RECENT DEVELOPMENTS IN FEDERAL INCOME TAXATION

"Recent developments are just like ancient history, except they happened less long ago."

By

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On December 22, 2017, the President signed legislation that makes significant amendments to the Internal Revenue Code of 1986. This legislation, which became Pub. L. No. 115-97, is colloquially referred to as the **Tax Cuts and Jobs Act**. This outline refers to the legislation in this manner and summarizes the provisions of the legislation that, in our judgment, are the most important. The outline does not attempt to list the legislation's provisions comprehensively or to explain them in detail.

I. ACCOUNTING

II. BUSINESS INCOME AND DEDUCTIONS

A. Income

B. Deductible Expenses versus Capitalization

C. Reasonable Compensation

D. Miscellaneous Deductions

1. Oh, come on! No more deductions for taking a client to a professional sports game? The 2017 Tax Cuts and Jobs Act, § 13304, amends Code § 274(a) to disallow deductions for costs "[w]ith respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation." Similarly, no deduction is allowed for membership dues with respect to any club organized for business, pleasure, recreation or other social purposes. This rule applies to taxable years beginning after 2017.

2. Rats! We knew that we should have been architects or engineers instead of tax advisors. The 2017 Tax Cuts and Jobs Act, § 11011, adds § 199A, thereby creating an unprecedented, new deduction for trade or business (and certain other) income earned by sole proprietors, partners of partnerships (including members of LLCs taxed as partnerships or as sole proprietorships), and shareholders of S corporations. New § 199A is intended to put owners of flow-through entities (but also including sole proprietorships) on par with C corporations that will benefit from the new reduced 21% corporate tax rate; however, in our view, the new provision actually makes many flow-through businesses even more tax-favored than they were under pre-TCJA law.

Big Picture. Oversimplifying a bit to preserve our readers' (and the authors') sanity, new § 199A essentially grants a special 20 percent deduction for "qualified business income" (principally, trade or business income, but not wages) of certain taxpayers (but not most personal service providers except those falling below an income threshold). In effect, then, new § 199A reduces the top marginal rate of certain taxpayers with respect to their trade or business income (but not wages) by 20 percent (i.e., the maximum 37 percent rate becomes 29.6 percent on qualifying business income assuming the taxpayer is not excluded from the benefits of the new statute). Most high-earning (over $415,000 taxable income if married filing jointly) professional service providers (including lawyers, accountants, investment advisors, physicians, etc., but *not* architects or engineers) are excluded from the benefits of new § 199A. Of course, the actual operation of new § 199A is considerably more complicated, but the highlights (lowlights?) are as summarized above.

Effective dates. Section 199A applies to taxable years beginning after 2017 and before 2026.

Initial Observations. Our initial, high-level observations of new § 199A are set forth below:

1. *How § 199A applies.* New § 199A is applied at the individual level of any qualifying taxpayer by first requiring a calculation of taxable income excluding the deduction allowed by § 199A and then allowing a special deduction of 20 percent of qualified business income against taxable income to determine a taxpayer's ultimate federal income tax liability. Thus, the deduction is *not* an above-the-line deduction allowed in determining adjusted gross income; it is a deduction that reduces taxable income. The deduction is available both to those who itemize deductions and those who take the standard deduction. The deduction cannot exceed the amount of the taxpayer's taxable income reduced by net capital gain. The § 199A deduction applies for income tax purposes; it does *not* reduce self-employment taxes. Query what states that piggyback off federal taxable income will do with respect to new § 199A. Presumably, the deduction will be disallowed for state income tax purposes.

2. *Eligible taxpayers.* Section 199A(a) provides that the deduction is available to "a taxpayer other than a corporation." The deduction of § 199A is available to individuals, estates, and trusts. For S corporation shareholders and partners, the deduction applies at the shareholder or partner level. Section 199A(f)(4) directs Treasury to issue regulations that address the application of § 199A to tiered entities.

3. *Qualified trades or businesses (or, what's so special about architect and engineers?)—§ 199A(d).* One component of the § 199A deduction is 20 percent of the taxpayer's qualified business income. To have qualified business income, the taxpayer must be engaged in a qualified trade or business, which is defined as any trade or business *other than* (1) the trade or business of performing services as an employee, or (2) a specified service trade or business. A specified service trade or business is defined (by reference to Code § 1202(e)(3)(A)) as "any trade or business involving the performance of services in the fields of health, … law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees." Architects and engineers must be special, because they are excluded from the definition of a specified service trade or business. There is no reasoned explanation for this exclusion in the 2017 TCJA Conference Report. *Note:* taxpayers whose taxable income, determined without regard to the § 199A deduction, is below a specified threshold are not subject to the exclusion for specified service trades or businesses, i.e., these taxpayers can take the § 199A deduction even if they are doctors, lawyers, accountants etc. The thresholds are $315,000 for married taxpayers filing jointly and $157,500 for all other taxpayers. (These figures will be adjusted for inflation in years beginning after 2018.) Taxpayers whose taxable income exceeds these thresholds are subject to a phased reduction of the benefit of the § 199A deduction until taxable income reaches $415,000 for joint filers and $207,500 for all other taxpayers, at which point the service business cannot be treated as a qualified trade or business.

4. *Qualified business income—§ 199A(c).* One component of the § 199A deduction is 20 percent of the taxpayer's qualified business income, which is generally defined as the net amount from a qualified trade or business of items of income, gain, deduction, and loss included or allowed in determining taxable income. Excluded from the definition are: (1) income not effectively connected with the conduct of a trade or business in the United States, (2) specified investment-related items of income, gain, deduction, or loss, (3) amounts paid to an S corporation shareholder that are reasonable compensation, (4) guaranteed payments to a partner for services, (5) to the extent provided in regulations, payments to a partner for services rendered other than in the partner's capacity as a partner, and (6) qualified REIT dividends, qualified cooperative dividends, or qualified publicly traded partnership income (because these three categories are separate components of the § 199A deduction).

5. *Determination of the amount of the § 199A deduction—§ 199A(a)-(b).* Given the much-touted simplification thrust of the 2017 Tax Cuts and Jobs Act, determining the amount of a taxpayer's § 199A deduction is surprisingly complex. One way to approach the calculation is to think of the § 199A deduction as the sum of three buckets, subject to two limitations. *Bucket 1* is the sum of the following from all of the taxpayer's qualified trades or businesses, determined separately for each qualified trade or business: the lesser of (1) 20 percent of the qualified trade or business income with respect to the trade or business, or (2) the greater of (a) 50 percent of the W–2 wages with respect to the qualified trade or business, or (b) the sum of 25 percent of the W–2 wages with respect to the qualified trade or business, plus 2.5 percent of the unadjusted basis immediately after acquisition of all qualified property. (*Note:* this W-2 wages and capital limitation *does not apply* to taxpayers whose taxable income is below the $157,500/$315,000 thresholds mentioned earlier in connection with the definition of a qualified trade or business. For taxpayers below the thresholds, Bucket 1 is simply 20 percent of the qualified trade or business income. For taxpayers above the thresholds, the wage and capital limitation phases in and fully applies once taxable income reaches $207,500/$415,000.) *Bucket 2* is 20 percent of the sum of the taxpayer's qualified REIT dividends and qualified publicly traded partnership income. *Bucket 3* is the lesser of (1) 20 percent of the taxpayer's qualified cooperative dividends, or (2) the taxpayer's taxable income reduced by net capital gain. *Limitation 1* is that the sum of Bucket 1 and Bucket 2 cannot exceed 20 percent of the amount by which the taxpayer's taxable income exceeds the sum of the taxpayer's net capital gain and qualified cooperative dividends. *Limitation 2* is an overall limitation and provides that the sum of Buckets 1, 2 and 3 (after application of

Limitation 1) cannot exceed the amount of the taxpayer's taxable income reduced by the taxpayer's net capital gain. Thus, a taxpayer's § 199A deduction is determined by adding together Buckets 1 and 2, applying Limitation 1, adding Bucket 3, and then applying Limitation 2.

6. *An incentive for business profits rather than wages.* Given a choice, most taxpayers who qualify for the § 199A deduction would prefer to be compensated as an independent contractor (i.e., 1099 contractor) rather than as an employee (i.e., W-2 wages), unless employer-provided benefits dictate otherwise because, to the extent such compensation is "qualified business income," a taxpayer may benefit from the 20 percent deduction authorized by § 199A.

7. *The "Edwards/Gingrich loophole" for S corporations becomes more attractive.* New § 199A exacerbates the games currently played by S corporation shareholders regarding minimizing compensation income (salaries and bonuses) and maximizing residual income from the operations of the S corporation. For qualifying S corporation shareholders, minimizing compensation income not only will save on the Medicare portion of payroll taxes, but also will maximize any deduction available under new § 199A.

3. Unless you fit in one of the exceptions, Congress just increased your interest rate on all your business loans. The 2017 Tax Cuts and Jobs Act, § 13301, amended § 163(j) to limit the deduction for business interest expense. Consequently, if your business is impacted by amended § 163(j), you will pay more for the use of borrowed funds, which is a de facto interest increase. Basically, the deduction for business interest expense under amended § 163(j) will be limited to 30 percent of "adjusted taxable income" (essentially earnings before interest, tax, depreciation and amortization (EBITDA) for the first 4 years, and then earnings before interest and taxes (EBIT) thereafter). Businesses with average annual gross receipts (computed over 3 years) of $25 million or less and businesses in certain industries (notably real estate if a proper election is made, but also floor plan financing of auto dealers and regulated utilities) are exempted from the limitations of amended §163(j). Real estate businesses must accept slightly longer recovery periods by using the alternative depreciation system for certain depreciable property if they elect out of the § 163(j) limitation. Because real estate businesses making the election out must use the alternative depreciation system for so-called qualified improvement property (among other categories), electing out of the § 163(j) limitation would seem to have the effect of making qualified improvement property ineligible for bonus depreciation under § 168(k).

4. Congress has repealed the § 199 domestic production activities deduction. We will remember fondly some of the issues it generated, such as whether assembling items into gift baskets constituted "manufacturing." The 2017 Tax Cuts and Jobs Act, § 13305, repealed Code § 199, which granted a special deduction to taxpayers with domestic production activities. The repeal is effective for taxable years beginning after 2017.

E. Depreciation & Amortization

1. Certain depreciation and amortization provisions of the 2017 Tax Cuts and Jobs Act:

a. Increased limits and expansion of eligible property under § 179.

Increased § 179 Limits. The 2017 Tax Cuts and Jobs Act, § 13101, increased the maximum amount a taxpayer can deduct under § 179 to $1 million (increased from $520,000). This limit is reduced dollar-for-dollar to the extent the taxpayer puts an amount of § 179 property in service that exceeds a specified threshold. The legislation increased this threshold to $2.5 million (increased from $2,070,000). These changes apply to property placed in service in taxable years beginning after 2017. The legislation did not change the limit on a taxpayer's § 179 deduction for a sport utility vehicle, which remains at $25,000. The basic limit of $1 million, the phase-out threshold of $2.5 million, and the sport utility vehicle limitation of $25,000 all will be adjusted for inflation for taxable years beginning after 2018.

Revised and expanded definition of qualified real property. The 2017 Tax Cuts and Jobs Act, § 13101, also simplified and expanded the definition of "qualified real property," the cost of which can be deducted under § 179 (subject to the applicable limits just discussed). Prior to amendment by the 2017 Tax Cuts and Jobs Act, § 179(f) defined qualified real property as including "qualified leasehold improvement property," "qualified restaurant property," and "qualified retail improvement property." The legislation revised the definition of qualified real property by replacing these three specific categories with a single category, "qualified improvement property" as defined in § 168(e)(6). Section 168(e)(6) defines qualified improvement property (subject to certain exceptions) as "any improvement to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service." In addition, the legislation expands the category of qualified real property by defining it to include the following improvements to nonresidential real property placed in service after the date the property was first placed in service: (1) roofs, (2) heating, ventilation, and air-conditioning property, (3) fire protection and alarm systems, and (4) security systems. These changes apply to property placed in service in taxable years beginning after 2017.

Section 179 property expanded to include certain personal property used to furnish lodging. The 2017 Tax Cuts and Jobs Act, § 13101, also amended Code § 179(d)(1). The effect of this amendment is to include within the definition of § 179 property certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging (such as beds or other furniture, refrigerators, ranges, and other equipment).

b. Goodbye, basis; hello 100 percent § 168(k) bonus first-year depreciation!

100 percent bonus depreciation for certain property. The 2017 Tax Cuts and Jobs Act, § 13201, amended Code § 168(k)(1) and 168(k)(6) to permit taxpayers to deduct 100 percent of the cost of qualified property for the year in which the property is placed in service. This change applies to property *acquired and placed in service* after September 27, 2017, and before 2023. The percentage of the property's adjusted basis that can be deducted is reduced from 100 percent to 80 percent in 2023, 60 percent in 2024, 40 percent in 2025, and 20 percent in 2026. (These periods are extended by one year for certain aircraft and certain property with longer production periods). Property *acquired on or before September 27, 2017* and placed in service after that date is eligible for bonus depreciation of 50 percent if placed in service before 2018, 40 percent if placed in service in 2018, 30 percent if placed in service in 2019, and is ineligible for bonus depreciation if placed in service after 2019.

Used property eligible for bonus depreciation. The legislation also amended Code § 168(k)(2)(A) and (E) to make used property eligible for bonus depreciation under § 168(k). Prior to this change, property was eligible for bonus depreciation only if the original use of the property commenced with the taxpayer. This rule applies to property *acquired and placed in service* after September 27, 2017. Note, however, that used property is eligible for bonus depreciation only if it is acquired "by purchase" as defined in § 179(d)(2). This means that used property is *not* eligible for bonus depreciation if the property (1) is acquired from certain related parties (within the meaning of §§ 267 or 707(b)), (2) is acquired by one component member of a controlled group from another component member of the same controlled group, (3) is property the basis of which is determined by reference to the basis of the same property in the hands of the person from whom it was acquired (such as a gift), or (4) is determined under § 1014 (relating to property acquired from a decedent). In addition, property acquired in a like-kind exchange is not eligible for bonus depreciation.

Qualified property. The definition of "qualified property" eligible for bonus depreciation continues to include certain trees, vines, and plants that bear fruits or nuts (deductible at a 100 percent level for items planted or grafted after September 27, 2017, and before 2023, and at reduced percentages for items planted or grafted after 2022 and before 2027). The definition also includes a qualified film or television production. Excluded from the definition is any property used in a trade or business that has had floor plan financing indebtedness (unless the business is exempted from the § 163(j) interest limitation because its average annual gross receipts over a three-year period do not exceed $25 million).

Section 280F $8,000 increase in first-year depreciation. For passenger automobiles that qualify, § 168(k)(2)(F) increases by $8,000 in the first year the § 280F limitation on the amount of depreciation deductions allowed. The legislation continues this $8,000 increase for passenger automobiles *acquired and placed in service* after 2017 and before 2023. For passenger automobiles acquired *on or before* September 27, 2017, and placed in service after that date, the previously scheduled phase-down of the $8,000 increase applies as follows: $6,400 if placed in service in 2018, $4,800 if placed in service in 2019, and $0 after 2019.

F. Credits

G. Natural Resources Deductions & Credits

H. Loss Transactions, Bad Debts, and NOLs

I. At-Risk and Passive Activity Losses

III. INVESTMENT GAIN

A. Gains and Losses

B. Interest, Dividends, and Other Current Income

C. Profit-Seeking Individual Deductions

D. Section 121

E. Section 1031

F. Section 1033

G. Section 1035

H. Miscellaneous

1. **Say it isn't so! Miscellaneous itemized deductions are no longer deductible beginning in 2018.** The 2017 Tax Cuts and Jobs Act, § 11045, amended Code § 67 by adding § 67(g), which disallows as deductions all miscellaneous itemized deductions for taxable years beginning after 2017 and before 2026. Miscellaneous itemized deductions are defined in § 67(b) and, prior to the Tax Cuts and Jobs Act, were deductible to the extent that, in the aggregate, they exceeded 2 percent of the taxpayer's adjusted gross income. The largest categories of miscellaneous itemized deductions are: (1) investment-related expenses such as fees paid for investment advice or for a safe deposit box used to store investment-related items, (2) unreimbursed employee business expenses, and (3) tax preparation fees.

IV. COMPENSATION ISSUES

A. Fringe Benefits

1. **Meals provided for the convenience of the employer will not be deductible beginning in 2026.** The 2017 Tax Cuts and Jobs Act, § 13304, amended Code § 274 by adding § 274(o), which disallows as deductions meals provided for the convenience of the employer (within the meaning of § 119), which otherwise would be deductible by the employer. This rule applies to amounts paid or incurred after 2025.

2. **The Tax Court ices the IRS by allowing the Boston Bruins' 100% deduction for away-game meals as a *de minimis* fringe, while the winning slap shot may be that hotel and banquet facilities can be "leased."** Jacobs v. Commissioner, 148 T.C. No. 24 (6/26/17). The taxpayers, a married couple, own the S corporation that operates the Boston Bruins professional hockey team. When the Bruins travel to away games, the team provides the coaches, players, and other team personnel with hotel lodging as well as pre-game meals in private banquet rooms. Game preparation (e.g., strategy meetings, viewing films, discussions among coaches and players) also takes place during these team meals. The Bruins enter into extensive contracts with away-game hotels, including terms specifying the food to be served and how the banquet rooms should be set up.

The taxpayers' S corporation spent approximately $540,000 on away-game meals at hotels over the years 2009 and 2010, deducting the full amount thereof pursuant to §§ 162, 274(n)(2)(B), and 132(e). Section 274(n) generally disallows 50 percent of meal and entertainment expenses, but § 274(n)(2)(B) provides an exception if the expense qualifies as a *de minimis* fringe benefit under § 132(e). Under Reg. § 1.132–7, employee meals provided on a nondiscriminatory basis qualify under § 132(e) if (1) the eating facility is owned or leased by the employer; (2) the facility is operated by the employer; (3) the facility is located on or near the business premises of the employer; (4) the meals furnished at the facility are provided during, or immediately before or after, the employee's workday; and (5) the annual revenue derived from the facility normally equals or exceeds the direct operating costs of the facility. The IRS argued that the Bruins' expenses do not qualify under § 132(e) and thus should be limited to 50 percent under § 274(n) because meals at away-game hotels are neither at facilities "operated by the employer," nor "owned or leased by the employer," nor "on or near the business premises of the employer." After easily determining that the other requirements for *de minimus* fringe benefit treatment were met, the Tax Court (Judge Ruwe) focused upon whether, for purposes of § 132(e) and Reg. § 1.132-7, the Bruins' away-game hotels can be considered facilities that are "operated by the employer," "leased by the employer," and "on or near the business premises of the employer." Judge Ruwe held that because away-game travel and lodging are indispensable to professional hockey and because the Bruins' contracts with the hotels specify many of the details regarding lodging, meals, and banquet rooms, the meal expenses are 100 percent deductible as a *de minimis* fringe. The hotel facilities are "operated by the employer" because the regulations expressly construe that term to include being operated under contract with the employer. The hotel facilities also should be considered "leased" by the employer, the court concluded, due to the extensive contracts and the team's exclusive use and occupancy of designated hotel space. Further, the court concluded that, because away-game travel and lodging is an indispensable part of professional hockey, the hotel facilities should be considered the business premises of the employer.

- **The slap shot to the IRS:** The Tax Court's holding that the Bruins' "lease" the hotel facilities is somewhat at odds with regulations under § 512. Reg. § 1.512(b)-1(c)(5) provides that amounts received for the use or occupancy of space where personal services are rendered to the occupant (e.g., hotel services) does not constitute rent for purposes of the § 512 exclusion from unrelated business taxable income. *See also* Rev. Rul. 80-298, 1980-2 C.B.197 (amounts received by tax-exempt university for professional football team's use of playing field and dressing room along with maintenance, linen, and security services is not rental income for purposes of § 512 exclusion from UBTI). Judge Ruwe's decision may embolden tax-exempt organizations seeking to exclude so-called "facility use fees" (e.g., payments made to an aquarium for exclusive use of its space for corporate events) from UBTI.

a. **But wait, upon further consultation with the replay center, the call is reversed!** The 2017 Tax Cuts and Jobs Act, § 13304, amends Code § 274(n) to remove the exception to the 50 percent limitation for meal expenses that qualify as a *de minimis* fringe benefit. Accordingly, employers can deduct only 50 percent of the cost of employee meals provided at an employer-operated eating facility. This rule applies to amounts paid or incurred after 2017 and before 2026. Beginning in 2026, such costs are *entirely disallowed* as deductions pursuant to new Code § 274(o).

B. Qualified Deferred Compensation Plans

C. Nonqualified Deferred Compensation, Section 83, and Stock Options

D. Individual Retirement Accounts

V. PERSONAL AND INDIVIDUAL INCOME AND DEDUCTIONS

A. Rates

1. **Under the new, simplified rate structure of the 2017 Tax Cuts and Jobs Act, the number of individual rate brackets has been reduced from seven to seven.** The 2017 Tax Cuts and Jobs Act, § 11001(a), added Code § 1(j), which replaces the existing rate structure for ordinary income of individuals with a new rate structure for taxable years beginning after 2017 and

before 2026. Unless Congress takes further action, the existing rate structure, as adjusted for inflation, will apply once more for taxable years beginning after 2025. The following tables show the rate structure for individuals that had been scheduled to take effect for taxable years beginning in 2018 and the rate structure that will apply by virtue of the 2017 Tax Cuts and Jobs Act. The brackets established by the 2017 Tax Cuts and Jobs Act will be adjusted for inflation for tax years beginning after 2018.

2018 Rates for Single Individuals			
		If taxable income is:	**Then income tax equals:**
1	*Before TCJA*	Not over $9,525	10% of taxable income
	After TCJA	Not over $9,525	10% of taxable income
2	*Before TCJA*	Over $9,525 but not over $38,700	$952.50 plus 15% of the excess over $9,525
	After TCJA	Over $9,525 but not over $38,700	$952.50, plus 12% of the excess over $9,525
3	*Before TCJA*	Over $38,700 but not over $93,700	$5,328.75 plus 25% of the excess over $38,700
	After TCJA	Over $38,700 but not over $82,500	$4,453.50, plus 22% of the excess over $38,700
4	*Before TCJA*	Over $93,700 but not over $195,450	$19,078.75 plus 28% of the excess over $93,700
	After TCJA	Over $82,500 but not over $157,500	$14,089.50, plus 24% of the excess over $82,500
5	*Before TCJA*	Over $195,450 but not over $424,950	$47,568.75 plus 33% of the excess over $195,450
	After TCJA	Over $157,500 but not over $200,000	$32,089.50, plus 32% of the excess over $157,500
6	*Before TCJA*	Over $424,950 not over $426,700	$123,303.75 plus 35% of the excess over $424,950
	After TCJA	Over $200,000 but not over $500,000	$45,689.50, plus 35% of the excess over $200,000
7	*Before TCJA*	Over $426,700	$123,916.25 plus 39.6% of the excess over $426,700
	After TCJA	Over $500,000	$150,689.50, plus 37% of the excess over $500,000

2018 Rates for Married Individuals Filing Joint Returns and Surviving Spouses			
		If taxable income is:	**Then income tax equals:**
1	*Before TCJA*	Not over $19,050	10% of taxable income
	After TCJA	Not over $19,050	10% of taxable income
2	*Before TCJA*	Over $19,050 but not over $77,400	$1,905 plus 15% of the excess over $19,050
	After TCJA	Over $19,050 but not over $77,400	$1,905, plus 12% of the excess over $19,050
3	*Before TCJA*	Over $77,400 but not over $156,150	$10,657.50 plus 25% of the excess over $77,400
	After TCJA	Over $77,400 but not over $165,000	$8,907, plus 22% of the excess over $77,400
4	*Before TCJA*	Over $156,150 but not over $237,950	$30,345 plus 28% of the excess over $156,150
	After TCJA	Over $165,000 but not over $315,000	$28,179, plus 24% of the excess over

			$165,000
5	*Before TCJA*	Over $237,950 but not over $424,950	$53,249 plus 33% of the excess over $237,950
	After TCJA	Over $315,000 but not over $400,000	$64,179, plus 32% of the excess over $315,000
6	*Before TCJA*	Over $424,950 but not over $480,050	$114,959 plus 35% of the excess over $424,950
	After TCJA	Over $400,000 but not over $600,000	$91,379, plus 35% of the excess over $400,000
7	*Before TCJA*	Over $480,050	$134,244 plus 39.6% of the excess over $480,050
	After TCJA	Over $600,000	$161,379, plus 37% of the excess over $600,000

2. **The rates of tax on net capital gains and qualified dividends remain essentially the same under the 2017 Tax Cuts and Jobs Act.** The 2017 Tax Cuts and Jobs Act, § 11001(a), added Code § 1(j). For taxable years beginning after 2017, and before 2026, § 1(j)(5) retains the existing maximum rates of tax on net capital gains and qualified dividends. Thus, the maximum rates of tax on adjusted net capital gain remain at 0 percent, 15 percent, or 20 percent. The maximum rate of tax on unrecaptured section 1250 gain remains at 25 percent, and the maximum rate on 28-percent rate gain remains at 28 percent. Further, the 3.8 percent tax on net investment income remains in place. However, unlike current law, which determines the rate of tax on adjusted net capital gain by reference to the rate of tax that otherwise would be imposed on the taxpayer's taxable income (including the adjusted net capital gain), new § 1(j)(5) defines "breakpoints" that are used for this purpose. The breakpoints are those under the current rate structure (before amendment by the 2017 Tax Cuts and Jobs Act) but are adjusted for inflation for taxable years beginning after 2017. For taxable years beginning in 2018, the following table shows the breakpoints that establish the rate of tax on adjusted net capital gain.

2018 Rates of Tax on Adjusted Net Capital Gain					
Tax Rate	**Single**	**Head of Household**	**Married Filing Jointly**	**Married Filing Separately**	**Estates and Trusts**
0% if taxable income does not exceed	$38,600	$51,700	$77,200	$38,600	$2,600
15% if taxable income does not exceed	$425,800	$452,400	$479,000	$239,500	$12,700
20% if taxable income exceeds	$425,800	$452,400	$479,000	$239,500	$12,700

3. **An incentive for kids to be entrepreneurial? The Tax Cuts and Jobs Act modified the kiddie tax by applying the rates of tax applicable to trusts and estates to the unearned income of children.** The 2017 Tax Cuts and Jobs Act, § 11001(a), added Code § 1(j). For taxable years beginning after 2017 and before 2026, § 1(j)(4) modifies the so-called "kiddie tax" by taxing the unearned income of children under the rate schedule that applies to trusts and estates. (The earned income of children continues to be taxed at the rates that normally apply to a single individual.) This changes the approach of current law, under which the tax on unearned income of children is determined by adding it to the income of the child's parents and calculating a hypothetical increase in tax for the parents. Under the new approach, the child's tax on unearned income is

unaffected by the parents' tax situation. The 2017 Tax Cuts and Jobs Act does not change the categories of children subject to the kiddie tax.

B. Miscellaneous Income

1. Provisions of the 2017 Tax Cuts and Jobs Act that affect ABLE accounts.

a. Designated beneficiaries of ABLE accounts can contribute an additional amount and are eligible for the saver's credit. Code § 529A, enacted by the Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014 (which became Division A of the Tax Increase Prevention Act of 2014), provides a tax-favored savings account for certain individuals with disabilities—the ABLE account. ABLE accounts permit certain individuals who became disabled before reaching age 26 and their families to contribute amounts to meet expenses related to the designated beneficiary's disability without affecting the beneficiary's eligibility for Supplemental Security Income, Medicaid, and other public benefits. ABLE accounts are modeled on § 529 accounts that are used to save for college education. Like § 529 accounts, ABLE accounts must be established pursuant to a state program, contributions to ABLE accounts are not tax deductible, the earnings of the ABLE account are not subject to taxation, and distributions from ABLE accounts are not included in the designated beneficiary's income to the extent they are used for qualified expenses related to the disability. Aggregate contributions to an ABLE account from all contributors cannot exceed the annual per-donee gift tax exclusion ($15,000 in 2018). The 2017 Tax Cuts and Jobs Act, § 11024, amended Code § 529A to increase this contribution limit for contributions made before 2026. Under the increased limit, once the overall limitation on contributions is reached, an ABLE account's designated beneficiary who is an employee (as defined) can contribute an additional amount equal to the lesser of: (1) the compensation includible in the beneficiary's income for the year, or (2) the federal poverty line for a one-person household as determined for the immediately preceding year ($12,486 for a single individual under age 65 in 2016). A designated beneficiary is considered to be an employee for this purpose only if the person is an employee with respect to whom no contribution is made to a defined contribution plan, an annuity contract described in § 403(b), or an eligible deferred compensation plan described in § 527. The legislation also makes designated beneficiaries of ABLE accounts who contribute eligible for the saver's credit of § 25B for contributions made before 2026. Both amendments are effective for taxable years beginning after December 22, 2017, the date of enactment.

b. Tax-free rollovers are permitted from a § 529 college savings account to an ABLE account. The 2017 Tax Cuts and Jobs Act, § 11025, amends Code § 529 to permit amounts in a § 529 account to be rolled over without penalty to an ABLE account if the owner of the ABLE account is the designated beneficiary of the § 529 account or a member of the designated beneficiary's family. Amounts rolled over pursuant to this provision, together with any other contributions to the ABLE account, are taken into account for purposes of the limit on aggregate contributions to the ABLE account. Any amount rolled over that exceeds this limitation is included in the gross income of the distributee in the manner provided by § 72. This provision applies to distributions from a § 529 account after December 22, 2017 (the date of enactment) that are transferred within 60 days and before 2026 to an ABLE account.

2. A new exclusion for cancellation of student loans on account of the death or permanent disability of the student. The 2017 Tax Cuts and Jobs Act, § 11031, amended Code § 108(f) by adding § 108(f)(5), which excludes from a taxpayer's gross income any amount which would be included in gross income by reason of the discharge of a student loan if the loan is discharged on account of the death or total and permanent disability of the student. For this purpose, the term "student loan" has the meaning set forth in § 108(f)(2) (which describes loans made by the federal or a state government or any political subdivision as well as loans made by certain public benefit corporations and educational organizations), and also includes private educational loans as defined in Consumer Credit Protection Act § 140(7). This exclusion applies to discharges of indebtedness occurring after 2017 and before 2026.

C. Hobby Losses and § 280A Home Office and Vacation Homes

D. Deductions and Credits for Personal Expenses

1. Standard deduction for 2018. The 2017 Tax Cuts and Jobs Act, § 11021, added Code § 63(c)(7), which significantly increases the standard deduction for taxable years beginning after 2017 and before 2026. This change, combined with the legislation's limitation or elimination of many itemized deductions, is expected to cause a large number of taxpayers who have itemized deductions in prior years to take the standard deduction beginning in 2018. The standard deduction for 2018 will be $24,000 for joint returns and surviving spouses (increased from $13,000), $12,000 for unmarried individuals and married individuals filing separately (increased from $6,500), and $18,000 for heads of households (increased from $9,550). These figures will be adjusted for inflation for tax years beginning after 2018.

2. Let's hope new withholding tables are issued soon. The deduction for personal exemptions has disappeared. The 2017 Tax Cuts and Jobs Act, § 11041, amended Code § 151(d) by adding § 151(d)(5), which reduces the exemption amount to zero for taxable years beginning after 2017 and before 2026. The effect of this amendment is to eliminate the deduction for personal exemptions. The reduction of the exemption amount to zero required conforming amendments to other Code provisions that make use of the exemption amount. For example, under § 6012, an individual taxpayer generally does not need to file a return if the taxpayer's gross income does not exceed the sum of the basic standard deduction plus the exemption amount under § 151(d). The legislation addresses this by amending § 6012 to provide that an individual need not file a return if the taxpayer's gross income does not exceed the standard deduction. Similarly, § 642(b)(2)(C) allows a qualified disability trust to deduct an amount equal to the exemption amount under § 151(d), and § 6334(d) exempts from levy an amount of weekly wages equal to 1/52 of the sum of the standard deduction and the aggregate amount of the taxpayer's deductions for personal exemptions under § 151. The legislation addresses this issue by amending those provisions to refer to $4,105 (to be adjusted for inflation), the exemption amount that had been scheduled to take effect in 2018 before the Tax Cuts and Jobs Act. The legislation also directs Treasury to develop rules to determine the amount of tax that employers are required to withhold from an employee's wages but gives Treasury the discretion to apply current wage withholding rules for 2018.

3. Has the federal deduction for your high property or state income taxes made them easier to bear? Brace yourself! The deduction for state and local taxes not paid or accrued in carrying on a trade or business or an income-producing activity is limited to $10,000. The 2017 Tax Cuts and Jobs Act, § 11042, amended Code § 164(b) by adding § 164(b)(6). For individual taxpayers, this provision generally (1) eliminates the deduction for foreign real property taxes, and (2) limits to $10,000 ($5,000 for married individuals filing separately) a taxpayer's itemized deductions on Schedule A for the aggregate of state or local property taxes, income taxes, and sales taxes deducted in lieu of income taxes. This provision applies to taxable years beginning after 2017 and before 2026. The provision does *not* affect the deduction of state or local property taxes or sales taxes that are paid or accrued in carrying on a trade or business or an income-producing activity (i.e., an activity described in § 212) that are properly deductible on Schedules C, E, or F. For example, property taxes imposed on residential rental property will continue to be deductible. With respect to income taxes, an individual can deduct only *foreign* income taxes paid or accrued in carrying on a trade or business or an income-producing activity. As under current law, an individual cannot deduct state or local income taxes as a business expense even if the individual is engaged in a trade or business as a sole proprietor. *See* Reg. § 1.62-1T(d).

4. Better be careful with that cash-out refinance. You could wind up with home equity indebtedness, the interest on which is no longer deductible. And there's more good news: the limit on acquisition indebtedness has dropped to $750,000. Prior to the 2017 Tax Cuts and Jobs Act, Code § 163(a) and (h)(3) allowed a taxpayer to deduct as an itemized deduction the interest on up to $1 million of acquisition indebtedness and up to $100,000 of home equity indebtedness. Acquisition indebtedness is defined as indebtedness secured by a qualified residence that is incurred to acquire, construct, or substantially improve the residence. Home equity indebtedness is defined as any indebtedness secured by a qualified residence that is not acquisition indebtedness. The Tax Cuts and Jobs Act, § 11043, amended § 163(h)(3) by adding § 163(h)(3)(F). For taxable years beginning after 2017 and before 2026, § 163(h)(3)(F) disallows the deduction of interest on home equity indebtedness and limits the amount of debt that can be treated as acquisition indebtedness to $750,000 ($375,000 for married taxpayers filing separately). There is no transition rule for home equity indebtedness. Therefore, the interest on any outstanding home equity indebtedness will become nondeductible beginning in 2018. The provision contains three transition rules that might affect acquisition indebtedness: (1) the new $750,000 limit on acquisition indebtedness does not apply to debt incurred on or before December 15, 2017; (2) any refinancing of indebtedness is treated for purposes of the December 15, 2017, transition date as incurred on the date that the original indebtedness was incurred to the extent the amount of the new indebtedness does not exceed the amount of the refinanced indebtedness (but this rule applies only for the term of the original indebtedness); and (3) a taxpayer who entered into a written, binding contract before December 15, 2017, to close on the purchase of a principal residence before January 1, 2018, and who purchases the residence before April 1, 2018 with indebtedness is considered to have incurred acquisition indebtedness prior to December 15, 2017.

- These rules could have an unanticipated effect on taxpayers who engage in a cash-out refinancing of existing acquisition indebtedness. If the amount of the new loan that exceeds the refinanced loan (i.e., the cash-out) is used for purposes unrelated to the home, that portion of the loan will be home equity indebtedness, the interest on which will not be deductible. For example, if a taxpayer refinances $100,000 of acquisition indebtedness by taking out a new loan of $110,000 and using the extra $10,000 to pay off high-interest credit card debt, the extra $10,000 will be home equity indebtedness and the interest on that portion of the loan will not be deductible.

5. **Expansion of the 7.5 percent threshold for deduction of medical expenses.** Prior to the 2017 Tax Cuts and Jobs Act, medical expenses generally were deductible only to the extent they exceeded 10 percent of a taxpayer's adjusted gross income. For taxable years beginning after 2012 and ending before 2017, this threshold was reduced to 7.5 percent if the taxpayer or the taxpayer's spouse had attained age 65 by the close of the year. The 2017 Tax Cuts and Jobs Act, § 11027, amended § 213(f) to provide that the 7.5 percent threshold applies to all taxpayers for taxable years beginning after 2016 and ending before 2019, i.e., to calendar years 2017 and 2018. Further, the legislation provides that this threshold applies for purposed of both the regular tax and the alternative minimum tax.

6. **An increased incentive to purchase insurance: say goodbye to the deduction for personal casualty losses (except those in federally declared disaster areas).** The 2017 Tax Cuts and Jobs Act, § 11044, amended Code § 165(h) by adding § 165(h)(5), which eliminates the deduction for personal casualty losses, other than those attributable to a federally declared disaster, for taxable years beginning after 2017 and before 2026. Despite this general disallowance, the legislation permits taxpayers to offset the amount of any personal casualty gains by the amount of otherwise-disallowed personal casualty losses.

7. **♪♫I keep on fallin' in and out of love with you.♫♪ Congress has repealed the § 68 overall limitation on overall deductions again.** The 2017 Tax Cuts and Jobs Act, § 11046, amended Code § 68 by adding § 68(f), which provides that the overall limitation on itemized deductions does not apply to taxable years beginning after 2017 and before 2026. This limitation reduces the amount of most itemized deductions by the lesser of 3 percent of the amount by which the taxpayer's adjusted gross income exceeds a specified threshold, or 80 percent of the itemized deductions. Congress first enacted this limitation as part of the Omnibus Budget Reconciliation Act of 1990. In the Economic Growth and Tax Relief Reconciliation Act of 2001, Congress repealed § 68 prospectively on a phased reduction schedule beginning in 2006, with full repeal effective for taxable years beginning after 2009. The provision did not apply in taxable years 2010 through 2012. Congress reinstated § 68 in the American Taxpayer Relief Act of 2012 for taxable years beginning after 2012. The provision was in effect for taxable years 2013 through 2017, and now has been repealed once more.

8. An enhanced child tax credit. The 2017 Tax Cuts and Jobs Act, § 11022, added Code § 24(j), which significantly increases the child tax credit and establishes a new credit for dependents other than qualifying children for taxable years beginning after 2017 and before 2026.

Child Tax Credit. The legislation increases the child tax credit from $1,000 to $2,000 per qualifying child and increases the refundable portion of the credit from $1,000 to $1,400 per qualifying child. The $1,400 refundable portion of the credit will be adjusted for inflation for taxable years beginning after 2018. The legislation retains the current-law age limit for the credit, i.e., a person can be a qualifying child only if he or she has not attained age 17 by the end of the taxable year. The refundable portion of the credit is determined in the same manner as under current law, except that the earned income threshold for determining the refundable portion is reduced from $3,000 to $2,500. To claim the child tax credit (either the refundable or nonrefundable portion), a taxpayer must include on the return for each qualifying child with respect to whom the credit is claimed a Social Security Number that was issued before the due date for filing the return. If the child tax credit is not available with respect to a qualifying child because of the absence of a Social Security Number, the taxpayer can claim the new, nonrefundable credit described below with respect to that child.

New Nonrefundable Credit for Dependents Other Than a Qualifying Child. The legislation also makes available (as an increase to the basic child tax credit) a new, nonrefundable credit of $500 for each dependent other than a qualifying child. This new credit would apply, for example, with respect to a parent who is the taxpayer's dependent and therefore a qualifying relative. The new, nonrefundable credit is available only with respect to a dependent who is a citizen, national, or resident of the U.S., i.e., the credit is not available with respect to a dependent who is a resident of the contiguous countries of Canada and Mexico.

Increased Phase-out Thresholds. The legislation significantly increases the modified adjusted gross income thresholds at which the credits (both the child tax credit and the new nonrefundable credit) begin to phase out. Under current law, the child tax credit is phased out by $50 for each $1,000 by which the taxpayer's modified AGI exceeds $55,000 for married taxpayers filing separately, $75,000 for single taxpayers or heads of household, and $110,000 for married taxpayers filing a joint return. Thus, under current law, the credit is phased out entirely for married taxpayers filing a joint return once modified AGI reaches $130,000. The legislation increases the phase-out thresholds to $400,000 for married couples filing a joint return and $200,000 for all other taxpayers. These increased thresholds will increase the number of taxpayers who benefit from the credit.

E. Divorce Tax Issues

1. ♪♫Breaking up is hard to do.♫♪ And it's now more costly for the payor of alimony. Under the Tax Cuts and Jobs Act, alimony is not deductible by the payor and is not taxable for the recipient. The 2017 Tax Cuts and Jobs Act, § 11051, repealed both Code § 215, which authorized an above-the-line deduction for alimony payments, and Code § 71, which included alimony payments in the recipient's gross income. For those subject to the new rules, the payor of alimony will not be able to deduct the payments, and the recipient will not include the alimony payments in gross income. This change applies to any divorce or separation instrument (as defined in former Code § 71(b)(2)) executed after 2018. It also applies to any divorce or separation instrument executed before 2018 that is modified after 2018 if the modification expressly provides that the amendments made by the Tax Cuts and Jobs Act will apply. The legislation also made various conforming amendments to other Code provisions.

F. Education

1. Private elementary and secondary schools have a new incentive to raise tuition: up to $10,000 per year can be withdrawn tax-free from § 529 accounts to pay it. The 2017 Tax Cuts and Jobs Act, § 11032, amended Code § 529(c) by adding § 529(c)(7), which permits tax-free distributions from § 529 accounts to pay "expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school." The limit on distributions for this purpose is $10,000 during the taxable year, which applies per student, not per account. Thus, if a student is a designated beneficiary of more than one § 529 account, the student can receive only $10,000 free of tax for this purpose in a given year regardless of whether the funds are distributed from multiple accounts. This provision applies to distributions occurring after 2017.

G. Alternative Minimum Tax

1. **The AMT will apply to fewer individuals because of increased exemption amounts and phase-out thresholds.** The 2017 Tax Cuts and Jobs Act, § 12002, amended Code § 55(d) by adding § 55(d)(4), which increases the AMT exemption amount for non-corporate taxpayers as well as the thresholds for alternative minimum taxable income above which the exemption amount phases out. These changes apply to taxable years beginning after 2017 and before 2026; the figures will be adjusted for inflation for taxable years beginning after 2018. The legislation did not change the exemption amount or the phase-out threshold for trusts and estates. The figures for 2018 both before and after the changes made by the 2017 Tax Cuts and Jobs Act are shown in the following tables:

AMT Exemption Amounts for 2018		
Filing Status	**Before TCJA**	**After TCJA**
Married Filing Separately	$43,100	$54,700
Single and HOH	$55,400	$70,300
Married Filing Jointly and Surviving Spouses	$86,200	$109,400
Estates and Trusts	$24,600	$24,600

AMTI Phase-Out Thresholds for 2018		
Filing Status	**Before TCJA**	**After TCJA**
Married Filing Separately	$82,050	$500,000
Single and HOH	$123,100	$500,000
Married Filing Jointly and Surviving Spouses	$164,100	$1 million
Estates and Trusts	$82,050	$82,050

VI. CORPORATIONS

A. Entity and Formation

B. Distributions and Redemptions

C. Liquidations

D. S Corporations

E. Mergers, Acquisitions and Reorganizations

F. Corporate Divisions

G. Affiliated Corporations and Consolidated Returns

H. Miscellaneous Corporate Issues

1. **Back to the future: Remember the good ole days before 1986 when C corporations were tax shelters? By introducing a flat corporate tax rate of 21 percent, Congress has given new life to C corporations and will force us to relearn personal holding company, accumulated earnings tax, and other anti-abuse rules we've long ignored.** The centerpiece of the 2017 Tax Cuts and Jobs Act is a reduction in corporate tax rates. Section 13001 of the legislation amended Code § 11(b) to tax corporate taxable income at a flat rate of 21 percent. Prior to this amendment, § 11(b) provided graduated rates with a top rate of 35 percent. For companies with significant profit from U.S. operations, this is a huge benefit. In fact, this rate reduction is estimated

to reduce corporate income taxes by roughly $1.3 trillion over the next ten years. Prior to this change, most businesses avoided C corporation status unless they were (or planned to be) publicly traded, were so-called "blocker" corporations, or, in some cases, were taken private by investment funds. Venture capital backed companies also tended to choose C corporation status to simplify their capital structure and tax compliance obligations. Now, however, C corporation status may be a sensible choice for some closely-held companies, especially if the business will be held for the life of the major shareholders or the shareholders will exit via a stock sale. The analysis is not an easy one and must take into account that, despite the reduced rate, subchapter C is still a double-tax regime and that most buyers of C corporations prefer to purchase the corporation's assets rather than its stock.

2. **Although we will have to relearn some old C corporation anti-abuse provisions, here's something we can forget: the corporate AMT.** The 2017 Tax Cuts and Jobs Act, § 12001, repealed the corporate alternative minimum tax (by amending Code § 55) effective for taxable years beginning after 2017. Corporations that incurred AMT in past years will want to be sure to claim that amount as a credit against regular tax going forward. A special rule regarding the refundable portion of the AMT credit is designed to allow a corporation to use fully in 2018 through 2021 any AMT credits carried forward. Also, corporations that have had other credits (e.g, the R&D credit) limited in past years by the AMT may be able to claim those credits going forward.

3. **A reduced corporate dividends received deduction.** The 2017 Tax Cuts and Jobs Act, § 13002, amended Code § 243 and certain other provisions to reduce the corporate dividends received deduction. Prior to this amendment, a corporation could deduct 100 percent of dividends received from a corporation in its affiliated group, 80 percent of dividends received from a corporation of which the recipient owns 20 percent or more of the stock (measured by vote and value), and 70 percent of dividends received from all other corporations. The legislation reduced the 80 percent and 70 percent figures to 65 percent and 50 percent, respectively. The legislation did not change the 100 percent dividends received deduction. These changes apply to taxable years beginning after 2017.

VII. PARTNERSHIPS

A. Formation and Taxable Years

B. Allocations of Distributive Share, Debt, and Outside Basis

1. **♫♪You got to know when to hold'em, know when to fold'em, know when to walk away, and know when to run….♫♪ Carried interests still qualify for preferential long-term capital gain rates, but the holding period just increased to 3 years for specified interests in hedge funds and other investment partnerships.** The 2017 Tax Cuts and Jobs Act, § 13309, created new Code § 1061 and redesignated pre-TCJA § 1061 as § 1062. New § 1061 requires a three-year holding period for allocations of income with respect to "applicable partnership interests" to qualify for long-term capital gain rates. Specifically, net long-term capital gain allocated to a partner who holds an applicable partnership interest is characterized as short-term capital gain to the extent the gain is attributable to the disposition of partnership property held by the partnership for three years or fewer. An applicable partnership interest is one that is transferred to (or is held by) a taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any "applicable trade or business." An applicable trade or business means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of ''raising or returning capital," and ''either (i) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition)," or ''developing specified assets." Specified assets for this purpose generally are defined as securities, commodities, real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, and (*big furrowed brow here*) "an interest in a partnership to the extent of the partnership's proportionate interest in any of the foregoing" (e.g., tiered partnerships). There are significant exceptions, though, for (i) employees of another entity holding interests in a partnership that only performs services for that other entity; and (ii) partnership interests acquired for invested capital (including via a § 83(b) election along with invested capital). New § 1061 is deserving of much more study, but we suspect

that new § 1061 will catch only those taxpayers who lack the sophisticated advice to plan around the statute. New § 1061 applies to taxable years beginning after 2017.

C. Distributions and Transactions Between the Partnership and Partners

D. Sales of Partnership Interests, Liquidations and Mergers

1. No more technical terminations of partnerships. How will we get out of § 754 elections? The 2017 Tax Cuts and Jobs Act, § 13504, amended Code § 708(b) to repeal the § 708(b)(1)(B) rule regarding technical terminations of partnerships. Prior to amendment, § 708(b)(1)(B) treated a partnership as terminated if, within any 12-month period, there was a sale or exchange of 50 percent or more of the total interest in partnership capital and profits. This change applies to taxable years beginning after 2017. One effect of a technical termination of a partnership was that it terminated elections that had been made by the partnership. An example of this is the election under § 754 to adjust the basis of partnership assets upon certain distributions of property or upon the transfer of a partnership interest. The § 754 election formerly ended when a technical termination of a partnership occurred. Because technical terminations no longer occur, a § 754 election now can be revoked during the life of a partnership only with the consent of the IRS.

E. Inside Basis Adjustments

F. Partnership Audit Rules

G. Miscellaneous

VIII. TAX SHELTERS

IX. EXEMPT ORGANIZATIONS AND CHARITABLE GIVING

A. Exempt Organizations

B. Charitable Giving

1. Provisions of the 2017 Tax Cuts and Jobs Act that affect charitable contributions.

a. If the legislation does not cause you to take the standard deduction, you can deduct even more of your cash contributions to public charities. The 2017 Tax Cuts and Jobs Act, § 11023, added new Code § 170(b)(1)(G) and redesignated existing § 170(b)(1)(G) as § 170(b)(1)(H). New § 170(b)(1)(G) increases the limit that applies to the deduction of certain charitable contributions by individuals. Prior to the Tax Cuts and Jobs Act, the limit on the deduction for charitable contributions that an individual made to a public charity or certain other organizations was 50 percent of the individual's contribution base, which, generally speaking, is adjusted gross income. The legislation increased this percentage to 60 percent for *cash contributions* that an individual makes to public charities and certain other organizations specified in § 170(b)(1)(A). Any contribution that exceeds this limit can be carried forward to each of the succeeding five years. This increased limit applies to taxable years beginning after 2017 and before 2026.

X. TAX PROCEDURE

A. Interest, Penalties and Prosecutions

1. Return preparers need to be extra careful with not only the earned income tax credit, but also with the child tax credit, additional child tax credit, and the American Opportunity Tax Credit. T.D. 9799, Tax Return Preparer Due Diligence Penalty Under Section 6695(g), 81 F.R. 87444 (12/5/16). The Treasury Department and the IRS have issued proposed and temporary regulations that amend Reg. § 1.6695-2 to implement changes made by the Protecting Americans from Tax Hikes Act of 2015. These changes extend the § 6695(g) preparer due diligence requirements to returns or claims for refund including claims of the child tax credit (CTC), additional child tax credit (ACTC), and American Opportunity Tax Credit (AOTC), in addition to the earned income credit (EIC). As a result of these changes, one return or claim for refund may contain claims for more than one credit subject to the due diligence requirements. Each failure to comply with the due diligence requirements set forth in the regulations results in a penalty, and therefore more than one penalty could apply to a single return or claim for refund. Examples in the temporary regulations illustrate how multiple penalties could apply when one return or claim for refund is filed. Revisions to Form 8867 have been made for 2016 so that it is a single checklist to be used for all applicable credits. The temporary regulations are effective on December 5, 2016.

a. **Congress has directed Treasury to issue preparer due diligence requirements with respect to head-of-household filing status.** The 2017 Tax Cuts and Jobs Act, § 11001(b), amended Code § 6695(g) to extend the preparer due diligence requirements to returns or claims for refund that claim eligibility for head-of-household filing status. This change is effective for taxable years beginning after 2017.

2. **Congress has reduced to zero the Affordable Care Act's penalty for failure to maintain minimum essential coverage for months beginning after 2018.** The 2017 Tax Cuts and Jobs Act, § 11081, amended Code § 5000A(c) to reduce to zero the penalty enacted as part of the Affordable Care Act for failing to maintain minimum essential coverage. This change applies to months beginning after 2018. Accordingly, for 2017 and 2018, individual taxpayers still must answer the question on the return concerning whether they and other household members had minimum essential coverage and will be subject to the penalty of § 5000A(c) (referred to as the shared responsibility payment) for failure to maintain such coverage. Under § 5000A(c)(1) and Reg. § 1.5000A-4(a), the individual shared responsibility payment for months during which an individual fails to maintain minimum essential coverage is the lesser of: (1) the sum of the monthly penalty amounts (generally 1/12 of the greater of a fixed dollar amount—$695 per adult with a family maximum of $2,085 for 2017—or a percentage—2.5 percent for 2017—of the amount by which household income exceeds the filing threshold), or (2) the sum of the monthly national average bronze plan premiums for the shared responsibility family—$272 per month per individual for 2017.

B. Discovery: Summons and FOIA

C. Litigation Costs

D. StatutoryNotice of Deficiency

E. Statute of Limitations

F. Liens and Collections

G. Innocent Spouse

H. Miscellaneous

XI. WITHHOLDING AND EXCISE TAXES

XII. TAX LEGISLATION

A. Enacted

XIII. TRUSTS, ESTATES & GIFTS

A. Gross Estate

B. Deductions

1. **"The difference between death and taxes is death doesn't get worse every time Congress meets." Well, estate and gift taxes actually just got a little better. Congress has doubled the basic exclusion amount.** The 2017 Tax Cuts and Jobs Act, § 11061, amended Code § 2010(c)(3) by adding § 2010(c)(3)(C), which increases the basic exclusion amount from $5 million to $10 million for decedents dying after 2017 and before 2026. Pursuant to § 2010(c)(3)(B), the $10 million amount is adjusted for inflation for calendar years after 2011. Accordingly, for 2018, the basic exclusion amount is $11.2 million. The legislation also directs the Treasury Department to issue regulations to carry out the new rule with respect to any difference between the exclusion

amount in effect at the time of the decedent's death and the amount in effect at the time of any gifts the decedent made.

C. <u>Gifts</u>

D. <u>Trusts</u>