Changes from the Tax Cuts and Jobs Act

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The Impact of the New Tax Law

By: Marvin J. Williams, JD, MBA, CPA, CMA, CFM, CGMA

The Tax Cuts And Jobs Act (TCJA) was passed by the United States Congress on December 20, 2017 and signed into law on December 22, 2017. The effective date of the new tax provisions is January 1, 2018. This sweeping change in the tax laws will have impact on essentially all taxpayers, individuals and businesses. The purpose of this brief article is to highlight the significant provisions of the new tax law and provide basic illustrations of the impact of the new tax law as compared to the immediate prior tax laws in a variety of settings for individual taxpayers.

Significant provisions of TCJA:

Itemized Deductions

As shown below, the (Regular) Standard Deduction for all taxpayers has been significantly increased under the new tax law. As a consequence, taxpayer's ability to qualify to Itemized Deductions will significantly diminish under the new tax law. With Schedule A (Itemized Deductions) being perhaps the most audited tax form, taxpayer compliance will greatly increase under the new tax. Some of the most notable changes in Itemized Deductions (and other provisions) under TCJA are discussed below.

State and Local Taxes

Itemized Deductions for State And Local Taxes are now capped at a maximum of $10,000 ($5,000 for Married Filing Separately taxpayers) per year. This limitation will have potential significant impact on taxpayers in jurisdictions with high State And Local Income Taxation and less impact on taxpayers in states such as Texas (and the other six states) that have no State Income Taxation. (However, this will impact taxpayers in the State Of Texas as Sales Taxes have been typically deducted as Itemized Deductions in lieu of State And Local Income Taxes as Sales Taxes (State And Local) also fall under this $10,000 ($5,000) annual limitation).

Property Taxes

The deductibility of Property Taxes on real estate (and in certain cases Personal Property) are likewise subject to the $10,000 ($5,000) annual limitation on the deductibility of State And Local Taxes under TCJA.

Qualified Residence Interest (Mortgage Interest)

TCJA brings significant changes regarding the deductibility of Qualified Residence Interest (Home Mortgage Interest). Under TCJA, the maximum qualified indebtedness (Acquisition Debt (Indebtedness)) in which interest can be computed for deduction purposes is $750,000 ($375,000 for Married Filing Separately taxpayers), down from $1,000,000 ($500,000 Married Filing Separately taxpayers) under prior tax law. (The new limits apply to debts incurred after December 15, 2017). Moreover, the deductibility of Home Equity Loan Interest has been substantially reduced (limited only to home equity loans used to buy, build or substantially improve the taxpayer's home that secures the loan) under the new tax law.

Personal Casualty Losses

Personal Casualty Losses for fire, storm, shipwreck, theft and other casualties which have been

permitted for many years have been repealed under TCJA except in cases of Personal Casualty Losses arising from federally declared natural disasters (subject to the same $100 per casualty floor and 10% of Adjusted Gross Income (AGI) as before under prior law.). This is another area where compliance has been of concern which such concern is greatly reduced with this new provision in TCJA.

Charitable Contributions
TCJA increases the limitation on charitable contributions to 60% (from 50%) of the taxpayer's AGI for a given year for cash contributions. As under prior tax law, cash contributions in excess of this 60% limit may be carried forward to the next five succeeding tax years in order of time. Despite the increase in the allowed annual limitation for cash contributions, charitable contributions may decline in future years as the higher (Regular) Standard Deduction discussed below will prevent many taxpayers from qualifying for Itemized Deductions and, thereby, reduce incentive by those taxpayers to make Charitable Contributions.

Medical Expenses
For the year of 2018, deductible Medical Expenses must exceed 7.5% of the taxpayer's AGI for all taxpayers. Beginning January 1, 2019, deductible Medical Expenses must exceed 10% of the taxpayer's AGI for all taxpayers. This 10% limit has been the case since 2013 for taxpayers not age 65 or older but this new provision beginning in the year of 2019 now applies to taxpayers age 65 or older as well as all other taxpayers. (These percents also apply to the Alternative Minimum Tax (AMT) for each respective tax year).

Tax Preparation Fees
Tax Preparation Fees are no longer deductible under TCJA which were allowed as other Miscellaneous Itemized Deductions that exceeded 2% of the taxpayer's AGI under prior tax law.

Unreimbursed Employee Expenses
Unreimbursed Employee Expenses are no longer deductible as Miscellaneous Itemized Deductions (that exceeded 2% of the taxpayer's AGI) as under prior tax law.

Professional And Union Dues
Professional And Union Dues are no longer deductible as Miscellaneous Itemized Deductions (that exceeded 2% of the taxpayer's AGI) as under prior tax law.

The Overall Limitation
The Overall Limitation of Itemized Deductions for high-income taxpayers is eliminated under TCJA.

Other Deductions

Alimony Payments (Income)
For the year of 2018, deduction for Alimony Payments and inclusion of Income for the recipient remains the same as under prior law. However, no deduction is allowed for Alimony Payments for Divorce Decrees executed after December 31, 2018. Likewise, no Taxable Income is incurred by the recipient of the Alimony Payments as was the case under prior tax law.

Moving Expenses
Moving Expenses are no longer deductible for the taxpayer under TCJA beginning January 1, 2018 (except from members of the Armed Forces who move pursuant to permanent orders). In addition, the reimbursement of Moving Expenses by the employer will now be treated as taxable income to the employee (and deductible by the employer) under TCJA and not tax-free as was the case under prior tax law.

Education Provisions

Employer Education Payments
The tax-free provision of Employer Education Payments made on behalf of employees continues under TCJA (at a maximum of $5,250 per year).

Payments to 529 Plans
Payments to Qualified 529 Plans are now expanded beyond post-secondary education expenses to include K-12 private school education expenses. Contributions (up to $10,000 per year per student (designated beneficiary)) to Qualified 529 Plans are not deductible but the earnings are tax-free when used for qualified education expenses of the designated beneficiary.

Student Loan Interest
Student Loan Interest deduction remains unchanged under TCJA. (An annual deduction of a maximum of $2,500 is allowed as under prior tax law subject to phase-out for higher income taxpayers).

Standard Deduction
As stated above, TCJA greatly increased (nearly doubled over the most recent tax year) the Regular Standard Deduction for all taxpayers. Beginning January 1, 2018, the Regular Standard Deduction for taxpayers by Filing Status is as follows:

Filing Status	Regular Standard Deduction
Single	$12,000
Head of Household	$18,000
Married Filing Jointly	$24,000
Married Filing Separately	$12,000

These substantial increases in the Regular Standard Deduction will greatly reduce the number of taxpayers that will qualify to Itemized Deductions. As a result, taxpayer compliance will significantly increase. The Additional Standard Deduction for taxpayers age 65 or older and/or blind continues as under the prior tax law. (All Standard Deductions (Regular and Additional) will be adjusted (indexed) annually for inflation).

Personal Exemption
The Personal Exemption ($4,050 each for the most recent tax year) for the taxpayers and their dependents is entirely eliminated under TCJA. The impact of this elimination will be somewhat offset by the increased Regular Standard Deduction discussed immediately above and the increased

Child Tax Credit discussed below. In addition, the elimination of the Personal Exemption will also have significant impact in regards to taxpayer compliance as in prior tax years a dependent has often been claimed on more than one tax return. The elimination of the Personal Exemption will have a very positive impact on overall taxpayer compliance in future tax years as the claiming of the same dependent on more than one tax return will no longer be possible.

Tax Credits

American Opportunity Tax Credit

The tremendously popular and beneficial American Opportunity Tax Credit will remain unchanged under TCJA. The American Opportunity Tax Credit is a maximum of $2,500 per year ($1,000 refundable per year) per eligible student for the first four years of post-secondary education (enrolled at least half-time).

Life Learning Tax Credit

The Life Learning Tax Credit will remain unchanged under TCJA. The Lifetime Learning Tax Credit is a maximum of $2,000 per year for all eligible students (not refundable) with no time limit or minimum enrollment requirement.

Child Tax Credit

The Child Tax Credit under TCJA has been increased to $2,000 per eligible child with a maximum of $1,400 refundable from $1,000 per eligible child and a maximum of $1,000 refundable under the immediate prior tax law. The age of the eligible child remains as under the age of 17 as under prior tax law. The beginning of the phase-out of the Child Tax Credit is greatly increased (more than doubled) and the earned income requirement slightly lowered for the refundable portion of the credit. This increase in the Child Tax Credit somewhat offsets the impact of the complete elimination of the Personal Exemption under TCJA discussed above.

Family Flexibility Credit

Related to the Child Tax Credit, a $500 Family Flexibility Credit (not refundable) applies for dependents that are not a child of the taxpayer subject to the same phase-outs as the Child Tax Credit.

Individual Tax Rates

Under TCJA, the number of individual tax rates remain at seven total Tax Rates as under the immediate prior tax law but the rates now range from 10% to 37% as opposed to 10% to 39.6% under the immediate prior tax law. The seven Tax Rates under TCJA are lower at each comparable level except for the first Tax Rate of 10% and the sixth rate of 35% and applies mostly to a higher range of Taxable Income at each Tax Rate level.

Capital Gain Tax Rates

Under TCJA, the Capital Gains Tax Rates for Qualified Dividends and Long-Term Capital Gains remain the same as under immediate prior tax law of 10%, 15% and 20% with slight acceleration of when the Capital Gain Tax Rates apply (not exactly matching the Tax Brackets as under prior tax law): 0% almost all of the two lowest tax brackets, 15% almost for the next five tax brackets and 20% for most of all of the highest tax bracket.

The Alternative Minimum Tax

The Alternative Minimum Tax Exemption for individuals have greatly increased beginning January 1, 2018 under TCJA. The Alternative Minimum Tax Exemption for 2018 for individuals by Filing Status is as follows:

Filing Status	Alternative Minimum Tax Exemption
Single	$ 70,300
Head of Household	$ 70,300
Married Filing Jointly	$109,400
Married Filing Separately	$ 54,700

The beginning of the phase-out of the Alternative Minimum Tax Exemption has been greatly expanded allowing most taxpayers to retain the full Exemption Amount. Moreover, the Alternative Minimum Tax Rates of 26% of the first $175,000 ($87,500 for Married Filing Separately taxpayers) of Alternative Minimum Taxable Income and 28% for Alternative Minimum Taxable Income in excess of $175,000 ($87,500 for Married Filing Separately taxpayers) is the same under TCJA as under immediate prior tax law (adjusted annually for inflation with the 2018 adjusted amounts being the first $191,500 ($95,750 for Married Filing Separately taxpayers) of Alternative Minimum Taxable Income and 28% for Alternative Minimum Taxable Income in excess of $191,750 ($95,750 for Married Filing Separately taxpayers). However, the significant increase in the Alternative Minimum Tax Exemption will result in many taxpayers not being subject to the Alternative Minimum Tax under TCJA as opposed to immediate prior tax law.

(The Alternative Minimum Tax Exemptions shown above and the beginning of the phase-out amounts will be adjusted (indexed) annually for inflation).

Basic Illustrations of Impact of New Tax Law

The impact of the myriad of changes in the new tax law will vary from taxpayer to taxpayer depending on many factors such as the make-up of their family unit, whether they qualified for Itemized Deductions under prior tax laws and the like. Below are hypothetical scenarios of individual taxpayers comparing the tax results for the year of 2018 of the new tax law (TCJA) and the immediate prior tax law.

Income/Deduction	Prior Tax Law	TCJA	Prior Tax Law	TCJA	Prior Tax Law	TCJA	Prior Tax Law	TCJA
W-2 Wages	$ 98,000	$ 98,000	$128,000	$128,000	$275,000	$275,000	$275,000	$275,000
Interest Income	$ 5,000	$ 5,000	$ 7,000	$ 7,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000
Medical Expenses	$ 6,000	$ 6,000	$ 8,000	$ 8,000	$ 12,000	$ 12,000	$ 12,000	$ 12,000
State And Local Income Taxes	$ 3,000	$ 3,000	$ 5,000	$ 5,000	$ 9,000	$ 9,000	$ 9,000	$ 9,000
Property Taxes	$ 5,000	$ 5,000	$ 6,000	$ 6,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000
Mortgage Interest	$ 2,000	$ 2,000	$ 3,000	$ 3,000	$ 8,000	$ 8,000	$ 8,000	$ 8,000
Charitable Contributions	$ 1,000	$ 1,000	$ 2,000	$ 2,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000
Net Tax Liability * (Single – No Dependents)	$17,616	$16,130						
Net Tax Liability * (HOH – 1 Child **)			$21,810	$18,978				
Net Tax Liability * (MFJ - No Dependents)					$55,807	$49,539		
Net Tax Liability * (MFJ - 2 Children **)							$53,095	$45,539
Tax Increase (Tax Savings) of TCJA		($1,486)		($2,832)		($6,268)		($7,556)

* - Based on projected Personal Exemption amount for 2018 before the passage of TCJA of $4,150, Regular Standard Deduction of $6,550 (Single), $9,550 (Head Of Household) and $13,000 (Married Filing Jointly) and ranges of Taxable Income for each Tax Rate (And Exclusive of Alternative Minimum Tax and Net Investment Income Tax, if applicable).
** - All under the age of 17 years of age (Child Tax Credit of $2,000 per eligible child is taken into account in determining the Net Tax Liability for TCJA computations above where applies) (Child Tax Credit of $1,000 per eligible child is fully phased-out in both cases above for the Prior Tax Law computations)

Corporations

The two most profound impact of TCJA as it relates to corporations is the introduction of a single Tax Rate (Flat Rate) of 21% (regardless of the level of taxable income) (down from a maximum Tax Rate of 35% under immediate prior tax law) and the elimination of the Alternative Minimum Tax (AMT) for corporations both effective January 1, 2018. (The AMT credit carryovers from prior tax years will still be allowed going forward to the extent of the Regular Tax Liability. Moreover, to the extent that the AMT credit carryover exceeds the Regular Tax Liability, 50% of the excess AMT credit carryovers will be refundable in 2018, 2019 and 2020 and the remainder fully refundable in 2021). The impact of these two changes will have enormous impact on many corporations and, as a consequence, the United States economy. It will be interesting to learn in the next few years the extent of this impact on corporations and the United States economy.

Pass Through Entities (Sole Proprietors, Partnerships, S Corporations, Etc.)

A special deduction for non-corporate taxpayers of 20% of Qualified Business Income (QBI) earned in a trade or business is allowed under TCJA subject to certain limitations.

Estates, Gifts and Trusts

The Income Tax Rates for Estates And Trusts are slightly lowered under TCJA with the same ranges of Taxable Income as the immediate prior tax law (although a higher rate applies to the next highest range of Taxable Income). In addition, the tax-free portion of an Estate (Exemption Equivalent) for Estate And Gift Tax purposes has increased (doubled) from $5,000,000 to $10,000,000 adjusted annually for inflation. The 2018 adjusted amount is $11,180,000. The Estate And Gift Tax rates remain the same (18% to 40%). Moreover, the Alternative Minimum Tax still applies for Estates and Trusts under TCJA with an Alternative Minimum Tax Exemption of $24,600 for the year of 2018 (adjusted annually for inflation) and the same Tax Rates and ranges of Taxable Income as for individuals.

Reference

H.R. 1 (2018) Public Law 115-97– Tax Cuts and Jobs Act Internal Revenue Service Website (www.irs.gov)

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The Qualified Business Income Deduction Clarified

By: Sidney Kess, CPA, J.D., LL.M

The Tax Cuts and Jobs Act of 2017 introduced a new write-off for owners of pass-through entities that runs from 2018 through 2025. This deduction doesn't require any cash outlay or special action to be eligible for it, but using it reduces the effective tax rate on business income. There is much confusion about this new deduction and some clarification will need IRS guidance. Here is what is clear so far, how it impacts CPAs and attorneys, and what needs IRS and/or Congress to explain further.

What is the new deduction?
Under new Code Section 199A there is a 20% deduction for qualified business income from a sole proprietorship or a pass-through entity.

Where is the deduction taken?
The deduction is not a business deduction used to reduce profits subject to tax; it does not reduce net earnings for self-employment tax purposes. It is not a reduction to gross income taken in the Adjusted Gross Income section of Form 1040. It is a deduction from adjusted gross income much like the standard deduction or itemized deductions used to reduce taxable income.

<u>Terminology</u>

What is a pass-through entity for purposes of Code Sec. 199A?
Many business owners may be eligible to take the deduction on their personal returns, including:

• Schedule C filers: Sole proprietors, independent contractors, and single-member limited liability companies (LLCs).

• Schedule E filers: S corporation shareholders, partners, members in multi-member LLCs, real estate investors, beneficiaries of trusts and estates, owners of REITs, and those with interests in qualified cooperatives.

• Schedule F filers: farmers and ranchers.

What is qualified business income?
The deduction applies to this income, but it isn't merely the owner's share of net income from the business. It is the net amount of income, gain, deduction, and loss from a qualified U.S. trade or business (including Puerto Rico). It does not include investment items, such as short-term and long-term capital gains and losses, dividends, and interest other than what's allocable to the business. And it doesn't include reasonable compensation or guaranteed payments to owners. But it does include most REIT dividends and income from publicly traded partnerships.

What is a specified service trade or business?
This is a business where the owner must reduce the amount of qualified business income on which the deduction is taken (explained below). It includes any trade or business involving the

performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services, as well the performance of services that consist of investing and investment management, trading or dealing in securities, partnership interests or commodities. It also includes any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees.

The TCJA deleted engineering and architecture, but the IRS could still view such businesses as a qualified service business based on the "reputation or skill" clause.

Deduction Amount

What is the deduction amount?
Technically the deduction is the sum of:

• The lesser of (1) the individual's combined qualified business income or (2) 20% of the excess of taxable income over net capital gain plus qualified cooperative dividends

• The lesser of (1) 20% of cooperative dividends or (2) taxable income reduced by net capital gains.

Essentially, the deduction is 20% of qualified business income. But due to the technical definition of the deduction, it means that the 20% deduction is based on taxable income if it is less than qualified business income.

Who can claim the full 20%-of-qualified-business-income deduction?
An individual who has taxable income below set levels can apply the 20% deduction against qualified business income. This is so whether or not the taxpayer is in a qualified service business. For 2018, the taxable income limit is $315,000 for a married couple filing a joint return and $157,500 for any other filer. These taxable income thresholds are where the 24% tax brackets end and the 32% tax brackets begin for 2018. The taxable income limit will be adjusted for inflation after 2018. Thus, an attorney or accountant with taxable income below the applicable threshold amount for his or her filing status would be able to claim the deduction with respect to income from a practice.

Limitations

What is the W-2 limitation?
If the owner's taxable income is above the threshold, then a limitation comes into play. The deduction is the lesser of:

• 20% of qualified business income, or

• The greater of (1) 50% of W-2 wages for the qualified business, or (2) 25% of the W-2 wages with respect to the business plus 2.5% of the unadjusted basis (immediately before acquisition) of qualified property.

If the amount of qualified business income is greater than the taxpayer's taxable income, then the 20% applies only to the extent of taxable income as explained earlier.

W-2 wages are amounts reported as such to the Social Security Administration for owners and other employees. Payments to independent contractors do not factor in. For partners, LLC members, and S corporation owners, the allocations of W-2 wages and the unadjusted basis of property are made in the same way as the allocation of qualified business income, and likely will have to be reported on Schedule K-1.

What is the limitation for a qualified service business?
For purposes of figuring the W-2 limitation, the owner of a qualified service business with taxable income above the threshold reduces the amount of qualified business income to which the deduction applies. The reduction is a percentage derived from the ratio of taxable income for the year in excess of the threshold over $100,000 on a joint return or $50,000 for all other filers. In effect, if taxable income for the owner of a qualified service business who files jointly is $415,000 or over in 2018 (or $207,500 for other filers), then no deduction can be claimed because there is no qualified business income on which to apply the deduction. Thus, CPAs and attorneys with taxable income over $415,000, or $207,500, depending on filing status, cannot claim any deduction.

If an individual above the taxable income threshold owns a qualified service business as well as a nonqualified service business, it is not yet clear whether the deduction can be taken with respect the nonqualified service business even though he or she phases out for the deduction on the qualified service business income.

What is a Section 199A loss and how does it impact the deduction?
If the net amount of income, gain, deduction, and loss is less than zero, the net amount is treated as a loss in the succeeding year.

It is not clear whether the loss is carried forward only to the following year or continues to be carried forward indefinitely until used up. And it's not clear whether the loss is used to offset only income in the subsequent year from the business that generated it or must be used to offset income from all of a taxpayer's businesses.

Conclusion
As is clear from the questions and answers above, much is not clear. Additional guidance from the IRS may not be immediately forthcoming from the recent tax filing season. Once this is done, then business owners can decide on what to do, including changing their form of entity, deciding whether to add independent contractors to the payroll, or taking other actions.

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Sales Tax After Supreme Court Overrules Physical Presence Standard

By: Andrea Turner, CPA and Wayne Danneman, CMI

In the 5-4 decision of *South Dakota v. Wayfair, Inc.*, the Supreme Court of the United States ruled South Dakota's economic nexus law constitutional. The decision has the potential to require online retailers and other remote sellers to collect and remit sales tax to states in which they do business, regardless of their physical presence within those states.

The decision overturned the physical presence standard established in the 1992 decision of *Quill Corp v. North Dakota*. That decision barred states from requiring out-of-state businesses to collect sales tax on purchases delivered to state residents unless those businesses had a physical presence within the state.

In the absence of *Quill*, the first question is whether the sales tax applies to an activity with substantial nexus with the taxing state. Such nexus is established when the seller avails itself of the privilege of carrying on significant business in the taxing jurisdiction. The Supreme Court's decision found that large, national companies with an extensive virtual presence in South Dakota are engaging in a significant quantity of business within the state. The South Dakota statute applies only to sellers who exceed the thresholds of $100,000 in gross revenue or 200 remote transactions with in-state consumers on an annual basis. The Court found this quantity of business could not have occurred unless the seller availed itself of the privilege of carrying on substantial business in South Dakota.

The Court remanded the case to determine whether the South Dakota law violates other elements of the Commerce Clause. The Commerce Clause is a constitutional principle that prohibits states from passing legislation that discriminates against interstate commerce. However, the Court noted in their decision that several features of the law prevent discrimination including the economic thresholds, no retroactive application and South Dakota's participation in the Streamlined Sales and Use Tax Agreement and simplification efforts.

The implications and scope of the Court's decision are still uncertain, but it is likely that additional states will enforce and enact economic thresholds and may repeal collection laws related to physical presence.

Next steps include:

- Reviewing existing activities and the geographic footprint for those activities

- Reviewing product and service offerings to develop taxability determinations

- Ensuring proper exemption documentation is collected, retained, and regularly renewed

- Reviewing and considering whether technology investments are warranted

• Monitoring state and local sales/use tax updates, including developments regarding economic nexus thresholds

• Preparing for increased audit activity by state and local taxing jurisdictions

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Post TCJA Estate Planning Checklist
CPAs Role More Important Than Ever Before

By: Martin M. Shenkman, CPA, MBA, PFS, J.D., Esq.

The Tax Cut and Jobs Act enacted in late December 2017 transforms estate planning making the CPAs role more important than ever before. Too many practitioners dismiss estate planning in light of the large exemptions (Gee none of my clients are worth more than $22 million!) but that mischaracterizes the planning environment. The following is a checklist of planning ideas to help practitioners get over the "doesn't apply to my clients" hump and create significant benefit for clients, and great business opportunities for CPAs.

Not Just Taxes
You've heard many times, but really estate planning was rarely ever only about estate taxes and for most clients certainly is not only about estate taxes now (but read on). The lessening importance of estate taxes makes this for huge business opportunities for CPAs. Clients will be less likely than ever to meet with their estate planning attorneys. They will not view the cost as worthwhile if there is no likely estate tax savings. That is a terrible mistake but the result is that unless CPAs educate clients about the importance of proper estate planning in the current environment, no one may be doing so. So ramp up your efforts to have estate planning discussions with clients.

Asset Protection is Critical. Every client, not just physician-clients, needs to take prudent steps to protect their assets from lawsuits and claims. Society will not be less litigious then before because of changes in the tax law. Few clients take sufficient steps. Asset protection should start with practical steps like making certain the client has adequate property, casualty and liability insurance. An excess personal liability policy is key to this layer of protection. Practitioners will be surprised at the frequent and significant gaps that can be uncovered in the course of a casual conversation with the client even before an insurance expert is brought in. Most clients hold investment real estate and business operations in separate LLCs. The primary purpose of that is to safeguard their home and savings from attack in the event of a claim. But shockingly many clients hold multiple assets in a single LLC (so a suit on one could jeopardize all assets inside that entity). Many clients never put rental properties or a home-based business into an LLC. Often the investment or business "just got started" and they never took the time to consult with an attorney. Every client should have these concerns and most practitioners can provide considerable help. Without the estate tax driver pushing the clients to meet with an attorney these critical non-tax steps will be overlooked.

Divorce Protection. How many clients worry about their children getting divorced and losing much of their inheritance? All! But most of these clients have wills that leave all inherited assets outright to their children at some age like 30. Why? Because no one explained to them the risks that creates and that with the simple technique of a long term trust the child can be protected. Review the client's will. Don't fret that you are not an attorney. It is usually pretty simple to see what trusts are used and if any when they end. Simply updating their wills can provide incredible divorce protection for their heirs. Not a difficult or costly process relative to the benefits involved.

√ **Old Wills Bad Formulas**. Many clients need to review their wills (or revocable trusts if that is the primary dispositive document) in light of the tax law changes. Many wills were drafted using formulas to determine how much of the estate passes to a credit shelter trust and how much to a marital bequest (e.g. a qualified terminable interest property or QTIP trust). Many of the formula clauses in old wills just won't work with the new law. Here's an extreme example, but don't assume it is unrealistic many of these have already surfaced.

Example: Grandmother wrote a will when the estate and GST (generation skipping trust) exemption was a mere $1 million. So, she left a bequest outright, no trusts, to her ten grandchildren of equal shares of the GST exemption, the remainder to her children. Conceptually that made sense because it used her GST exemption, and perhaps for $100,000 or less per grandchild she did not want the cost of a trust incurred tenfold. With an exemption over $11 million under the new law, her $10 million plus estate passed all the grandchildren with each grandchild inheriting more than a $1 million unprotected. A disaster. Don't assume this is so rare that your clients need not worry. Another common scenario might be funding a credit shelter trust for the surviving spouse and children from a prior marriage with the exemption amount. That might have been reasonable if the exemption were a mere $1 million but now the entirety of the estate might end up in that trust. Depending on the distribution provisions, who is named as trustee, and other factors, this could range from a bad result to an unmitigated disaster. Many clients do not understand these issues and merely dismiss the need to go back to their estate planner since they view the exemption as beyond them. Regardless of the fact of their estate perhaps not incurring an estate tax, the change in law may completely undermine their intended dispositive scheme; a non-tax consideration of extreme importance. Practitioners again should not feel uncomfortable at least trying to help clients identify what happens to their estate so that the client can be directed back to their estate planning attorney to confirm if there is in fact and issue an if so resolve it.

Small Estates Bad Planning

For small estates, or simpler situations, some attorneys left assets outright to the surviving spouse. For moderate estates a disclaimer provision may have been included in the will to permit the surviving spouse to direct some of the funds to a credit shelter trust if it was determined after the first spouse's death that such a trust should be used to save estate taxes. These approaches, while cheap and seductively simple, leave all the estate exposed to remarriage and creditors of the surviving spouse. Those issues are too often ignored or minimized. With longevity and burgeoning elder financial abuse that is a mistake. A better approach for many of these clients is to have a will, post-TCJA, leaving all of the estate to a marital QTIP trust. That trust could even include a right or the surviving spouse to disclaim. With document generation software technology building a better will is not particularly costly. Using an "all to QTIP unless disclaimed to credit shelter" approach gives the surviving spouse protection for lawsuits, future spouse, creditors and predators. That's important. As to tax planning, for clients that needn't care about the estate tax, all QTIP assets will be included in the surviving spouse's estate and thereby qualify for a basis step-up if applicable. The QTIP also creates a range of more sophisticated planning options that are worth having "just in case." For example, GST exemption can be allocated to the QTIP and those assets can then grow outside the transfer tax system after the surviving spouse's death if left in long term trusts for heirs (which they should be for the same reasons- protection and flexibility). If the surviving spouse might remarry a disclaimer of any

portion of his or her income interest in the QTIP can trigger a current gift thereby using up the deceased spouse unused exemption (DSUE) from the first to die spouse. That could be prudent since the death of the new spouse would eliminate the DSUE from the first or prior spouse. Depending on the changes in the law and other factors that could be useful.

Terminating Old Planning

Many clients have already and will continue to show up at their CPA's door to seek help unwinding old plans that they view as costly and irrelevant in light of the new exemption amounts. Many clients will seek out their CPAs viewing the process as less costly then returning to their estate planning attorney. CPAs should be very cautious in pursuing any of these "unwinds" without first carefully considering all of the issues and ramifications. Few clients will begin to evaluate these situations beyond the "I don't need this." Many clients bought life insurance to pay an estate tax that is likely irrelevant. These clients might seek to terminate the coverage and cancel the trust. Depending on the facts, that old insurance coverage might remain a prudent investment and a ballast to more risky investments the client has in the rest of her portfolio. If the client has a health issue that coverage might never again be obtainable. What if the estate tax exemption lowers to ½ the current level in 2026 as is provided for in the law? What if a future administration, in reaction to the benefits of the wealthy under the current law, revert to an even lower exemption? If the insurance is cancelled and the insurance trust unwound it may be impossible to reconstruct. The cost of keeping the old trust in place is insignificant. The cost of creating it is a sunk cost. Some taxpayers with family limited partnerships (FLPs) or LLCs may seek to liquidate those entities since, after all, they might not need the discounts. Perhaps not but what of the asset protection, management, probate avoidance and other benefits an FLP or LLC might provide? What will your liability exposure be as a practitioner that helps liquidate an entity only to find that the next month the client is subject of a large lawsuit? What of a QPRT (qualified personal residence trust) established when the exemption was a mere $1 million to save estate tax and now the only result is the loss of a step-up in basis and no estate tax savings? Liquidation of the QPRT might sound sensible and simple to the client (just deed the house back to mom, right?) but it could be far from that. What of the liability to the trustee for violating the terms of the trust? What if the beneficiaries of the QPRT differ from the beneficiaries of mom's will? What if mom has a new boyfriend no one knows about? Again, clients need objective, broad-perspective, analysis not a quick reaction to a change in the law that may yet change again.

Using Temporary Exemptions

While many clients, and even many practitioners, might view the new $11 million exemption as of stratospheric proportions, is it really? First, as noted above, the exemption drops by ½ in 2026. Further, no one has a crystal ball to guesstimate the likelihood of a future administration change the rules to a harsher result than that. So now, many clients of moderate wealth might still benefit by shifting wealth into irrevocable trusts to grow that wealth out of their estates. Before dismissing this need, as many clients already have, consider the growth in the client's estate by 2026 when the exemption will drop. A not insignificant number of clients might well face an estate tax. Do a projection of the client's assets growing at a reasonable rate for 10 years. What does that number look like compared to the $5 million (not $10 million) inflation adjusted exemption in 2026?

Income Tax

For a decade or longer the default approach for many irrevocable trusts was to structure them to be grantor trusts taxed to the settlor creating the trust. Now, however, for the first time in a very long time the use of non-grantor trusts might provide valuable income tax savings. Non-grantor trusts that own some of the equity in a client's business might qualify for a full IRC Sec. 199A 20% business income deduction because the trust's income may be under the income thresholds mandated under 199A. If a client cannot benefit from charitable contribution deductions, transferring investment assets to a trust and having the trust make the contributions can secure a full income tax deduction since trusts do not have the standard deduction individual taxpayers do. Just be sure the trust meets the requirements of IRC Sec. 642(c) to qualify. The trust will salvage an otherwise lost/wasted contribution deduction and the client will still have their full $12,000 or $24,000 standard deduction. A nice tax savings. Practitioners will be critical to this income tax oriented trust planning. This change in focus is yet another reason that the CPA will prove to be the catalyst to estate planning happening. In many instances estate planning attorneys will not have a strong income tax background and will more than ever need the assistance of the CPA on the planning team.

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Changes from the Tax Cuts and Jobs Act

1. Due to the Tax Cuts And Jobs Act, itemized deductions for state and local taxes are capped at a maximum of $10,000 per year. The potential significant impact on taxpayers will be in:
A. States with Federally declared natural disasters.
B. States that have no state income taxation.
C. Jurisdictions with high state and local income taxation.
D. Expatriate citizens living abroad.

2. Due to the Tax Cuts And Jobs Act, the deductibility of this housing indebtedness has been substantially reduced.
A. Home Mortgage Interest
B. Qualified Residence Interest
C. Home Equity Loan Interest
D. Both A and B

3. The Tax Cuts And Jobs Act increases the limitation on charitable contributions to: _______ (of the taxpayer's AGI for a given year for cash contributions).
A. 50% of taxpayer's AGI for a given year for pledges and commitments
B. 50% of the taxpayer's AGI for a given year for cash contributions
C. 60% of taxpayers AGI for in kind contributions
D. 60% of the taxpayer's AGI for a given year for cash contributions

4. Which of the following are no longer deductable under the Tax Cuts And Jobs Act?
A. Tax Preparation Fees
B. Unreimbursed Employee Expenses
C. Professional And Union Dues
D. All of the above

5. The Tax Cuts And Jobs Act states moving expenses are no longer deductable with the exception of what?

A. Government employees being relocated

B. Armed Forces members who move due to permanent orders

C. Those who have not moved in the last four years

D. All of the above

6. Which of the following regarding the regular standard deduction for all taxpayers under the Tax Cuts And Jobs Act is false

A. Filing status: Single ; Regular standard deduction: $12,000

B. Filing Status: Head of household; Regular Standard Deduction: $20,000

C. Filing Status: Married filing jointly; Regular Standard Deduction: $ 24,000

D. Filing Status: Married filing separately; Regular Standard Deduction: $12,000

7. The Child Tax Credit under Tax Cuts And Jobs Act has been changed to:

A. $2,000 per eligible child.

B. The beginning of the phase-out of the Child Tax Credit is greatly increased (more than doubled).

C. The earned income requirement slightly lowered for the refundable portion of the credit.

D. All of the above.

8. Under new Code Section 199A there is a 20% deduction for qualified business income from a sole proprietorship or a pass-through entity. Which of the following qualifies for this deduction?

A. Real estate investment trust dividends and income from publicly traded partnerships.

B. Long-term capital gains and losses.

C. Reasonable compensation or guaranteed payments to owners.

D. Short-term dividends and interest.

9. Which of the following business owners are eligible to take the Tax Cuts and Jobs Act deduction on their personal returns:
A. Schedule F filers: farmers and ranchers
B. Schedule E filers: S corporation shareholders, partners, members in multi-member LLCs, real estate investors, beneficiaries of trusts and estates, owners of REITs, and those with interests in qualified cooperatives
C. Schedule C filers: Sole proprietors, independent contractors, and single-member limited liability companies (LLCs)
D. All of the above

10. Who can claim the Tax Cuts and Jobs Act “full-percentage-of-qualified-business-income” deduction?
A. A non-qualified service business
B. A qualified service business
C. An individual who has taxable income below $157,500
D. All the above

11. What is known for certain about a Section 199A loss?
A. A net loss that is carried forward indefinitely until used up.
B. The net amount of income, gain, deduction, and loss less than zero that is treated as a loss the succeeding year.
C. A net loss used to offset only income in the subsequent year from the business that generated it.
D. A net amount used to offset income from all of a taxpayer’s income.

12. Which of the following is a threshold that would qualify as seller activity with substantial nexus with the taxing state (South Dakota), therefore subject to taxation due to *South Dakota v. Wayfair, Inc*?

A. Sellers who exceed the thresholds of $80,000 in gross revenue

B. Sellers who exceed the thresholds of $110,000 in gross revenue

C. Sellers who exceed 150 remote transactions with in-state consumers on an annual basis

D. Sellers who exceed 200 remote transactions with in-state consumers on an annual basis

13. Which of the following is not considered a practical first step to protect assets from lawsuits and claims?

A. Deposit insurance policy

B. Personal excess liability insurance policy

C. Property insurance policy

D. Casualty insurance policy

14. Which of the following was mentioned as an estate-planning tool needing review due to formula clauses that wont work with the Tax Cuts and Jobs Act?

A. Prenuptial agreement

B. Health care proxy

C. Life insurance

D. Wills or revocable trusts

15. A better approach post TCJA for small estates who need not care about estate tax is using an "all to ______ unless disclaimed to credit shelter" approach gives the surviving spouse protection for lawsuits, future spouse, creditors and predators.

A. Qualified terminable interest property

B. Totten trust

C. Qualified personal residence trust

D. Asset protection trust

Question Responses

1. ______
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15. ______

Payment Information

Name: ____

Company/Firm: ____

Street address: ____

City/state/zip: ____

Email (required): ____

Phone: ____

Card:

Visa MasterCard American Express Discover

Card number: ____

Expiration date: ___________________________

Signature:____