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Honorable David J. Kautter
Commissioner of the IRS
1111 Constitution Ave., NW
Washington, DC 20224

February 26, 2018

Dear Commissioner Kautter:

I write to address confusion regarding whether New Jersey taxpayers who prepaid their 2018 state and local property taxes should be eligible for the deductions available in 2017. The recent IRS Advisory establishes that this inquiry turns on the timing of tax assessments under state law. It is my judgment, based on a review of statutes, executive orders, and state agency notices, that any individuals who paid 2018 local property taxes in 2017 were satisfying local property tax assessment obligations under New Jersey law and are entitled to the 2017 state and local tax (SALT) deduction.

The Tax Cuts and Jobs Act of 2017 adopted an unprecedented change to the federal tax code. Previously, taxpayers could deduct from their federal tax liability money paid for state and local income, property, and sales taxes. But under the new regime, the same taxpayers can only claim a deduction of up to \$10,000 for those taxes. Attempting to mitigate the impact of the new law, residents rushed to prepay their state and local taxes in 2017. Although the Act established that amounts prepaid for 2018 state or local income taxes would be credited in 2018, the law did not say the same regarding payment of local property taxes. Thousands of our residents therefore assumed that property tax payments made in 2017 would receive 2017 federal tax treatment. In one of our hardest hit towns, nearly one out of every six residents prepaid their property taxes, for a total of almost \$25 million.¹

Although states like New Jersey acted to support their residents by confirming that such prepayments must be received and credited in 2017, the IRS's Advisory was less conclusive. The IRS explained that some local property tax payments would in fact qualify for 2017 treatment: "In general, whether a taxpayer is allowed a deduction for the prepayment of state or local real property taxes in 2017 depends on whether ... the real property taxes are assessed prior to 2018." And that inquiry, the IRS continued, turns on state law because "[s]tate or local law determines whether and when a property tax is assessed." That is why I am writing to you now, to inform

¹ See Steve Strunsky and Bill Gallo Jr., "Towns took in millions in prepaid taxes. See how every county's heavy hitters made out," NJ.com (February 19, 2018), available at http://www.nj.com/news/index.ssf/2018/02/property_tax_prepayments_in_nj_2018.html.



you that, in light of our state's laws, New Jersey residents who made the decision to pay their property taxes in 2017 should receive the full 2017 deductions.

New Jersey law squarely addresses this scenario. Residents who prepaid property taxes during 2017 for 2018 were satisfying 2018 local real property tax assessments, and so their tax payments must be credited under 2017 tax rules. Although taxes are not due until quarterly installment dates (February 1, May 1, August 1, and November 1), that is not when the taxpayers start being on the hook: "Taxes may be received and credited as payments *at any time, even prior to the dates hereinbefore fixed for payment*, from the property owners, their agents or lien holders." N.J.S.A. 54:4-66 (emphasis added); *see also* N.J.S.A. 54:4-66.1 (same). In other words, New Jersey law welcomes prepayments—and if residents start satisfying their tax obligations during the prior year, their payments are "credited" at that time. So as a matter of state law, a 2018 local property tax payment made in 2017 is entitled to treatment under 2017 rules. And because, as the IRS confirmed, the Internal Revenue Code relies upon assessment determinations by the states, the same is true for federal tax law as well.

Even if our statutes did not resolve this issue, the Executive Branch's interpretation of state law confirms this understanding. On December 27, 2017, Governor Chris Christie issued Executive Order 237, which reaffirmed that state law "permits taxes to be received and credited from property owners, their agents, or lienholders, even prior to the dates otherwise fixed for payment." As applied to this context, the Order directed municipalities "to accept payments for 2018 property taxes in calendar year 2017" and "to credit those payments as received in calendar year 2017 if the payment is postmarked on or before December 31, 2017."

That is also how the state agency charged with implementing this program describes our law. The Division of Local Government Services in the Department of Community Affairs—which Executive Order 237 empowered to clarify local property tax prepayment issues—issued Local Finance Notice 2017-28 on the same day as that Order. The Division confirmed that local property "taxes may be received and credited as payments at any time, even prior to the statutory due dates." It follows, the Division continued, "consistent with Executive Order No. 237 and the relevant tax collection statutes," that all "municipalities must accept payments for 2018 property taxes in calendar year 2017," and that they "must credit those payments as received in 2017 if the payment is postmarked on or before December 31, 2017."

All relevant sources of New Jersey law thus point to the same result—that New Jersey residents who prepaid their 2018 local property taxes in 2017 are entitled to the SALT deduction that applied in 2017. State statutes, executive orders, and agency notices are clear that residents may satisfy property tax assessments in advance and payments must be credited at that time. I see no basis for the IRS to refuse to do the same.

This is a matter of fundamental fairness. If corporations can deduct employee bonuses in 2017 that will not be paid until 2018, individuals must be able to deduct property tax payments they made in 2017. As I noted, while the Act did establish that income tax prepayments should be credited in 2018, that law did not impose the same rule on property tax prepayments. And so, relying on the text of the law, thousands of New Jersey taxpayers rushed to pay their taxes in

order to qualify for the SALT deduction. State statutes, orders, and agency notices all support our taxpayers' efforts, and there is no good reason for the IRS to change course now.

I would be happy to discuss this further with you, and I hope you can confirm that New Jersey taxpayers who paid 2018 property taxes on or before December 31, 2017 will be eligible for the deductions available in 2017.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gurbir S. Grewal", followed by a period.

Gurbir S. Grewal
Attorney General