Miller & Chevalier

TAX TAKE: SALT of the Earth: Top Five Observations About the SALT Deduction Cap

Tax Alert

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As Congress considers how to go about extending the Tax Cuts and Jobs Act (TCJA) tax relief provisions, one major issue that continues to vex lawmakers is how to address the $10,000 individual state and local tax (SALT) deduction cap. This week, we provide our top five observations regarding this important issue.

For more than a few Republicans from high-tax states such as New York, New Jersey, and California, this is an issue of existential importance. These lawmakers will not vote for a reconciliation bill that does not deliver adequate SALT relief. Given the narrow Republican margins in the House and Senate, these members have unique power in shaping the pending tax reconciliation bill, particularly in the House where the Republican margin to start the year is down to two (217 to 215). The recent meeting between SALT deduction cap opponents and President Trump at Mar-A-Lago to discuss this issue underscores the pivotal role these members are expected to play.

Without congressional action, the individual SALT deduction cap expires on December 31, 2025, along with many other individual provisions and the section 199A passthrough business deduction. The fact that these key provisions all expire at the same time – and that they will form the cornerstone of any TCJA extension bill – provides SALT deduction cap opponents additional leverage in their negotiations with congressional leadership and the White House.

The individual SALT deduction cap was a major funding mechanism for the TCJA and similarly represents a major funding mechanism for the pending tax reconciliation bill. The need for revenue for the bill will be tempered by the amount of deficit spending allowed, as well as the potential use of a current-policy baseline. These factors may allow for a significant increase to the amount of the deduction cap from $10,000.

Representative Michael Lawler (R-NY) introduced the SALT Fairness and Marriage Penalty Elimination Act, which would increase the SALT deduction cap to $100,000 for single filers and $200,000 for married couples filing jointly. These dollar amounts likely represent the high-water mark for negotiation, with cap amounts ultimately settled somewhere between the current $10,000 and these significantly higher amounts.

Some, including the House Freedom Caucus, have suggested that the cost of an increased individual SALT deduction cap should be offset by imposing a cap on corporate SALT deductions. It is unclear whether Republicans would be receptive to such a significant tax increase on corporate businesses. In addition, such a cap would need to be carefully constructed – as suggested by the Bipartisan Policy Center, and the cap should be limited to state and local corporate taxes on net income but should not apply to non-income taxes such as taxes on wages, sales, and property, which are part of the cost of doing business.

As our list indicates, there are a number of political and budgetary factors influencing resolution of the SALT deduction cap. Such resolution is imperative to a reconciliation bill getting across the finish line. **#TaxTake**
