticipated real property taxes that have not been assessed prior to 2018 are not deductible in 2017. State or local law determines whether and when a property tax is assessed, which is generally when the taxpayer becomes liable for the property tax imposed.”

In response to the Act, on December 22, 2017, New York Governor Andrew M. Cuomo signed Executive Order #172 (Order) urging municipalities to issue 2018 property tax bills before year end, thus enabling New York Property Owners to prepay taxes and pay their 2018 property taxes in 2017 before the limits on deductibility take effect. The Order authorizes local governments to approve and deliver “warrants for the collection of taxes” (i.e., the basis on which tax bills are issued) to the local tax collectors no later than 11:59 pm on Thursday, December 29, 2017. After receiving such tax warrants, tax collectors are

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directed to accept payments of tax until (i) the close of business on Friday, December 29, 2017, for payments made in person, (ii) 11:59 pm on Sunday, December 31, 2017, for payments made online, and (iii) actually received by the tax collector, for payments made by mail that are postmarked on or before Sunday, December 31, 2017.

Notably, Governor Cuomo's Order does not require local governments to accept early payments before January 1, 2018. In response to the Act, some counties are hurrying to approve warrants and issue tax bills to property owners. For example: (a) Dutchess County prepared and provided tax rolls to all of its local towns so that they can receive prepayment of 2018 property taxes, (b) certain Westchester County localities are now accepting prepayment of 2018 property taxes, (c) Monroe County announced that it will prepare and post tax bills no later than 9:00 am on Friday, December 29, 2017 in order to allow residents to prepay their 2018 property taxes, and (d) certain Nassau County towns are now accepting prepayment of 2018 property taxes.

New York City will accept early payment of third and fourth quarter property tax bills for the 2017-2018 fiscal year ending June 30, 2018. Because the tentative assessment roll for NYC's fiscal year beginning July 1, 2018 will not be issued until January 15, 2018, there are no 2018/19 tax bills that can be prepaid in 2017. The IRS Advisory seemingly prohibits NYC property owners from deducting in 2017 any overpayment of their current property tax bill with the expectation that the resultant credit balances can be applied against their 2018/19 tax bill.

Before prepaying property taxes, property owners should consult with their tax advisors. The issues to consider include whether the IRS will determine that prepaid 2018 property taxes are deductible in the 2017 tax year; although Governor Cuomo unequivocally stated that property tax payments that you "make this year are deductible this year," any

such deduction would be governed by the IRS' interpretation of applicable law. Another important consideration relates to the alternative minimum tax. Specifically, state and local tax deductions are AMT preference items; thus, while prepayment of property tax might save income tax, all or part of such savings might be payable back as alternative minimum tax. Finally, property owners who pay real estate taxes to a bank as part of their mortgage payment may only deduct the amount actually paid by the lender to the municipality; any prepayment of tax should be made directly to the tax collector.

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