

Maryland Politics

Tax experts: Prepaid property taxes may be deductible after all

By **Rachel Siegel** January 23 at 6:00 AM

In 2017's final days, tens of thousands of Americans rushed to prepay their 2018 property taxes in a last-ditch attempt to claim a deduction that would be capped starting Jan. 1.

The effort was especially acute in the Washington area and other high-tax districts.

For many, those efforts appeared to be thwarted on the evening of Dec. 27, when the Internal Revenue Service announced taxpayers could claim the deduction only if those property taxes were assessed and paid in 2017.

While the D.C. government declared its tax bills fit that criteria, many Virginia municipalities, as well as Montgomery County in Maryland, said prepayments likely would not qualify for deductions, since tax assessments had not yet gone out.

But some tax experts in the Washington region say the IRS is wrong and its stance carries no legal authority. They are encouraging homeowners who made prepayments to claim the deductions. And they are warning government officials not to offer refunds to those who prepaid, saying that doing so would jeopardize the chances of deductibility.

"Normally, [people] see something come out from the IRS, and they assume the IRS is right," said Leslie Schneider, a tax expert and partner at the D.C. firm Ivins, Phillips & Barker. "It requires some fair amount of strength and confidence to say, 'I'm not going to listen to the IRS.'"

Schneider's argument boils down to two methods of accounting used to report federal taxable income: one more commonly used by individuals and small businesses, the other used by larger businesses and corporations.

For individuals, taxes are deductible in the year in which they are paid. In other words, if someone pays property taxes a year late, they deduct them in that later year. If they pay early, they deduct early.

That is unlike the method used for larger businesses, Schneider said, under which taxes are deductible in the year they are owed.

Schneider noted that the system has limits: Individuals, for example, cannot pay their taxes "20 years before you owe it" to rack up the deductions.

But he believes the deduct-when-you-pay principle would still apply to homeowners who paid property taxes in 2017 to beat the new \$10,000 cap on state and local tax deductions starting in 2018 — IRS guidance notwithstanding.

At the same time, he and other experts warned the payments would almost certainly not be deductible if jurisdictions decided to offer refunds.

In Montgomery, where lawmakers passed emergency legislation to allow prepayments the day after Christmas, County Council members were initially unsure whether they would consider passing a bill to refund the payments.

Now, Council President Hans Riemer (D-At Large) says he would oppose any bill to allow refunds, in part because of the advice of Schneider and others.

IRS spokesman Matthew Leas said the stance taken by the agency holds up legally because the tax law says if a state or local authority hasn't assessed or imposed a tax, taxpayers cannot take a deduction on it.

"The law supports our position," he said.

He declined to say whether the IRS would press the issue in court if residents who prepaid began claiming their deductions. He also did not directly address Schneider's point about property tax being deductible for individuals in the year that it is paid.

Steven Rosenthal, a senior fellow at the Urban-Brookings Tax Policy Center, said he was shocked to read the IRS announcement the day he submitted his prepayment in Montgomery County. He said if the IRS wanted to prevent taxpayers from claiming deductions, as its Dec. 27 announcement suggested, the agency could have worked with Congress to change the law.

“The advisory itself isn’t authority. It’s just a shot across the bow to scare taxpayers,” Rosenthal said.

Council member George L. Leventhal (D-At Large) said he decided not to introduce a bill this month that would allow for refunds in Montgomery, after hearing from tax experts who agreed that doing so would make it less likely that residents could claim their deductions.

But Leventhal also noted that the council never guaranteed that prepayments would be deductible. A form residents had to sign and submit with their prepayments said as much in capital letters.

Riemer conceded there are “thousands and thousands of people who want to know, ‘What the heck do we do now?’ ”

Rosenthal had an answer: “Tell them to sit tight, and buckle up,” he said.

 **3 Comments**

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