BYU Law Review

Volume 48 | Issue 2 Article 10

12-22-2022

America the Divisible: Local Taxes and the SALT Subsidy

Matthew S. Johnson

Follow this and additional works at: https://digitalcommons.law.byu.edu/lawreview

Part of the Taxation-State and Local Commons

Recommended Citation
Matthew S. Johnson, *America the Divisible: Local Taxes and the SALT Subsidy*, 48 BYU L. Rev. 687 (2022).
Available at: https://digitalcommons.law.byu.edu/lawreview/vol48/iss2/10

This Comment is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

America the Divisible: Local Taxes and the SALT Subsidy

Matthew S. Johnson[*]

The state and local tax (SALT) deduction subsidizes localities in a way that has not fully been appreciated by policymakers, practitioners, or academics. While the state portion of the SALT deduction captures headlines and receives significant attention from academics, the local portion has been overlooked. Local taxes introduce concerns that are not relevant to state-levied taxes. The local tax deduction provides a greater subsidy, per capita, for wealthy localities than it does for economically heterogeneous or less wealthy localities. This Note is the first to quantify the subsidy received by localities through the SALT deduction. This Note contributes to the literature by (1) examining the overlooked local portion of the SALT deduction, (2) quantifying the SALT subsidy received by localities, and (3) noting the impact of the Tax Cuts and Jobs Act on the SALT subsidy.

CONTENTS

INTRODUCTION 688
I. SALT DEDUCTION: A FEDERAL SUBSIDY 690
A. Federal Subsidies.. 691
B. SALT Deduction Overview 693
C. Who Does the SALT Subsidy Benefit? 696
II. METHODOLOGY 699
A. Identify Wealthy Localities.. 699
1. Itemization Rates to Measure Wealth 699
2. Assumptions and Limitations 700
B. Calculate Local Taxes Paid 702
1. Isolating Property Taxes... 703
2. Assumptions and Limitations 703

[*] J.D. and M.Acc. Candidate, Brigham Young University. I am grateful to Professors Cree Jones and Dane Thorley for both their insights into empirical studies and their comments throughout the drafting process. I also thank Professor Gladriel Shobe for her priceless contributions to both the SALT deduction literature and this Note. I am also grateful to Josh Martineau and Adam Moore for their specific ideas that significantly contributed to this Note. Finally, I must thank my empirical studies classmates for enduring several iterations of what many consider the least exhilarating topic on earth—taxation.

C. Estimate Itemizer Tax Rates 704
1. Rate Calculation with Weighted Averages 704
2. Assumptions and Limitations 706
III. RESULTS 708
A. SALT Subsidy Summary 709
B. Impact of the TCJA 713
IV. IMPLICATIONS 717
A. General Summary 717
B. Local Tax Limitation or Phase Out 718
CONCLUSION 720

INTRODUCTION

Debates surrounding the state and local tax (SALT) deduction have existed for decades and do not appear to be going away anytime soon.[1] Most recently, the House of Representatives passed a version of the Build Back Better bill that would controversially increase the cap on the SALT deduction from $10,000 to $80,000.[2] The SALT deduction remains at the forefront of the tax policy debate.[3] Yet these debates fall short in evaluating the *full* impact of the SALT deduction.

1. *See* Nonna A. Noto & Dennis Zimmerman, *Limiting State-Local Tax Deductibility: Effects Among the States*, 37 NAT. TAX J. 539 (1984); Louis Kaplow, *Fiscal Federalism and the Deductibility of State and Local Taxes Under the Federal Income Tax*, 82 VA. L. REV. 413 (1996); Kirk J. Stark, *Fiscal Federalism and Tax Progressivity: Should the Federal Income Tax Encourage State and Local Redistribution?*, 51 UCLA L. REV. 1389 (2004); Brian Galle, *Federal Fairness to State Taxpayers: Irrationality, Unfunded Mandates, and the "SALT" Deduction*, 106 MICH. L. REV. 805 (2008); Gladriel Shobe, *Disaggregating the State and Local Tax Deduction*, 35 VA. TAX REV. 327 (2016).

2. Kate Dore, *'No SALT, No Deal.' Some House Democrats Say Deduction Must Be in Build Back Better*, CNBC (Jan. 21, 2022, 1:20 PM), https://www.cnbc.com/2022/01/21/some-democrats-threaten-to-sink-build-back-better-without-salt-reform.html ("House Democrats in November passed a spending package boosting the SALT cap to $80,000 from 2021 through 2030 before dropping it back to $10,000 in 2031.").

3. *See, e.g.*, Manoj Viswanathan, *Hyperlocal Responses to the SALT Deduction Limitation*, 71 STAN. L. REV. ONLINE 294 (2019); William B. Barker, *The Tax Cuts and Jobs Act of 2017: The SALT Deduction, Tax Competition, and Double Taxation*, 56 SAN DIEGO L. REV. 73 (2019); Daniel Hemel, *The Death and Life of the State and Local Tax Deduction*, 72 TAX L. REV. 151 (2019); Ben Steverman, *Rich Americans Find Tax Gap Hard to Ignore with SALT Debate Raging*, BLOOMBERG (Dec. 10, 2021, 6:00 AM), https://www.bloomberg.com/news/articles/2021-12-10/democrat-s-debate-over-80-000-salt-cap-throws-state-tax-gap-in-spotlight; Matthew D. Chase, *Debate on State and Local Tax Deduction Ignores Its Origins*, THE HILL (Dec. 19, 2019, 5:00 PM), https://thehill.com/blogs/congress-blog/politics/475363-debate-on-state-and-local-tax-deduction-ignores-its-origins; Richard V. Reeves & Christopher Pulliam, *How Dems Can*

The SALT deduction, despite being referred to as a single deduction, is two deductions—a state portion and a local portion. While the state portion of this deduction receives significant airtime, the local portion does not. Indeed, the local portion has unique implications for tax policy that have not been openly discussed in the SALT deduction debates.[4]

It is widely accepted that the SALT deduction acts as a subsidy from the federal government to states and localities.[5] The deduction effectively gives taxpayers a discount on their state and local taxes paid, allowing states and localities to charge higher taxes and raise greater local revenue than they could in the absence of the SALT deduction.[6]

This Note furthers the discussion surrounding the SALT deduction by addressing the subsidy the federal government gives local governments through the SALT deduction (referred to hereinafter as the SALT subsidy).[7] While scholars have both supported and criticized the SALT deduction, only recently have they suggested that the federal government is indirectly subsidizing wealthy cities more than less wealthy cities through the local portion of the SALT deduction.[8] In other words, the SALT

Get Out of the SALT Mess and Save $1 Trillion, BROOKINGS (Oct. 2, 2021), https://www.brookings.edu/blog/up-front/2021/10/02/how-dems-can-get-out-of-the-salt-mess-and-save-1-trillion-dollars/.

4. *See, e.g.*, Nicholas Sargen, *Why the Debate Over SALT Deductions Matters*, THE HILL (Feb. 4, 2022, 8:00 AM), https://thehill.com/opinion/finance/592686-why-the-debate-over-salt-deductions-matters/; Preston Brashers, *SALT Deduction: Debunking the "Moocher State" and Cost-of-Living Justifications*, HERITAGE FOUND. (Feb. 18, 2022), https://www.heritage.org/taxes/report/salt-deduction-debunking-the-moocher-state-and-cost-living-justifications.

5. Robert P. Inman, *Does Deductibility Influence Local Taxation?* (Nat'l Bureau of Econ. Rsch., Working Paper No. 1714, 1985) ("There is tentative evidence to suggest the present deductibility of state-local taxes may stimulate the provision of state-local government services by providing a subsidy to state-local taxation.").

6. Douglas Holtz-Eakin & Harvey Rosen, *Federal Deductibility and Local Property Tax Rates*, 27 J. URB. ECON. 269, 270 (1990) ("The results suggest that federal deductibility of property tax payments does indeed have a positive impact on the property tax rate.").

7. To be clear, the SALT deduction and the SALT subsidy are distinct. The SALT deduction is the amount deducted on a tax return, resulting in a decrease of the tax owed. The SALT subsidy, however, refers specifically to the decrease in tax resulting from the SALT deduction.

8. Gladriel Shobe, *Subsidizing Economic Segregation Through the State and Local Tax Deduction*, 11 U.C. IRVINE L. REV. 539, 543 (2020) ("This Article argues that the local tax deduction disproportionately subsidizes wealthy, economically segregated localities because only the relatively wealthy can deduct their local taxes and benefit from the local tax deduction on their tax returns; therefore, only localities with a critical mass of relatively wealthy taxpayers can charge higher taxes (at the expense of all taxpayers) as a result of the

deduction disproportionately subsidizes wealthy localities because only the relatively wealthy are in a position deduct their local taxes on their tax returns.[9] In contrast, taxpayers in relatively poor localities, which are primarily composed of non-itemizing tax filers, pay full or close to full price for their local goods and services because poor localities receive little to no subsidy from the local tax deduction.

By quantifying the SALT subsidy received by localities, this Note shows how the SALT deduction—specifically the local portion of the deduction—contributes to economic disparities across the United States. This, in turn, can help policymakers better understand how the SALT deduction is currently impacting the taxing systems in America and recognize the areas where the SALT deduction can be improved.

This Note proceeds as follows: Part I gives a history of the SALT deduction and describes the federal subsidy that results from its use. Part II explains the methodology used to calculate the SALT subsidy received by localities. Part III examines the SALT subsidies received by localities and individuals and explores the impact of the Tax Cuts and Jobs Act (TCJA) on the SALT subsidy. Finally, Part IV advances the SALT discussion by focusing on local taxes and arguing that the local portion of the SALT deduction should be reduced.

I. SALT DEDUCTION: A FEDERAL SUBSIDY

This Part lays the groundwork necessary to understand the SALT deduction and its current operation in the taxing system. The SALT deduction, like most tax breaks, is a federal subsidy. The subsidy benefits both the taxpayers who are in a position to claim the SALT deduction and the jurisdictions that levy a potentially deductible tax.

---

deduction. In contrast, taxpayers in poor localities, which are comprised primarily of non-itemizing taxpayers, pay full or close to full price for their local goods and services because poor localities receive little to no subsidy from the local tax deduction.") (footnotes omitted).

9. The term "wealthy" is both subjective and relative. While it is true that most wealthy individuals itemize and most non-wealthy individuals do not itemize, at what point an individual achieves wealth or loses it is beyond the scope of this Note. Although this Note uses itemization rates to predict wealth, it is recognized that the choice to itemize is not completely reflective of wealth. *See infra* Section II.A.

A. Federal Subsidies

The SALT deduction is one of the many less-obvious subsidies offered by the federal government. A subsidy is defined as a financial benefit given by a government through either a cash payment or a tax reduction.[10] This Note focuses on the latter—tax reductions. Subsidies, including tax breaks, are often used by a government to incentivize behavior.[11] Tax subsidies decrease the tax burden of the tax filer by allowing the tax filer to deduct these qualified expenses on their tax return, thereby encouraging this type of spending. For example, tax subsidies encourage individuals to donate to charitable organizations[12] and pursue postsecondary education.[13]

Tax subsidies are a fairly unique area of subsidization, as taxes and subsidies tend to be viewed as opposites in economics.[14] Taxes often decrease the quantity sold of an item or service in equilibrium, while subsidies increase the quantity sold of that item or service. Yet once taxes are imposed, the decrease of the tax burden is a type of subsidy.

Tax filers seek to decrease their tax burden through deductions and credits. Deductions reduce the individual's taxable income by

10. EMMA HUTCHINSON, PRINCIPLES OF MICROECONOMICS (2017) ("A subsidy is a benefit given by the government to groups or individuals, usually in the form of a cash payment or a tax reduction.") (emphasis removed); *see also Agreement on Subsidies and Countervailing Measures ("SCM Agreement")*, WTO, www.wto.org/english/tratop_e/scm_e/subs_e.htm (last visited Oct. 1, 2022) ("WTO SCM Agreement contains a definition of the term 'subsidy'. The definition contains three basic elements: (i) a financial contribution (ii) by a government or any public body within the territory of a Member (iii) which confers a benefit. All three of these elements must be satisfied in order for a subsidy to exist.").

11. For example, governments offer subsidies to companies that are environmentally friendly by offering grants and favorable tax treatment. *See, e.g.*, *Economic Incentives*, EPA, https://www.epa.gov/environmental-economics/economic-incentives (last visited Oct. 1, 2022) ("Subsidies are forms of financial government support for activities believed to be environmentally friendly. Rather than charging a polluter for emissions, a subsidy rewards a polluter for reducing emissions. Examples of subsidies include grants, low-interest loans, favorable tax treatment, and procurement mandates."). Additionally, subsidies are given to farmers to encourage farm use and to protect the food supply of the United States by ensuring more farmers are operating than would without the federal subsidy. *See* Kimberly Amadeo, *Farm Subsidies with Pros, Cons, and Impact*, THE BALANCE (Apr. 18, 2022), https://www.thebalance.com/farm-subsidies-4173885.

12. *See* I.R.C. § 170(a)(1) ("There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year.").

13. *See* I.R.C. § 25A (American Opportunity and Lifetime Learning credits); *see also* Andrew D. Pike, *No Wealthy Parent Left Behind: An Analysis of Tax Subsidies for Higher Education*, 56 AM. U. L. Rev. 1229 (2007).

14. *See* HUTCHINSON, *supra* note 10, § 4.7.

the amount of the allowed deduction, thus generating a benefit of the individual's marginal tax rate multiplied by the deduction amount. Credits directly decrease the tax due—often dollar for dollar. While a one-dollar credit is certainly more beneficial than a one-dollar deduction, both credits and deductions are used to incentivize behavior.[15]

But while all subsidies incentivize behavior, not all subsidies are intended to do so. For example, the mortgage interest deduction subsidizes the expense of owning a home; yet its original purpose had nothing to do with encouraging homeownership.[16] Prior to the TCJA, the mortgage interest deduction was the second-largest tax subsidy given by the government (behind the SALT subsidy) and yet its subsidy is recognized to be nothing more than an accident.[17]

Like the mortgage interest deduction, the SALT deduction was an accident. Many believe the SALT deduction was created to avoid taxing the income used to pay the tax.[18] However, the fact that this deduction is not readily available to all taxpayers shows that we have moved away from this tax logic.[19] We are now left with a deduction that incentivizes high state and local tax rates and, in some instances, economic segregation through an accidental subsidy.[20]

15. HARVEY S. ROSEN, PUBLIC FINANCE 377 (7th ed. 2005) ("If the purpose is mainly to encourage certain behavior, it is unclear whether credits or deductions are superior . . . .").

16. Dennis J. Ventry, Jr., *The Accidental Deduction: A History and Critique of the Tax Subsidy for Mortgage Interest*, 73 L. & CONTEMP. PROBS. 233, 236 (2010) ("[T]he [mortgage interest expense] deduction had nothing to do with encouraging or rewarding homeownership.").

17. *Id.* (describing what was, at the time, "the second most expensive tax subsidy" and its accidental birthright).

18. William J. Turnier, *Evaluating Personal Deductions in an Income Tax—The Ideal*, 66 CORNELL L. REV. 262, 265 (1981) ("Although the legislative history is inconclusive, some commentators have suggested that Congress enacted the deduction out of a desire to avoid imposing a tax on a tax."). While the SALT deduction was not widely applied until after the passage of the Sixteenth Amendment in 1913, Americans had long been discussing and applying the SALT deduction—some efforts being traced back to the mid-1800s. *See id.* at 264–69.

19. While all tax filers may elect to itemize and therefore deduct their state and local taxes paid, only those who have enough qualified deductions to surpass the standard deduction will choose to do so. This leaves us with a system where only the taxpayers with the most qualified expenses (often the wealthiest taxpayers) can reasonably choose to deduct their state and local taxes. The rest of the taxpayers instead take the standard deduction. *See infra* note 27.

20. Shobe, *supra* note 8; Holtz-Eakin & Rosen, *supra* note 6, at 269 (1990) ("The results suggest that federal deductibility of property tax payments does indeed have a positive impact on the property tax rate.").

B. SALT Deduction Overview

The federal government loses tax revenue when individuals deduct qualified expenses. One of the largest tax subsidies given by the federal government is the SALT deduction.[21] The SALT deduction cost the federal government over $100 billion of lost tax revenue in 2017 alone.[22]

The SALT deduction allows taxpayers to deduct[23] qualified taxes[24] paid to state and local governments on their federal income tax returns. Yet the SALT deduction does not benefit all taxpayers.[25] The SALT deduction is one of many itemized deductions, which only benefit taxpayers who itemize.[26]

21. The SALT deduction is estimated to cost the federal government $24.4 billion in 2020 alone. *Tax Basics*, TAX FOUND., https://taxfoundation.org/tax-basics/salt-deduction/#:~:text=The%20Joint%20Committee%20on%20Taxation,government%20%2424.4%20billion%20for%202020 (last visited Oct. 4, 2022) ("The Joint Committee on Taxation (JCT) estimated that the deduction for state and local taxes paid would cost the federal government $24.4 billion for 2020.").

22. *See* STAFF OF JOINT COMM. ON TAX'N, JCX-34-18, Estimates of Federal Tax Expenditures for Fiscal Years 2017–2021 (2018) (stating the 2017 deduction of nonbusiness state and local government taxes was $100.9 billion). The Joint Committee on Taxation estimated that the limitation of the SALT deduction would decrease the cost of the SALT deduction to $36.6 billion in 2018 and to slightly above $20 billion for 2019 and 2020. JCX-34-18 (for 2017 and 2018) and JCX-55-19 (for 2019 and 2020). Other itemized deductions also cost the federal government several billion dollars (i.e., mortgage interest expense and charitable contributions cost $66.4 and $61 billion, respectively, in 2017). JCX-34-18; *see also What Are Itemized Deductions and Who Claims Them?*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/what-are-itemized-deductions-and-who-claims-them (*Table 1*) (last visited Oct. 4, 2022).

23. It is widely accepted that taxpayers should not be able to deduct expenses that are directly consumed by the taxpayer. *See* HENRY C. SIMONS, PERSONAL INCOME TAXATION: THE DEFINITION OF INCOME AS A PROBLEM OF FISCAL POLICY (1938); Robert Murray Haig, *The Concept of Income—Economic and Legal Aspects*, *in* THE FEDERAL INCOME TAX 1, 7 (Robert Murray Haig ed., 1921), *reprinted in* READINGS IN THE ECONOMICS OF TAXATION 54 (Richard A. Musgrave & Carl S. Shoup eds., 1959). While the portions of state taxes paid by individuals are rarely directly consumed by the payer, local taxes may be different since there is less opportunity to redistribute the tax revenues.

24. Qualified taxes consist of state income taxes, local income taxes, real estate taxes, and personal property taxes. *See* I.R.C. § 164.

25. § 164(a). Only itemizers may claim the SALT deduction. I.R.C.

26. I.R.C. § 63(d). Itemizing involves aggregating qualified deductions, such as charitable contributions, mortgage interest expenses from a qualified residence, medical expenses in excess of 7.5% of the taxpayer's adjusted gross income, and state and local taxes paid, among others.

When filing a tax return, tax filers are faced with the decision of either taking the standard deduction or itemizing.[27] Tax filers usually elect to take the greater of the two.

Unlike the standard deduction, the itemized deduction is not a set number. Instead, tax filers may take itemizable deductions far above the standard deduction so long as they have enough qualified expenses to justify doing so. The more money a taxpayer earns, the more money the taxpayer is likely to spend; and the more money a taxpayer spends, the more likely they are to itemize. Additionally, some itemizable expenses are only incurred by individuals with certain assets[28] or are directly connected to income levels.[29] Subsequently, wealthier tax filers itemize at significantly higher rates than less wealthy tax filers.[30]

Prior to the enactment of the TCJA,[31] the SALT deduction was unlimited. The TCJA, however, limited the SALT deduction to $10,000 per tax return.[32] This proved to be a painful limitation for the wealthiest taxpayers who were no longer able to deduct significant amounts of taxes paid to their states and localities.[33]

27. The standard deduction is the same for each taxpayer and only varies based on filing status (i.e., single, married filing jointly, head-of-household, widow, or married filing separately). *See* John R. Brooks II, *Doing Too Much: The Standard Deduction and the Conflict Between Progressivity and Simplification*, 2 COLUM. J. TAX L. 203, 209–18 (2011). For example, in 2018 the standard deduction for a single tax filer was $12,000. I.R.C. § 63(c)(7)(A)(ii). Itemizing involves aggregating qualified deductions, such as charitable contributions, mortgage interest expenses from a qualified residence, medical expenses in excess of 7.5% of the taxpayer's adjusted gross income, and state and local taxes paid, among others. I.R.C. § 63(d).

28. The mortgage expense deduction is only available to individuals with a qualifying mortgage. *See* I.R.C. § 163. Individuals who are unable to afford a home, however, are unable to deduct rental expenses.

29. As an individual earns more income, they likely pay more state and local tax. Since state and local tax paid is an itemizable expense, the higher the tax bill, the higher likelihood the taxpayer will itemize.

30. The number of individuals that itemized can be estimated based on their adjusted gross income range with data published by the Tax Policy Center. *See* TAX POL'Y CTR., *supra* note 22, at fig. 2.

31. TAX CUTS AND JOBS ACT OF 2017, PUB. L. NO. 115-97, 131 STAT. 2054, 2086 (2017).

32. § 11042 Limitation on Deduction for State and Local, etc. TAX CUTS AND JOBS ACT OF 2017, PUB. L. NO. 115-97, 131 STAT. 2054, 2085 (2017). If the tax filers are married and filing separately, each individual is limited to $5,000. *Id.* § 11042(a)(6)(B) ("[T]he aggregate amount of taxes taken into account under paragraphs (1), (2), and (3) of subsection (a) and paragraph (5) of this subsection for any taxable year shall not exceed $10,000 ($5,000 in the case of a married individual filing a separate return).").

33. While the $10,000 limitation sparked a large debate, at one point in time Congress was considering the elimination of the SALT deduction entirely. *See, e.g.*, GOVERNMENT FINANCE OFFICERS ASSOCIATION, THE IMPACT OF ELIMINATING THE STATE AND LOCAL TAX DEDUCTION (2017).

The TCJA was not all bad news for taxpayers, however, as it included tax reductions for both individuals and corporations.[34] In fact, most individuals and corporations saw a decrease in their federal tax rate.[35] Many predicted that by limiting several deductions, including the SALT deduction, Congress would make up for the revenue lost due to the decrease in individual and corporation rates. The SALT deduction limitation was one of the largest ways by which the favorable TCJA changes were funded.[36] The SALT deduction limitation was meant to be a temporary measure and includes a sunset provision establishing its expiration after the 2025 tax year.[37]

Since state and local taxes are often qualified expenses and contribute to the total deduction for taxpayers who itemize, itemizers are able to deduct any SALT taxes on their federal tax returns. This results in an indirect subsidy from the federal government.[38]

34. The TCJA lowered the top individual rate from 39.6% to 37% and decreased the corporate income tax rate from 35% to 21%. *Tax Cuts and Jobs Act (TCJA)*, TAX FOUNDATION, https://taxfoundation.org/tax-basics/tax-cuts-and-jobs-act/#:~:text=Act%20(ACA).-,Business,from%20%24500%2C000%20to%20%241%20million (last visited Oct. 4, 2022).

35. Garrett Watson, *Congressional Budget Office Shows 2017 Tax Law Reduced Tax Rates Across the Board in 2018*, TAX FOUND. (Aug. 5, 2021), https://taxfoundation.org/congressional-budget-office-shows-2017-tax-law-reduced-tax-rates-across-board-2018/.

36. The SALT deduction and other smaller itemized deduction limitations were expected to raise $668.4 billion over ten years. H.R. REP. NO. 115-466, at 684 (2017) (Conf. Rep.) (graphic showing the largest tax revenues from the TCJA coming from these limitations and the expected total).

37. *Id.* at 260 ("The Senate amendment follows the House bill. However, under the Senate amendment, the suspension of the deduction for State and local taxes expires for taxable years beginning after December 31, 2025."). The "sunset" nature of this limitation is fairly important. While it is possible that the limitation will be renewed in 2025 or even codified entirely, the temporary nature of the limitation disincentivizes localities from reacting to the limit. Since the limitation is temporary, many individuals are not willing to lobby for local or state tax changes while they know the benefits of those changes may only last until 2025 when the limitation is removed. Especially with the significant resources that are required for lobbying and the time required for tax changes to be proposed, debated, and passed, localities are unlikely to react to this limitation. Preliminary research also did not show significant changes to local tax rates in response to the TCJA limitation on the SALT deduction.

38. While this indirect subsidy is almost certainly unintentional, the local part of the SALT deduction may join the list of legislation that resulted in unintended consequences. *See* Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, 133 Q.J. ECON. 191 (2018) (describing how the "ban the box" policies meant to decrease discrimination in hiring practices actually increase racial discrimination).

C. Who Does the SALT Subsidy Benefit?

Commentators often refer to the SALT deduction as a subsidy for blue states.[39] While high-tax blue states certainly benefit from the SALT deduction, the question of where the subsidy flows is more nuanced than a simple red state/blue state divide.[40] Approximately half of the deduction is for local taxes,[41] which makes the debate surrounding the SALT deduction not so cut and dry as red or blue. It should also be noted that the term "local" in state and *local* tax deductions refers to the taxing authority in any geographic subset that is smaller than the state.[42]

The SALT subsidy is received by any taxing jurisdiction that levies a tax on its residents—regardless of the tax rate. Higher rates certainly will result in a larger SALT subsidy for the locality, but localities with lower rates and many residents also benefit from the SALT subsidy.

The SALT deduction benefits both individuals claiming the SALT deduction (who receive a lower effective tax paid to the state or locality) and the jurisdiction levying the taxes.[43] The following table shows the hypothetical impact of the SALT deduction on two individuals, John and Jane. John and Jane both file as single taxpayers in Utah and are thereby subject to the 4.95% Utah state tax rate. The only difference between the two is Jane makes ten

39. Abby Vesoulis, *A Wonky Tax Break for the Well-Off is a Bigger Problem for Democrats Than You'd Think*, TIME (Dec. 16, 2021, 12:50 PM), https://time.com/6128775/salt-cap-democrats-divided/ ("[T]he main losers of the new $10,000 SALT deduction cap were well-to-do people in states with the highest property taxes—Democratic states, like California, New York and New Jersey."); Robert Verbruggen, *The SALT Subsidy*, NAT'L REV. (Apr. 15, 2021, 2:39 PM), https://www.nationalreview.com/corner/the-salt-subsidy/ ("Blue-state lawmakers like [Jerry] Nadler like SALT, and want to get rid of the cap on it, because they want that subsidy, not because it's fair tax policy.").

40. *See* Naomi Jagoda, *GOP Ramps Up Attacks on SALT Deduction Provision*, THE HILL (Dec. 2, 2021, 6:00 AM), https://thehill.com/policy/finance/583931-gop-ramps-up-attacks-on-salt-deduction-provision ("They have continued to defend the cap, saying it helps to prevent the federal tax code from subsidizing states with higher taxes."); s*ee also* Peter Coy, *The SALT Deduction Isn't Just a Subsidy to High-Tax Blue States*, BLOOMBERG (Apr. 5, 2021, 7:34 AM), https://www.bloomberg.com/news/articles/2021-04-05/the-salt-deduction-isn-t-just-a-subsidy-to-high-tax-blue-states.

41. Shobe, *supra* note 8, at 542 ("[T]he local tax deduction . . . accounts for approximately half of the state and local tax deduction . . . .").

42. This includes county, city, and school district.

43. Shobe, *supra* note 8, at 561 ("First, [the SALT subsidy] allows itemizing taxpayers to *reduce their federal tax liability* on their federal tax return. Second, it acts as a *subsidy* for states and localities.").

times what John does and subsequently itemizes rather than taking the standard deduction.[44]

Figure 1: Hypothetical State Subsidy

	John	**Jane**
Taxable Income	$50,000	$500,000
Deduction	Standard	Itemize
State Tax Burden	$2,475	$24,750
Decrease in Federal Tax Burden	$0	$9,801
Effective State Tax Rate	4.95%	2.99%

Jane receives a $9,801 SALT subsidy. As a result, Jane effectively pays a lower state tax rate than John by deducting her state tax payments when filing her federal tax return. John, on the other hand, does not spend enough money on qualified expenses (likely due to his limited income) and consequently pays the full state tax rate with no benefit on his federal tax return.

Jane and other itemizers are not the only parties that benefit from the SALT subsidy.[45] The states and localities levying the tax are also winners, as their resident itemizers are essentially refunded by the federal government for a portion of the tax. Studies have shown that the deductibility of state and local taxes increases the rate at which localities tax their residents, suggesting that the benefit received is not just for the itemizer but also for the states and localities.[46]

While some view the SALT deduction as a handout to the richest taxpayers,[47] the deduction inarguably increases the resources states

44. This example has been oversimplified. Individuals would normally take the standard deduction or the itemized deductions from their adjusted gross income at the federal level, while states operate their taxing systems differently. This example is meant only to show that those who take the standard deduction are not benefited by the state and local taxes they paid throughout the year, thus paying the full effective state and local tax rates.

45. Laura Davison, *All About SALT, the Tax Deduction That Divides U.S.*, BLOOMBERG (Apr. 12, 2021, 7:28 AM), https://www.bloomberg.com/news/articles/2021-04-12/all-about-salt-the-tax-deduction-that-divides-u-s-quicktake.

46. Holtz-Eakin & Rosen, *supra* note 6 ("The results suggest that federal deductibility of property tax payments does indeed have a positive impact on the property tax rate.").

47. *See, e.g.*, David Brunori, *First Take: The SALT Deduction is a Good Thing—for Rich Folks*, D.C. POL'Y CTR. (Dec. 7, 2017), https://www.dcpolicycenter.org/publications/first-take-salt-deduction-good-thing-rich-folks/; Christopher Pulliam & Richard V. Reeves, *The SALT Tax Deduction is a Handout to the Rich. It Should be Eliminated Not Expanded*,

and localities have to address poverty within their jurisdictions. By easing the burden of many taxpayers through the SALT deduction, the federal government effectively puts more money in the pockets of state and local legislatures, who are arguably better equipped to address the more localized issues.[48]

Despite lumping state and local taxes together in the SALT acronym, state and local taxes are inherently different. States receive their tax revenues from taxpayers scattered throughout the state and then redistribute portions of those revenues to underfunded localities. Localities, on the other hand, receive their tax revenues from locality residents but often only redistribute the tax revenues within that same locality.[49]

If wealthy individuals congregate to make up a significant portion of a locality, the local taxes paid by the wealthy are simply redistributed to benefit the already well-off community—all while decreasing the federal tax burden through a dollar-for-dollar deduction for the wealthy, itemizing taxpayers. This means the localities that raise the most tax revenue per resident (i.e., wealthy localities), are also likely to receive the largest SALT subsidy per resident from the federal government. Whether the wealthiest localities should receive both the largest amounts of tax from their residents and the largest SALT subsidy from the federal government is a question policy makers should consider.

BROOKINGS (Sept. 4, 2020), https://www.brookings.edu/blog/up-front/2020/09/04/the-salt-tax-deduction-is-a-handout-to-the-rich-it-should-be-eliminated-not-expanded/; Alan Rappeport & Patrick McGeehan, *Tax Deduction that Benefits the Rich Divides Democrats Before Vote*, N.Y. TIMES (Nov. 18, 2021), https://www.nytimes.com/2021/11/18/us/politics/salt-tax-deduction-democrats.html.

48. *See, e.g.*, Brad Olson & Mark Brennan, *From Community Engagement to Community Emergence: The Holistic Program Design Approach*, 5 INT'L J. RSCH. ON SERVICE-LEARNING & CMTY. ENGAGEMENT 4 (2017); Mark Brennan & Mary Kate Berardi, *Importance of Local Community Action in Shaping Development*, PENN STATE EXTENSION (May 18, 2020), https://extension.psu.edu/importance-of-local-community-action-in-shaping-development; Marcus Hawkins, *A Definition of Federalism: The Case for Reinvigorating States' Rights*, THOUGHTCO. (Feb. 16, 2021), https://www.thoughtco.com/a-definition-of-federalism-3303456. *But see*, Annie Lowrey, *Are States Really More Efficient Than the Federal Government?*, THE ATLANTIC (Oct. 2, 2017), https://www.theatlantic.com/business/archive/2017/10/graham-cassidy-states-federal-efficiency/541599/.

49. While this is the case for most localities, some states have laws in place that ensure wealthier localities do not retain all of their tax revenues. In California, for example, once a locality raises a certain amount of tax per capita, the tax revenue in excess of that number is sent to the state to be redistributed to less-wealthy localities. *See* Matt Newman & Marianne O'Malley, *Property Taxes: Why Some Local Governments Get More Than Others*, LEGIS. ANALYST'S OFF. (Aug. 20, 1996), https://www.pvestates.org/home/showpublisheddocument/3128/636195698300600000.

This Note uses original research to quantify the SALT subsidy and evaluate how much localities receive from the federal government through the SALT deduction.

II. METHODOLOGY

To determine the amount of the SALT subsidy for each locality and the magnitude of the deduction for wealthy localities, it is necessary to determine (i) the concentration of wealthy taxpayers in each locality, (ii) how much the itemizing taxpayers pay in local taxes, and (iii) the estimated tax rate of the itemizers. With this information, we can quantify the SALT subsidy received from the federal government.

Each state has distinct laws that govern the taxation of its residents. Due to the state and local tax variance from state to state, this Note focuses on a single state—Utah.[50] The same analysis can apply to any state, however, once local and state taxing schemes are understood and accounted for in the calculation. Though "local" taxes could refer to taxes levied by counties, cities, or smaller entities, this Note studies only taxes at the city level.

A. Identify Wealthy Localities

Localities with a large concentration of wealthy residents may be receiving disproportionate benefits from the SALT subsidy. Measuring the wealth concentration of a locality is the first step to analyzing the SALT subsidy.

1. Itemization Rates to Measure Wealth

Cities in which a significant portion of tax filers itemize are presumably wealthy localities.[51] The concentration of itemizing taxpayers in a locality can be determined using the IRS Statistics on Income (SOI).[52] The SOI displays data at the ZIP code level,[53] yet ZIP

50. This study uses 348 ZIP codes and 150 cities within Utah for this analysis.

51. *See* TAX POL'Y CTR, *supra* note 22 (showing itemization rates increase with wealth). This assumption is further explained in Section II.A.2.

52. *SOI Tax Stats – Individual Income Tax Statistics – ZIP Code Data (SOI)*, IRS, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-statistics-zip-code-data-soi (last visited Sept. 2, 2022) [hereinafter SOI]. The SOI displays aggregated taxpayer information (such as filing status, itemizers, and deductions) by adjusted gross income (AGI).

53. While this Note recognizes that ZIP codes are not a perfect filter for localities, many credible authors have used them for empirical studies involving geographic locations,

codes are not taxing jurisdictions. ZIP codes do, however, indicate the applicable taxing jurisdictions, namely the state and localities in which the ZIP code falls. By merging the SOI with postal code data,[54] ZIP codes can be aggregated up to the locality level.

Although SOI data is available through 2019, the changes made by the TCJA relating to the SALT deduction are temporary, meaning the data from 2017 is closer to what one can expect the taxing system will revert to once the SALT limitation is removed. This Note uses the data for two analyses: First, using only pre-2017 data, this Note quantifies the SALT subsidy for localities. Second, comparing 2017 and 2018 SALT subsidies, this Note studies the impact of the TCJA on the SALT subsidy.[55]

2. Assumptions and Limitations

Several assumptions are required to conduct these analyses. For example, this Note assumes itemization rates are indicative of wealth. Although not all itemizers are wealthy, there is certainly a strong correlation between wealth and the likelihood of itemization.[56] Furthermore, while a city may have a significant portion of its residents itemize, not all residents of that city are

as it is often the best available measure to filter by geographic region. *See, e.g.*, Raj Chetty, Nathaniel Hendren, Patrick Kline & Emmanuel Saez, *Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States*, 129 Q.J. ECON. 1553 (2014).

54. The postal code data set was purchased from UnitedStatesZipCodes.org. *ZIP Code Database*, https://www.unitedstateszipcodes.org/zip-code-database/ (last visited Sept. 2, 2022). The data displays ZIP codes and their primary cities, counties, and other jurisdictions, as well as general demographics.

55. The TCJA introduced several changes to the tax code, including the SALT deduction limitation and the doubling of the standard deduction. Consequently, a significantly lower portion of tax filers itemized in the years since the TCJA has gone into effect since the standard deduction became more appealing and itemizing became less appealing. *See* Stephen Fishman, *The Tax Cuts and Jobs Act: Key Changes for Individuals*, NOLO, https://www.nolo.com/legal-updates/the-tax-cuts-and-jobs-act-key-changes-for-individuals.html (last visited Sept. 7, 2022). This Note, however, focuses on the subsidy that has been given for several years leading up to the TCJA and will apply again in some strength once the SALT limitation is removed. While the increase in the standard deduction will decrease the subsidy received in future years, it is too soon to determine the future of the SALT deduction.

56. Scott Greenberg, *Who Itemizes Deductions?*, TAX FOUND. (Feb. 22, 2016), https://taxfoundation.org/who-itemizes-deductions/.

necessarily wealthy. Even the wealthiest cities may have areas that are crippled with poverty.[57]

Additionally, ZIP codes are assumed to reflect an individual's geographic location. Yet some ZIP codes overlap cities and even states.[58] To simplify this analysis, ZIP codes spanning multiple localities are aggregated into the locality that makes up the geographic majority of the ZIP code.[59] While this assumption could cause some localities to have an overstated or understated itemization rate, that problem is attenuated here because the number of overlapping ZIP codes is relatively few and the overlap is often only a small geographic region.

The financial information for every resident of the United States would be ideal for conducting this study, yet that data is not available. The SOI data only accounts for residents that filed a tax return in a given tax year. Since relatively low-income residents are not required to file a tax return, there are certainly individuals that are not accounted for in the SOI data—most of whom are on the less wealthy end of the data.[60] This likely skews the analysis by overstating the wealth of a locality when just looking at tax filers. While tax filing and compliance is certainly a concern for any study using tax data to review the population, reliance on the taxing system data is fairly common.[61] For example, recent government assistance during the COVID-19 pandemic was administered through the tax system.[62] While the tax data is far from perfect,

57. While quantifying the deduction certainly will assist in understanding wealth disparities between cities or within cities, this Note does not directly address wealth inequality within cities.

58. There are nine ZIP codes that cross Utah state lines: 81324, 82930, 83312, 83342, 84034, 84531, 84536, 86044, and 86514.

59. SOI, *supra* note 52.

60. *Do I Have to File Taxes?*, GET IT BACK (Dec. 10, 2021), https://www.taxoutreach.org/blog/do-i-have-to-file-taxes/#:~:text=Not%20everyone%20is%20required%20to%20file%20their%20taxes.,tax%20credits%20and%20other%20benefits. This leaves the potential for some localities to have a large number of filers itemize, but those that do not file are less wealthy, leading to a bimodal spread—with the residents either itemizing or falling well short of the traditional income needed to itemize.

61. *See, e.g.*, Mathew Hauer & James Byars, *IRS County-to-County Migration Data, 1990–2010*, 40 DEMOGRAPHIC RSCH. 1153 (2019).

62. The United States Federal Government sent out individual economic payments based on the prior year's tax return. In situations where individuals did not file or children were born after the tax year, residents notified the government of the discrepancies. *See Coronavirus Tax Relief*, IRS, https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments (last visited Sept. 7, 2022); Lorie Konish, *New Batch of $1,400 Stimulus Checks Includes Payments for People who Recently Filed Their Tax Returns*, CNBC (Apr. 22,

many academics and even the United States government itself have recognized the data to be satisfactory.[63] This is because tax data is updated yearly and has been recognized to be fairly accurate in estimating the American population.[64]

Finally, this study is limited by the fact that each state has a unique set of taxing regimes and consumer habits. Although this analysis is informative when evaluating the SALT deduction in Utah, it may over or underestimate the deduction's impact in other states. Utah residents, for example, itemize at a higher rate than residents from most other states.[65]

In summary, despite itemization's shortcomings as a proxy for wealth, the two are closely correlated. Additionally, while the tax system and IRS statistics do not represent all U.S residents, the government and other researchers constantly rely on them. This Note similarly uses SOI data to identify which localities are wealthier than others.

B. Calculate Local Taxes Paid

Calculating the amount of local taxes paid by itemizers is the next step in quantifying the SALT subsidy. The SOI data can also be used to identify the amount itemizing taxpayers pay in local taxes. While the SOI data does not distinguish between state and

2021, 11:16 AM), https://www.cnbc.com/2021/04/22/new-1400-stimulus-checks-include-people-who-filed-2020-tax-returns.html.

63. *See, e.g.*, Jesse Bricker, Jacob Krimmel, Alice Henriques & John Sabelhaus, *Measuring Income and Wealth at the Top Using Administrative and Survey Data*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2016, at 261; Daniel Kim, *Projected Impacts of Federal Tax Policy Proposals on Mortality Burden in the United States: A Microsimulation Analysis*, 111 PREVENTATIVE MED. 272 (2018).

64. *But see* Peter Sailer, Michael Weber & Ellen Yau, *How Well Can IRS Count the Population?*, IRS (1993), https://www.irs.gov/pub/irs-soi/90pop.pdf ("The data from this first attempt at counting the population by using administrative records are very encouraging—certainly encouraging enough to warrant further research. The Internal Revenue Service, by itself, can do a very good job of counting working age residents of the United States. We are not quite as good at counting young people . . . .").

65. Nick Kasprak, *Monday Map: Percentage of Itemizers by State*, TAX FOUND. (Sept. 19, 2011), https://taxfoundation.org/monday-map-percentage-itemizers-state/. For the 2009 tax year, 39.5% of Utah's residents itemized on their tax return, making Utah the eighth-highest itemizing state. *Id.* Utah consistently ranks as one of the most charitable states, with several of its residents donating thousands to charity each year. Adam McCann, *Most Charitable States for 2022*, WALLETHUB (Nov. 9, 2021), https://wallethub.com/edu/most-and-least-charitable-states/8555. Many of these charitable contributions qualify as itemizable deductions and likely increase the rate at which Utah's residents opt out of the standard deduction and choose to itemize.

local taxes, certain taxes are only levied at the state level while others are only levied at the local level. Accordingly, this Note focuses only on those that can be levied at the local level.

1. Isolating Property Taxes

Qualified local taxes are primarily composed of local income taxes, real estate taxes, and personal property taxes. Thirty-seven states do not permit cities and counties to levy an income tax,[66] meaning in those states the deductible local taxes paid should be exclusively local real estate and personal property taxes (collectively referred to as property taxes).[67] Utah is one of the thirty-seven states that does not allow localities to levy income taxes. Property taxes are displayed in the SOI data and are assumed to be the full amount of local taxes claimed for the local portion of the SALT deduction in states that do not permit localities to tax the income of their residents.

2. Assumptions and Limitations

This analysis assumes that the itemizable deductions reported on the SOI data are for taxpayers who end up itemizing—which is not explicitly stated in the SOI data. While it is possible that persons may report their itemizable deductions without itemizing, this is unlikely. Persons that pay property taxes are often homeowners, which increases the likelihood of itemizing. Additionally, there is no requirement to report deductions for expenses that will not appear on your tax return—so taxpayers who do not itemize have no incentive to report their charitable contributions,[68] medical expenses, or state and local taxes paid.

66. Tonya Moreno, *States Where Cities and Counties Levy Additional Income Taxes*, THE BALANCE (May 31, 2022), https://www.thebalance.com/cities-that-levy-income-taxes-3193246. Alabama, California, Colorado, Delaware, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, Pennsylvania, and West Virginia are the thirteen states that allow localities to levy income taxes. *Id.*

67. The vast majority of property taxes are from real estate, with only a small portion coming from personal property taxes. *See* SOI, *supra* note 52. Combining the two, however, was not difficult and gives a more accurate estimate of the total federal subsidy from the SALT deduction.

68. Starting in 2020, eligible tax filers may deduct $300 or $600 for charitable contributions (depending on filing status) regardless of whether they itemize or take the standard deduction. *See* I.R.C. § 62(a)(22); *see also* John McKinley, Luke Richardson & Jonas Lee, *The New Charitable Deduction for Nonitemizers*, J. ACCT. (Sept. 1, 2020),

Additionally, this Note focuses on the city level of the SALT subsidy, yet not all of the local taxes are levied at the city level. While taxes are often levied by cities, they are also levied by school districts, townships, and even counties.[69] These taxing jurisdictions notably overlap. Local taxes in one state may be driven by school district taxes, while another state may have the majority of its local taxes levied by the counties. In Utah, however, the vast majority of tax revenues come from the taxes levied at the city level,[70] which mitigates the overlapping and separate taxing jurisdiction concern.

In summary, by focusing on a state that does not allow its localities to levy income taxes, this Note assumes property taxes account for the local portion of the SALT deduction. This Note also assumes all deductible expenses reported are from itemizers.

C. Estimate Itemizer Tax Rates

The next step in calculating the SALT subsidy is estimating the tax rates of the itemizers claiming the SALT deduction. This estimated rate, in turn, will be multiplied by the local taxes paid to calculate the SALT subsidy.[71]

1. Rate Calculation with Weighted Averages

Tax rates depend on two things: a tax filer's (i) filing status and (ii) amount of taxable income.[72]

Taxpayers file as single, head of household, married filing jointly, or married filing separately.[73] Each filing status has

https://www.journalofaccountancy.com/issues/2020/sep/cares-act-charitable-deduction-for-nonitemizers.html.

69. *See* Joan Youngman, *School Finance and Property Taxes*, LAND LINES, Winter 2016, at 17 ("Nevertheless, the overwhelming majority of U.S. property tax collections fund local government operations, and the property tax remains the main source of autonomous revenue for most local jurisdictions, including school districts.").

70. *See, e.g.*, *View Utah County Tax Rates*, UTAH CNTY., https://www.utahcounty.gov/dept/treas/TaxRates.asp (last visited Sept. 8, 2022); *Tax Rates*, SALT LAKE CNTY., https://slco.org/property-tax/tax-rates/ (last visited Sept. 8, 2022). For example, of the fifty-two taxing districts of Utah County, only four are based entirely on a school district (two of which are related to Alpine School District while the other two are the Nebo School District). The remaining forty-eight taxing districts stem from the city level (i.e., Lehi City, Draper City, Provo City, etc.). Many counties and school districts also levy taxes.

71. The subsidy is as follows: Local Taxes Paid * Federal Tax Rate = Subsidy. For example, if a tax filer claims a $100,000 SALT deduction and is taxed at 39.6%, the SALT subsidy is $39,600.

72. *See* I.R.C. § 1.

73. *Id.*

different tax rate thresholds (except for single and married filing separately, which are identical).[74] Federal income tax rates are readily available through the Internal Revenue Service.

Concerning taxable income, the SOI data breaks tax filers into six adjusted gross income (AGI) buckets: bucket number one consists of tax filers with an AGI below $25,000, and bucket number six consists of tax filers with an AGI above $200,000; the other four buckets fall between.[75] Each bucket shows the number of tax filers for that AGI bucket, the number of each filing status,[76] and the amounts they paid in property taxes.

As both filing status and taxable income vary from bucket to bucket, the SALT subsidy is calculated for each AGI bucket and then aggregated post-calculation.

The first step to calculating an estimated itemizer tax rate is to calculate a tax rate for each of the filing statuses for each AGI bucket. The filing status for each AGI bucket is provided in the SOI data. The following equation is used to estimate the applicable tax rate within each AGI bucket:

$$Tax\ Rate = \sum_{i=1}^{4} S_i * \tau(S_i, \eta)$$

The rate at which each filing status is used within each AGI bucket is denoted by S_i and is hereafter referred to as Status Rate. Status Rates can be estimated for each AGI bucket by simply

74. Married filing separately reverts to single tax brackets, but the filing status comes at an expense as filers are unable to claim certain credits and deductions, such as the education credits and childcare credits. *Pub. 504 Divorced or Separated Individuals: For Use in Preparing 2021 Returns*, IRS (2021), https://www.irs.gov/publications/p504#en_US_2021_publink1000175839.

75. The AGI buckets displayed in the SOI are $0–$24,999; $25,000–$49,000; $50,000–$74,999; $75,000–$100,000; $100,000–$199,999; $200,000 and greater. *See* SOI, *supra* note 52.

76. The filing statuses are rounded to the nearest ten in the SOI, which results in occasional rounding errors. The SOI data did not explicitly give the number of tax filers who filed as married filing separately, but that number could be backed out by taking the total number of returns and subtracting the total single filers, married filing joint filers, and head of household filers. Occasionally the married filing separately column was negative, meaning there were multiple roundups in the other filing statuses. This study kept the negative numbers in an attempt to minimize the overstatement that is made by the other taxpayers.

dividing the number of each filing status by the total number of filers for that AGI bucket.[77]

The applicable tax rate for each status (hereafter Estimated Tax Rate for Status) is denoted as τ and depends on the income of that status represented as η. To calculate the Estimated Tax Rate for Status, the analysis uses the federal tax rates applicable for earners in that particular AGI bucket. For AGI buckets that spanned multiple tax brackets, a weighted average is used.[78] Since there are four filing statuses and six AGI buckets, there are twenty-four potential Estimated Tax Rates for Status—one for each filing status and AGI bucket combination.[79]

As represented by the tax rate equation, the Status Rate is then multiplied by the Estimated Tax Rate for Status to create a weighted itemizer tax rate. The four weighted itemizer tax rates (one for each status) are then added together to produce the estimated itemizer tax rate for the entire AGI bucket.

That estimated itemizer tax rate can then be multiplied by the property taxes paid by that AGI bucket to show the total SALT subsidy received from the deduction of local taxes by the itemizers in that AGI bucket. All SALT subsidies are then aggregated to the ZIP code level, and subsequently, the city level. This aggregation shows the total SALT subsidy received by the city through the SALT deduction for the tax year.

2. Assumptions and Limitations

When estimating the tax rate applicable to each AGI bucket, there is an assumption that taxable income and adjusted gross income are the same. In reality, taxable income is AGI less either the standard deduction or itemizable deductions. Although treating AGI as taxable income arguably inflates the incomes (and therefore tax rates) used in the calculation, the analysis focuses on the taxable benefit received from the SALT deduction, which arguably starts at AGI. Said differently, this Note estimates the

77. For example, for the third AGI bucket in a particular ZIP code, 55% of the tax filers were married filing jointly, 25% single, 15% head of household, and 5% married filing separately.

78. The tax rates are averaged out to account for a distribution across the AGI bucket. For example, for a specific status, if the bottom half of the AGI bucket is taxed at 10% while the top half is taxed at 15%, the Estimated Tax Rate for Status the AGI bucket would be 12.5%.

79. For example, a head of household filer in the second AGI bucket is estimated to have a tax rate of 15%, whereas a single filer in the fourth AGI bucket is estimated to have a tax rate of 26%.

benefit from taking the SALT deduction right away, not the marginal benefit it gives a taxpayer above that of the standard deduction or in addition to other itemized deductions.

Additionally, this analysis assumes the SALT deduction is the first deduction taken by itemizers. For example, if a tax filer has $50,000 of itemizable deductions (with the first $30,000 decreasing their income from a 25% bracket and the other $20,000 decreasing the income in the 22% bracket) this analysis assumes that the SALT deduction applies to the 25% rate. Although the higher rate increases the estimated SALT subsidy, calculating the total itemizable deductions for each individual is not possible because the SOI data presents only summary data of AGI buckets. Even if there were individual-level data that allowed us to study deductions across several tax brackets, deductions are not applied individually—rather, they are applied in the aggregate.[80]

In addition, this analysis assumes that income levels are consistent across each AGI bucket, meaning there are just as many people who make $50,000 as there are those who make $74,999. In buckets and statuses where multiple tax rates have been averaged to create the Estimated Tax Rate for Status, the SALT subsidy will either be over or underestimated, depending on whether the majority of the taxpayers actually pay the higher or lower tax rate. Where tax filers are bunched at the lower end of a multiple tax rate bucket, the Estimated Tax Rate for Status and the SALT Subsidy will be overestimated. On the other hand, where tax filers are bunched on the higher end of the bucket, the Estimated Tax Rate for Status and SALT subsidy will be understated.

Furthermore, the sixth AGI bucket was assumed to max out at $400,000 in calculating the Estimated Tax Rates for Status, effectively leaving out the highest tax rates that apply to the top earners in the United States.[81] This assumption likely underestimates the SALT subsidy received by a locality for the top earners with higher tax rates than those used in the analysis. This assumption was made in light of the alternative, which is to assume

80. In other words, the SALT deduction could theoretically be the first deduction applied or the last. When filing a tax return, all deductions apply simultaneously.

81. The highest tax rates for 2017 were 35% and 39.6%, both of which only applied to taxpayers who had taxable income over $400,000. The highest tax rate for 2018 was 37%, which only applied to individuals with taxable income over $500,000 (except for married filing separately, which had a slightly lower threshold). *1040 Tax Tables*, IRS (Sept. 28, 2017), https://www.irs.gov/pub/irs-prior/i1040tt—2017.pdf.

that several high earners are taxed at the highest rate. Since there is no way of knowing how much a tax filer made in excess of $200,000, this study takes the conservative approach of assuming no taxpayer makes more than $400,000.

In summary, the SALT subsidy can be calculated by multiplying an estimated itemizer tax rate that accounts for both the income and filing status of the tax filers by the property taxes paid. Although there are assumptions made regarding income distributions within each AGI bucket, the analysis uses conservative estimates to predict the tax rates applicable to the residents at each AGI level. The data is then aggregated to the city level.

III. RESULTS

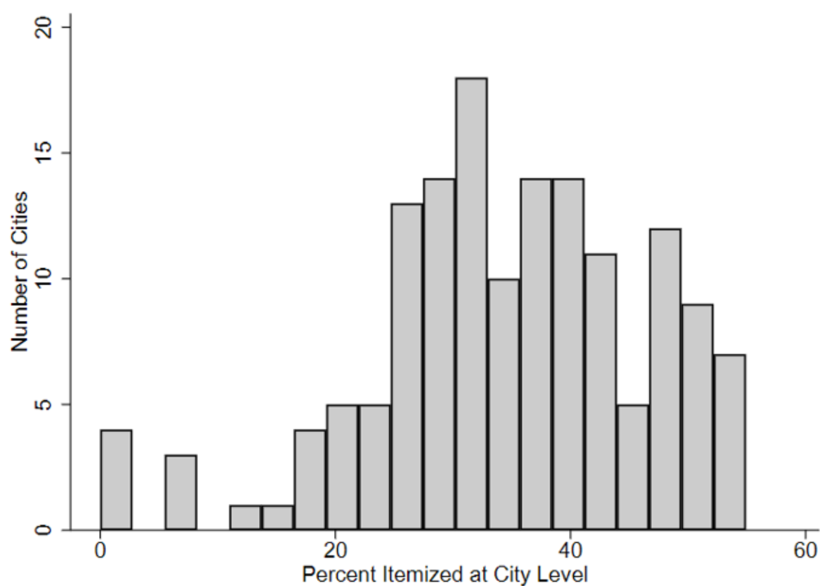
Using the methodology described in Part II, this Note first examines and quantifies the SALT subsidy for the 2017 tax year. In Utah, wealthier cities appear to receive a significantly larger SALT subsidy, per capita, than less wealthy cities.

Following the 2017 analysis, this Note examines the impact of the TCJA on the SALT subsidy. Post-TCJA, the SALT subsidy decreased for all cities; however, less-wealthy cities saw larger decreases than wealthy cities.

A. SALT Subsidy Summary

As mentioned previously, the data is filtered to display only Utah cities. As seen below in *Figure 2*, about 20% to 40% of the tax filers itemized in most Utah cities in 2017. Notably, some cities had few or even no itemizers, while in other cities, over 50% of tax-filing residents itemized.

Figure 2: Percentage of Tax Filers that Itemize by City



To get a closer look at the data used to create *Figure 2*, *Table 1* displays the percentage of itemizers found in specific cities.[82]

Table 1: Percentage of Tax Returns that Itemize in 2017

City	Percent Itemized
Herriman	51.68%
Draper	49.67%
Park City	49.09%
Springville	36.91%
Salt Lake City	32.90%
Brigham City	31.82%
West Valley	24.60%
Salina	23.36%
Helper	20.65%

Cities that had a higher percentage of itemizers received a disproportionate SALT subsidy. In Herriman, almost 52% of the tax filers had their state and local tax burdens subsidized by the federal government. In Helper, on the other hand, only 20% of the tax filers received similar subsidized treatment.

Table 2 displays the total SALT subsidy received by the city. The total SALT subsidy received by the locality is driven by three factors: (1) the number of itemizers in the locality, (2) the amount itemizers paid in property taxes, and (3) the federal tax rate of the itemizers.[83] *Table 2* displays the estimated SALT subsidy received by each city.

82. The State of Utah has 150 cities. This Note divides the cities into three groups with the top fifty cities representing the wealthy group, the middle fifty representing the middle group, and the bottom fifty representing the least wealthy group. While each city varies by population and general socioeconomic status, dividing the cities into these three groups allows summary tables to better examine the SALT subsidy across cities with varying economic statuses. For each of the three groups, this Note pulls three cities to further demonstrate the application of the SALT deduction and the corresponding SALT subsidy. To maintain consistency, the same nine cities are used in each table throughout the Note. While the ordering of the cities changes between each table, the cities remain within their corresponding groups (i.e., the top three cities are from the wealthy group).

83. *See supra* Part II.

Table 2: Locality SALT Subsidy in 2017

City	SALT Subsidy
Park City	$11,414,510
Draper	$9,446,345
Herriman	$7,428,680
Salt Lake City	$54,501,670
Springville	$2,391,264
Brigham City	$1,510,203
West Valley	$6,045,768
Helper	$117,997
Salina	$96,896

Park City is generally recognized as a wealthy locality[84] while West Valley is generally considered less wealthy.[85] While Park City received $11,414,510 from the SALT subsidy, West Valley received $6,045,768. This is likely due to West Valley having fewer wealthy, itemizing residents.

The disparity between Park City and West Valley grows even more when one considers that West Valley has over sixteen times more residents than Park City.[86] This means that, per resident, Park City received a SALT subsidy of $1,360 while West Valley received a mere $43.

While the total SALT subsidy does not account for the population of each city, the SALT subsidy can be better understood by looking at the average benefit received by the itemizers.[87] This is shown in *Table 3*.

84. Lee Davidson, *Park City is Now the Nation's 2nd Wealthiest Small Urban Area, with Average Incomes $27,000 More than in Salt Lake City*, SALT LAKE TRIB. (Dec. 10, 2017, 5:12 PM), https://www.sltrib.com/news/politics/2017/12/07/park-city-is-now-the-nations-2nd-wealthiest-small-urban-area-with-average-incomes-27000-more-than-in-salt-lake-city.

85. *See* Taylor Stevens, *80% of Kids Are Under the Poverty Level at This West Valley Elementary School. Today, They'll Start Classes with New Backpacks and Fresh Haircuts*, SALT LAKE TRIB. (Aug. 20, 2018, 12:25 PM), https://www.sltrib.com/news/education/2018/08/18/west-valley-city/.

86. In the 2020 census, West Valley was reported to have 140,230 residents while Park City was reported to have 8,396. *QuickFacts: Park City, Utah; West Valley City, Utah*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/parkcitycityutah,westvalleycitycityutah/PST045221 (last visited Oct. 3, 2022).

87. While finding the average SALT subsidy per tax filer and resident may also sound relevant, the itemizers are the ones who benefit both from deducting their local taxes paid and receiving well-funded public services in localities comprised of wealthy individuals.

Table 3: SALT Subsidy per Itemizer, Tax Filer, and Resident in 2017

City	SALT Subsidy per Itemizer[88]
Park City	$1,564
Draper	$966
Herriman	$680
Salt Lake City	$783
Springville	$490
Brigham City	$439
West Valley	$422
Salina	$388
Helper	$369

Each Park City itemizer received, on average, a decrease of $1,564 in federal taxes as a result of property taxes paid. West Valley itemizers, on the other hand, only received a decrease of $422.[89]

These results show that the SALT deduction provides a substantial subsidy for localities and their residents. Cities where a significant portion of the locality itemizes receive a considerable SALT subsidy that can then provide residents with more (and better) public services. Relatively poor localities with few itemizing taxpayers receive a much smaller SALT subsidy from the federal government. As a result, itemizing residents from wealthy localities receive subsidized public services while residents from poorer localities must pay full price for the local services provided.

While this Note does not pretend that the SALT subsidy accounts for all of the economic differences between Park City and West Valley, the extra funding from the SALT subsidy certainly contributes to the continued economic and public service disparities between the two cities.[90]

Although non-itemizing residents are also benefitting from the SALT subsidy, this table shows the general wealth of Park City itemizer is likely much more than a Helper itemizer.

88. The average SALT subsidy received by each itemizer is found by dividing the SALT subsidy of the city by the number of itemizers in that city.

89. The disparity grows when we look at only the top AGI bucket of tax filers, who reported an AGI of $200,000 or more. Park City itemizers in the top AGI bucket received a subsidy on average, of $2,736, which is about 75% more than the already large $1,564 average subsidy received per itemizer.

90. Shobe, *supra* note 8, at 543 ("[T]axpayers in poor localities, which are comprised primarily of non-itemizing taxpayers, pay full or close to full price for their local goods and services because poor localities receive little to no subsidy from the local tax deduction.").

B. Impact of the TCJA

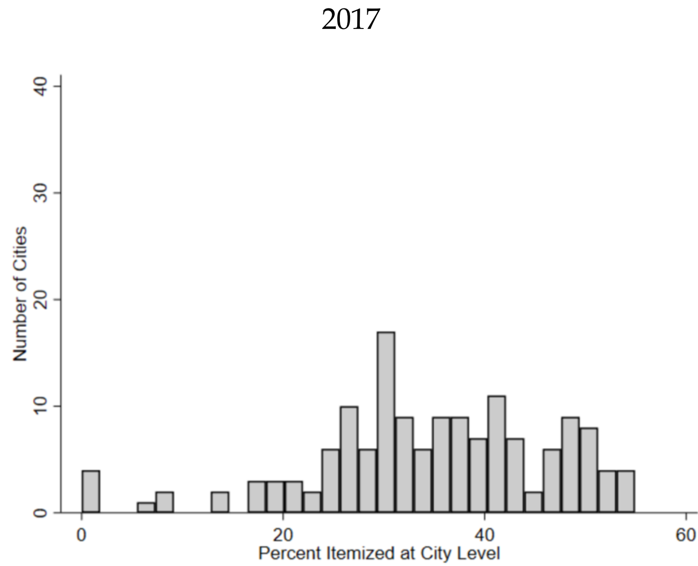
The TCJA significantly impacted the SALT subsidy received by cities. By increasing the standard deduction and limiting the SALT deduction, the TCJA decreased the total SALT subsidy paid by the federal government.

For many tax filers, the standard deduction became more advantageous than itemizing because the amount of the standard deduction doubled.[91] Additionally, the $10,000 limitation on the SALT deduction kept individuals with large property tax bills from claiming the full amounts that had been deductible in prior years, possibly keeping the itemizable deduction total below the new standard deduction. *Figure 3* compares the rate of itemization in Utah cities for 2017 with that of 2018, the first year the TCJA went into effect.

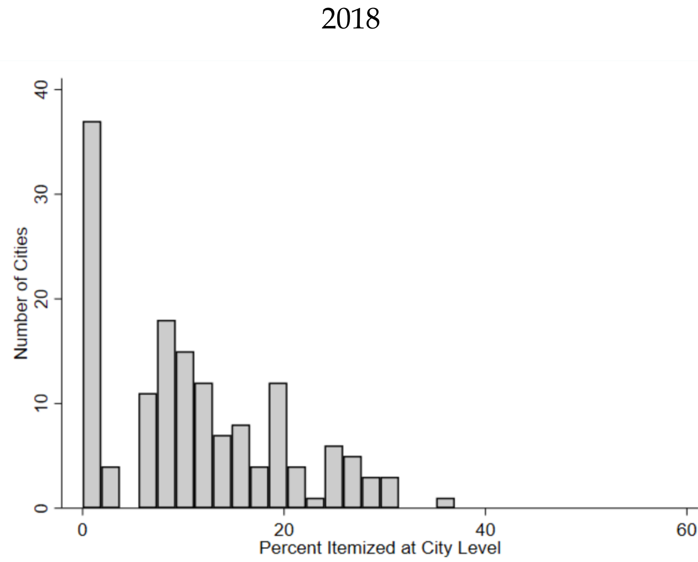
91. Many tax filers who itemized in 2017 chose to take the standard deduction in 2018. These tax filers likely found the standard deduction more beneficial simply because they had itemizable expenses that fell between the 2017 standard deduction and the 2018 standard deduction. In these cases, the standard deduction is offering several tax filers a benefit in excess of that offered by the SALT and other itemizable deductions.

Figure 3: Percentage of Tax Filers that Itemize by Number of Cities in 2017 vs. 2018

2017



2018



While the majority of Utah cities had between 20% and 40% of their tax filers itemize in 2017, in 2018, the highest rate of itemization was only 37%.[92] Also, while only four cities had no itemizers in 2017, almost forty cities had no itemizers in 2018.

The amount of the SALT subsidy was also significantly impacted by the changes introduced by the TCJA, as shown in *Table 4*.

Table 4: Locality SALT Subsidy 2017 vs. 2018

City	SALT Subsidy 2017	SALT Subsidy 2018
Park City	$11,414,510	$8,942,782
Draper	$9,446,345	$6,811,414
Herriman	$7,428,680	$4,876,900
Salt Lake City	$54,501,670	$31,502,990
Springville	$2,391,264	$1,365,221
Brigham City	$1,510,203	$634,057
West Valley	$6,045,768	$2,183,062
Helper	$117,997	$26,783
Salina	$96,896	$20,791

Although all localities were impacted by the TCJA, it did not impact all localities equally. Salt Lake City, for example, saw its SALT subsidy cut almost in half. Park City, on the other hand, saw its SALT subsidy decrease only by 21.65%. In fact, the SALT subsidy appears to decrease significantly more for less wealthy localities, as shown in *Table 5*.

92. This city was Alpine, Utah.

Table 5: Locality SALT Subsidy Change from the TCJA

City	Itemizer PP Δ[93]	SALT Subsidy % Δ[94]
Park City	-20.30 PP	-21.65%
Draper	-20.84 PP	-27.89%
Herriman	-27.56 PP	-34.35%
Salt Lake City	-19.47 PP	-42.20%
Springville	-22.48 PP	-42.91%
Brigham City	-22.23 PP	-58.02%
West Valley	-18.50 PP	-63.89%
Helper	-17.54 PP	-77.30%
Salina	-19.69 PP	-78.54%

Most Utah cities saw a decrease of about twenty percentage points in itemizing rates from 2017 to 2018. Yet the TCJA appears to have impacted the SALT subsidy of the less wealthy localities more than it impacted that of the wealthy localities.

However, the TCJA did not just limit the SALT deduction for itemizers; it also doubled the standard deduction for tax filers. While a portion of the decrease in the SALT subsidy received is likely attributable to the limitation of the SALT deduction, another portion of that decrease is attributable to tax filers who found the doubled standard deduction to be more beneficial than itemizing in 2018.[95]

While the SALT subsidy decreased significantly more for less wealthy cities than the wealthiest cities in Utah, the doubling of the standard deduction likely benefitted residents in less wealthy cities more than residents in wealthy cities. The discussion around the SALT subsidy is, therefore, more nuanced than simply a decrease from 2017 to 2018.

93. Itemizer percentage point change reflects the raw decrease in the percentage of itemizers for each locality. For example, West Valley had 24.60% of its tax filers itemize in 2017, but only 6.10% itemized in 2018. This is a decrease of 18.50 percentage points.

94. The percentage change in the SALT subsidy reflects percentage decrease in the SALT subsidy between 2017 and 2018, after the TCJA was passed. For example, Springville received a SALT subsidy of $2,391,264 in 2017, but only $1,365,221 in 2018. This is a 42.91% decrease.

95. This Note does not examine the benefit received by the doubled standard deduction, but this Note recognizes that the decrease in the SALT subsidy is offset—at least in part—by the increased standard deduction given to tax filers.

IV. IMPLICATIONS

By understanding the SALT subsidy, policymakers are better equipped to discuss its improvement. The government should consider limiting or phasing out the local portion of the SALT deduction, especially in cities with a high concentration of wealthy taxpayers.

A. General Summary

It has been argued that the SALT deduction is justified when there is redistribution of the tax revenue to less wealthy areas.[96] While this may be easily achievable in large, diverse cities, it may not be possible in all localities, especially localities that have a high concentration of wealthy taxpayers. If redistribution is the goal, policymakers should be concerned that less wealthy cities have, through a decrease of the SALT subsidy, received fewer resources to address economic disparities. As reflected by the changes in the SALT subsidy received by Utah cities, economically diverse and less wealthy cities saw larger decreases in the SALT subsidy than wealthy cities.

Showing that a locality has a high concentration of itemizing taxpayers, however, will not allow policymakers to draw definitive conclusions about the effect of the SALT subsidy on taxpayers in that jurisdiction. For example, if a state requires redistribution from its wealthy localities to its poorer localities, those high-wealth localities have not captured the full benefit of the SALT subsidy, and therefore a deduction is arguably warranted for the state and local taxes paid. Utah, however, does not currently require such a redistribution.

If a state does not require redistribution from wealthy localities, then those localities capture the benefit of the local tax deduction for themselves, and the federal government subsidizes wealthy localities in an arguably unjustified manner. It is recognized that

96. Shobe, *supra* note 8, at 546 ("[F]rom a tax policy perspective, a deduction for local taxes is justified if it is shared with the less wealthy through redistribution (much like the charitable deduction), which is often the case for taxpayers in large cities with economically diverse populations and taxpayers in states that require wealthy localities to share tax revenue with poorer localities. However, where the subsidy created by the local tax deduction is captured primarily by those who receive a direct benefit for the taxes they pay, which occurs the most frequently in wealthy, economically segregated localities, then the deduction is significantly less justified . . . . When looked at this way, the question of whether to allow and how to structure a deduction turns to the nature of the underlying localities the deduction subsidizes.").

while wealthier taxpayers receive the largest benefit from the deduction, they also bear the largest portion of the burden.[97] However, when wealthy individuals are the direct beneficiaries of the local tax revenues in addition to receiving a tax deduction on their federal return, the deduction may be less justified. Making this determination must be done on a state-by-state basis in light of the local tax redistribution policies.

The SALT subsidy concerns have been addressed in part by raising the standard deduction and limiting the SALT deduction.[98] Yet, with the reinstatement of the full SALT deduction in 2026 (or at least a higher limitation), policymakers should question the potential implications of the local portion of the SALT subsidy.

If redistribution of wealth is the goal,[99] then legislators should consider limiting the local portion of the SALT deduction, especially in localities that have a high concentration of wealthy residents.

B. Local Tax Limitation or Phase Out

Congress may approach these issues by either limiting the local portion of the SALT deduction or by phasing out the local tax deduction entirely based on the percentage of itemizers in a locality. While both suggestions would reduce the SALT subsidy received by wealthy localities, the local tax limitation is more practicable.

The first option policymakers may consider is applying a SALT limitation only to the local portion of the deduction. The current $10,000 SALT deduction limit applies to both state and local taxes. While its original purpose was to fund the TCJA, a SALT deduction limitation may still have a purpose in the tax law. The Build Back

97. Research also suggests that getting rid of the deduction completely would not necessarily increase equality among tax filers. Daniel Hemel & Kyle Rozema, *Inequality and the Mortgage Interest Deduction*, 70 TAX L. REV. 667, 702 (2017) ("Our analysis serves to illustrate that even though the benefits of the SALT deduction flow disproportionately to high-income households, eliminating the SALT deduction to fund an across-the-board tax cut would not necessarily reduce after-tax income inequality.").

98. Some have argued that the limitation on the SALT deduction has saved the deduction from future repeal. Hemel, *supra* note 3, at 190 ("[T]he political will to reengineer stable state tax systems simply did not exist before the 2017 Act thrust the SALT deduction into the spotlight. By waking a sleeping giant, the new tax law ironically may have effectively spurred SALT's extension.").

99. It is recognized that not all individuals share the same view on re-distribution—and these differences depend heavily on where the individuals were raised and are now currently located. However, the vast majority of Americans support some level of redistribution. William W. Franko & Avery C. Livingston, *Economic Segregation and Public Support for Redistribution*, 59 SOC. SCI. J. 375, 375 (2022).

Better bill has suggested increasing the limit, but policymakers should consider maintaining (or even decreasing) the limit and only applying it to the local portion of the deduction.

As suggested in this Note, state and local governments are inherently different. The largest concern is not necessarily the SALT subsidy itself, but rather that the SALT subsidy is given to wealthy localities that are already well-funded and whose residents potentially receive direct benefits from their already deductible local taxes. If individuals received limited SALT deductions for locality taxes, the SALT subsidy to localities would be limited. While wealthy localities would continue to receive tax revenue from their residents and a smaller SALT subsidy, the federal government will have additional funds to allocate to underfunded states and localities.

Additionally, the limitation may not need to increase from its current resting place of $10,000. As noted in *Table 5*, wealthy localities saw a relatively small decrease in the SALT subsidy post-TCJA. If anything, the limitation may need to be decreased to continue acting as a true limitation, especially if it were to only apply to local taxes.

A second option policymakers may consider is phasing out the local tax deduction based on the general concentration of wealth in a city. As the rate of itemization increases in a given city, the local tax deductibility would decrease. By way of a hypothetical, if 30% of tax filers from a city itemize, the local tax deduction could be capped at 50%. Once 40% of tax filers in a city itemize, local taxes could no longer be deductible.

These phase-outs for the local portion of the SALT deduction would disincentivize wealthy filers from congregating in wealthy cities. While wealthy taxpayers may still choose to segregate from taxpayers of other socioeconomic statuses, the taxes that are paid to own property and support the schools in that area would no longer be deductible to the same extent they would be in a much more economically diverse city where a smaller percentage of the tax filers itemized. Rather than incentivizing economic segregation,[100] a local tax deduction phase-out would *disincentivize* economic segregation.

100. *See* Shobe, *supra* note 8.

While this solution may sound harsh, it is less radical than the elimination of the SALT deduction entirely, as suggested by several academics and practitioners.[101] Either way, the limitation or elimination of state and local tax deductibility simply causes the wealthier, itemizing tax filers to pay the same effective local rates as their non-itemizing neighbors who have never received a tax benefit from their local taxes.

A local tax limitation would decrease the SALT subsidy received by economically diverse cities, such as Salt Lake City. But the additional revenues from the limitation of the SALT subsidy in localities like Park City could then be reallocated to the state to use for less wealthy or economically diverse localities, like West Valley and Salt Lake City. This Note recommends that policymakers consider placing a limit on the local portion of the SALT deduction that tax filers can claim while allowing the state portion (which is unlikely to directly benefit the itemizer) to go uncapped.

This Note recognizes that the impact of the SALT deduction is complicated,[102] but suggests the local portion of the deduction be seriously considered—arguably for the first time in history.

CONCLUSION

The SALT deduction remains a heavily debated topic. The full impact of the SALT deduction, however, has not fully been appreciated; the local portion of the deduction has been overlooked. Local taxes and their subsequent deductibility introduce concerns that are not relevant to taxes levied by states. The local portion of the SALT deduction provides a greater subsidy, per capita, for wealthy localities than it does for economically heterogeneous and less wealthy localities. By quantifying and analyzing the SALT subsidy received by localities, this Note suggests the local portion of the SALT deduction be considered when deciding the future of federal SALT legislation. Subsidizing wealthy localities at a higher rate than less wealthy cities will further the disparities we see

101. *See, e.g.*, Rachel Greszler, Kevin Dayaratna & Michael Sargent, *Why Tax Reform Should Eliminate State and Local Tax Deductions*, HERITAGE FOUND. (Oct. 16, 2017), https://www.heritage.org/taxes/report/why-tax-reform-should-eliminate-state-and-local-tax-deductions; *Why Are Democrats Pushing a Tax Cut for the Wealthy?*, N.Y. TIMES (Apr. 25, 2021), https://www.nytimes.com/2021/04/25/opinion/salt-deduction-democrats.html.

102. Hemel & Rozema, *supra* note 97, at 699 ("Scholarship on the SALT deduction generally acknowledges that the provision's effects on inequality are more nuanced.").

between cities and, if not consciously controlled, will create America, the divisible.[103]

103. *Cf.* 4 U.S.C. § 4, Pledge of Allegiance.