

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKSTATE OF NEW YORK,
STATE OF CONNECTICUT,
STATE OF MARYLAND, and STATE OF
NEW JERSEY,

Plaintiffs,

v.

STEVEN MNUCHIN, in his official capacity
as Secretary of the United States Department
of Treasury; the UNITED STATES
DEPARTMENT OF THE TREASURY;
CHARLES P. RETTIG, in his official capacity
as Commissioner of the United States Internal
Revenue Service; the UNITED STATES
INTERNAL REVENUE SERVICE; and the
UNITED STATES OF AMERICA,

Defendants.

Civil Action No. 1:18-cv-06427 (JPO)

PLAINTIFFS' LOCAL RULE 56.1 STATEMENT

Pursuant to Local Civil Rule 56.1, Plaintiffs State of New York, State of Connecticut, State of Maryland, and State of New Jersey ("the Plaintiff States"), hereby submit the following statement of material facts, as to which Plaintiffs contend that there exists no genuine issue to be tried.

A. Background on the Limits of Federal Tax Power.

1. During the debates regarding the framing of the United States Constitution, one topic of concern was the consequence of vesting the federal government with a general power of

taxation over all objects of taxation. Plaintiffs' Exhibit 1 (1 James Kent, *Commentaries on American Law* 367 (O. Halsted ed., 1826)).¹

2. In part to respond to this concern, the Framers adopted a dual federalist structure and reserved to the States a concurrent tax authority. Plaintiffs' Exhibit 2 (*The Federalist* No. 33 (Hamilton)).

3. In the decades following the ratification of the Constitution, the federal government was primarily financed by customs duties and excise taxes, rather than by taxing revenue sources traditionally taxed by the States, such as property and income. Plaintiffs' Exhibit 3 (Roy G. Blakey & Gladys C. Blakey, *The Federal Income Tax* 2 (1940)).

4. When Congress first considered imposing an income tax during the War of 1812, an initial proposal for a federal income tax exempted entirely state and local taxes from federal taxation, providing that the federal income tax would extend "only to such capital or employments as are not taxed by any existing laws." Plaintiffs' Exhibit 4 (28 Annals of Cong. 1079 (Jan. 18, 1815)).

5. When Congress adopted the first federal income tax in 1861, it provided a deduction for "all national, state, or local taxes assessed upon the property, from which the income is derived." Plaintiffs' Exhibit 5 (Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 292, 309).

6. During the debate regarding the first federal income tax, House Ways and Means Committee member Justin Smith Morrill stated: "It is a question of vital importance to [the States] that the General Government should not absorb all their taxable resources—that the accustomed objects of State taxation should, in some degree at least, go untouched. The orbit of the United

¹ The Plaintiff States' exhibits are attached to the Declaration of Owen T. Conroy (December 14, 2018). For voluminous sources such as books and statutes, only relevant excerpts have been attached.

States and the States must be different and not conflicting.” Plaintiffs’ Exhibit 6 (Cong. Globe, 37th Cong., 2d Sess. 1194 (1862)).

7. Committee Chairman Thaddeus Stevens stated that Congress was concerned with avoiding “double taxation,” and stated that the drafters intended to “exclud[e] from this tax the articles and subjects of gain and profit which are taxed in another form.” Plaintiffs’ Exhibit 7 (Cong. Globe, 37th Cong., 2d Sess. 1577 (1862)).

8. Although the Civil War income tax was modified several times, the deduction for SALT remained in effect until the federal income tax was repealed in 1872. Plaintiffs’ Exhibit 8 (Act of July 1, 1862, ch. 119, § 91, 12 Stat. 432, 473-74); Exhibit 9 (Act of June 30, 1864, ch. 173, § 117, 13 Stat. 223, 281); Exhibit 10 (Act of March 3, 1865, ch. 78, 13 Stat. 469, 479); Exhibit 11 (Act of March 2, 1867, ch. 169, § 13, 14 Stat. 471, 478); Exhibit 12 (Act of July 14, 1870, ch. 255, § 9, 16 Stat. 256, 258).

9. When the federal income tax was briefly revived between 1894 and 1895, legislators provided a deduction for “all national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year.” Plaintiffs’ Exhibit 13 (Act of August 27, 1894, ch. 349, § 28, 28 Stat. 509, 553).

10. During the ratification debates regarding the Sixteenth Amendment, many state legislators raised concerns that the proposed amendment would expand the federal government’s power at the expense of the States. Plaintiffs’ Exhibit 14 (John D. Buenker, *The Ratification of the Federal Income Tax Amendment*, 1 Cato J. 183, 204 (1981)).

11. In January 1910, then-Governor (and later Chief Justice of the U.S. Supreme Court) Charles Evans Hughes delivered a message to the New York Legislature opposing ratification on federalism grounds and expressing concern that the proposed amendment “would be an

impairment of the essential rights of the State," including the States' ability to generate revenue from traditional sources. Plaintiffs' Exhibit 15 (*Hughes is Against Income Amendment*, N.Y. Times, Jan. 6, 1910, at 2).

12. Officials in multiple other States cited the Hughes Message and expressed similar concerns. Plaintiffs' Exhibit 16 (John D. Buenker, *The Income Tax and the Progressive Era* 239, 264-65 (1985)).

13. Georgia initially voted against the amendment, with legislators warning that "it was a grave thing for States to confer such power on the Federal Government," and that "it would probably be better for Georgia to adopt an income tax law for herself and reject the proposition for a National income tax." Plaintiffs' Exhibit 17 (*Georgia Avoids Income Tax*, N.Y. Times, Aug. 6, 1909, at 1).

14. After the Virginia legislature rejected the amendment, one local newspaper stated: "It will be a long time before Virginia will set her sister States the example of surrendering unnecessarily to the central government any important right now reserved to the States." Plaintiffs' Exhibit 18 (*Decisive Blow at the Income Tax Amendment*, Daily Press (Newport News, V.A.), Mar. 10, 1910, at 4).

15. Speaking in support of the 16th Amendment, U.S. Senator William Borah stated: "[t]he taxing power of the United States is subject to an implied restraint arising from the existence of the powers in the State which are obviously intended to be beyond the control of the General Government." Plaintiffs' Exhibit 19 (45 Cong. Rec. 1696 (Feb. 10, 1910)).

16. U.S. Senator Elihu Root sent a letter to the New York legislature responding to the Hughes Message, stating: "[t]he taxing power of the Federal Government does not . . . extend to the means or agencies through or by the employment of which the States perform their essential

functions.” Plaintiffs’ Exhibit 20 (*Root for Adoption of Tax Amendment*, N.Y. Times, Mar. 1, 1910, at 4).

17. U.S. Senator Joseph Bailey stated: “It is not true that such an amendment would abridge the rights of the State. No change but one is proposed, and that is that the income tax should be levied upon wealth rather than population. . . . Everything the State can do or tax now it can do after this amendment is adopted.” Plaintiffs’ Exhibit 21 (*Bailey Speaks at Columbia, Watchman and Southron* (Sumter, S.C.), Feb. 19, 1910, at 6).

18. The first federal income tax law after the 16th Amendment was ratified—the Revenue Act of 1913—included a deduction for “all national, State, county, school, and municipal taxes paid within the year.” Plaintiffs’ Exhibit 22 (Revenue Act of 1913, ch. 16, § II(B), 38 Stat. 114, 167).

19. H. Parker Willis, an economist who advised the House Banking and Currency Committee on the 1913 Revenue Act, wrote that Congress “desired that the question of interference with state taxes should very carefully be safeguarded” and “it was believed[] the field ought to be shared with the states.” Plaintiffs’ Exhibit 23 (H. Parker Willis, *The Tariff of 1913: III*, 22 J. Pol. Econ. 218, 224, 227 (1914)).

20. When considering reforms to the tax code in 1963, a House Report stated that it was necessary to retain the SALT deduction to preserve federalism when “the State and local governments on one hand and the Federal Government on the other hand tap this same revenue source.” Plaintiffs’ Exhibit 24 (H.R. Rep. No. 88-749, at 48 (1963)).

21. During the 1980s, a proposal to eliminate the SALT deduction was defeated after a number of constitutional scholars and elected officials argued that repealing the SALT deduction

was unconstitutional. Plaintiffs' Exhibit 25 (Sarah F. Liebschutz & Irene Lurie, *The Deductibility of State and Local Taxes*, 16 Publius 51, 64-70 (1986)).

22. During the debate over the proposal, U.S. Senator Daniel Patrick Moynihan stated that repealing the SALT deduction would disrupt the “constitutional balance in some fundamental way.” Plaintiffs’ Exhibit 26 (*Tax Reform Proposals—XIX: Hearing Before the S. Finance Comm.*, 99th Cong. 70 (1985)).

23. The Governor of New York, Mario M. Cuomo, testified before Congress that the SALT deduction is a “fundamental constitutional concept,” and that repealing the deduction would violate the “essential predicate” of the compact between the States and the federal government. Plaintiffs’ Exhibit 27 (*The Impact of Repeal of the Deductions for State and Local Taxes: Hearings Before the Subcomm. on Monetary and Fiscal Policy of the Joint Economic Committee*, 99th Cong. 87 (1985)).

24. U.S. Senator Dave Durenberger, the Chair of the Senate Subcommittee on Intergovernmental Relations, argued that the SALT deduction “prevent[ed] the national government from capturing all of the tax base,” “preserve[d] some portion of the base for state and local revenue sharing,” and “cushion[ed] the harmful tax competition among states by reducing the effect of fiscal disparities among them.” Plaintiffs’ Exhibit 26 (*Tax Reform Proposals—XIX: Hearing Before the S. Finance Comm.* at 7, 99th Cong. 70 (1985)).

25. Although Congress has imposed some incidental limitations on the deduction in the past, until 2017 the core of the deduction for state and local property and income taxes remained intact, across 51 different Congresses and 56 different tax acts. Plaintiffs’ Exhibits 28-83 (collecting relevant federal tax statutes).

B. The Plaintiff States' Taxation and Fiscal Policies.

26. The Plaintiff States each levy state taxes and use the tax revenue to offer services to their residents. Plaintiffs' Exhibit 84 (Tax Policy Center, *How Do State and Local Individual Income Taxes Work*).

27. For fiscal year 2017-2018, New York's state personal income tax raised \$51.5 billion, and the State's sales, excise, and user taxes generated \$15.7 billion. Plaintiffs' Exhibit 85 (New York State Dep't of Taxation and Finance: *Fiscal Year Tax Collections, 2017-2018*).

28. In the 2018 state fiscal year, New York's tax revenues funded education, hospitals and other health services, transportation, social services, parks, environment, economic development, and other services. Plaintiffs' Exhibit 86 (State of New York FY 2019 Enacted Budget Financial Plan at 66).

29. For fiscal year 2016, New York, Connecticut, and New Jersey all paid more in federal taxes than their residents received in federal spending. Plaintiffs' Exhibit 87 (New York Office of the Comptroller, *New York's Balance of Payments in the Federal Budget, Federal Fiscal Year 2016*, at 3-7 (2017)).

C. The 2017 Tax Act.

30. Prior to Pub. L. No. 115-97, § 11042, 131 Stat. 2054 (2017) ("the 2017 Tax Act"), federal law permitted individuals who itemized their individual income tax deductions to deduct, with only incidental limitations, all of their: (1) state and local real estate taxes, (2) state and local personal property taxes, and (3) either state and local income taxes or state and local sales taxes. Plaintiffs' Exhibit 88 (26 U.S.C. § 164(a)-(b) (as effective December 18, 2015 to December 21, 2017)).

31. Under the 2017 Tax Act, individuals may deduct only up to \$10,000 total in (i) state and local real and personal property taxes, and (ii) either state and local income taxes or state and local sales taxes. Plaintiffs' Exhibit 89 (Pub. L. No. 115-97, § 11042).

32. Married taxpayers filing separately may deduct only up to \$5,000 each. Plaintiffs' Exhibit 89 (Pub. L. No. 115-97, § 11042).

33. In 2015, the most recent year for which tax data is available, the average SALT deduction claimed by the 3.3 million New York taxpayers who itemized their deductions on their federal tax returns was \$21,943. Declaration of Lynn Holland (ECF No. 1-1) ("Holland Decl.") ¶ 13.

D. Federal Officials Admitted That The 2017 Tax Act Was Intended to Coerce the States to Change Their Taxation and Fiscal Policies.

34. On September 7, 2017, Republican House Speaker Paul Ryan appeared at an event hosted by the New York Times and stated that the SALT deduction should be eliminated because: "People in states that have balanced budgets, whose state governments have done their job and kept their books balanced and don't have big massive pension liabilities, they're effectively paying for states that don't." Plaintiffs' Exhibit 90 (Mike DeBonis, *To Make Their Tax Plan Work, Republicans Eye a Favorite Blue-State Break*, Wash. Post, Sept. 16, 2017).

35. On October 11, 2017, President Donald Trump appeared on Fox News, where Sean Hannity stated his belief that for taxpayers "in a state like New York or Illinois and New Jersey or California, you won't be able to deduct your local or state income tax" under the 2017 Tax Act, which he understood to be sending a message that "[i]n other words, if you elect politicians that want to raise taxes, you will going to pay [sic] the penalty." Plaintiffs' Exhibit 91 (*Transcript: President Trump Vows Largest Tax Cut in History*, Fox News, Oct. 11, 2017).

36. President Trump agreed with Hannity, singling out Florida's Republican-led state government for praise and stating: "And those are the people that frankly should—the people that had the intelligence to elect them should really benefit. And that's what we are doing. We are creating an incentive." Plaintiffs' Exhibit 91 (*Transcript: President Trump Vows Largest Tax Cut in History*, Fox News, Oct. 11, 2017).

37. In the same appearance, President Trump also stated: "it's finally time to say, hey, make sure that your politicians do a good job of running your state. Otherwise, you are not going to benefit" from the 2017 Tax Act. Plaintiffs' Exhibit 91 (*Transcript: President Trump Vows Largest Tax Cut in History*, Fox News, Oct. 11, 2017).

38. On October 12, 2017, Defendant Steven Mnuchin, the Secretary of the Treasury, appeared on CNBC and stated: "We don't want this to hurt New York, and California, and New Jersey, and Connecticut, and Illinois too much, but on the other hand we can't have the federal government continue to subsidize the states." Plaintiffs' Exhibit 92 (*First on CNBC: Transcript: Treasury Secretary Steven Mnuchin Speaks with CNBC's "Squawk Box" Today*, CNBC, Oct. 12, 2017)).

39. On October 12, 2017, Speaker Ryan appeared at a Heritage Foundation event and argued for the elimination of the SALT deduction by stating: "I would argue we're propping up profligate, big government states and we're having states that actually got their act together pay for states that didn't. I think Wisconsin versus Illinois." Plaintiffs' Exhibit 93 (Lindsey McPherson, *Brady and Ryan Mulling Big Gamble on Key Tax Deduction*, Roll Call, Oct. 16, 2017).

40. On October 27, 2017, Republican House Member Duncan Hunter appeared on radio station KUSI and commented on the SALT deduction as follows: "California, New Jersey, New York, and other states that have horrible governments, yes. It's not as good for those states."

Plaintiffs' Exhibit 94 (Joshua Stewart, *Rep. Duncan Hunter said GOP tax bill could cost Californians more than others, but he still supports it*, San Diego Union Tribune, Oct. 30, 2017).

41. On October 31, 2017, Republican House Majority Leader Kevin McCarthy attended a conference call with reporters and called the cap on the SALT deduction a “challenge [to] our governors” to lower state taxes. Plaintiffs’ Exhibit 95 (*GOP Leaders to Governors: Lower State Taxes*, Wall Street Journal, Oct. 31, 2017).

42. On November 8, 2017, the National Review published a column that stated: “[t]he fact that these tax increases will fall most heavily on ‘blue’ parts of the country is obviously not an accident.” Plaintiffs’ Exhibit 96 (Ramesh Ponnuru, *Red States, Blue States, and Taxes*, Nat’l Rev., Nov. 8, 2017).

43. On November 9, 2017, Secretary Mnuchin gave a speech at the Economic Club in New York City in which he stated: “I do hope that [the SALT deduction cap] sends a message to the state governments that, perhaps, they should try to get their budgets in line. . . . And the question is: why do you need 13 or 14% state taxes?” Plaintiffs’ Exhibit 97 (*Mnuchin Fires Warning Shot to High-Tax States: Get Control of Your Budgets*, Fox Business, Nov. 9, 2017).

44. On November 28, 2017, Senator Rob Portman, a Republican from Ohio, appeared on CNN and stated: “The biggest issue you’re pointing to is the state and local tax issue. And you’re right, particularly people at the higher end, this goes—it’s a—it’s a regressive tax in the sense that over 50 percent of the benefit goes to families making over \$200,000 a year. And for states like New York and states like California, not having that deduction any longer does kick some of those folks who are upper middle class or high income folks into a situation where they don’t get that deduction.” Plaintiffs’ Exhibit 98 (*Transcript: Moore Back on Campaign Trail*, CNN, Nov. 28, 2017).

45. On December 5, 2017, Bloomberg News quoted conservative economist Stephen Moore, who advised the Donald Trump campaign on tax policy, as stating that the 2017 Tax Act meant “death to Democrats.” Plaintiffs’ Exhibit 99 (Sahil Kapur, ‘*Death to Democrats’: How the GOP Tax Bill Whacks Liberal Tenets*, Bloomberg, Dec. 5, 2017).

46. After the 2017 Tax Act passed, Republican Senator Ted Cruz stated: “One hopefully positive result of this legislation will be that state and local officials will be less eager to jack up the taxes on hard working Americans.” Plaintiffs’ Exhibit 99 (Sahil Kapur, ‘*Death to Democrats’: How the GOP Tax Bill Whacks Liberal Tenets*, Bloomberg, Dec. 5, 2017).

E. Harms Inflicted on Plaintiff States by 2017 Tax Act.

47. Among the States, New York, Connecticut, Maryland, New Jersey, and California have the highest percentages of taxpayers whose federal tax burden increased under the 2017 Tax Act. Declaration of Scott Palladino (ECF No. 1-2) (“Palladino Decl.”) ¶¶ 23-29.

48. Under the 2017 Tax Act, the share of the federal tax cuts received by the Plaintiff States was smaller than their share of the federal tax base. Palladino Decl. ¶¶ 30-41.

49. Taxpayers in the Plaintiff States are paying billions of dollars in additional federal income taxes because of the cap on the SALT deduction, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap. Palladino Decl. ¶¶ 15-22; Affidavit of Ernest Adamo (ECF No. 1-3) (“Adamo Aff.”) ¶¶ 10-11; Declaration of Andrew M. Schaufele (ECF No. 1-4) (“Schaufele Decl.”) ¶ 3; Declaration of Martin Poethke (ECF No. 1-5) (“Poethke Decl.”) ¶¶ 8-14.

50. New York expects that the new cap on the SALT deduction will cause New York taxpayers to pay \$121 billion more to the federal government between 2018 and 2025, relative to

what they would have paid if the 2017 Tax Act had been enacted without the cap. Palladino Decl.

¶ 18.

51. Connecticut expects that the new cap on the SALT deduction will raise Connecticut taxpayers' 2018 federal income tax liability by approximately \$2.8 billion, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap. Adamo Aff. ¶ 10.

52. By assessing the lost deductions and converting those figures into increased tax liability using 2017 rate tables, estimates forecast that the new cap on the SALT deduction may raise Maryland taxpayers' 2018 federal income tax liability by approximately \$1.7 billion. Schaufele Decl. ¶ 3.

53. New Jersey expects that the new cap on the SALT deduction will raise New Jersey taxpayers' annual federal income tax liability by approximately \$3.136 billion, using 2015 dollars, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap. Poethke Decl. ¶ 11.

54. Plaintiff State taxpayers across multiple income brackets will see increases in their federal tax liability, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap. Palladino Decl. ¶¶ 19-20; Adamo Decl. ¶ 11.

55. The 2017 Tax Act increased the portion of the federal government's income tax revenues paid by taxpayers in the Plaintiff States. Plaintiffs' Exhibit 100 (Institute on Taxation and Economic Policy, *Final GOP-Trump Bill Still Forces California and New York to Shoulder a Larger Share of Federal Taxes Under Final GOP-Trump Tax Bill; Texas, Florida, and Other States Will Pay Less* (Dec. 17, 2017)).

56. The 2017 Tax Act reduced the portion of the federal government's income tax revenues paid by most other States. Plaintiffs' Exhibit 100 (Institute on Taxation and Economic

Policy, *Final GOP-Trump Bill Still Forces California and New York to Shoulder a Larger Share of Federal Taxes Under Final GOP-Trump Tax Bill; Texas, Florida, and Other States Will Pay Less* (Dec. 17, 2017)).

57. By capping the deductibility of property taxes that were previously fully deductible, the 2017 Tax Act makes homeownership in the Plaintiff States more expensive and decreases the value of real estate in the Plaintiff States by billions of dollars. Holland Decl. ¶ 7; Poethke Decl. ¶¶ 15-20; Schaufele Decl. ¶¶ 5-7.

58. New York expects that the total value of home equity potentially lost due to the SALT deduction cap could be as high as \$63.1 billion. Holland Decl. ¶ 16.

59. New York expects the decline in home equity due to the SALT deduction cap to cause an annual reduction in household spending in New York State of between \$1.26 billion and \$3.15 billion. Holland Decl. ¶ 19.

60. New York expects reductions in household spending by New York residents to result in a reduction in sales for businesses within the State. Holland Decl. ¶ 20.

61. As a result of lower sales caused by the decline in home equity associated with the imposition of the SALT deduction cap, New York expects to lose between 12,500 and 31,300 jobs. Holland Decl. ¶ 20.

62. The New York Department of Budget estimates that home price declines could result in a decline in real estate transfer tax collections of \$24.5 million for FY 2019, with \$15.3 million attributable to the SALT deduction cap, and a decline of \$110.4 million for FY 2020, with \$69.2 million attributable to the SALT deduction cap. Holland Decl. ¶ 21.

63. Estimates of Maryland's housing market forecast a slowdown attributable to the SALT deduction cap, resulting in a reduction of \$22.5 billion in property value in 2019 due to lost growth. Schaufele Decl. ¶ 5.

64. Estimates of Maryland's housing market forecast a slowdown attributable to the SALT deduction cap, which is estimated to cost Maryland a total of \$52.3 million in reduced revenue from real estate and transfer taxes in 2018 and 2019. Schaufele Decl. ¶ 7.

65. New Jersey expects home values to decline by 8.5% from their peak, as a result of the SALT deduction cap. Poethke Decl. ¶ 16.

66. New Jersey expects its realty transfer fee and additional assessment on certain real property value over \$1 million to decline by a combined total of \$105.1 million from fiscal year 2019 through fiscal year 2020. Poethke Decl. ¶ 20.

F. Plaintiff States' Responses to the 2017 Tax Act.

67. In the months since the enactment of the 2017 Tax Act, the Plaintiff States have taken, or are considering taking, legislative and other action to alleviate the burden the 2017 Tax Act places on their taxpayers. Plaintiffs' Exhibit 101 (N.J.S.A. § 54:4-66.9 (entitling taxpayers to a property tax credit for certain qualifying local charitable donations)); Exhibit 102 (N.Y. State Fin. Law § 92-gg (same)); Exhibit 103 (2018 Conn. Legis. Serv. P.A. 18-49 (S.B. 11) Stat. § 12-699 (entitling pass through entities tax credits to alleviate the loss of the SALT deduction)); Exhibit 104 (Laura Davison, Lynnley Browning, and Ben Steverman, *New York, Connecticut Taxpayers Have Plan B Options to Beat SALT*, Bloomberg, Aug. 27, 2018).

68. On August 27, 2018, Defendants Department of the Treasury and Internal Revenue Service issued proposed regulations providing that a taxpayer who makes payments or transfers property to an entity listed in section 170(c) must reduce their charitable contribution deduction

by the amount of any state or local tax credit the taxpayer receives or expects to receive. Plaintiffs' Exhibit 105 (Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43563-01 (proposed August 27, 2018) (to be codified at 26 C.F.R. pt. 1)).

69. The proposed regulations state that they are intended to respond to "state and local tax credit programs" that "now give taxpayers a potential means to circumvent the" SALT deduction cap. Plaintiffs' Exhibit 105 (Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43563-01 (proposed August 27, 2018) (to be codified at 26 C.F.R. pt. 1)).

Dated: December 14, 2018

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