DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear :

I am responding to your letter to the Chief Counsel dated December 8, 2011, in which you asked for clarification of the Internal Revenue Service's views on whether real property taxes must be assessed on an ad valorem basis to be deductible for federal income tax purposes.

You note that the 2011 instructions for the Form 1040 Schedule A, Itemized Deductions, state that real property taxes are deductible "only if the taxes are based on the assessed value of the property." On the other hand, a 2003 Chief Counsel memorandum dated November 24, 2003, regarding the deductibility of California Mello-Roos and other assessments, concludes that those assessments may, depending on the facts and circumstances, be deductible as real property taxes even though they are not imposed on an ad valorem basis.

Section 164(a)(1) of the Internal Revenue Code permits a deduction for real property taxes, but does not define what constitutes a real property tax. Personal property taxes also may be deductible under § 164(a), but § 164(b)(1) requires a personal property tax be an ad valorem tax to be deductible. The Code does not explicitly require the same for real property taxes. Section 1.164-4(a) of the Income Tax Regulations explains that to be deductible, a real property tax must be levied for the general public welfare at a like rate against all real property in the taxing authority's jurisdiction. In general, an amount that is assessed only on specific property benefitted by a local benefit (such as for streets, sidewalks, and like improvements) cannot be deducted as a real property tax. However, § 1.164-4(b)(1) permits a deduction for assessments to provide local benefits to the extent that the taxpayer can show they were imposed to repair, maintain, or meet interest charges for such benefits.

Revenue Ruling 80-121, 1980-1 C.B. 43, notes that a characteristic common to many real property taxes is that the tax is measured by the value of the real property. However, there is no statutory or regulatory requirement that a real property tax be an ad valorem tax to be deductible for federal income tax purposes. Assessments on real property owners, based other than on the assessed value of the property, may be deductible if they are levied for the general public welfare by a proper taxing authority at a like rate on owners of all properties in the taxing authority's jurisdiction, and if the assessments are not for local benefits (unless for maintenance or interest charges).

We will recommend appropriate revisions to our forms and publications on this subject.

I hope this information is helpful. If you have any questions, please contact me or at .

Sincerely,

Christopher F. Kane
Chief, Branch 3
Associate Chief Counsel
(Income Tax & Accounting)