

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

March 5, 2018

The Honorable David J. Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Acting Commissioner Kautter:

We write to reiterate our serious concerns about Internal Revenue Service (IRS) interpretation of the new tax law's provisions regarding prepayment of 2018 state and local taxes, and to request an update by March 16th on IRS actions to implement this aspect of the law.

The Tax Cuts and Jobs Act of 2017 (TCJA) did not fail to envision that taxpayers might prepay 2018 state and local taxes before the end of 2017 in order to claim an itemized deduction on their 2017 taxes. To the contrary, the new law set out precise conditions for the administration of these prepayments. It explicitly barred taxpayers from claiming an itemized deduction in 2017 on a prepayment of state or local *income* taxes for future years. However, the statute included no language whatsoever disallowing prepayment of 2018 *real estate* taxes in 2017.

Yet, six days after the TCJA was enacted on December 22, 2017, the IRS issued IRS Advisory IR-2017-210, which invented restrictions on the prepayment of property taxes that were not set out in—and in fact were wholly unsupported by—the statute. The Advisory stipulated that 2018 state and local property tax prepayments would only be deductible in the 2017 tax year if the property taxes were assessed in 2017. The word “assessed” does not appear anywhere in the section of the law addressing the State and Local Tax Deduction. We are aware of no report language, hearing testimony, or any other indication that Congress contemplated such a restriction, or delegated to the IRS the ability to establish one.

In fact, when Congress singled out a prohibition on *only state and local income tax prepayment* for future years, it is entirely reasonable to conclude that the omission of state and local property taxes was the express intention of the law. This is a plain-language reading of the statute. There is no reason to believe that Congress made a mistake in omitting property tax prepayments, and there was certainly no basis for the IRS to substitute its own policy judgments that departs from the act of Congress, especially when the consequence of the IRS's determination may have cost taxpayers millions of dollars.

We view this as a clear case of bureaucratic overreach, and now, as a result, many of our constituents are losing a valuable deduction—and consequently part of their hard-earned income. In Amherst, Massachusetts, for example, city officials collected \$300,000 in real estate taxes on a single day at the end of last year. New Jersey residents prepaid over \$300 million in property taxes in the days between the law's enactment and the end of the year. Families who made these payments—and families who were discouraged from doing so because of the IRS Advisory—may see negative financial consequences as a result of IRS action not authorized by Congress, either as a result of audits or as a result of being deterred from accessing an allowed deduction. This is unacceptable.

Even worse, we were vexed to read the January 12th BNA article, “Mnuchin Warns of Audits in Blue States as Tax Showdown Continues,” in which Secretary Mnuchin is quoted as saying, “I can assure you we will audit the real estate issue.” As representatives of the taxpayers the Treasury Secretary favors targeting for audits, we demand information on this targeted audit initiative.

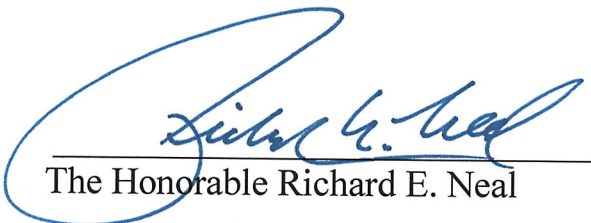
The end-of-year rollout of this tax law change was haphazard and sloppy. The bill was enacted less than ten days before the end of the tax year, in the midst of the holidays, when many municipal offices were closed and unavailable to accept prepayments. Then, the IRS offered no guidance until the very end of the year, December 28th. If our constituents found this conflicting information confusing, it is no surprise and no fault of theirs. Now, after this confusing and disorganized process, the Treasury Secretary is indicating that the IRS leadership will pursue aggressive enforcement against these taxpayers. We are surprised and dismayed at this expression of IRS priorities, and we are angry to read of this naked political payback against taxpayers in “blue” states.

Given this harm to our constituents, we request that you furnish us with answers to the following questions as quickly as possible:

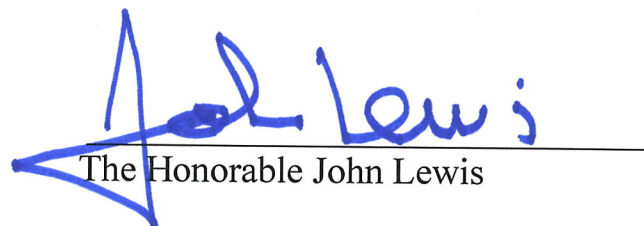
- Please explain in detail the agency's plans for real estate audits. How many enforcement agents and other agency resources will be dedicated to this? Will enforcement be spread evenly across all 50 states, or will the audits target taxpayers in blue states? Given how strapped the IRS is for resources, what other enforcement initiatives will recede in priority to accommodate the real estate audits?
- What statutory language or other evidence did the IRS consider authorization to disallow the itemized deduction of 2018 property tax prepayments made in 2017?
- The word "assessed" did not appear anywhere in the section of the TCJA devoted to the State and Local Tax Deduction. On what theory did IRS determine it had authority to restrict taxpayers' access to this deduction based on whether their 2018 state and local property taxes had been assessed?
- How many taxpayers have claimed itemized deductions for property tax prepayments, and in what counties/states do they reside? What was the dollar value of these deductions?

We appreciate your response by March 16, 2018.

Sincerely,



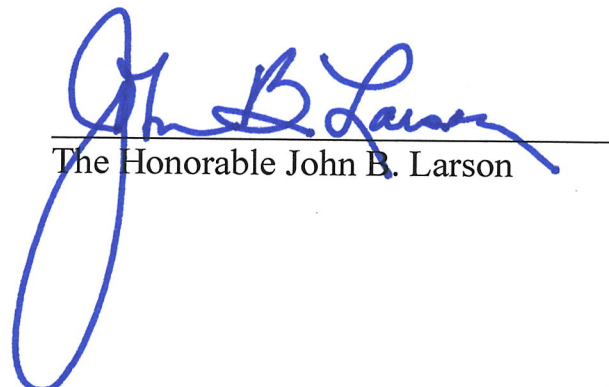
The Honorable Richard E. Neal



The Honorable John Lewis



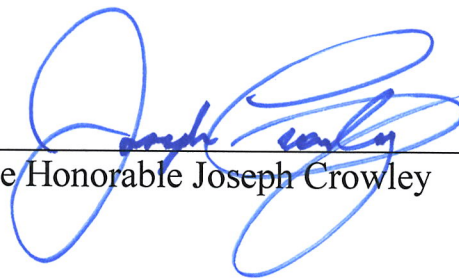
The Honorable Mike Thompson



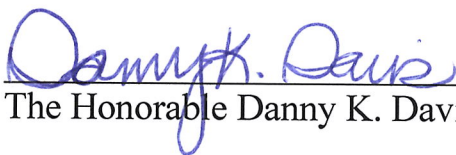
The Honorable John B. Larson



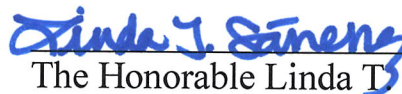
The Honorable Bill Pascrell, Jr.



The Honorable Joseph Crowley



The Honorable Danny K. Davis



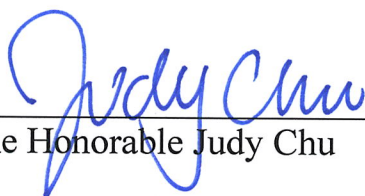
The Honorable Linda T. Sánchez



The Honorable Brian Higgins



The Honorable Suzan DelBene



The Honorable Judy Chu