

DIVISION OF REVENUE
TECHNICAL INFORMATION MEMORANDUM 2019-1
February 26, 2019

**SUBJECT: ITEMIZED DEDUCTIONS: \$10,000 AGGREGATE LIMIT ON STATE
AND LOCAL TAXES PAID**

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Prior to the Tax Cuts and Jobs Act (“TCJA”), individuals were permitted to claim an unlimited amount of state and local real property and income taxes paid as itemized deductions. For tax years 2018 through 2025, TCJA limits deductions for taxes paid by individual taxpayers to \$10,000 per year, or \$5,000 for a married individual filing a separate return. This limitation does not apply if the taxes are paid or accrued in carrying on a trade or business or in an activity engaged in for the production of income (e.g., deductible on a Schedule E or Schedule C).

Because Delaware follows federal law regarding itemized deductions, the question has arisen as to how Delaware will apply this rule. It is Delaware’s position that a taxpayer will be entitled to an itemized deduction for state and local taxes equal to the total real property taxes and local income taxes paid, up to the maximum \$10,000 (or \$5,000 for married individuals filing a separate or combined separate return). While Delaware requires a downward adjustment of itemized deductions for state income taxes paid, this adjustment will not be required as long as the taxpayer has paid more than \$10,000 of real property and local income taxes, excluding state income taxes. The downward adjustment may be limited if the taxpayer’s total state and local taxes paid exceed \$10,000, as taxpayers will be permitted to deduct an amount equal to their total real property and local income taxes paid. Married taxpayers who elect to file a joint federal return, but a separate or combined separate Delaware return will each be permitted an itemized deduction of up to \$5,000 on their respective Delaware returns. Married taxpayers may allocate real estate taxes paid between their returns as they deem appropriate.

Example 1: A taxpayer paid \$11,000 of real property taxes, \$2,000 of local income taxes, and \$5,000 of state income taxes, and included an itemized deduction of \$10,000 on the federal return. The taxpayer may deduct the full \$10,000 as the state and local portion of the itemized deductions on a Delaware return because the taxpayer’s real property taxes and local income taxes paid exceeded \$10,000. No adjustment is required on line 47a.

Example 2: A taxpayer paid \$7,000 of real property taxes, \$1,000 of local income taxes, and \$3,000 of state income taxes, and included an itemized deduction of \$10,000 on the federal return. On the Delaware return, the taxpayer will be required to reduce

the state and local tax portion of itemized deductions to \$8,000 so that the amount claimed is no greater than the total real property and local income taxes paid. NOTE: A taxpayer will not be required to back out the full amount of state taxes paid in this situation. The adjustment to be shown on line 47a. would be \$2,000, the difference between \$10,000 and the allowable deduction, less than the \$3,000 state taxes paid.

Example 3: A taxpayer paid \$5,000 of real property taxes, \$500 of local income taxes, and \$2,000 of state income taxes and included state and local taxes of \$7,500 as an itemized deduction on the federal return. The taxpayer will be required to reduce the state and local tax portion of itemized deduction to \$5,500 on the Delaware return. The adjustment to be shown on line 47a. would be \$2,000, the total state income taxes paid.

Example 4: Married taxpayers, who filed a joint return for federal purposes, paid \$11,000 of real property taxes, \$2,000 of local income taxes, and \$5,000 of state income taxes, and included state and local taxes of \$10,000 as an itemized deduction on their joint federal return. For Delaware purposes, if they file using either separate forms or a combined separate form, each taxpayer may deduct a portion of the total real property and local income taxes paid, up to \$5,000 each.

Example 5: Married taxpayers A and B filed a joint return for federal purposes. Together they paid \$8,000 of real property taxes. Taxpayer A paid \$1,500 of local income taxes, and \$3,000 of state income taxes. Taxpayer B paid no local income taxes, and \$1,000 of state income taxes. Together, they deducted state and local taxes of \$10,000 as itemized deductions on their federal Schedule A. For Delaware purposes, Taxpayer A may deduct \$5,000, because Taxpayer A's share of the total would be \$5,500 (the deduction is capped at \$5,000), calculated as \$4,000 (one-half of \$8,000 real property taxes) plus \$1,500 local income taxes paid. Taxpayer A would reflect no adjustment on line 47a. Taxpayer B may only deduct \$4,000 (one-half of \$8,000 real property taxes) and would reflect an adjustment of \$1,000 on line 47a.

Example 6: Married taxpayers A and B filed a joint return for federal purposes. Together they paid \$3,000 of real estate taxes. Taxpayer A paid \$2,000 in state income taxes. Taxpayer B paid \$6,000 of state income taxes. Neither paid any local income taxes. Together, they deducted \$10,000 on their federal Schedule A. For Delaware purposes, they would be entitled to include only \$3,000 of state and local taxes as an itemized deduction if they file a joint Delaware return (equal to the real property taxes paid). If they file separate returns for Delaware purposes, each would be entitled to claim a share of the real estate taxes, so that collectively they claim no more than \$3,000.

As in the past, a taxpayer will continue to be allowed to claim itemized deductions on a Delaware return even if the taxpayer has claimed the standard deduction on a federal return.

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