

Legal Division Guidance 2011-12-01  
(Real Property Tax Deductions)

Q: Does a real property tax need to be *ad valorem* in order to be deductible as an itemized deduction?

A: Yes. A real property tax needs to be *ad valorem* in order to be deductible under Internal Revenue Code section 164, to which California law is fully conformed.

The Internal Revenue Service's (IRS) well established official position, to which California law conforms, is that the only real property taxes deductible as an itemized deduction are those that are assessed on the basis of the value of the property, i.e., *ad valorem*. The federal position, supported by federal legal analyses (General Counsel Memoranda 37927 (1979); see also General Counsel Memorandum 36466 (1975)), rulings (Rev. Rul. 80-121, 1980-1 C.B. 44 (1980); see also Priv. Ltr. Rul. 8033022, May 20, 1980), regulation (Treas. Reg. sec. 1.164-4(a)), and case law (*Sandy Lake Road Limited Partnership v. Commissioner* (1997) TC Memo 1997-295), unquestionably limits the deduction for real property taxes to those that are assessed on the basis of the value of the property. Finally, the 2010 Instructions for Schedule A (Form 1040) provide, in part, as follows – "Line 6 Real Estate taxes include taxes (state, local or foreign) you paid on real estate you own that was not used for business, but only if the taxes are based on the assessed value of the property assessed." (See also Publication 17 (2010), at p. 146, and Publication 530 (2010), at p. 2.)

Further, taxpayers may not deduct assessments (whether assessed on an *ad valorem* basis or otherwise) for local benefits (such as street, sidewalk, and other like improvements) of a kind tending to increase the value of the property assessed that are imposed because of and measured by some benefit inuring directly to the property against which the assessment is levied. These nondeductible amounts may be added to the basis of the property in accordance with Internal Revenue Code section 1016 and the applicable regulations. Federal law does, however, provide that the portion of the above-discussed assessments for local benefits that are made for the purpose of maintenance or repair, or for the purpose of meeting interest charges with respect to those local benefits, are deductible. Federal regulations provide that the burden is on the taxpayer to show that a portion of the amount assessed is allocable to these purposes. If the allocation cannot be made, the federal regulations provide that none of the amount so paid is deductible.

Finally, a 2003 IRS Office of Chief Counsel Memorandum provides the apparent basis for a conclusion that assessments may be deductible as real property taxes even though they are not imposed on an *ad valorem* basis. However, this was an internal memorandum drafted by a local IRS attorney which is inconsistent with published federal guidance, should not be considered written advice, and, according to conversations with IRS Office of the Chief Counsel, does not reflect the official position of the IRS. This internal memorandum has never been released nor made available by the IRS and the conclusion expressed in it has never appeared in any IRS ruling, written advice, publication or guidance.