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# Rich people in high-tax states are using this strategy to evade SALT caps

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Residents in high-tax states are getting creative when it comes to evading the $10,000 cap on state and local tax deductions implemented as part of the Tax Cuts and Jobs Act, tapping a strategy one expert says may actually be permissible under current Internal Revenue Service (IRS) guidelines.

High net worth individuals have been utilizing non-grantor trusts, which are taxable entities where the assets are owned by the trust, to get more deductions for their properties. A separate tax return needs to be filed for these trusts.

Taxpayers can take one or more of their properties to form a limited liability company (LLC), then take the shares of that LLC and divide it into multiple non-grantor trusts to maximize their benefits.

For example, someone with $30,000 in property taxes on a multimillion property can split it into three non-grantor trusts, getting the maximum $10,000 exemption for each trust, according to Elijah Kovar, founding partner of Great Waters Financial, told FOX Business.

The catch is that the trust needs to be generating income in order for the taxpayer to be able to claim the deduction. That can mean the individual could rent the property or put securities-paying dividends into the trust as well.

“Ideally you would want to generate enough income so that after the deduction the trust has about $12,000 so as to get the maximum bracket benefit of the deduction,” Michael D'Addio, principal at Marcum LLP, told FOX Business.

D’Addio noted that the trusts must also be structured in a certain way – with different terms – to avoid treatment as a single trust. That means, for example, different distribution standards. He also said careful crafting is required to get around grantor trust treatment.

Additionally, these trusts are not cheap. Kovar said it can take $10,000 to $20,000 to set up and administer one of these non-grantor trusts.

Taxpayers have also been setting up the LLCs in states without income tax, such as Alaska, Delaware or Nevada, to avoid state taxes on assets.

Still, so far the strategy seems to be working.

“I know the IRS isn’t cracking down on these,” Kovar said. “This seems like the most viable, legitimate strategy [to get around the SALT cap].”

While the tactic itself is not new, it is just gaining popularity as a way to avoid the SALT cap, Kovar said. In May, the IRS said it would release guidance addressing states that have sought to allow taxpayers to make charitable contributions to an established state fund in order to earn a credit with the goal of allowing residents to take the full amount given as a deduction.

The Tax Cuts and Jobs Act, signed into law by President Trump in December, decreased the cap on SALT deductions to $10,000, which is well below the average amounts claimed by individuals residing in states such as New York, California and New Jersey. The average deduction claimed in California, for example, is $22,000, according to Kevin de Leon, a Democratic member of the California State Senate.

In November, U.S. Treasury Secretary Steven Mnuchin said he hoped initial proposals to eliminate SALT deductions altogether would encourage change among lawmakers in high-tax states.

“I do hope that this sends a message to the state governments that, perhaps, they should try to get their budgets in line,” Mnuchin said during a speech at the Economic Club of New York. “And the question is: Why do you need 13% or 14% state taxes?”