A Pinch of SALT and a Splash of PTET Complexity

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I. INTRODUCTION

The Constitution created concurrent taxation authority between the federal and state governments.[1] Historically, both federal and state governments rely on taxes to operate; therefore, there are overlapping interests that often create tensions in tax policies.[2]

This Note will analyze how states reacted to the State and Local Tax Deduction Limitation ("SALT Tax Deduction") enacted in the 2017 Tax Cut and Jobs Act ("TCJA") through the creation of a Pass-Through Entity Tax Election. The SALT deduction cap should not be continued, and Congress should utilize other mechanisms to raise revenue that do not disproportionately impact residents from high-taxed states negatively. Additionally, permitting Pass-Through Entity Tax Elections circumvents the purpose behind pass-through entities, and should not be allowed.

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1. Elaine L. Orr, *Evolution of U.S. Fiscal Federalism*, THE GAO REV., Fall 1981, at 34.
2. *Id.* at 35.

First, Part II will provide background on both the current federal and state tax systems, and how recent policy decisions have resulted in taxpayers electing a pass-through entity tax mechanism to reduce federal tax liability in the wake of the deduction limitation. Part III will then analyze the effectiveness of the TCJA, and how the SALT tax deduction has functioned. Additionally, it will address the effectiveness of mitigation efforts that states and individuals have created in reaction to the deduction limitation. In addition to the effectiveness of current tax policy, it will analyze current tax policies proposed by Democratic and Republican representatives. Part IV will provide recommendations for addressing the future of Pass-Through Entity Tax Elections in the wake of the TCJA SALT tax cap deduction limitation expiring in 2025. Finally, Part V will conclude that the SALT tax deduction limitation and the related Pass-Through Entity Tax Election should not continue as they overburden the tax compliance system with complexities, while not providing sufficient benefits to either the Government or the Taxpayer.

II. BACKGROUND

A. The History of the SALT Tax Deduction

Since the inception of the Federal Income Tax, the Federal Government has allowed taxpayers to deduct any state and local taxes paid.[3] Although there is no record showing the legislative intent behind the implementation of permitting the SALT deduction, there are two main reasons why the early Congress adopted the SALT deduction as the sole allowed deduction.[4] First, the deduction is consistent with the cornerstones of federalism[5] because it maintains the separate spheres of both the federal and state governments.[6] Permitting both the federal and state governments to retain their ability to raise tax revenues is essential for both governments to function and succeed. Second, the SALT deduction protected its citizens against "double taxation."[7] "Double taxation" exists when taxpayers are required to pay federal taxes on income that was already paid to state and local governments.[8] Hence, the same dollar of income is taxed by the federal and state governments. Historically, the SALT deduction permitted taxpayers to reduce their overall taxable income for any tax payments made to state and local governments.[9] Thus, if an individual paid the state of Iowa $100 for sales tax, they could then deduct $100 on their federal return when calculating their federal tax liability. As a result of the SALT deduction, an individual's overall tax liability to the federal government decreases directly by each dollar of state and local taxes paid.

3. *The History of the SALT Deduction*, CHAMBERLAIN HRDLICKA ATT'YS L. (Feb. 11, 2022), www.chamberlainlaw.com/tax-blawg/history-of-the-salt-deduction [https://perma.cc/JNT2-NNTH].

4. *Id.*

5. *Id.*

6. *See What is Federalism?*, CTR. FOR STUDY FEDERALISM, federalism.org/explore-federalism/what-is-federalism/ [https://perma.cc/U7F3-M55C] (noting that a hallmark of federalism is retaining "the integrity of each partner").

7. *The History of the SALT Deduction*, *supra* note 3.

8. *See e.g.*, Kelley R. Taylor, *SALT Deduction Changes: Three Key Tax Points to Know Now*, KIPLINGER (Feb. 5, 2026), https://www.kiplinger.com/taxes/salt-deduction-things-to-know [https://perma.cc/H3NM-VNSM].

9. *See State and Local Tax (SALT) Deduction: Lane County, Ore.*, NAT'L ASS'N OF COUNTIES, ce.naco.org/%2Fapp%2Fprofiles%2FSALT%2FSALT_41039.pdf [https://perma.cc/WQ64-JVWV].

In its inception, there was little political controversy over permitting a SALT deduction, but over the years, Congress has modified the deduction by narrowing the types of taxes included.[10] Largely, these modifications were a result of the growing disparity between high-taxed states,[11] especially as state and local taxes continued to grow and expand annually.[12] Because taxpayers could fully deduct all SALT taxes paid on their federal returns, taxpayers in high-taxed states had a larger SALT deduction available than taxpayers in lower-taxed states.[13] For example, a taxpayer in New York City or Washington, D.C. could take a larger deduction on their Federal returns than a taxpayer in rural Texas—even if they reported the same amount of income.[14] Therefore, the taxpayer in New York City or Washington, D.C. has a lower federal tax liability solely based on them residing in a higher-taxed state.[15]

Congress first modified the SALT Tax Deduction in 1964 by limiting the type of taxes included in the deduction.[16] The limitation was needed because of the difficulty of tracking the multitude of state and local excise taxes by both the taxpayer and the IRS.[17] Then, in 1990, Congress also indirectly modified the SALT tax deduction by adopting gross income thresholds, where individuals exceeding the specific thresholds were temporarily limited from taking their full itemized deductions.[18] Thus, once a taxpayer reached a certain adjusted gross income level, they were prevented from taking specific deductions—like the SALT deductions—to further reduce their tax liability. Finally, in 2004, Congress reverted the types of SALT taxes included in the deduction by permitting taxpayers to deduct either state and local sales taxes or income taxes.[19]

President Trump's first administration resulted in significant tax policy adjustments by the TCJA. In 2017, the TCJA introduced Section 11042, creating a $10,000 limit on the state and local deduction.[20] Prior to the passing of the TCJA, Speaker of the House Paul Ryan argued that the Act was built with the intent of serving middle-class Americans by blocking the ability for high-income taxpayers to utilize complex loopholes in the tax

10. *The History of the SALT Deduction*, *supra* note 3.

11. *See id.* (citing modifications in the Tax Code such as adding income-based phase-outs and limiting the types of State and Local Taxes available to deduct).

12. *See State and Local Taxes and Spending*, ECON. POL'Y INST., epi.org/explorer/state-and-local (on file with the *Journal of Corporation Law*) (showing that generally a third of household taxes are attributable to State and Local Governments).

13. *Id.*

14. *See What is the SALT Cap?*, PETER G. PETERSON FOUND. (Apr. 6, 2026), https://www.pgpf.org/article/what-is-the-salt-cap/ [https://perma.cc/R3C6-UTPX] (reporting that 20.8% of Washington D.C. residents took a SALT Deduction in 2020, while only 1.6% of taxpayers in Brownsville, Texas took a SALT deduction).

15. *See id.* (reporting that states with higher SALT Deductions per taxpayer also typically had higher personal income per capita and higher SALT tax rates).

16. *See The History of the SALT Deduction*, *supra* note 3 (reducing the category of deductible taxes to "income, property and sales taxes").

17. Mortimer M. Caplin, *Reflections on the Revenue Act of 1964*, 112 U. PA. L. REV. 857, 861 (1964).

18. Janice M. Johnson, *The Revenue Reconciliation Act of 1990: Another Skirmish in the Budget-Balancing Battle*, CPA J. ONLINE (Mar. 1991), http://archives.cpajournal.com/old/10504994.htm [https://perma.cc/ED9T-JKBA].

19. *The History of the SALT Deduction*, *supra* note 3.

20. The SALT deduction limit was increased to $40,000 from 2025–29, and it will revert back to $10,000 in 2030 with the passage of the One Big Beautiful Bill Act. *See* One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72, 169 (2025) (codified as amended at 26 U.S.C. § 164 (b)).

code.[21] But Ryan later stated that "[p]eople in states that have balanced budgets, whose state governments have done their job and kept their books balanced and don't have massive pension liabilities, they're effectively paying for states that don't."[22] Therefore, the TCJA was contentiously framed as a way to punish dysfunctional states for being fiscally irresponsible. Furthermore, the TCJA largely passed because the Republican Party had control of both the Executive and Legislative branches, so many saw the SALT Tax Cap as a punishment aimed at high-taxed "blue" states.[23] Following the implementation of the limitation, four "high-tax" states opened suit claiming the cap diminished their power to levy tax, and that it exceeded the federal government's taxing powers provided in the Sixteenth Amendment.[24] Although New York, Connecticut, Maryland, and New Jersey filed a petition for certiorari for the Supreme Court to hear the case[25], the Supreme Court did not grant the petition and has yet to speak on the constitutionality of the SALT tax limitation.[26]

Since being signed, the SALT tax cap has increasingly caused division among Democrats when considering different policy solutions moving forward.[27] Democrats from high-taxed states tend to argue for lifting the SALT tax cap because these states also tend to have significantly higher costs of living.[28] Former Representative Katie Porter, a Democrat who represented Orange County, California, at the time the SALT tax cap was implemented, argued: "[The] deduction exists to prevent Americans from being taxed again at the federal level on income already taxed and taken by their states."[29] On the other hand, other Democrats argue that lifting the SALT tax cap would disproportionately benefit the 20% wealthiest Americans.[30] Additionally, there are arguments that the SALT tax deduction is a significant waste of tax dollars.[31] Prior to 2017, the SALT deduction excluded over $69 billion from federal revenue.[32] After the TCJA implemented the SALT tax deduction limitation, the IRS increased its revenues by over $48 billion in 2023.[33] Although

21. Speaker Paul Ryan, *Speaker Ryan's Floor Speech on the Tax Cut and Jobs Act*, YOUTUBE at 4:59 (Nov. 16, 2017), www.youtube.com/watch?v=yNl8s7OBnRc [https://perma.cc/MX22-9FKD].

22. *The History of the SALT Deduction*, *supra* note 3.

23. *Id.*

24. Charlie Ban, *States File Lawsuit Over SALT Deductions Cap*, NAT'L ASS'N OF COUNTIES (Aug. 6, 2018), www.naco.org/articles/states-file-lawsuit-over-salt-deductions-cap [https://perma.cc/V6GA-59R4].

25. New York v. Yellen, 15 F.4th 569, 572 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 1669 (2022).

26. Press Release, Governor Kathy Hochul, Multistate Coalition Files Petition to U.S. Supreme Court to Hear Appeal (Jan. 3, 2022), governor.ny.gov/news/governor-hochul-and-attorney-general-james-continue-efforts-defend-salt-deduction [https://perma.cc/8SVZ-USEE].

27. *The History of the SALT Deduction*, *supra* note 3.

28. Abby Vesoulis, *A Wonky Tax Break for the Well-Off Is a Bigger Problem for Democrats Than You'd Think*, TIME (Dec. 16, 2021), time.com/6128775/salt-cap-democrats-divided/ (on file with the *Journal of Corporation Law*).

29. Press Release, Representative Katie Porter, Rep. Porter Reintroduces Legislation to Lower Taxes for Middle-Class Californians (Mar. 2, 2023), https://web.archive.org/web/20240528061617/http://porter.house.gov/news/documentsingle.aspx?DocumentID=519 (on file with the *Journal of Corporation Law*).

30. Vesoulis, *supra* note 28.

31. Richard V. Reeves & Christopher Pulliam, *Note to Bernie: The 8 Arguments for Restoring the SALT Deduction, and Why They're All Wrong*, BROOKINGS (June 24, 2021), https://www.brookings.edu/articles/note-to-bernie-the-8-arguments-for-restoring-the-salt-deduction-and-why-theyre-all-wrong/ [https://perma.cc/2UP7-7L9L].

32. *Id.*

33. *Id.*

the IRS collected roughly $4.7 trillion of tax revenue in fiscal year twenty-three,[34] the amount previously excluded due to the SALT Tax Deduction is approximately only 1% of revenues. Therefore, the SALT deduction limit does have an impact on IRS revenues. But overall, the amount is relatively insignificant.

In 2025, the Big Beautiful Bill extended the SALT tax deduction limitation until 2029; however, the extension did raise the limitation from $10,000 to $40,000 annually.[35] This extension applies to taxpayers with an annual income of under $600,000, and is thought to most benefit individual taxpayers in coastal cities in which high earners are subjected to significant state taxes.[36] Although the Big Beautiful Bill did narrow the impacts of the SALT deduction limitation, it still is a significant deduction barrier to high-earning individuals, and remains a highly debated provision of the Code.[37] Therefore, individual taxpayers and states will continue to utilize mechanisms to mitigate the adverse changes created from the TCJA.

B. Mediating the TCJA SALT Tax Deduction Limitation

Immediately upon the passage of the TCJA, taxpayers and states were looking for ways to mitigate the adverse changes to an individual's tax liability.[38] Even though the deduction limitation solely impacts individuals, states believed that it would lead to increased pressure to reduce their own tax collections.[39] Because of this fear, states began pursuing other means for taxpayers to deduct their taxes paid to reduce their overall taxable liability.[40]

One potential avenue explored was providing taxpayers a credit for donating to organizations focused on specific state and local programs.[41] Similar programs already existed in about thirty states, and provided an incentive for taxpayers to support programs created with the intent to better their state.[42] As an alternative to the SALT deduction, individual taxpayers could make charitable contributions that were deductible at both the

34. Press Release, Internal Revenue Serv., IRS Releases 2023 Data Book Describing Agency's Transformation Through Statistics (Apr. 18, 2024), https://www.irs.gov/newsroom/irs-releases-2023-data-book-describing-agencys-transformation-through-statistics [https://perma.cc/GE45-TAUK].

35. One Big Beautiful Bill Act, Pub. L. No. 119–21, 139 Stat. 72, 169 (2025) (codified as amended at 26 U.S.C. § 164 (b)).

36. *Id.*

37. Michael Ettlinger, *The SALT Caucus, Fortunately, Comes Up Short*, INST. OF TAX'N & ECON. POL'Y (July 2, 2025), https://itep.org/salt-cap-senate-tax-changes-trump-megabill/ [https://perma.cc/79AE-V8KX].

38. Leonard E. Burman & Frank Sammartino, *State Responses to the TCJA's SALT Deduction Limit May Be Costly and Favor High Income Residents*, TAX POL'Y CTR. (Jan. 30, 2018), www.taxpolicycenter.org/taxvox/state-responses-tcjas-salt-deduction-limit-may-be-costly-and-favor-high-income-residents (on file with the *Journal of Corporation Law*); *see generally* Jason Smathers, *Outfoxed or Conning Ourselves? Balancing Accountability, Business, and Fiscal Interests in Location-Based Tax Incentive Deals*, 44 J. CORP. L. 827 (2019) (showing how states have similar structured tax credits for businesses).

39. Smathers, *supra* note 38, at 830.

40. *Id.* at 834–36.

41. *Id.*

42. *See* Joseph Bankman et al., *State Responses to Federal Tax Reform: Charitable Tax Credits*, 159 STATE TAX NOTES 641, 641–42 (2018) ("Before the enactment of the Tax Cuts and Jobs Act . . . state charitable tax credits operated largely under the radar. Subsequently, these programs garnered new attention because of the tax advantage of making federally deductible gifts that reduce one's state tax liability.").

federal and state levels, or the state would provide a credit.[43] Thus, taxpayers had an alternative pathway to reduce their federal and state "double taxation."

Historically, both IRS rulings and case law supported the charitable contribution double deduction benefits.[44] But since the passing of the TCJA, the U.S. Department of the Treasury issued final rules that disincentivize states from distributing tax credits to taxpayers who are making charitable contributions with the intent to avoid the cap on SALT tax deduction limitation.[45] These final rules established that, "if a taxpayer makes a payment . . . and the taxpayer receives or expects to receive a state or local tax credit in return . . . the tax credit constitutes a return benefit, or quid pro quo, to the taxpayer and reduces the taxpayer's charitable contribution deduction."[46] Meaning that if a state is incentivizing the taxpayer in making a charitable contribution, the taxpayer would be precluded by the IRS from taking a charitable deduction on their federal return.[47] Therefore, taxpayers utilizing these charitable contribution programs to mitigate the SALT tax cap must seek other avenues.[48]

In the wake of the IRS ruling on charitable contributions, taxpayers and tax professionals began exploring a Pass-Through Entity Tax election as another avenue to mitigate the effects of the SALT tax deduction limitation.[49] The Pass-Through Entity Tax election (PTET) permits a pass-through entity to pay a tax on behalf of its partners, who then are able to receive a credit in their state to reduce their share of the entity's income.[50] A pass-through entity historically does not pay tax on its income because the income is allocated to each partner, who then pays the tax on their personal return.[51] Thus, a pass-through entity is generally not a taxable entity since all of its income and expenses are "passed through" and taxed at the individual level.[52] A complexity to the pass-through entity system is that individual taxpayers and the entity do not necessarily utilize the same method of accounting. Most individuals use the cash method of accounting, which reports income and expenses in the year that it is received or spent.[53] On the other hand, partnerships are

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43. *Id.* at 642–43.

44. *Id.*

45. Press Release, U.S. Dep't Treasury, Treasury Issues Final Regulations on Charitable Contributions and State and Local Tax Credits (June 11, 2019), home.treasury.gov/news/press-releases/sm705 [https://perma.cc/S8V7-3F2P].

46. Contributions in Exchange for State or Local Tax Credits, 84 Fed. Reg. 27513 (June 13, 2019) (to be codified at 26 C.F.R. pt. 1) (emphasis omitted).

47. *Id.*

48. Joe Kristan, *State Tax News & Views: Charity SALT Cap Workarounds Fail; Entity Tax Workarounds Unaffected.*, EIDE BAILLY (Apr. 5, 2024), www.eidebailly.com/insights/blogs/2024/4/salt20240405 [https://perma.cc/9B87-YXL8].

49. *Id.*

50. *Id.*

51. *Tax Information for Partnerships*, IRS, www.irs.gov/businesses/partnerships [https://perma.cc/W4FT-7TAH].

52. Anthony J. Nitti, *Partnership Taxation*, CCH ANSWERCONNECT, answerconnect.cch.com/topic/5557e8c87c6b1000949890b11c2ac4f102/partnership-taxation [https://perma.cc/4Q9K-6SJ7] (on file with the author).

53. Robert Recchia, *Cash Method of Accounting*, CCH ANSWERCONNECT, answerconnect.cch.com/topic/21df0e607c691000a60490b11c18cbab0c/cash-method-of-accounting [https://perma.cc/9KQN-WCPC] (on file with the author).

required to use the method utilized for calculating their books.[54] Only "small businesses" are eligible to use the cash accounting method.[55] Entities not eligible to use the cash accounting method utilize the accrual accounting method, which recognizes income and expenses when earned or incurred, rather than when cash is constructively received or spent.[56] What makes this complicated is that a partnership may record income that is not realized income for the individual partners.[57] Thus, there can be a disconnect between when income and expenses are reported on both the partnership's and the partner's tax returns.

A benefit of the pass-through entity system is that it avoids a "second layer of tax" that would typically be paid under a corporate tax structure.[58] Since this tax election only applies to pass-through entities, it limits a taxpayer's eligibility to mitigate the SALT tax cap limitation to taxpayers who participate in pass-through entities. Pass-Through Entities can include four different types of entities: S Corps, LLCs, partnerships, and sole proprietorships.[59] As of 2021, the IRS processed 4.5 million partnership returns—including S-Corps, LLCs, and Partnerships—[60] but these returns do not represent the total amount of individual taxpayers who would be eligible for the election.

Connecticut was the first state to create a Pass-Through Entity Tax in Response to the TCJA.[61] The tax legislation resulted in shifting most compliance responsibilities from individuals to the entity level (i.e., the partnership itself).[62] Connecticut's pass-through entity tax was initially mandatory for all partnerships, S corporations, and limited liability companies.[63] Each partner or shareholder then had a tax credit available to reduce their taxable income within the state.[64] Many states have followed suit in enacting or proposing their own similar PTE election programs.[65]

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54. 26 C.F.R. § 1.446-1 (2026).

55. *What's the Best Accounting Method Route for Business Tax Purposes?*, YEO & YEO (Feb. 12, 2024), www.yeoandyeo.com/resource/whats-the-best-accounting-method-route-for-business-tax-purposes [https://perma.cc/3TXE-K2W8] (noting that the TCJA expanded small business eligibility to extend to businesses averaging gross receipts of less than $30 million over three years).

56. *What Is Accrual Accounting?*, HARV. BUS. SCH. ONLINE (Sept. 29, 2016), online.hbs.edu/blog/post/what-is-accrual-accounting [https://perma.cc/G7Y4-UVF9].

57. *Id.*

58. Nitti, *supra* note 52.

59. *Pass-Through Entity: Overview and FAQs*, THOMSON REUTERS, https://tax.thomsonreuters.com/en/glossary/pass-through-entity [https://perma.cc/BW5P-898S].

60. RON DECARLO, TUBA OZER-GURBUZ & NINA SHUMOFSKY, PARTNERSHIP RETURNS, TAX YEAR 2021 2 (2023) https://www.irs.gov/pub/irs-soi/soi-a-copa-id2305.pdf [https://perma.cc/C8HV-UMJG].

61. *Connecticut Enacts Pass-Through Entity Tax and Other Responses to Federal Tax Reform*, BDO (May 24, 2018), www.bdo.com/insights/tax/connecticut-enacts-pass-through-entity-tax-and-other-responses-to-federal-tax-reform [https://perma.cc/H6CS-NBWP].

62. Brian Kirkell, Robert Zonenshein & Mo Bell-Jacobs, *Pass-Through Entity Elections Are Here to Stay: What You Need to Know*, RSM (June 15, 2023), rsmus.com/insights/services/business-tax/pass-through-entity-elections-are-here-to-stay-what-you-need-to-know.html [https://perma.cc/2ED4-U6E6].

63. *Connecticut Enacts Pass-Through Entity Tax and Other Responses to Federal Tax Reform*, *supra* note 61.

64. *Id.*

65. *State Pass-Through Entity (PTE) Map*, AM. INST. OF CERTIFIED PUB. ACCTS. (Apr. 14, 2026), https://www.aicpa-cima.com/resources/download/state-pass-through-entity-pte-map [https://perma.cc/S2TQ-8Z8J].

The IRS has since released forthcoming regulations in response to increased usage of PTET elections. In the proposed regulations, they confirm that, "Specified Income Tax Payments . . . are deductible by partnerships and S corporations in computing their non-separately stated income or loss."[66] Specified Income Tax Payments include amounts paid on behalf of partners and partners receive some type of tax benefit as a result of the entity-level tax.[67]

Since 2018, 36 states have established some form of PTET,[68] but each state's requirements vary on how an entity can make the election, how the tax is calculated, and how the partner accounts for the tax paid by the partnership.[69] Furthermore, since the PTET is a newer mechanism, there is little guidance at both the federal and state levels.[70] Furthermore, in larger pass-through entities, there is a risk that resident partners will benefit at the cost of non-resident partners, since some non-resident partners are unable to claim credits for taxes paid in other states.[71]

C. The Future of the Pass-Through Election Tax

The State Tax Deduction Limitation was extended through the Big Beautiful Bill until 2029.[72] Because these sunset provisions are temporary, it leaves uncertainty about the future of the updated tax policy, especially due to increased polarization since 2016.[73]

Since a Republican-controlled legislature passed the TCJA and the Big Beautiful Bill, the Acts have largely been criticized for being partisan, especially since some critics argue that it benefits wealthier Americans more than the average American.[74] Interestingly, President Trump has publicly criticized the TCJA, specifically targeting the SALT tax cap.[75] Although he has voiced criticism, other Republican representatives have not publicly voiced similar sentiments, making it unclear how Republican representatives may view specific tax policies.[76] Senate Minority Leader Chuck Schumer found President Trump's criticism on the SALT deduction limitation hypocritical, saying that he "must be suffering from selective amnesia, because he was the one who took away people's SALT deductions

66. IRS, FORTHCOMING REGULATIONS REGARDING THE DEDUCTIBILITY OF PAYMENTS BY PARTNERSHIPS AND S CORPORATIONS FOR CERTAIN STATE AND LOCAL INCOME TAXES 5 (2020), https://www.irs.gov/pub/irs-drop/n-20-75.pdf [https://perma.cc/H3RM-GJKF].

67. *Id.* at 5–6.

68. *State Pass-Through Entity (PTE) Map*, *supra* note 65.

69. Liz Pascal, *Are Pass-Through Entity Taxes Worth the Hype?*, ILL. TAX SCH. (Aug. 7, 2023), taxschool.illinois.edu/post/are-pass-through-entity-taxes-worth-the-hype/ [https://perma.cc/E9E6-5P22].

70. *Id.*

71. *Id.*

72. One Big Beautiful Bill Act, Pub. L. No. 119–21, 139 Stat. 72, 169 (2025) (codified as amended at 26 U.S.C. § 164 (b)).

73. David D. Stewart & Ted Peterson, *The SALT Cap After 2025*, TAX NOTES (July 11, 2024), https://www.taxnotes.com/tax-notes-live/tax-notes-talk/salt-cap-after-2025/7kgrb (on file with the *Journal of Corporation Law*).

74. *Id.*; *see also* Reeves & Pulliam, *supra* note 31 (reporting that removing the limitation would provide the top 1% with an average tax cut of $35,000, but only a $37 tax cut for the average taxpayer).

75. *See* President Donald J. Trump (@realDonaldTrump), TRUTH SOC., *VOTE FOR TRUMP! I will turn it around, get SALT back, lower your Taxes, and so much more.* (Sept. 17, 2024), https://truthsocial.com/@realDonaldTrump/posts/113154156175795473 (on file with the *Journal of Corporation Law*).

76. *See* Stewart & Peterson, *supra* note 73 ("The discussion . . . is still . . . unclear about what Republicans would do with the SALT cap, relative to lifting it entirely, or modifying the existing cap as is in place right now.").

in the first place. [The TCJA was] a dagger aimed at blue states that want to spend a little more to help people with housing, and health care, and education, [and] transportation."[77] Although critical of the President's policy agenda, Schumer also advocates for the limitation to be removed.[78] It remains even more complicated because Democrats remain split on solutions. Representatives from high-taxed states continue to argue for the permanent removal of any limitation on SALT Tax Deductions.[79] While Representatives from lower-taxed states continue to argue for the SALT Tax limitation to remain in place.[80] Although some Democrats have previously pushed Biden to lift the cap as part of his own tax policy, their efforts resulted in little movement throughout the entirety of Biden's administration.[81]

Although Republicans appear to remain more united and would likely extend the TCJA, there is still a potential that they would modify or replace the SALT Tax Deduction limitation.[82] The political uncertainty in both major parties is largely driven by who would benefit from lifting the SALT Deduction.[83] Prior to the limitation, 71% of taxpayers benefiting from the SALT Deduction earned over $200,000 in the tax year.[84] Since the limitation has been implemented, the main beneficiaries of the benefit remain taxpayers earning over $200,000.[85]

III. ANALYSIS

A. How The Pass-Through Entity Tax Election Disproportionately Favors Certain Individuals

In 2021, the IRS processed over 160 million individual tax returns[86] and 4.5 million partnership tax returns.[87] Of those 4.5 million partnerships, 30 million partners were represented.[88] Of the 30 million partners represented, over 32% of those partners were in partnerships with assets over $100 million.[89] These numbers show that, of the individual returns filed with the IRS, less than 18% of the individuals filing are members of a partnership. Of those 18% who are in a partnership, 6% are members of a partnership with assets over $100 million. These partnerships are primarily in the finance and real estate sector, accounting for over two-thirds of all income reported by partnerships in 2021.[90] Because the only people who can benefit from a Pass-Through Entity Tax Election are

77. Tami Luhby, *Trump Suggests Reversing His Cap on State and Local Tax Deductions*, CNN (Sept. 18, 2024), cnn.com/2024/09/17/politics/donald-trump-salt-tax/index.html [https://perma.cc/U5VN-6T9B].

78. *See id.* (noting Schumer called the SALT Deduction Limitation "a nasty piece of legislation supported by Donald Trump").

79. Stewart & Peterson, *supra* note 73.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *What is the SALT Cap?*, *supra* note 14.

85. *Id.*

86. Erica York & Claire Rock, *Sources of Personal Income, Tax Year 2021*, TAX FOUND. (June 27, 2024), taxfoundation.org/data/all/federal/personal-income-tax-returns-data [https://perma.cc/XHF8-6TP9].

87. DECARLO, OZER-GURBUZ & SHUMOFSKY, *supra* note 60, at 1.

88. *Id.*

89. *Id.* at 2.

90. *Id.* at 1.

individuals who are partners in a pass-through entity, and only about 18% of individuals filing annual returns are members of a partnership, permitting a Pass-Through Entity Tax Election allows a limited number of individuals to circumvent the SALT tax deduction limitation. Furthermore, the majority of individuals who may take advantage of a Pass-Through Entity Tax Election are generally high-taxed individuals—as most are members of a partnership with assets over $100 million.[91]

The SALT Tax Deduction Limitation was primarily designed to block high-income taxpayers from avoiding paying their fair share.[92] Because of that, if the only people that can benefit from the Pass-Through Entity Tax Election are the very same high-income taxpayers that the limitation was designed to target, permitting states to create a Pass-Through Entity Tax Election provision undermines the purpose of the SALT tax deduction limitation. Since the IRS embraced the Pass-Through Entity Tax Election in 2020,[93] 26 additional states enacted or proposed pass-through entity tax. The legislative movement suggests a trend of continued growth in partnerships making the election.[94] Most of these states' Pass-Through Entity Tax Election taxes include provisions that would repeal the tax provision if the $10,000 SALT Tax Deduction Limitation is repealed or expires at the federal level. Thus, it is clear that the states passing these policies are doing so to specifically mitigate the impacts of this federal deduction limitation.[95] As entity-level tax payments become more common through the increased support of most state governments, the SALT Tax Deduction limit will positively benefit high-income individuals in partnerships more than other individuals.

B. Permitting a Pass-Through Entity Tax Election Increases Net Costs and Inefficiencies in Tax Compliance & Operations

1. Increased Cost in Tax Compliance

As mentioned in the background, as of May 2024, over 36 states have enacted some type of Pass-Through Entity Tax Election.[96] Each state's election program varies significantly in how to elect, whether the election is mandatory or optional, how to calculate the tax, and how the credit is taken at the partner level.[97] Because of these inconsistent standards and limited guidance, it can be challenging to determine if the PTET election is a net tax benefit.[98] Tax professionals at RSM report that "understanding whether a PTE election

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91. *Id.*

92. *See* Speaker Paul Ryan, *supra* note 21 (arguing that states that maintained fiscal responsibility were paying for states that did not).

93. *See* IRS, *supra* note 66, at 1 (reporting that the IRS intends to issue regulations that permit deductions of "Specified Income Tax Payments" at the entity level of pass-through entities).

94. *See State Pass-Through Entity (PTE) Map*, *supra* note 65 (showing the effective tax year for each state with enacted or proposed Pass-Through Entity Level Tax); *see also Elective Pass-Through Entity Tax*, WOLTERS KLUWER (Mar. 9, 2022), www.wolterskluwer.com/en/expert-insights/whole-ball-of-tax-elective-pass-through-entity-tax (on file with the *Journal of Corporation Law*) (noting that IRS Notice 2020-75 prompted even more states to create Pass-Through Entity Tax Laws).

95. *See Elective Pass-Through Entity Tax*, *supra* note 94 ("Many states that enacted elective PTE taxes include provisions . . . to align with the end of the SALT cap.").

96. *State Pass-Through Entity (PTE) Map*, *supra* note 65.

97. Pascal, *supra* note 69.

98. IRS, *supra* note 66, at 5–6.

results in a benefit requires modeling and detailed analysis of all the risks and opportunities involved."[99] The entity must consider both state and federal implications of the elections.[100] For example, a pass-through entity must consider questions like: how the income is sourced, how the tax base is determined, and how it may impact their partners.[101] This non-exhaustive list of analyses all come at a cost—increased tax professional fees & a more complicated tax compliance process.

Beyond the initial consideration of whether a Pass-Through Entity Tax Election would be beneficial, pass-through entities and tax professionals must also consider the additional annual expense required in maintaining the Pass-Through Entity Election.[102] For example, making a Pass-Through Entity Tax Election may require new state tax filing requirements, thus increasing costs related to tax services.[103]In conclusion, the election may result in a more complicated tax compliance process, resulting in higher tax professional fees.

Furthermore, there is also additional consideration to be had for each individual taxpayer. Some states require the individual taxpayer to file within the state to receive the tax credit associated with the Pass-Through Entity Election.[104] Therefore, a non-resident partner may have to file in other states in addition to the state in which they claim residency.[105] Even if they receive a benefit through the election, overall the burden may outweigh the benefits, as it may require a more complicated filing process with additional fees from tax services and filing.[106]

With each level of consideration required, the cost of tax compliance services increases significantly. Most partnerships utilize a certified public accounting firm or professional to ensure timely tax compliance, who, as of 2020, charged an average of $177.29 per hour in completion of Partnership Tax Returns (Form 1065).[107] Since 2020, these tax fees have continued to increase—increasing over 25% in 2023—due to a shortage of qualified tax professionals.[108] With increased costs in tax professional fees, each added step of analysis required increases the overall expense of the election, which may reduce the overall benefit of the Pass-Through Entity Tax Election.[109]

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99. Kirkell, Zonenshein & Bell-Jacobs, *supra* note 62.

100. *Id.*

101. *Id.*

102. Patrick Walsh, *State PTE Elections: A Big Picture Perspective*, THE TAX ADVISER (Aug. 1, 2022), www.thetaxadviser.com/issues/2022/aug/state-pte-elections.html [https://perma.cc/Z6A8-KKUY].

103. *Id.*

104. *Id.*

105. *Id.*

106. *See* Kirkell, Zonenshein & Bell-Jacobs, *supra* note 62 (noting that "not all PTE members will benefit from electing into a state workaround").

107. NAT'L SOC'Y OF ACCTS., INCOME AND FEES OF ACCOUNTANTS AND TAX PREPARERS IN PUBLIC PRACTICE: 2020-2021 SURVEY REPORT, 26 (2020).

108. Rebecca Chen, *Tax Prep Fees Are Rising Because Accounting Is Not a 'Cool' Career*, YAHOO! FIN. (Jan. 6, 2024), https://finance.yahoo.com/news/tax-prep-fees-are-rising-because-accounting-is-not-a-cool-career-140416424.html (on file with the *Journal of Corporation Law*).

109. *See* Kirkell, Zonenshein & Bell-Jacobs, *supra* note 62 ("PTEs, especially large, multi-state entities, should be aware that the aggregate additional state tax burdens might exceed the federal tax savings.").

2. *Operational Inefficiencies and Considerations*

In addition to the many tax compliance considerations that need to be taken before making a Pass-Through Entity Tax Election, there are also operational considerations that complicate making this election. In addition to increased tax preparation fees, each entity must also consider further factors. A pass-through entity may now have to adjust its historic cash flow operations because they are now responsible for paying all state tax payments at the entity level.[110] For example, a partnership that previously earned $100 of income would not have to consider the income tax expense incurred because of that income.[111] Instead, the individual partners would report their share of income and pay tax on it.[112] Thus, if an entity elects to pay a state tax on behalf of its partners, it also must adequately adjust cash distributions and expenses to incur the additional expense. For example, if a partnership makes a Pass-Through Entity Tax Election in Minnesota, it must make quarterly estimated tax payments based on the estimated Pass-Through Entity Tax. If the partnership fails to make accurate estimated payments there may be additional tax penalties.[113] Meaning that larger partnerships operating in multiple states, with partners from multiple states, must be vigilant in determining which states a Pass-Through Election makes sense and maintaining timely estimated tax payments in those states.

Additionally, beyond retaining more cash, an entity also must carefully consider the timing of each tax payment to ensure that they are properly aligned with the credits received based on both accrual-basis and cash-basis taxpayers.[114] For example, if an entity makes a tax payment for the tax year 2023 in early 2024, the deduction would not be available for cash-basis taxpayers until 2024. Thus, a partnership making a pass-through entity election could create a further disconnect between tax payments recognized at the entity level and reported at the individual level.

In short, because the PTE election requires extensive consideration at both the entity and individual level, there is a high risk that the increased cost of analysis, compliance, and operational changes may outweigh the benefit of circumventing the SALT tax cap.[115] Furthermore, the increased cost and inefficiencies of compliance and operations of the Pass-Through Election make it a time-intensive loophole for individuals to pursue.

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110. Walsh, *supra* note 102.

111. Tralawney Trueblood, *Partnerships (State Tax)*, CCH ANSWERCONNECT, answerconnect.cch.com/topic/1bfef46e7deb1000ba15000d3a8abb4e02/partnerships-state-tax [https://perma.cc/73BT-KNTY] (on file with the author).

112. *Id.*

113. *Pass-Through Entity (PTE) Tax*, MINN. DEP'T OF REVENUE, revenue.state.mn.us/pass-through-entity-pte-tax [https://perma.cc/89C5-6SJB].

114. *Id.*

115. *Id.*; *see also A New Frontier in State Taxation: Pass-Through Entity Tax*, PBMARES, www.pbmares.com/insights-tax-state-taxation-pass-through-entity-tax/ [https://perma.cc/9DPH-TQTS] (explaining that "[i]n theory, the PTET might appear simple and straight-forward. But in practice, the opposite is proving to be true" and "the potential costs or uncertainties may negate the hoped-for tax savings").

IV. Recommendation

A. Representatives Should Completely Remove Any SALT Tax Limitation

Immediately upon the implementation of the TCJA in 2017, representatives started to propose policy changes to mitigate the effects of the SALT Tax Deduction Limitation. One proposal, in 2018, H.R.5377, sought to remove the limitation for any taxpayers who do not exceed an annual adjusted gross income of over $100 million.[116] Although this proposal passed the House, it passed with a narrow margin (218-206), and it did not progress after being proposed in the Senate. This legislative record suggests that even though there have been representatives calling for the removal of such limitation, there is also strong support in maintaining such limitation.[117] The clear polarization of the limitation suggests that upon the Big Beautiful Bill's expiration in 2029, it is unclear what the future of the SALT Tax Deduction cap will be.

Upon the expiration, the SALT tax deduction will return, unless Congress acts. Currently, there are multiple recommendations, from both Democratic and Republican representatives, as replacements or modifications to the SALT Tax Cap. For example, Former Representative Katie Porter has suggested removing the SALT Tax Deduction Cap for people making less than $400,000 annually.[118] Although her proposal recognizes the burden of double taxation, specifically because California, her home state, is known for being a high-tax state, her proposal would maintain a SALT Tax Cap for all individuals whose annual earnings are above this threshold. Her proposal claims it would raise tax revenues by $150.9 billion over ten years when compared to the prior TCJA SALT Cap,[119] but it does not address how the increased limitation of the Big Beautiful Bill or workarounds like the Pass-Through Entity Tax Election would change the analysis. Under her proposal, the Pass-Through Entity Tax Election "loophole" would continue to permit specific individuals from circumventing the deduction limitation even if they earn over the threshold annually, while limiting other individuals who are not part of pass-through entities.[120] Overall, this would allow only certain high-income earners to strategically avoid their tax burden under the proposal.[121]

Currently, under the Big Beautiful Bill, the limitation has been raised to $40,000, but the deduction is phased out for taxpayers earning over $500,000.[122] Although the Bill is now law, both parties disagree significantly over the future of the SALT Tax Limitation. The increased limitation is set to expire in 2029, which will likely mean the SALT Tax Limitation conversation is far from over. An additional hurdle in consideration is President

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116. H.R. 5377, 116th Cong. (2019).

117. *See* Taylor, *supra* note 8 (showing that Representatives perceived the SALT Tax Deduction limitation as a punishment towards high-taxed "blue states").

118. Porter, *supra* note 29 ("My bill restores tax fairness for Americans who have experienced the burden of double taxation.").

119. *Id.*

120. *Id.*

121. *Id.*

122. Fredrick Hernandez, *SALT Deduction Changes in The One Big Beautiful Bill Act*, BIPARTISAN POL'Y CTR. (July 30, 2025), https://bipartisanpolicy.org/explainer/salt-deduction-changes-in-the-one-big-beautiful-bill-act/ (on file with the *Journal of Corporation Law*).

Trump's hostility, including targeted funding cuts, towards the IRS which makes enforcing and auditing more complicated tax proposals more challenging.[123]

While this proposal does alleviate the burden of double taxation on most Americans, it still does not address the burden of double taxation on all Americans. Since it would maintain a limitation based on an income threshold, it would continue to permit "double taxation" for wealthier Americans. Although some politicians would argue that wealthier Americans may be better positioned for "double taxation," there are equity concerns because many believe that early Congress included a SALT deduction to reinforce federalism and fairness.[124]

Proposals like this remove the limitation for taxpayers under a specific threshold. While alleviating the burden on most Americans, the policy appears to not have sufficient support to become enacted. Furthermore, it does not address considerations of double taxation and how this limitation conflicts with traditional notions of federalism. Therefore, upon the expiration of the Big Beautiful Bill in 2029, representatives should not propose policies of similar SALT Tax Deduction limitations.

B. IRS Should Reconsider the Permissibility of Pass-Through Entity Tax Elections

Regardless of the future of the SALT Tax Deduction Limitation, the number of states that have created and implemented Pass-Through Entity Tax Elections suggests that this regime may become a more permanent fixture in our tax system. As of right now, the IRS has continued to support Pass-Through Entity Tax Election systems at the state level.[125] As mentioned in Part II, the Pass-Through Entity Tax Election creates a tax mechanism that does not connect with the legal structure of a partnership.[126] Additionally, the increased burden and cost of analysis and tax compliance suggest that these systems that already circumvent the legal purpose and function of a Partnership, also create a complex web of considerations that an average taxpayer is unable to adequately navigate without extensive professional support. Because of the complexity, cost, and inefficiencies of this system, the IRS should reconsider the permissibility of the Pass-Through Entity Election processes.

V. CONCLUSION

The power of taxation is a fundamental principle of the federalist system of the United States. Raising sufficient tax revenues is an essential function of both the federal and state governments to ensure effective public programs and governance. Although the SALT Tax Deduction cap, on its face, provides additional tax revenues to the federal government, the IRS permitting a Pass-Through Entity Tax Election to serve as a workaround for

123. Natalie Alms, *Some Republicans Question Trump's IRS Budget Cuts*, NEXTGOV/FCW (May 6, 2025), nextgov.com/modernization/2025/05/some-republicans-question-trumps-irs-budget-cuts/405109/ [https://perma.cc/2LSM-WXL2].

124. *See generally supra* Part II.A (discussing the history and legislative intent of the SALT deduction).

125. *See* IRS, *supra* note 66, at 1 (clarifying that "[s]tate and local income taxes imposed on and paid by a partnership or an S corporation on its income are allowed as a deduction by the partnership or S corporation").

126. *See* Nitti, *supra* note 52 (emphasizing that the partnership is generally not a taxed entity, since earnings are taxed at the individual partner level).

individuals limited by the SALT Cap directly diminishes the purpose and intent of the SALT Tax Deduction limitation.

Although the SALT Tax Cap Limitation provision does expire in 2029, the permissibility of using pass-through entities to strategically reduce individual tax burdens suggests an acceptance of tax workarounds that largely benefit individuals who have the financial standing and literacy to make more strategic tax decisions to reduce their effective tax rate. Though still supported through current IRS notices, permitting a pass-through entity to pay tax on behalf of its partners diminishes the purpose of the legal entity classifications and increases both inefficiencies and ineffectiveness throughout the tax compliance process.

In an increasingly polarized political climate, implementation of tax policy has now become an ultra-partisan issue. Throughout the 2024 election season, both Republican and Democratic candidates utilized tax policy as key arguments for their candidacy, but both parties have failed to provide comprehensive policies that could address the key issues relating to tax collection mechanisms and avoidance. Moving forward, both parties should strongly consider the removal of the SALT Tax Deduction Cap and advocate for the IRS to reconsider the permissibility of Pass-Through Entity Tax Elections.