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TRUST ADVISORS FORUM
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HOT TOPICS
THE TAX CUTS AND JOBS ACT (TCJA)

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Exhibit A: Individuals, Estates, and Trusts
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OVERVIEW OF PROVISIONS OF THE TAX CUTS AND JOBS ACT (TCJA)

I.

TCJA PROVISIONS THAT HAVE AN IMPACT ON INDIVIDUALS, ESTATES, AND TRUSTS. UNLESS OTHERWISE NOTED, THE CHANGES ARE EFFECTIVE FOR TAX YEARS BEGINNING IN 2018 THROUGH 2025.

1. Tax rates.

Rate changes for individuals, estates, and trusts. Ordinary income is taxed at increasing rates that apply to different ranges of income depending on the filing status (single; married filing jointly, including surviving spouse; married filing separately; and head of household). The pre-TCJA rates were 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%.

TCJA rates. Beginning with the 2018 tax year and continuing through 2025, there will still be seven tax brackets for individuals, and the percentage rates will change to: 10%, 12%, 22%, 24%, 32%, 35%, and 37%. The following tables show the dollar ranges of these new brackets.

Single Individuals' 2018 Income Tax Rates

If taxable income is:	The tax is:
Not over $9,525	10% of taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$45,689.50 plus 35% of the excess over $200,000
Over $500,000	$150,689.50 plus 37% of the excess over $500,000
[Over $426,700	$123,916.25 plus 39.6% of the excess over $426,700]

Married Filing Jointly and Surviving Spouse 2018 Income Tax Rates

If taxable income is:	The tax is:
Not over $19,050	10% of taxable income
Over $19,050 but not over $77,400	$1,905 plus 12% of the excess over $19,050
Over $77,400 but not over $165,000	$8,907 plus 22% of the excess over $77,400
Over $165,000 but not over $315,000	$28,179 plus 24% of the excess over $165,000
Over $315,000 but not over $400,000	$64,179 plus 32% of the excess over $315,000

If taxable income is:	The tax is:
Over $400,000 but not over $600,000	$91,379 plus 35% of the excess over $400,000
Over $600,000	$161,379 plus 37% of the excess over $600,000
[Over $480,050	$134,244 plus 39.6% of the excess over $480,050]

Married Filing Separate 2018 Income Tax Rates

If taxable income is:	The tax is:
Not over $9,525	10% of taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $300,000	$45,689.50 plus 35% of the excess over $200,000
Over $300,000	$80,689.50 plus 37% of the excess over $300,000
[Over $240,025	$67,122 plus 39.6% of the excess over $240,025]

Head of Household 2018 Income Tax Rates

If taxable income is:	The tax is:
Not over $13,600	10% of taxable income
Over $13,600 but not over $51,800	$1,360 plus 12% of the excess over $13,600
Over $51,800 but not over $82,500	$5,944 plus 22% of the excess over $51,800
Over $82,500 but not over $157,500	$12,698 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$30,698 plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$44,298 plus 35% of the excess over $200,000
Over $500,000	$149,298 plus 37% of the excess over $500,000
[Over $453,350	$129,458 plus 39.6% of the excess over $453,350]

Estates and Trusts 2018 Income Tax Rates

If taxable income is:	The tax is:
Not over $2,550	10% of taxable income
Over $2,550 but not over $9,150	$255 plus 24% of the excess over $2,550
Over $9,150 but not over $12,500	$1,839 plus 35% of the excess over $9,150

If taxable income is:	**The tax is:**
Over $12,500	$3,011.50 plus 37% of the excess over $12,500
[Over $12,700	$3,283 plus 39.6% of the excess over $12,700]

Capital gain rates. Three tax brackets currently apply to net capital gains, including certain kinds of dividends, of individuals and other noncorporate taxpayers: 0% for net capital gain that would be taxed at the 10% or 15% rate if it were ordinary income; 15% for gain that would be taxed above 15% and below 39.6% if it were ordinary income; or 20% for gain that would be taxed at the 39.6% ordinary income rate.

The TCJA, generally, keeps the existing rates and adjusts the breakpoints on net capital gains and qualified dividends. For 2018, the 15% breakpoint is: $77,200 for joint returns and surviving spouses (half this amount for married taxpayers filing separately), $51,700 for heads of household, and $38,600 for other unmarried individuals. The 20% breakpoint is $479,000 for joint returns and surviving spouses (half this amount for married taxpayers filing separately), $452,400 for heads of household, and $425,800 for any other individual (other than an estate or trust).

2. Standard Deduction. The pre-TCJA standard deduction was $12,700 for married taxpayers filing jointly, and $6,350 for single taxpayers. TCJA increases the standard deduction to $24,000 for joint filers, $18,000 for heads of household, and $12,000 for singles and married taxpayers filing separately. Given these increases, many taxpayers will no longer be itemizing deductions. These figures will be indexed for inflation after 2018.

3. Exemptions. TCJA suspends the deduction for personal exemptions. Thus, starting in 2018, taxpayers can no longer claim personal or dependency exemptions. In lieu of the deduction for personal exemptions, an estate is allowed a deduction of $600, a complex trust is allowed a deduction of $100, and a simple trust (required to distribute all of its income currently) is allowed a deduction of $300. These deduction amounts are not changed by TCJA.

4. New Deduction for "Qualified Business Income". Starting in 2018, taxpayers are allowed a deduction equal to 20% of "qualified business income," or "pass-through" income, i.e. income from partnerships, S corporations, LLCs, and sole proprietorships. See III.

5. Child and Family Tax Credit. Prior to TCJA, the child tax credit was $1,000 per qualifying child, but it was reduced for married couples filing jointly by $50 for every $1,000 (or part of a $1,000) by which their adjusted gross income (AGI) exceeded $110,000. The threshold was $55,000 for married couples filing separately, and $75,000 for unmarried taxpayers. To the extent the $1,000-per-child credit exceeded your tax liability, it resulted in a refund up to 15% of your earned income (e.g., wages, or net self-employment income) above $3,000. For taxpayers with three or more qualifying children, the excess of the taxpayer's social security taxes for the year over the

taxpayer's earned income credit for the year was refundable. In all cases, the refund was limited to $1,000 per qualifying child.

Starting in 2018, the TCJA doubles the child tax credit to $2,000 per qualifying child under 17. It also allows a new $500 credit (per dependent) for any of your dependents who are not qualifying children under 17. There is no age limit for the $500 credit, but the tax tests for dependency must be met. Under the TCJA, the refundable portion of the credit is increased to a maximum of $1,400 per qualifying child. In addition, the earned threshold is decreased to $2,500 (from $3,000 under pre-TCJA law), which has the potential to result in a larger refund. The $500 credit for dependents other than qualifying children is nonrefundable.

The TCJA substantially increases the "phase-out" thresholds for the credit. Starting in 2018, the total credit amount allowed to a married couple filing jointly is reduced by $50 for every $1,000 (or part of a $1,000) by which their AGI exceeds $400,000 (up from the pre-TCJA threshold of $110,000). The threshold is $200,000 for all other taxpayers.

In order to claim the credit for a qualifying child, you *must* include that child's Social Security number on your tax return.

6. State and Local Taxes. Before TCJA, individuals were permitted to claim the following types of taxes as itemized deductions, even if they were not business related: (1) state, local, and foreign real property taxes; (2) state and local personal property taxes; and (3) state, local, and foreign income, war profits, and excess profits taxes.

For tax years 2018 through 2025, TCJA limits the aggregate deduction for state and local real property taxes; state and local personal property taxes; state and local, and foreign, income, war profits, and excess profits taxes; and general sales taxes (if elected) for any tax year to $10,000 ($5,000 for marrieds filing separately). The $10,000 limit doesn't apply to: (i) foreign income, war profits, excess profits taxes; (ii) state and local, and foreign, real property taxes; and (iii) state and local personal property taxes if those taxes are paid or accrued in carrying on a trade or business or in an activity engaged in for the production of income.

An individual may not claim an itemized deduction in 2017 on a pre-payment of income tax for a future tax year in order to avoid the $10,000 aggregate limitation.

7. Mortgage Interest. Under the pre-TCJA rules, you could deduct interest on up to a total of $1 million of mortgage debt used to acquire your principal residence and a second home, i.e., acquisition debt. For a married taxpayer filing separately, the limit was $500,000. You could also deduct interest on home equity debt, i.e., debt secured by the qualifying homes. Qualifying home equity debt was limited to the lesser of $100,000 ($50,000 for a married taxpayer filing separately), or the taxpayer's equity in the home or homes (the excess of the value of the home over the acquisition debt). The funds obtained via a home equity loan did not have to be used to acquire or improve the homes.

Under the TCJA, starting in 2018, the limit on qualifying acquisition debt is reduced to $750,000 ($375,000 for a married taxpayer filing separately). However, for acquisition debt incurred before December 15, 2017, the higher pre-TCJA limit applies. The higher pre-TCJA limit also applies to debt arising from refinancing pre-December 15, 2017 acquisition debt, to the extent the debt resulting from the refinancing does not exceed the original debt amount. This means you can refinance up to $1 million of pre-December 15, 2017 acquisition debt in the future and not be subject to the reduced limitation.

Starting in 2018, there is no longer a deduction for interest on home equity debt. This applies regardless of when the home equity debt was incurred.

In the absence of intervening legislation, the pre-TCJA rules come back into effect in 2026. So beginning in 2026, interest on home equity loans will be deductible again, and the limit on qualifying acquisition debt will be raised back to $1 million ($500,000 for married separate filers).

8. Miscellaneous Itemized Deductions. New §67(g) provides that there is no longer a deduction for miscellaneous itemized deductions, which were formerly deductible to the extent they exceeded 2 percent of adjusted gross income. This category of miscellaneous itemized deductions is extensive. Miscellaneous itemized deductions are all itemized deductions other than those specifically listed in §67(b). The excepted items, which are still deductible, include deductions for payment of interest, taxes, charitable contributions, medical expenses, and estate tax attributable to income in respect to a decedent.

Section 641(b) provides that the taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as provided in Subchapter J. Section 67(e) provides that an estate or trust is allowed a deduction for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in the estate or trust; and deductions allowable under §642(b), §651, and §661. Since executor and trustee fees are not specifically listed in §67(b), does TCJA preclude their deduction? The better reasoning would indicate that executor and trustee fees are still deductible.

Section 642(b)(1) provides that on the termination of an estate or trust, a net operating loss or capital loss carryover is allowed as a deduction to the beneficiaries. Capital losses are not itemized deductions. Section 642(h)(2) provides that on termination of an estate or trust any deductions for the last taxable year of the estate or trust in excess of gross income shall be allowed as a deduction to the beneficiaries. This deduction is not mentioned in §67(b), is a miscellaneous itemized deduction, and therefore not allowed under TCJA.

9. Medical Expenses. Under TCJA, for 2017 and 2018, medical expenses are deductible to the extent they exceed 7.5 percent of adjusted gross income for all taxpayers. Previously, the adjusted gross income "floor" was 10% for most taxpayers.

10. Casualty and Theft Losses. Before the TCJA, individuals could claim as itemized deductions certain personal casualty losses, not compensated by insurance or otherwise, including losses arising from fire, storm, shipwreck, or other casualty, or from theft. For tax years 2018 through 2025, the personal casualty and theft loss deduction isn't available, except for casualty losses incurred in a federally declared disaster. Where a taxpayer has personal casualty gains, personal casualty losses can still be offset against those gains, even if the losses aren't incurred in a federally declared disaster.

11. Overall Limitation on Itemized Deductions. The TCJA suspends the overall limitation ("Pease limitation") on itemized deductions that formerly applied to taxpayers whose adjusted gross income exceeded specific thresholds. The itemized deductions of such taxpayers were reduced by 3% of the amount by which AGI exceeded the applicable threshold, but the reduction could not exceed 80% of the total itemized deductions, and certain items were exempt from the limitation. Eliminating the Pease limitation may have little impact in light of the elimination of most itemized deductions.

12. Moving Expenses. The deduction for job-related moving expenses has been eliminated, except for certain military personnel. The exclusion for moving expense reimbursements has also been suspended.

13. Alimony. Under the current rules, an individual who pays alimony may deduct an amount equal to the alimony or separate maintenance payments paid during the year as an "above-the-line" deduction. An "above-the-line" deduction is a deduction that a taxpayer need not itemize deductions to claim, and is more valuable for the taxpayer than an itemized deduction. Under current rules, alimony and separate maintenance payments are taxable to the recipient spouse (includible in that spouse's gross income). Payers of child support don't get a deduction, and recipients of child support don't have to pay tax on those amounts.

Under the TCJA for divorces and legal separations that are executed (i.e., that come into legal existence due to a court order) after 2018, the alimony-paying spouse won't be able to deduct the payments, and the alimony-receiving spouse doesn't include them in gross income or pay federal income tax on them. The current rules continue to apply to already-existing divorces and separations, as well as divorces and separations that are executed *before 2019*. The current rules continue to apply to child support payments.

14. Health Care Individual Mandate. The TCJA has eliminated the shared responsibility payment, more commonly known as the "individual mandate," that penalizes individuals who are not covered by a health care plan, as outlined in the Affordable Care Act of 2010. This penalty is eliminated starting in 2019.

15. Alternative Minimum Tax (AMT). The TCJA doesn't repeal the AMT for individuals, but it does increase its exemption amounts for tax years 2018 through 2025, making it less likely to hit at lower income levels. Before the TCJA, individual AMT exemptions for 2018 (as adjusted for inflation) would have been $86,200 for marrieds filing jointly and surviving spouses; $55,400 for other unmarried individuals; and $43,100 for marrieds filing separately. Those exemption amounts would have been

reduced by 25% of the amount by which the individual's alternative taxable income exceeded: $164,100 for marrieds filing jointly and surviving spouses (completely phased out at $508,900); $123,100 for unmarried individuals (completely phased out at $344,700); and $82,050 for marrieds filing separately (completely phased out at $254,450, with an additional add-back to discourage separate filing by marrieds).

The TCJA increases the individual AMT exemption amounts for tax years 2018 through 2025 to $109,400 for marrieds filing jointly and surviving spouses; $70,300 for single filers; and $54,700 for marrieds filing separately. These increased exemption amounts are reduced (not below zero) by 25% of the amount of the taxpayer's alternative taxable income above $1 million for joint returns and surviving spouses, and $500,000 for other taxpayers except estates and trusts. For trusts and estates, the base figure AMT exemption of $22,500, and phase-out threshold of $75,000, remain unchanged. All of these amounts will be indexed for inflation after 2018.

16. Recharacterization of IRA Contributions. An individual who makes a contribution to a regular or Roth IRA can recharacterize it as made to the other type of IRA via a trustee-to-trustee transfer before the due date of the return for the contribution year. Under the TCJA, once a contribution to a regular IRA has been converted into a contribution to a Roth IRA, it can no longer be converted back into a contribution to a regular IRA, i.e., a recharacterization cannot be used to "unwind" a Roth conversion.

17. Section 529 Plans. The TCJA has made some changes to §529 plans. These changes take effect for §529 plan distributions after 2017. A §529 plan distribution is tax-free if it is used to pay "qualified higher education expenses" of the beneficiary (student). The TCJA provides that qualified higher education expenses now include expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school. There is a limit to how much of a distribution can be taken from a §529 plan for these expenses. The amount of cash distributions from all §529 plans per single beneficiary during any tax year can't, when combined, include more than $10,000 for elementary school and secondary school tuition incurred during the tax year.

18. ABLE Account. An ABLE account is a tax-advantaged savings vehicle that can be established for a designated beneficiary who is disabled or blind. Only one account is allowed per beneficiary. Contributions to an ABLE account aren't deductible, but amounts in the account grow on a tax-deferred basis. Distributions are tax-free up to the amount of the designated beneficiary's qualified disability expenses, a term that is broadly defined to include basic living expenses, such as housing, transportation, and education, as well as medical necessities. The balance in an ABLE account and distributions used to pay qualified disability expenses are generally disregarded in determining eligibility for federal means-tested programs. This allows the beneficiary to save for the future without sacrificing current benefits.

Contributions to an ABLE account can be made by the designated beneficiary or any other person. Prior to TCJA, the total annual contributions by all persons couldn't

exceed the amount of the gift tax exclusion for that year. For 2018, that figure is $15,000. The TCJA allows the designated beneficiary (but no other person) to make additional contributions in excess of this limit. To be eligible to make these contributions, the designated beneficiary must be employed or self-employed and must not be covered by an employer's retirement saving plan. The additional contributions are limited to the lesser of (1) the previous year's poverty line for a one-person household ($12,060) or (2) the designated beneficiary's taxable compensation for the current year. A designated beneficiary can contribute the full $12,060 for 2018 if the beneficiary's 2018 taxable compensation is at least that much. When added to the original $15,000, that allows a total of $27,060 in contributions.

The TCJA allows a 60-day rollover from a designated beneficiary's §529 account to that same beneficiary's ABLE account. But this would only work if the beneficiary is disabled or blind and has an ABLE account. Alternatively, a 60-day rollover is possible from a §529 account to the ABLE account of a member of the family of the §529 account's beneficiary. A family member is defined broadly for this purpose. There's a dollar limit on the amount that can be rolled over in this way. The rollover amount, when added to other contributions to the ABLE account for the year, can't exceed the gift tax exclusion amount for the year.

19. New Measure of Inflation. Under pre-TCJA law, the Code §1(f)(3) inflation adjustment computation was based on annual changes in the level of the Consumer Price Index for all Urban Consumers (i.e., the "CPI-U"), an index that measures prices paid by typical urban consumers on a broad range of products, developed and published by the Department of Labor. Effective for tax years beginning after 2017, the TCJA modifies the Code §1(f)(3) inflation adjustment computation rules to require use of chained CPI-U (i.e., "C-CPI-U"), instead of CPI-U, to index the income tax brackets for inflation. The C-CPI-U, like the CPI-U, is a measure of the average change over time in prices paid by urban consumers. But, the C-CPI-U differs from the CPI-U in that it accounts for the ability of individuals to alter their consumption patterns in response to relative price changes. The C-CPI-U reflects people's ability to lessen the impact of inflation by buying fewer goods or services that have risen in price and buying more goods and services whose price have risen less, or not at all. Thus, C-CPI-U is a slower-growing method of calculating COLAs. Using a lower rate of inflation to calculate future tax brackets means taxpayers may more quickly slip into the next higher tax bracket ("bracket creep"), and so will pay more in taxes over time.

Among the other provisions that are modified to require inflation adjustments be based on the C-CPI-U, instead of the CPI-U are:

1. Alternative minimum tax (AMT) for noncorporate taxpayers (individuals, estates and trusts), statutory dollar amounts in tentative minimum tax collection, AMT exemption amounts, and exemption phase-out thresholds. (Code §55(d)(4)(A(ii)).

2. Standard deduction. (Code §63(c)(4)(B)).

3. Overall limitation on itemized deductions, AGI phase-out amounts. (Code §68(b)(2)(B)).

4. Personal exemption deduction amount. (Code §151(d)(4)(B)).

5. Code §179 expensing dollar limit phase-out. (Code §179(b)(6)(A)(ii)).

6. Individual retirement account (IRA) deductible contribution limit and reduced limit for nonparticipant spouse of active participant. (Code §219(b)(5)(C)(i)(II); Code §219(g)(8)(B)).

7. Roth IRA dollar amounts for AGI limits (Code §408A(c)(3)(D)(ii)).

8. Applicable exclusion amount for unified credit against estate tax (Code §2010(c)(3)(B)(ii)).

9. Special use valuation, limitation on decrease in value of qualified real property (Code §2032A(a)(3)(B)).

10. Gift tax annual exclusion (Code §2503(b)(2)(B)).

11. Rate of interest on estate tax deferred under Code §6166, taxable value. (Code §6601(j)(3)(B)).

20. Kiddie Tax Modified. The tax on certain children with unearned income (the "kiddie tax") applies to the net unearned income of any child who: (i) is under age 19 by the close of the tax year, or is a full-time student under age 24; (ii) has at least one living parent at the close of the tax year; (iii) has unearned income of more than $2,100 (for 2017); and (iv) doesn't file a joint return. The kiddie tax applies regardless of whether the child may be claimed as a dependent by either or both parents. For children over age 17, the kiddie tax applies only to children whose earned income doesn't exceed one-half of the amount of their support.

Under the kiddie tax rules, children are taxed at the normally applicable rates on their earned income, and on their investment income ("unearned income") up to a prescribed amount (which is adjusted annually for inflation, $2,100 for 2017). For children who have more than the prescribed amount of unearned income for the tax year, that income is taxed to the child, but at the rate that would apply if that income were included in the parents' return, if that rate is higher than what the child would otherwise pay.

The TCJA modifies the kiddie tax to effectively apply the estates' and trusts' ordinary and capital gains rates to the net unearned income of a child. As under pre-TCJA law, the child's taxable income attributable to earned income is taxed according to an unmarried taxpayer's brackets and rates. Thus, under the TCJA changes, the child's tax will no longer be affected by the tax situation of the child's parent.

21. Charitable Contribution Deduction Limitation Increased. Under pre-TCJA law, an individual could take an itemized deduction up to 50% of the individual's contribution base (the "50% limit") for contributions to (as opposed to for the use of) 50% charities. These are charitable organizations such as (1) churches, (2) educational organizations, (3) foundations for the benefit of state colleges or universities, (4) hospitals and medical research organizations, (5) agricultural research organizations, (6) governmental bodies, (7) publicly supported organizations, (8) certain membership and other broadly supported organizations, (9) supporting organizations, and (10) certain private foundations. Charities that aren't 50% charities are 30% charities. Individuals may deduct up to 30% of their contribution bases (the "30% limit") for charitable contributions to or for the use of 30% charities and contributions for the use of 50% charities.

The TCJA increases the contribution-base percentage limit for tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026, for deductions of *cash* contributions by individuals to 50% charities from 50% to 60%.

22. No Deduction for Athletic Seating Rights. Under pre-TCJA law, if a taxpayer made a payment to or for the benefit of a college or university that would have been allowable as a charitable deduction but for the fact that, as a result, the taxpayer received (directly or indirectly) the right to buy tickets for seating at an athletic event in the institution's athletic stadium, 80% of the payment was treated as a charitable contribution. Under the TCJA, no charitable deduction is allowed for a payment to a college or university in exchange for which the contributor receives the right to purchase tickets or seating at an athletic event.

23. Self-Created Property Not a Capital Asset. Under pre-TCJA law, certain self-created intangibles such as copyrights, literary, musical, or artistic compositions, letters or memoranda, or similar property were excluded from the definition of a capital asset if the asset is held either by the taxpayer who created the property, or (in the case of a letter, memorandum, or similar property) a taxpayer for whom the property was produced. Any self-created intangible that was excluded from the definition of a capital asset also was ineligible to be treated as a capital gain-ordinary loss asset (i.e., a trade or business asset) under Code §1231.

The TCJA excludes a patent, invention, model or design (whether or not patented), a secret formula or process, a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property which is held by the taxpayer who created the property from the definition of a capital asset.

II.

TCJA PROVISIONS THAT HAVE AN IMPACT ON BUSINESS. UNLESS OTHERWISE NOTED, THE CHANGES ARE EFFECTIVE FOR TAX YEARS BEGINNING IN 2018

24. Corporate Tax Rates Reduced. TCJA cuts the corporate tax rate to a flat 21%. Before the TCJA, rates were graduated, starting at 15% for taxable income up to $50,000, with rates at 25% for income between $50,001 and $75,000, 34% for income

between $75,001 and $10 million, and 35% for income above $10 million. Personal service corporations paid tax on their entire taxable income at the rate of 35%.

25. Dividends-Received Deduction. The dividends-received deduction available to corporations that receive dividends from other corporations has been reduced under the TCJA. For corporations owning at least 20% of the dividend-paying company, the dividends-received deduction has been reduced from 80% to 65% of the dividends. For corporations owning under 20%, the deduction is reduced from 70% to 50%.

26. Alternative Minimum Tax Repealed for Corporations. The corporate alternative minimum tax (AMT) has been repealed by TCJA.

27. Alternative Minimum Tax Credit. Corporations are allowed to offset their regular tax liability by the AMT credit. For tax years beginning after 2017 and before 2022, the credit is refundable in an amount equal to 50% (100% for years beginning in 2021) of the excess of the AMT credit for the year over the amount of the credit allowable for the year against regular tax liability. Thus, the full amount of the credit will be allowed in tax years beginning before 2022.

28. Net Operating Loss ("NOL") Deduction Modified. Under TJCA, generally, NOLs arising in tax years ending after 2017 can only be carried forward, not back. The general two-year carryback rule, and other special carryback provisions, have been repealed. However, a two-year carryback for certain farming losses is allowed. These NOLs can be carried forward indefinitely, rather than expiring after 20 years. Additionally, under the TCJA, for losses arising in tax years beginning after 2017, the NOL deduction is limited to 80% of taxable income, determined without regard to the deduction. Carryovers to other years are adjusted to take account of the 80% limitation.

29. Limit on Business Interest Deduction. Under the TCJA, every business, regardless of its form, is limited to a deduction for business interest equal to 30% of its adjusted taxable income. For pass-through entities such as partnerships and S corporations, the determination is made at the entity level. Adjusted taxable income is computed for tax years beginning after 2017 and before 2022, without regard to deductions for depreciation, amortization, or depletion. Any business interest disallowed under this rule is carried into the following year, and, generally, may be carried forward indefinitely. The limitation does not apply to taxpayers (other than tax shelters) with average annual gross receipts of $25 million or less for the three-year period ending with the prior tax year. Real property trades or businesses can elect to have the rule not apply if they elect to use the alternative depreciation system for real property used in their trade or business. Certain additional rules apply to partnerships.

30. New Fringe Benefit Rules. The TCJA eliminates the 50% deduction for business-related entertainment expenses. The pre-TCJA 50% limit on deductible business meals is expanded to cover meals provided via an in-house cafeteria or otherwise on the employer's premises. Additionally, the deduction for transportation fringe benefits (e.g., parking and mass transit) is denied to employers, but the exclusion from income for such benefits for employees continues. No deduction is allowed for transportation

expenses that are the equivalent of commuting for employees except as provided for the employee's safety.

31. Penalties and Fines. Under pre-TCJA law, deductions are not allowed for fines or penalties paid to a government for the violation of any law. Under the TCJA, no deduction is allowed for any otherwise deductible amount paid or incurred by suit, agreement, or otherwise to or at the direction of a government or specified nongovernmental entity in relation to the violation of any law or the investigation or inquiry by the government or entity into the potential violation of any law. An exception applies to any payment the taxpayer establishes is either restitution (including remediation of property), or an amount required to come into compliance with any law that was violated or involved in the investigation or inquiry, that is identified in the court order or settlement agreement as such a payment. An exception also applies to an amount paid or incurred as taxes due.

32. Sexual Harassment. Under the TCJA, effective for amounts paid or incurred after Dec. 22, 2017, no deduction is allowed for any settlement, payout, or attorney fees related to sexual harassment or sexual abuse if the payments are subject to a nondisclosure agreement.

33. Lobbying Expenses. The TCJA disallows deductions for lobbying expenses paid or incurred after the date of enactment with respect to lobbying expenses related to legislation before local governmental bodies.

34. Family and Medical Leave Credit. A new general business credit is available for tax years beginning in 2018 and 2019 for eligible employers equal to 12.5% of wages they pay to qualifying employees on family and medical leave if the rate of payment is 50% of wages normally paid to the employee. The credit increases by 0.25% (up to a maximum of 25%) for each percent by which the payment rate exceeds 50% of normal wages. For this purpose, the maximum leave that may be taken into account for any employee for any year is 12 weeks. Eligible employers are those with a written policy in place allowing qualifying full-time employees at least two weeks of paid family and medical leave a year, and less than full-time employees a pro-rated amount of leave. A qualifying employee is one who has been employed by the employer for one year or more, and who, in the preceding year, had compensation not above 60% of the compensation threshold for highly compensated employees. Paid leave provided as vacation leave, personal leave, or other medical or sick leave is not considered family and medical leave.

35. Qualified Rehabilitation Credit. The TCJA repeals the 10% credit for qualified rehabilitation expenditures for a building that was first placed in service before 1936, and modifies the 20% credit for qualified rehabilitation expenditures for a certified historic structure. The 20% credit is allowable during the five-year period starting with the year the building was placed in service in an amount that is equal to the ratable share for that year. This is 20% of the qualified rehabilitation expenditures for the building, as allocated ratably to each year in the five-year period. It is intended that the sum of the ratable shares for the five years not exceed 100% of the credit for qualified

rehabilitation expenditures for the building. The repeal of the 10% credit and modification of the 20% credit take effect starting in 2018 (subject to a transition rule for certain buildings owned or leased at all times after 2017).

36. Orphan Drug Credit Reduced and Modified. The TCJA reduces the business tax credit for qualified clinical testing expenses for certain drugs for rare diseases or conditions, generally known as "orphan drugs," from 50% to 25% of qualified clinical testing expenses for tax years beginning after 2017. These are costs incurred to test an orphan drug after it has been approved for human testing by the FDA but before it has been approved for sale. Amounts used in computing this credit are excluded from the computation of the separate research credit. The new law modifies the credit by allowing a taxpayer to elect to take a reduced orphan drug credit in lieu of reducing otherwise allowable deductions.

37. Increased Code §179 Expensing. Before the TCJA, most taxpayers could elect, on an asset-by-asset basis, to immediately deduct the entire cost of §179 property up to an annual limit of $500,000, adjusted for inflation. For assets placed in service in tax years that begin in 2018, the scheduled adjusted limit was $520,000. The annual limit was reduced by one dollar for every dollar that the cost of all §179 property placed in service by the taxpayer during the tax year exceeded a $2 million inflation-adjusted threshold. For assets placed in service in tax years that begin in 2018, the scheduled threshold was $2,070,000. The TCJA substitutes as the annual dollar limit $1 million (inflation-adjusted for tax years beginning *after* 2018) and $2.5 million as the phase down threshold (similarly inflation adjusted).

Before the TCJA, §179 property included tangible personal property as well as non-customized computer software. The only buildings or other non-production-process land improvements that qualified did so because the taxpayer elected to treat "qualified real property" as §179 property, for purposes of both the dollar limit and the phase down threshold. Qualified real property included restaurant buildings and certain improvements to leased space, retail space and restaurant space.

For tax years beginning after 2017, those buildings and improvements are eliminated as types of qualified real property and there is substituted a far broader group of improvements made to any building other than a residential rental building: (1) any building improvement other than elevators, escalators, building enlargements or changes to internal structural framework, and (2) building components that are roofs; heating, ventilation and air conditioning property; fire protection and alarm systems; or security systems. Also, for tax years beginning after 2017, items (for example, non-affixed appliances) used in connection with residential buildings (but not the buildings or improvements to them) are §179 property.

38. Bonus Depreciation. Before the TCJA, taxpayers were allowed to deduct in the year that an asset was placed in service 50% of the cost of most new tangible property other than buildings and, with the exception of qualified improvement property, building improvements. Most new computer software was also eligible for the 50% deduction. Because of the deduction in the year placed in service, there was adjustment

of the regular depreciation allowed in that year and later years. The "50% bonus depreciation" was to be phased down to 40% for property placed in service in calendar year 2018, 40% in 2019 and 0% in 2020 and afterward. The phase down was to begin a year later for certain private aircraft and long-production period property.

For property placed in service and acquired after September 27, 2017, the TCJA has raised the 50% rate to 100%, i.e. "full expensing" or "100% expensing". Additionally, under the TCJA, the post-September 27, 2017 property eligible for bonus depreciation can be new *or used*. Also, certain film, television and live theatrical productions are now eligible. The TCJA excluded from bonus depreciation public utility property and property owned by certain vehicle dealerships.

The 2018/2019/2020 phase down (above) doesn't apply to post-September 27, 2017 property. Instead, 100% depreciation is decreased to 80% for property placed in service in calendar year 2023, 60% in 2024, 40% in 2025, 20% in 2026, and 0% in 2027 and afterward (with phase down beginning a year later for certain private aircraft and long-production period property).

39. Depreciation of Qualified Improvement Property. If placed in service after 2017, TCJA provides that qualified improvement property, in addition to being eligible for bonus depreciation and being newly eligible as §179 property, is depreciable using a 15-year recovery period and the straight-line method. Qualified improvement property is any improvement to an interior portion of a building that is nonresidential real property placed in service after the building was placed in service. It does not include expenses related to the enlargement of the building, any elevator or escalator, or the internal structural framework. There are no longer separate requirements for leasehold improvement property or restaurant property.

40. Depreciation of Farming Equipment and Machinery. Under the TCJA, subject to certain exceptions, the cost recovery period for farming equipment and machinery, the original use of which begins with the taxpayer, is reduced from 7 to 5 years. Additionally, in general, the 200% declining balance method may be used in place of the 150% declining balance method that was required under pre-TCJA law.

41. Luxury Auto Depreciation Limits. Under the TCJA, for a passenger automobile for which bonus depreciation is not claimed, the maximum depreciation allowance is increased to $10,000 for the year it's placed in service, $16,000 for the second year, $9,000 for the third year, and $5,760 for the fourth and later years in the recovery period. These amounts are indexed for inflation after 2018. For passenger autos eligible for bonus first year depreciation, the maximum additional first year depreciation allowance remains at $8,000 as under pre-TCJA law.

42. Computers and Peripheral Equipment. The TCJA removes computers and peripheral equipment from the definition of listed property. Thus, the heightened substantiation requirements and possibly slower cost recovery for listed property no longer apply.

43. New Rules for Post-2021 Research and Experimentation ("R & E") Expenses. Under the TCJA, specified R & E expenses paid or incurred after 2021 in connection with a trade or business must be capitalized and amortized ratably over a 5-year period (15 years if conducted outside the U.S.). These include expenses for software development, but not expenses for land, or depreciable or depletable property used in connection with the R & E (but do include the depreciation and depletion allowance for such property). For R&E expenses paid or incurred before 2022, these expenses are deductible currently or may be capitalized and recovered over the useful life of the research (not to exceed 60 months), or over a ten-year period, at the taxpayer's election.

44. Like-kind Exchange Treatment Limited. In a like-kind exchange, a taxpayer doesn't recognize gain or loss on an exchange of like-kind properties if both the relinquished property and the replacement property are held for productive use in a trade or business or for investment purposes. For exchanges completed after Dec. 31, 2017, the TCJA limits tax-free exchanges to exchanges of real property that is not held primarily for sale. Thus, exchanges of personal property and intangible property can't qualify as tax-free like-kind exchanges. Although the real property limitation applies to exchanges completed after Dec. 31, 2017, transition rules provide relief for certain exchanges.

45. Excessive Employee Compensation. Under pre-TCJA law, a deduction for compensation paid or accrued with respect to a covered employee of a publicly traded corporation is deductible only up to $1 million per year. Exceptions applied for commissions, performance-based pay, including stock options, payments to a qualified retirement plan, and amounts excludable from the employee's gross income. The TCJA repealed the exceptions for commissions and performance-based pay. The definition of "covered employee" is revised to include the principal executive officer, principal financial officer, and the three highest-paid officers. An individual who is a covered employee for a tax year beginning after 2016 remains a covered employee for all future years.

46. Employee Achievement Awards Clarified. An employee achievement award is tax free to the extent the employer can deduct its cost, generally limited to $400 for one employee or $1,600 for a qualified plan award. An employee achievement award is an item of tangible personal property given to an employee in recognition of length of service or a safety achievement and presented as part of a meaningful presentation. The TCJA defines "tangible personal property" to exclude cash, cash equivalents, gift cards, gift coupons, gift certificates (other than from an employer pre-selected limited list), vacations, meals, lodging, theater or sports tickets, stocks, bonds, or similar items, and other non-tangible personal property.

47. Cash Basis Accounting and Income Inclusion Reporting. TCJA includes a number of changes to the rules governing the choice of accounting methods by taxpayers. In certain situations, the Act raises the gross receipts limit used to determine which taxpayers can use the cash method of accounting.

The TCJA provides that, for tax years beginning after December 31, 2017, taxpayers that have average annual gross receipts of *$25 million* or less during the preceding three years (up from $10 million under pre-TCJA law) aren't required to account for the cost of goods sold using inventories under Code §471 (and, thus, aren't required to use the accrual method of accounting); but rather may use a method of accounting for inventories that either: (1) treats inventories as non-incidental materials and supplies, or (2) conforms to the taxpayer's financial accounting treatment of inventories.

The TCJA provides that, in tax years beginning after December 31, 2017, corporations and partnerships that have a corporation as a partner satisfy the gross receipts test for the tax year if the taxpayer's average annual gross receipts are under *$25 million* for the three tax-year period ending with the tax year *that precedes* the tax year for which the taxpayer is being tested. The $25 million limit is adjusted for inflation for tax years beginning after 2018. Under pre-TCJA law, the three-year testing period ended with the tax year *before* the tax year for which the taxpayer was being tested, and a corporation or partnership having a corporation as a partner didn't satisfy the gross receipts test unless the average annual gross receipts of the entity for the three-tax-year period ending with the earlier tax year did not exceed $5 million (unadjusted for inflation).

The TCJA provides that, in tax years beginning after December 31, 2017, a farming business owned by a C corporation (or partnerships with such a C corporation as a partner) is exempt from the rule requiring such corporations to use the accrual method if the corporation meets an inflation-adjusted *$25 million* gross receipts test for the tax year. This limit replaces both the non-inflation-adjusted $25 million limit for family corporations and the $1 million limit for non-family corporations in effect before the TCJA.

The TCJA requires (or allows) taxpayers in certain circumstances to recognize income for tax purposes no later than the year in which it's recognized for financial reporting purposes.

The TCJA provides that, for an accrual basis taxpayer, the all events test with respect to any item of gross income (or portion thereof) in tax years beginning after December 31, 2017, won't be treated as met any later than (and, thus, these taxpayers must recognize income no later than) the tax year in which the income is taken into account as income on (1) an applicable financial statement or (2) under rules specified by IRS, another financial statement.

The TCJA allows taxpayers in tax years beginning after December 31, 2017, to defer the inclusion of income associated with certain advance payments to the end of the tax year following the tax year of receipt if that income also is deferred for financial statement purposes.

III.

TCJA PROVISIONS THAT HAVE AN IMPACT ON PARTNERSHIPS, S CORPORATIONS, AND PASS-THROUGH INCOME. IN GENERAL, THEY ARE EFFECTIVE STARTING IN 2018

48. New Deduction For Pass-Through Income. TCJA adds new §199A establishing a new tax deduction taking effect in 2018 with respect to "qualified business income" from a partnership, S corporation, LLC, or sole proprietorship. This income is sometimes referred to as "pass-through" income.

The deduction is 20% of your "qualified business income" (QBI) from a partnership, S corporation, or sole proprietorship, defined as the net amount of items of income, gain, deduction, and loss with respect to your trade or business. The business must be conducted within the U.S. to qualify, and specified investment-related items are not included, e.g., capital gains or losses, dividends, and interest income (unless the interest is properly allocable to the business). The trade or business of being an employee does not qualify. Also, QBI does not include reasonable compensation received from an S corporation, or a guaranteed payment received from a partnership for services provided to a partnership's business.

TCJA amends §63 to add new §63(b)(3) dealing with the deduction provided in §199A. Accordingly, the deduction is taken "below the line," i.e., it reduces your taxable income but not your adjusted gross income. It is available regardless of whether you itemize deductions or take the standard deduction. In general, the deduction cannot exceed 20% of the excess of your taxable income over net capital gain. If QBI is less than zero, it is treated as a loss from a qualified business in the following year.

For taxpayers with taxable income above $157,500 ($315,000 for joint filers), an exclusion from QBI of income from "specified service" trades or businesses is phased in. These are trades or businesses involving the performance of services in the fields of health, law, consulting, athletics, financial or brokerage services, or where the principal asset is the reputation or skill of one or more employees or owners. Additionally, for taxpayers with taxable income more than the above thresholds, a limitation on the amount of the deduction is phased in based either on wages paid or wages paid plus a capital element.

Other limitations may apply in certain circumstances, e.g., for taxpayers with qualified cooperative dividends, qualified real estate investment trust (REIT) dividends, or income from publicly traded partnerships.

The deduction under §199A reduces the discrepancy in the top rates (21% - 37%) at which business income would be taxed depending on whether the business is taxed as a C corporation or as a pass-through entity. Generally, the §199A deduction results in a top rate of 29.6% for taxation of qualified business income from pass-through entities: $(1 - 0.20) \times 37\% = 29.6\%$.

49. S Corporation Conversion to C Corporation. Under the TCJA, on the date of its enactment, any §481(a) adjustment of an "eligible terminated S corporation" attributable to the revocation of its S corporation election (i.e., a change from the cash method to the accrual method) is taken into account ratably during the 6-tax-year period starting with the year of change. An "eligible terminated S corporation" is any regular C corporation which meets the following tests: (1) it was an S corporation the day before the enactment of the TCJA, (2) during the 2-year period beginning on the date of enactment it revokes its S corporation election, and (3) all of the owners on the date the election is revoked are the same owners (in identical proportions) as the owners on the date of enactment. If money is distributed by the eligible corporation after the post-termination transition period, the distribution will be allocated between the accumulated adjustment account and the accumulated earnings and profits, in the same ratio as the amount in the accumulated adjustments account bears to the amount of the accumulated earnings and profits.

50. Partnership "Technical Termination" Rule Repealed. Before the TCJA, partnerships experienced a "technical termination" if, within any 12-month period, there was a sale or exchange of at least 50% of the total interest in partnership capital and profits. This resulted in a deemed contribution of all partnership assets and liabilities to a new partnership in exchange for an interest in it, followed by a deemed distribution of interests in the new partnership to the purchasing partners and continuing partners from the terminated partnership. Some of the tax attributes of the old partnership terminated, its tax year closed, partnership-level elections ceased to apply, and depreciation recovery periods restarted. This often imposed unintended burdens and costs on the parties. The TCJA repeals this rule. A partnership termination is no longer triggered if within a 12-month period, there is a sale or exchange of 50% or more of total partnership capital and profits interests. A partnership termination will still occur if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

51. Partnership Loss Limitation Rule. A partner can only deduct his share of partnership loss to the extent of his basis in his partnership interest as of the end of the partnership tax year in which the loss occurred. IRS has ruled that this loss limitation rule should not apply to limit a partner's deduction for his share of partnership charitable contributions. The TCJA provides that the rule limiting a partner's losses to his basis in his partnership interest is applied by reducing his basis by his share of partnership charitable contributions. However, in the case of partnership charitable contributions of property with a fair market value that exceeds its adjusted basis, the partner's basis reduction is limited to his share of the basis of the contributed property.

52. Carried Interest – New Holding Period. A profits interest in a partnership is any interest other than a capital interest. A profits interest gives the holder the right to receive future profits and appreciation in value of assets of a partnership, but doesn't give the holder a share of the proceeds upon the immediate liquidation of the partnership. The receipt of a capital interest for services provided to a partnership results in taxable compensation for the recipient. Under a safe harbor rule, the receipt of a profits interest in exchange for services provided is not a taxable event to the recipient

if the profits interest entitles the holder to share only in gains and profits generated after the date of issuance (and certain other requirements are met).

Partnerships can issue profits interests to key service providers because they aren't taxable at grant, but the holder of the profits interest will be considered to be a partner from the time of vesting and will be eligible for long-term capital gain treatment upon a liquidity event *if the relevant holding period is met.* Profits interests are commonly used in private investment funds and are often referred to as "carried interest". In this context, carried interest is a share of the profits that the general partner (commonly a manager of a private equity fund, hedge fund, or similar investment vehicle) receives as compensation, regardless of that partner's capital investment, if any. A partnership is required to compute certain classes of income and deductions as separate items. These classes of income and deductions are then directly "passed through" to the partners, who take them into account for tax purposes by including their distributive share of each of these classes of income and deductions as separate items on their tax returns. In the hands of the partner, the character of any partnership item that must be "separately stated" is determined as if realized directly from the source from which the partnership realized it, or incurred in the same manner as the partnership incurred it. Thus, to determine the nature of an item of separately stated income, gain, loss, deduction or credit in the hands of the partnership and in the hands of the partner, the partnership is viewed as an entity, and the items are characterized from the viewpoint of the partnership rather than from the viewpoint of an individual partner. If a partnership recognizes gain from the sale of a capital asset that it has held for more than one year, an individual partner who is allocated a share of the partnership's long-term capital gain will be taxed on that share at long-term capital gain rates.

This was the crux of the perceived windfall that fund managers derived from carried interest. Outside of the partnership context, individuals typically are taxed at favorable capital gain rates only on gains generated from investments of their after-tax dollars. However, as a result of the partnership tax regime, carried interest passed through the partnership as long-term capital gain and fund managers were able to pay tax at a more favorable rate on gains derived from their services, which would have been ordinary income had it been paid as compensation for their services.

The TCJA changes the tax treatment of gains from a profits interest in a partnership held in connection with the performance of services by providing for a three-year holding period in the case of certain net long-term capital gain with respect to any applicable partnership interest held by the taxpayer. Section 83, relating to property transferred in connection with the performance of services, doesn't apply to the transfer of a partnership interest to which this provision applies.

IV.

TCJA PROVISIONS THAT HAVE AN IMPACT ON TAX-EXEMPT ORGANIZATIONS. IN GENERAL, THE PROVISIONS INVOLVED ARE EFFECTIVE STARTING IN 2018

53. Excise Tax on Exempt Organization's Excessive Compensation. Before the TCJA, executive compensation paid by tax-exempt entities was subject to reasonableness requirements and a prohibition against private inurement. The TCJA adds an excise tax that is imposed on compensation in excess of $1 million paid by an exempt organization to a "covered" employee. The tax rate is set at 21%, which is the new corporate tax rate. Compensation for these purposes is the sum of: (1) remuneration (other than an excess parachute payment) over $1 million paid to a covered employee by a tax-exempt organization for a tax year; plus (2) any excess parachute payment paid by the organization to a covered employee. A covered employee is an employee or former employee of the organization who is one of its five highest compensated employees for the tax year, or was a covered employee of the organization or its predecessor for any preceding tax year beginning after 2016. Remuneration is treated as paid when there is no substantial risk of forfeiture of the rights to the remuneration.

54. Excise Tax on Private College's Investment Income. Before the new law, private colleges and universities were generally treated as public charities, as opposed to private foundations, and were therefore not subject to the private foundation excise tax on their net investment income. The new law imposes an excise tax on the net investment income of colleges and universities meeting specified size and asset requirements. The excise tax rate is 1.4% of the institution's net investment income, and applies only to private colleges and universities with at least 500 students, more than half of whom are in the U.S., and with assets of at least $500,000 per student. For this purpose, assets used directly in carrying out the institution's exempt purpose are not counted. The number of students is based on a daily average of "full-time equivalent" students, i.e., two students carrying half loads would count as a single full-time equivalent student. For purposes of the excise tax, net investment income is the institution's gross investment income minus expenses incurred to produce it, but without the use of accelerated depreciation or percentage depletion.

55. Exempt Organization's UBTI Computed Separately for Separate Businesses. Before the TCJA, a tax-exempt organization computed its unrelated business taxable income (UBTI) by subtracting deductions directly connected with the unrelated trade or business from its gross income from the unrelated trade or business. If the organization had more than one unrelated trade or business, the organization combined its income and deductions from all of the trades or businesses. Under that approach, a loss from one trade or business could offset income from another unrelated trade or business, thus reducing overall UBTI. Under the TCJA, an exempt organization cannot use losses from one unrelated trade or business to offset income from another one. Gains and losses are calculated and applied to each unrelated trade or business separately. There is an exception for net operating losses from pre-2018 tax years that are carried forward.

56. Exempt Organization's UBTI to Include Disallowed Fringe Benefit Costs. Under the TCJA, an exempt organization's unrelated business taxable income (UBTI) is to include any nondeductible entertainment expenses, and costs incurred for any qualified transportation fringe, parking facility used in connection with qualified parking, or any on-premises athletic facility. However, UBTI is not to include any such amount to the extent it is directly connected with an unrelated trade or business regularly carried on by the organization.

V.

TCJA PROVISIONS THAT HAVE AN IMPACT ON TRANSFER TAX

57. Applicable Credit Amount; GST Exemption Amount. Before the TCJA, the first $5 million (as adjusted for inflation in years after 2011) of transferred property was exempt from estate tax, gift tax, and generation-skipping tax. For estates of decedents dying and gifts made in 2018, this "basic exclusion amount" as adjusted for inflation, would have been $5.6 million, or $11.2 million for a married couple. With proper planning, the unused portion of a deceased spouse's exclusion amount (DSUEA) could be added to that of the surviving spouse ("portability") for purposes of the estate tax and gift tax.

For decedents dying and gifts made from 2018 through 2025, the TCJA doubles the base estate and gift tax exemption amount from $5 million to $10 million. Indexing for post-2011 inflation, and considering C-CPI-U adjustment for tax years beginning after 2017, brings this amount to approximately $11.2 million for 2018, and $22.4 million per married couple, with the same basic portability techniques. The TCJA doesn't specifically mention the generation-skipping tax (GST), but since the GST exemption amount is based on the basic exclusion amount, the GST exemption amount is similarly adjusted.

58. Clawback. TCJA amends §2001(g) to add new §2001(g)(2) directing the Treasury to prescribe regulations necessary to address any difference in the basic exclusion amount at the time of a gift and at the time of death. This is to deal with the possibility of a "clawback" of a prior gift. A clawback would occur with respect to a prior gift that was covered by the gift tax exclusion at the time of the gift, but results in estate tax because the estate tax exclusion has decreased at the time of the donor's death. This was an issue in 2012 when there was a possibility that the gift tax exclusion could be reduced from $5 million to $1 million.

EXHIBIT A

NON-ITEMIZER
UNMARRIED INDIVIDUAL

	2018 Pre-TCJA	2018 Post-TCJA
Gross Income	50,000	50,000
Personal Exemption	<4,150>	-0-
Standard Deduction	<6,350>	<12,000>
Taxable Income	39,500	38,000
Tax 25% - 12%	5,528.75	4,369.50

	2018 Pre-TCJA	2018 Post-TCJA
Gross Income	75,000	75,000
Personal Exemption	<4,150>	-0-
Standard Deduction	<6,350>	<12,000>
Taxable Income	64,500	63,000
Tax 25% - 22%	11,778.75	9,799.50

NON-ITEMIZER
MARRIED FILING JOINTLY - NO CHILDREN

	2018 Pre-TCJA	2018 Post-TCJA
Gross Income	50,000	50,000
Personal Exemptions	<8,300>	-0-
Standard Deduction	<13,000>	<24,000>
Taxable Income	28,700	26,000
Tax 15% - 12%	3,352	2,739

	2018 Pre-TCJA	2018 Post-TCJA
Gross Income	75,000	75,000
Personal Exemptions	<8,300>	-0-
Standard Deduction	<13,000>	<24,000>
Taxable Income	53,700	51,000
Tax 25% - 12%	7,102	5,739

NON-ITEMIZER
MARRIED FILING JOINTLY - TWO CHILDREN

	2018 Pre-TCJA	2018 Post-TCJA
Gross Income	50,000	50,000
Personal Exemptions	<16,600>	-0-
Standard Deduction	<13,000>	<24,000>
Taxable Income	20,400	26,000
Tax 15%-12%	2,107	2,739
Child Tax Credit	<2,000>	<4,000>
Net Tax	107	<1,261>

	2018 Pre-TCJA	2018 Post-TCJA
Gross Income	75,000	75,000
Personal Exemptions	<16,600>	-0-
Standard Deduction	<13,000>	<24,000>
Taxable Income	45,400	51,000
Tax 15%-12%	5,857	5,739
Child Tax Credit	<2,000>	<4,000>
Net Tax	3,857	1,739

	2018 Pre-TCJA	2018 Post-TCJA
Gross Income	100,000	100,000
Personal Exemptions	<16,600>	-0-
Standard Deduction	<13,000>	<24,000>
Taxable Income	70,400	76,000
Tax 15%-12%	9,607	8,739
Child Tax Credit	<2,000>	<4,000>
Net Tax	7,607	4,739

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Code Sec. 67. 2-percent floor on miscellaneous itemized deductions.

(a) General rule.

In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income.

(b) Miscellaneous itemized deductions.

For purposes of this section , the term "miscellaneous itemized deductions" means the itemized deductions other than—

(1) the deduction under section 163 (relating to interest),

(2) the deduction under section 164 (relating to taxes),

(3) the deduction under section 165(a) for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d) ,

(4) the deductions under section 170 (relating to charitable, etc., contributions and gifts) and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose),

(5) the deduction under section 213 (relating to medical, dental, etc., expenses),

(6) any deduction allowable for impairment-related work expenses,

(7) the deduction under section 691(c) (relating to deduction for estate tax in case of income in respect of the decedent),

(8) any deduction allowable in connection with personal property used in a short sale,

(9) the deduction under section 1341 (relating to computation of tax where taxpayer restores substantial amount held under claim of right),

(10) the deduction under section 72(b)(3) (relating to deduction where annuity payments cease before investment recovered),

(11) the deduction under section 171 (relating to deduction for amortizable bond premium), and

(12) the deduction under section 216 (relating to deductions in connection with cooperative housing corporations).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Repeal of Certain Miscellaneous Itemized Deductions Subject to the Two-Percent Floor (secs. 1307 and 1312 of the House bill, sec. 11045 of the Senate amendment, and secs. 62, 67 and 212 of the Code)

PRESENT LAW

Individuals may claim itemized deductions for certain miscellaneous expenses. Certain of these expenses are not deductible unless, in aggregate, they exceed two percent of the taxpayer's adjusted gross income ("AGI").[222] The deductions described below are subject to the aggregate two-percent floor.[223]

Expenses for the production or collection of income

Individuals may deduct all ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income.[224]

Present law and IRS guidance provide examples of items that may be deducted under this provision. This non-exhaustive list includes:[225]

- Appraisal fees for a casualty loss or charitable contribution;
- Casualty and theft losses from property used in performing services as an employee;
- Clerical help and office rent in caring for investments;
- Depreciation on home computers used for investments;
- Excess deductions (including administrative expenses) allowed a beneficiary on termination of an estate or trust;
- Fees to collect interest and dividends;
- Hobby expenses, but generally not more than hobby income;
- Indirect miscellaneous deductions from pass-through entities;
- Investment fees and expenses;
- Loss on deposits in an insolvent or bankrupt financial institution;
- Loss on traditional IRAs or Roth IRAs, when all amounts have been distributed;
- Repayments of income;
- Safe deposit box rental fees, except for storing jewelry and other personal effects;
- Service charges on dividend reinvestment plans; and
- Trustee's fees for an IRA, if separately billed and paid.

Tax preparation expenses

For regular income tax purposes, individuals are allowed an itemized deduction for expenses for the production of income. These expenses are defined as ordinary and necessary expenses paid or incurred in a taxable year: (1) for the production or collection of income; (2) for the management, conservation, or maintenance of property held for the production of income; or (3) in connection with the determination, collection, or refund of any tax.[226]

Unreimbursed expenses attributable to the trade or business of being an employee

In general, unreimbursed business expenses incurred by an employee are deductible, but only as an itemized deduction and

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[222] Sec. 67(a).
[223] The miscellaneous itemized deduction for tax preparation expenses is described in a separate section of this document.
[224] Sec. 212(1).
[225] See IRS Publication 529, *"Miscellaneous Deductions"* (2016), p. 9.
[226] Sec. 212.

only to the extent the expenses exceed two percent of adjusted gross income.[227]

Present law and IRS guidance provide examples of items that may be deducted under this provision. This non-exhaustive list includes:[228]

- Business bad debt of an employee;
- Business liability insurance premiums;
- Damages paid to a former employer for breach of an employment contract;
- Depreciation on a computer a taxpayer's employer requires him to use in his work;
- Dues to a chamber of commerce if membership helps the taxpayer perform his job;
- Dues to professional societies;
- Educator expenses;[229]
- Home office or part of a taxpayer's home used regularly and exclusively in the taxpayer's work;
- Job search expenses in the taxpayer's present occupation;
- Laboratory breakage fees;
- Legal fees related to the taxpayer's job;
- Licenses and regulatory fees;
- Malpractice insurance premiums;
- Medical examinations required by an employer;
- Occupational taxes;
- Passport fees for a business trip;
- Repayment of an income aid payment received under an employer's plan;
- Research expenses of a college professor;
- Rural mail carriers' vehicle expenses;
- Subscriptions to professional journals and trade magazines related to the taxpayer's work;
- Tools and supplies used in the taxpayer's work;
- Purchase of travel, transportation, meals, entertainment, gifts, and local lodging related to the taxpayer's work;
- Union dues and expenses;
- Work clothes and uniforms if required and not suitable for everyday use; and
- Work-related education.

Other miscellaneous itemized deductions subject to the two-percent floor

Other miscellaneous itemized deductions subject to the two-percent floor include:

- Repayments of income received under a claim of right (only subject to the two-percent floor if less than $3,000);
- Repayments of Social Security benefits; and
- The share of deductible investment expenses from pass-through entities.

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[227] Secs. 62(a)(1) and 67.
[228] See IRS Publication 529, *"Miscellaneous Deductions"* (2016), p. 3.
[229] Under a special provision, these expenses are deductible "above the line" up to $250.

EXHIBIT B

CODE SECTIONS 199A. QUALIFIED BUSINESS INCOME
SENATE AMENDMENT AND CONFERENCE AGREEMENT

In General

For taxable years beginning after December 31, 2017 and before January 1, 2026, an individual taxpayer generally may deduct 20 percent of qualified business income from a partnership, S corporation, or sole proprietorship, as well as 20 percent of aggregate qualified REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income. Special rules apply to specified agricultural or horticultural cooperatives. A limitation based on W-2 wages paid is phased in above a threshold amount of taxable income. A disallowance of the deduction with respect to specified service trades or businesses is also phased in above the threshold amount of taxable income.[1]

The conference agreement clarifies that the 20-percent deduction is not allowed in computing adjusted gross income, and instead is allowed as a deduction reducing taxable income. Thus, for example, the provision does not affect limitations based on adjusted gross income. Similarly the conference agreement clarifies that the deduction is available to both nonitemizers and itemizers.

Qualified Business Income

Qualified business income is determined for each qualified trade or business of the taxpayer. For any taxable year, qualified business income means the net amount of qualified items of income, gain, deduction, and loss with respect to the qualified trade or business of the taxpayer. The determination of qualified items of income, gain, deduction, and loss takes into account these items only to the extent included or allowed in the determination of taxable income for the year. For example, if in a taxable year, a qualified business has $100,000 of ordinary income from inventory sales, and makes an expenditure of $25,000 that is required to be capitalized and amortized over 5 years under applicable tax rules, the qualified business income is $100,000 minus $5,000 (current-year ordinary amortization deduction), or $95,000. The qualified business income is not reduced by the entire amount of the capital expenditure, only by the amount deductible in determining taxable income for the year.

If the net amount of qualified business income from all qualified trades or businesses during the taxable year is a loss, it is carried forward as a loss from a qualified trade or business in the next taxable year. Similar to a qualified trade or business that has a qualified business loss for the current taxable year, any deduction allowed in a subsequent year is reduced (but not below zero) by 20 percent of any carryover qualified business loss. For example, Taxpayer has qualified business income of $20,000 from qualified business A and a qualified business loss of $50,000 from qualified business B in Year 1. Taxpayer is not permitted a deduction for Year 1 and has a carryover qualified business loss of $30,000 to Year 2. In Year 2, Taxpayer has qualified business income of

$20,000 from qualified business A and qualified business income of $50,000 from qualified business B. To determine the deduction for Year 2, Taxpayer reduces the 20 percent deductible amount determined for the qualified business income of $70,000 from qualified businesses A and B by 20 percent of the $30,000 carryover qualified business loss.

Domestic Business

Items are treated as qualified items of income, gain, deduction, and loss only to the extent they are effectively connected with the conduct of a trade or business within the United States.[2] In the case of a taxpayer who is an individual with otherwise qualified business income from sources within the commonwealth of Puerto Rico, if all the income is taxable under section 1 (income tax rates for individuals) for the taxable year, the "United States" is considered to include Puerto Rico for purposes of determining the individual's qualified business income.

Treatment of Investment Income

Qualified items do not include specified investment-related income, deductions, or loss. Specifically, qualified items of income, gain, deduction and loss do not include (1) any item taken into account in determining net long-term capital gain or net long-term capital loss, (2) dividends, income equivalent to a dividend, or payments in lieu of dividends, (3) interest income other than that which is properly allocable to a trade or business, (4) the excess of gain over loss from commodities transactions, other than those entered into in the normal course of the trade or business or with respect to stock in trade or property held primarily for sale to customers in the ordinary course of the trade or business, property used in the trade or business, or supplies regularly used or consumed in the trade or business, (5) the excess of foreign currency gains over foreign currency losses from section 988 transactions, other than transactions directly related to the business needs of the business activity, (6) net income from notional principal contracts, other than clearly identified hedging transactions that are treated as ordinary (i.e., not treated as capital assets), and (7) any amount received from an annuity that is not used in the trade or business of the business activity. Qualified items under this provision do not include any item of deduction or loss properly allocable to such income.

Reasonable Compensation and Guaranteed Payments

Qualified business income does not include any amount paid by an S corporation that is treated as reasonable compensation of the taxpayer. Similarly, qualified business income does not include any guaranteed payment for services rendered with respect to the trade or business,[3] and to the extent provided in regulations, does not include any amount paid or incurred by a partnership to a partner who is acting other than in his or her capacity as a partner for services.[4]

Qualified Trade or Business

A qualified trade or business means any trade or business other than a specified service trade or business and other than the trade or business of being an employee.

Specified Service Business

A specified service trade or business means any trade or business involving the performance of services in the fields of health[5], law, consulting[6], 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 one or more of its employees or owners, or which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interests, or commodities. For this purpose, a security and a commodity have the meanings provided in the rules for the mark-to-market accounting method for dealers in securities (sections 475(c)(2) and 475(e)(2), respectively).

[Comment: The Conference Agreement excluded engineering and architecture services from the definition of specified service trade or business.]

Phase-in of Specified Service Business Limitation

The exclusion from the definition of a qualified business for specified service trades or businesses phases in for a taxpayer with taxable income in excess of a threshold amount. The threshold amount is $175,500 (200 percent of that amount, or $315,000, in the case of a joint return) (the "threshold amount"). The threshold amount is indexed for inflation. The exclusion from the definition of a qualified business for specified service trades or businesses is fully phased in for a taxpayer with taxable income in excess of the threshold amount plus $50,000 ($100,000 in the case of a joint return). For a taxpayer with taxable income within the phase-in range, the exclusion applies as follows.

In computing the qualified business income with respect to a specified service trade or business, the taxpayer takes into account only the applicable percentage of qualified items of income, gain, deduction, or loss, and of allocable W-2 wages. The applicable percentage with respect to any taxable year is 100 percent reduced by the percentage equal to the ratio of the excess of the taxable income of the taxpayer over the threshold amount bears to $50,000 ($100,000 in the case of a joint return).

For example, Taxpayer has taxable income of $200,000, of which $150,000 is attributable to an accounting sole proprietorship after paying wages of $100,000 to employees. Taxpayer has an applicable percentage of 51 percent. In determining includible qualified business income, Taxpayer takes into account 51 percent of $150,000, or $76,500. In determining the includible W-2 wages, Taxpayer takes into account 51 percent of $100,000, or $51,000. Taxpayer calculates the deduction by taking the lesser of 20 percent of $76,500 ($15,300) or 50 percent of $51,000 ($22,500). Taxpayer takes a deduction for $15,300.

1 - ($200,000 - $175,500)/$50,000 = 1 - 24,500/50,000 = 1 – 49% = 51 %.

[Comment: The applicable percentage with respect to the taxable year is 100%, reduced by a percentage, the numerator of which is the excess of the taxable income of the taxpayer over the threshold amount ($200,000 - $175,500 = $24,500) and the denominator is $50,000 ($100,000 in the case of a joint return). ($24,500 ÷ $50,000 = 49%). The applicable percentage is 51% (100% - 49% = 51%).

For a taxpayer with taxable income not in excess of the threshold amount ($175,500, or $315,000 in the case of a joint return), a specified service trade or business is not excluded from the definition of a qualified trade or business. The exclusion of a specified service trade or business from the definition of a qualified trade or business is fully phased in for a taxpayer with taxable income in excess of the threshold amount plus $50,000 ($100,000 in the case of a joint return). For a taxpayer with taxable income within the phase-in range, the exclusion applies as noted above.]

Tentative Deductible Amount for a Qualified Trade or Business

In General

For each qualified trade or business, the taxpayer is allowed a deductible amount equal to the lesser of: (1) 20 percent of the qualified business income with respect to such qualified trade or business; or (2) the greater of (a) 50 percent of the W-2 wages paid 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 (the "wage limit"). However, if the taxpayer's taxable income is below the threshold amount ($175,500, or $315,000 in the case of a joint return), the deductible amount for each qualified trade or business is equal to 20 percent of the qualified business income with respect to each respective trade or business.

W-2 Wages

W-2 wages are the total wages[7] subject to wage withholding, elective deferrals,[8] and deferred compensation[9] paid by the qualified trade or business with respect to employment of its employees during the calendar year ending during the taxable year of the taxpayer.[10] W-2 wages do not include any amount which is not properly allocable to the qualified business income as a qualified item of deduction. In addition, W-2 wages do not include any amount which was not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

[Comment: The Joint Explanatory Statement explains that the W-2 wage limitation is meant to "...deter high-income taxpayers from attempting to convert wages or other compensation for personal services into income eligible for the 20% deduction."]

Qualified Property

For purposes of the provision, qualified property means tangible property of a character subject to depreciation that is held by, and available for use in, the qualified trade or business at the close of the taxable year, and which is used in the production of qualified business income, and for which the depreciable period has not ended before the close of the taxable year. The depreciable period with respect to qualified property of a taxpayer means the period beginning on the date the property is first placed in service by the taxpayer and ending on the later of (a) the date 10 years after that date, or (b) the last day of the last full year in the applicable recovery period that would apply to the property under section 168 (without regard to section 168(g)).

For example, a taxpayer (who is subject to the limit) does business as a sole proprietorship conducting a widget-making business. The business buys a widget-making machine for $100,000 and places it in service in 2020. The business has no employees in 2020. The limitation in 2020 is the greater of (a) 50 percent of W-2 wages, or $0, or (b) the sum of 25 percent of W-2 wages ($0) plus 2.5 percent of the unadjusted basis of the machine immediately after its acquisition: $100,000 x .025 = $2,500. The amount of the limitation on the taxpayer's deduction is $2,500.

In the case of property that is sold, for example, the property is no longer available for use in the trade or business and is not taken into account in determining the limitation. The Secretary is required to provide rules for applying the limitation in cases of a short taxable year or where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the year. The Secretary is required to provide guidance applying rules similar to the rules of section 179(d)(2) to address acquisitions of property from a related party, as well as in a sale-leaseback or other transaction as needed to carry out the purposes of the provision and to provide anti-abuse rules, including under the limitation based on W-2 wages and capital. Similarly, the Secretary shall provide guidance prescribing rules for determining the unadjusted basis immediately after acquisition of qualified property acquired in like-kind exchanges or involuntary conversions as needed to carry out the purposes of the provision and to provide anti-abuse rules, including under the limitation based on W-2 wages and capital.

Phase-in of Wage Limit

The application of the wage limit phases in for a taxpayer with taxable income in excess of the threshold amount. The wage limit applies fully for a taxpayer with taxable income in excess of the threshold amount plus $50,000 ($100,000 in the case of a joint return). For a taxpayer with taxable income within the phase-in range, the wage limit applies as follows.

With respect to any qualified trade or business, the taxpayer compares (1) 20 percent of the taxpayer's qualified business income with respect to the qualified trade or business with (2) the greater of (a) 50 percent of the W-2 wages paid 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 (the "wage limit"). If the amount determined under (2) is less than the amount determined under (1), (that is, if the wage limit is binding), the taxpayer's deductible amount is the amount determined under (1) reduced by the same proportion of the difference between the two amounts as the excess of the taxable income of the taxpayer over the threshold amount bears to $50,000 ($100,000 in the case of a joint return).

For example, H and W file a joint return on which they report taxable income of $400,000. W has a qualified trade or business that is not a specified service business, such that 20 percent of the qualified business income with respect to the business is $15,000. W's share of wages paid by the business is $20,000, such that 50 percent of the W-2 wages with respect to the business is $10,000. The $15,000 amount is reduced by 85 percent of the difference between $15,000 and $10,000, or $4,250. H and W take a deduction for $10,750.

($400,000-$315,000)/$100,000 = 85 percent.

[Comment: If the taxable income of a taxpayer for any taxable year does not exceed the threshold amount ($175,500, or $315,000 in the case of a joint return), then the wage limit under (2) does not apply, and the deductible amount shall be the amount determined under (1), i.e., 20% of the taxpayers qualified business income with respect to the qualified trade or business.

If the taxable income of a taxpayer for any taxable year exceeds the threshold amount ($175,500, or $315,000 in the case of a joint return) by $50,000 or more ($100,000 or more in the case of a joint return) then the wage limit fully applies, and the deductible amount shall be the lesser of the amount determined under (1) or the amount determined under (2).

If the taxable income of a taxpayer for any taxable year exceeds the threshold amount ($175,500, or $315,000 in the case of a joint return) by less than $50,000 ($100,000 in the case of a joint return); and the amount determined under (2) is less than the amount determined under (1), (that is, if the wage limit is binding) then the deductible amount shall be the amount determined under (1), i.e. 20% of the taxpayer's qualified business income with respect to the qualified trade or business, less a reduction amount. The reduction amount is the product determined by multiplying the excess amount times a fraction; the numerator of which is the amount by which the taxpayer's taxable income for the taxable year exceeds the threshold amount, and the denominator of which is $50,000 ($100,000 in the case of a joint return). The excess amount is the excess of the amount determined under (1), over the amount determined under (2).

Excess Amount: $15,000 - $10,000 = $5,000
Fraction: $85,000 ÷ $100,000 = 85%
Reduction Amount: $5,000 x 85% = $4,250
Deductible Amount: $15,000 - $4,250 = $10,750]

Qualified REIT Dividends, Cooperative Dividends, and Publicly Traded Partnership Income

A deduction is allowed under the provision for 20 percent of the taxpayer's aggregate amount of qualified REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income for the taxable year. Qualified REIT dividends do not include any portion of a dividend received from a REIT that is a capital gain dividend[11] or a qualified dividend.[12] A qualified cooperative dividend means a patronage dividend,[13] per-unit retain allocation,[14] qualified written notice of allocation,[15] or any similar amount, provided it is includible in gross income and is received from either (1) a tax-exempt benevolent life insurance association, mutual ditch or irrigation company, cooperative telephone company, like cooperative organization,[16] or a taxable or tax-exempt cooperative that is described in section 1381(a), or (2) a taxable cooperative governed by tax rules applicable to cooperatives before the enactment of subchapter T of the Code in 1962. Qualified publicly traded partnership income means (with respect to any qualified trade or business of the taxpayer), the sum of (a) the net amount of the taxpayer's allocable share of each qualified item of income, gain, deduction, and loss (that are effectively connected with a U.S. trade or business and are included or allowed in determining taxable income for the taxable year and do not constitute excepted enumerated investment-type income, and not including the taxpayer's reasonable compensation, guaranteed payments for services, or (to the extent provided in regulations) section 707(a) payments for services) from a publicly traded partnership not treated as a corporation, and (b) gain recognized by the taxpayer on disposition of its interest in the partnership that is treated as ordinary income (for example, by reason of section 751).

Determination of the Taxpayer's Deduction

The taxpayer's deduction for qualified business income for the taxable year is equal to the sum of (a) the lesser of: (i) the combined qualified business income amount for the taxable year, or (ii) an amount equal to 20 percent of the excess of taxpayer's taxable income over any net capital gain[17] and qualified cooperative dividends; plus (b) the lesser of: (i) 20 percent of qualified cooperative dividends; or (ii) taxable income (reduced by net capital gain). This sum may not exceed the taxpayer's taxable income for the taxable year (reduced by net capital gain). Under the provision, the 20-percent deduction with respect to qualified cooperative dividends is limited to taxable income (reduced by net capital gain) for the year. The combined qualified business income amount for the taxable year is the sum of: (i) the deductible amounts determined for each qualified trade or business carried on by the taxpayer; and (ii) 20 percent of the taxpayer's qualified REIT dividends and qualified publicly traded partnership income. The deductible amount for each qualified trade or business is the lesser of: (1) 20 percent of the taxpayer's qualified business income with respect to such qualified trade or business; or (2) the greater of (a) 50 percent of the W-2 wages paid 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 (the "wage limit").

Treatment of Agricultural and Horticultural Cooperatives

For taxable years beginning after December 31, 2017 but not after December 31, 2025, a deduction is allowed to any specified agricultural or horticultural cooperative equal to the lesser of (a) 20 percent of the cooperative's taxable income for the taxable year or (b) the greater of 50 percent of the W-2 wages paid by the cooperative with respect to its trade or business or the sum of 25 percent of the W-2 wages of the cooperative with respect to its trade or business plus 2.5 percent of the unadjusted basis immediately after acquisition of qualified property of the cooperative. A specified agricultural or horticultural cooperative is an organization to which subchapter T applies that is engaged in (a) the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, (b) the marketing of agricultural or horticultural products that its patrons have so manufactured, produced, grown, or extracted, or (c) the provision of supplies, equipment, or services to farmers or organizations described in the foregoing.

Treatment of Trusts and Estates

The conference agreement provides that trusts and estates are eligible for the 20-percent deduction under the provision. Rules similar to the rules under present-law section 199 (as in effect on December 1, 2017) apply for apportioning between fiduciaries and beneficiaries any W-2 wages and unadjusted basis of qualified property under the limitation based on W-2 wages and capital.

Effective Date

The provision is effective for taxable years beginning after December 31, 2017. The provision does not apply to taxable years beginning after December 31, 2025.

Special Rules and Definitions

For purposes of the provision, taxable income is determined without regard to the deduction allowable under the provision.

In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. Each partner takes into account the partner's allocable share of each qualified item of income, gain, deduction, and loss, and is treated as having W-2 wages for the taxable year equal to the partner's allocable share of W-2 wages of the partnership. The partner's allocable share of W-2 wages is required to be determined in the same manner as the partner's share of wage expenses. For example, if a partner is allocated a deductible amount of 10 percent of wages paid by the partnership to employees for the taxable year, the partner is required to be allocated 10 percent of the W-2 wages of the partnership for purposes of calculating the wage limit under this deduction. Similarly, each shareholder of an S corporation takes into account the shareholder's pro rata share of each qualified item of income, gain, deduction, and loss, and is treated as having W-2 wages for the taxable year equal to the shareholder's pro rata share of W-2 wages of the S corporation.

Qualified business income is determined without regard to any adjustments prescribed under the rules of the alternative minimum tax.

The deduction under the provision is allowed only for Federal income tax purposes.

Authority is provided to promulgate regulations needed to carry out the purposes of the provision, including regulations requiring, or restricting, the allocation of items of income, gain, loss, or deduction, or of wages under the provision. In addition, regulatory authority is provided to address reporting requirements appropriate under the provision, and the application of the provision in the case of tiered entities.

Additional Examples

Example 1

H and W file a joint return on which they report taxable income of $320,000 (determined without regard to this provision). H is a partner in a qualified trade or business that is not a specified service business ("qualified business A"). W has a sole proprietorship qualified trade or business that is a specified service business ("qualified business B"). H and W also received $10,000 in qualified REIT dividends during the tax year.

H's allocable share of qualified business income from qualified business A is $300,000, such that 20 percent of the qualified business income with respect to the business is $60,000.[1] H's allocable share of wages paid by qualified business A is $100,000, such that 50 percent of the W-2 wages with respect to the business is $50,000.[2] As H and W's taxable income is above the $315,000 threshold amount for a joint return, the application of the wage limit for qualified business A is phased in. Accordingly, the $60,000 amount is reduced by 5 percent[3] of the difference between $60,000 and $50,000, or $500.[4] H's deductible amount for qualified business A is $59,500.[5]

[1] $300,000 x 0.20 = $60,000.

[2] $100,000 x 0.50 = $50,000.

[3] ($320,000-$315,000)/$100,000 = 5 percent.

[4] ($60,000 - $50,000) = $10,000 x 0.05 = $500.

[5] $60,000 - $500 = $59,500.

W's qualified business income and W-2 wages from qualified business B, which is a specified service business, are $325,000 and $150,000, respectively. H and W's taxable income is above the $315,000 threshold amount for a joint return. Thus, the exclusion of qualified business income and W-2 wages from the specified service business are phased in. W has an applicable percentage of 95 percent.[6] In determining includible

qualified business income, W takes into account 95 percent of $325,000, or $308,750. In determining includible W-2 wages, W takes into account 95 percent of $150,000, or $142,500. W calculates the deductible amount for qualified business B by taking the lesser of 20 percent of $308,750 ($61,750) or 50 percent of includible W-2 wages of $142,500 ($71,250).[7] W's deductible amount for qualified business B is $61,750.

[6] 1 - ($320,000 - $315,000)/$100,000 = 1 - $5,000/$100,000 = 1 - .5 = 95 percent.

[7] Although H and W's taxable income is above the threshold amount for a joint return, the wage limit is not binding as the 20 percent of includible qualified business income of qualified business B ($61,750) is less than 50 percent of includible W-2 wages of qualified business B ($71,250).

H and W's combined qualified business income amount of $123,250 is comprised of the deductible amount for qualified business A of $59,500, the deductible amount for qualified business B of $61,750, and 20 percent of the $10,000 qualified REIT dividends ($2,000). H and W's deduction is limited to 20 percent of their taxable income for the year ($320,000), or $64,000. Accordingly, H and W's deduction for the taxable year is $64,000.

Example 2

H and W file a joint return on which they report taxable income of $200,000 (determined without regard to this provision). H has a sole proprietorship qualified trade or business that is not a specified service business ("qualified business A"). W is a partner in a qualified trade or business that is not a specified service business ("qualified business B"). H and W have a carryover qualified business loss of $50,000.

H's qualified business income from qualified business A is $150,000, such that 20 percent of the qualified business income with respect to the business is $30,000. As H and W's taxable income is below the $315,000 threshold amount for a joint return, the wage limit does not apply to qualified business A. H's deductible amount for qualified business A is $30,000.

W's allocable share of qualified business loss is $40,000, such that 20 percent of the qualified business loss with respect to the business is $8,000. As H and W's taxable income is below the threshold amount for a joint return, the wage limit does not apply to qualified business B. W's deductible amount for qualified business B is a reduction to the deduction of $8,000.

H and W's combined qualified business income amount of $12,000 is comprised of the deductible amount for qualified business A of $30,000, the reduction to the deduction for qualified business B of $8,000, and the reduction to the deduction of $10,000 attributable to the carryover qualified business loss. H and W's deduction is limited to 20 percent of their taxable income for the year ($200,000), or $40,000. Accordingly, H and W's deduction for the taxable year is $12,000.

Footnotes

[1] For purposes of this provision, taxable income is computed without regard to the 20 percent deduction.

[2] For this purpose, section 864(c) is applied substituting "qualified trade or business (within the meaning of section 199A)" for "nonresident alien individual or a foreign corporation" or "a foreign corporation."

[3] Described in sec. 707(c).

[4] Described in sec. 707(a).

[5] A similar list of service trades or business is provided in section 448(d)(2)(A) and Treas. Reg. sec. 1.448-1T(e)(4)(i). For purposes of section 448, Treasury regulations provide that the performance of services in the field of health means the provision of medical services by physicians, nurses, dentists, and other similar healthcare professionals. The performance of services in the field of health does not include the provision of services not directly related to a medical field, even though the services may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers. See Treas. Reg. sec. 1.448-1T(e)(4)(ii).

[6] For purposes of the similar list of services in section 448, Treasury regulations provide that the performance of services in the field of consulting means the provision of advice and counsel. The performance of services in the field of consulting does not include the performance of services other than advice and counsel, such as sales or brokerage services, or economically similar services. For purposes of the preceding sentence, the determination of whether a person's services are sales or brokerage services, or economically similar services, shall be based on all the facts and circumstances of that person's business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided (e.g., whether the compensation for the services is contingent upon the consummation of the transaction that the services were intended to effect). See Treas. Reg. sec. 1.448-1T(e)(4)(iv).

[7] Defined in sec. 3401(a).

[8] Within the meaning of sec. 402(g)(3).

[9] Deferred compensation includes compensation deferred under section 457, as well as the amount of any designated Roth contributions (as defined in section 402A).

[10] In the case of a taxpayer with a short taxable year that does not contain a calendar year ending during such short taxable year, the Committee intends that the following amounts shall be treated as the W-2 wages of the taxpayer for the short taxable year: (1) only those wages paid during the short taxable year to employees of the qualified trade

or business, (2) only those elective deferrals (within the meaning of section 402(g)(3)) made during the short taxable year by employees of the qualified trade or business, and (3) only compensation actually deferred under section 457 during the short taxable year with respect to employees of the qualified trade or business. The Committee intends that amounts that are treated as W-2 wages for a taxable year shall not be treated as W-2 wages of any other taxable year.

[11] Defined in sec. 857(b)(3).

[12] Defined in sec. 1(h)(11).

[13] Defined in sec. 1388(a).

[14] Defined in sec. 1388(f).

[15] Defined in sec. 1388(c).

[16] Defined in sec. 501(c)(12).

[17] Defined in sec. 1(h).

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EXHIBIT C

Sec. 2010. UNIFIED CREDIT AGAINST ESTATE TAX

(a) General Rule. - A credit of the applicable credit amount shall be allowed to the estate of every decedent against the tax imposed by section 2001.

(b) Adjustment to Credit for Certain Gifts Made Before 1977.

(c) Applicable Credit Amount. -

(1) In General. - For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

(2) Applicable Exclusion Amount. - For purposes of this subsection, the applicable exclusion amount is the sum of—

(A) the basic exclusion amount, and

(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

(3) Basic Exclusion Amount. -

(A) In General. - For purposes of this subsection, the basic exclusion amount is $5,000,000.

(B) Inflation Adjustment. - In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall be increased by an amount equal to -

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2010" for "calendar year 2016" in subparagraph (A)(ii) thereof.

(C) Increase in basic exclusion amount. In the case of estates of decedents dying or gifts made after December 31, 2017, and before January 1, 2026, subparagraph (A) shall be applied by substituting "$10,000,000" for "$5,000,000".

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

(4) Deceased Spousal Unused Exclusion Amount. - For purposes of this subsection, with respect to a surviving spouse of a deceased spouse dying after December 31, 2010, the term "deceased spousal unused exclusion amount" means the lesser of —

(A) the basic exclusion amount, or

(B) the excess of —

(i) the applicable exclusion amount of the last such deceased spouse of such surviving spouse, over

(ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

(5) Special Rules. -

(A) Election Required. - A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

(B) Examination of Prior Returns After Expiration of Period of Limitations With Respect to Deceased Spousal Unused Exclusion Amount. - Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

(6) Regulations. - The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.

(d) Limitation based on amount of tax. – The amount of the credit allowed by subsection (a) shall not exceed the amount of the tax imposed by section 2001.

Sec. 2505. UNIFIED CREDIT AGAINST GIFT TAX

(a) General Rule – In the case of a citizen or resident of the United States, there shall be allowed as a credit against the tax imposed by section 2501 for each calendar year an amount equal to—

(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by

(2) the sum of the amounts allowable as a credit to the individual under this section for all preceding calendar periods.

For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.

Sec. 2631. GST EXEMPTION

(a) General Rule. – For purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

(b) Allocations Irrevocable. – Any allocation under subsection (a), once made, shall be irrevocable.

(c) GST Exemption Amount. – For purposes of subsection (a), the GST exemption amount for any calendar year shall be equal to the basic exclusion amount under section 2010(c) for such calendar year.

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Clawback Under TCJA. Assume that in 2018, an individual with an $11 million net worth gifts all of his assets to his children and pays no federal gift tax. The individual then dies in 2026, with a $0 estate and when the basic exclusion amount has reverted to $5.5 million (on an inflation adjusted basis). Would the decedent's estate owe no estate taxes; or owe estate tax on $5.5 million?

Assume the same individual only gave away $5.5 million of assets in 2018 and died in 2026 with a taxable estate of $5.5 million, and when the basic exclusion amount has reverted to $5.5 million (on an inflation adjusted basis). Would the decedent's estate owe no estate tax; or owe estate tax on $5.5 million?

The answer depends on whether the §2001(b)(2) offset for gift taxes payable would use the estate and gift tax exemption amount applicable at the time of the gift, or at the time of the individual's death. If the former was used, the individual hadn't effectively taken full advantage of the larger lifetime gift tax exemption.

SEC. 2001. IMPOSITION AND RATE OF TAX.

(a) Imposition. - A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) Computation of Tax. - The tax imposed by this section shall be the amount equal to the excess (if any) of -

(1) a tentative tax computed under subsection (c) on the sum of -

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(g) Modifications to tax payable.

(2) Modifications to estate tax payable to reflect different basic exclusion amounts.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section with respect to any difference between –

(A) the basic exclusion amount under section 2010(c)(3) applicable at the time of the decedent's death, and

(B) the basic exclusion amount under such section applicable with respect to any gifts made by the decedent.

Defacto Estate Tax Repeal. The House version of the TCJA would have repealed the estate tax for decedents dying after 2024, and left in place the §1014 step-up in basis at death. The House version would have left the gift tax in place, but with a reduction in the rate to 35% after 2024. As noted, there is no formal repeal of the estate tax under TCJA. Obviously, with the higher exemption amounts, there has been a defacto repeal of the estate tax for the vast majority. Some have speculated that the number of Forms 706 will be as few as one thousand per year. The Joint Committee on Taxation estimates that in 2018-2023, there will be 4,600-5,100 Forms 706 filed, with 1,800-1,900 of them taxable. The IRS recently released statistics confirming that only 606 estates under $5,000,000.00 filed no-tax estate tax returns in 2016 (presumably to secure the DSUEA). There will likely be much fewer returns filed in the future for purposes of securing the DSUEA. It was estimated that a mere 0.02% of taxpayers were liable for estate tax before TCJA.

To Give or Not to Give. We have been functioning under a transfer tax regime with a slightly increasing basic exclusion amount, and no threat of reduction in the basic exclusion

amount. We are familiar with a flat transfer tax rate of 40% and a capital gain rate of 20%. We are familiar with the analysis entailed in making a gift of low basis property which will constitute an adjusted taxable gift. Adjusted taxable gifts serve to remove from the transfer tax base only the appreciation and earnings on the gifted property from the date of gift to the date of death. Gifts qualifying for the annual exclusion, medical exclusion, and tuition exclusion are not adjusted taxable gifts and are termed by some attorneys as "perfect gifts". Perfect gifts not only remove the appreciation and earnings on the gifted property, but the value of the gifted property itself, from the transfer tax base. The consideration to make an adjusted taxable gift takes into account the flat 40% transfer tax rate and the 20% capital gain rate.

The math would indicate that a gift of zero basis property qualifying for the annual, medical, or tuition exclusions is still worthwhile, if death tax is avoided on the gifted property. Making a gift that constitutes an adjusted taxable gift could be a big mistake, in terms of total transfer and income tax.

Example #1: Assume in 2016, a donor with a death taxable estate gives stock that has a $10,000.00 basis and is now worth $100,000.00. The donor dies in 2017 when the stock is still worth $100,000.00 (or less); and there have been no earnings on the stock. Obviously, the donor made a bad mistake. The donor could have kept the stock until his death, without any difference in the death tax result, but with the donee receiving a "step-up in basis" to $100,000.00. This is because the $100,000.00 gift constitutes an adjusted taxable gift, and will be added back to the transfer tax base. For a client that has previously fully used available exclusion amounts, a gift of a $1,000,000.00 asset with a zero basis would have to appreciate to approximately $2,470,000.00 (value that is 247% of the current value) in order for the estate tax savings on the future appreciation ($1,469,135.00 x 40%) to offset the loss of step-up in basis ($2,469,135.00 x 23.8%). The required appreciation will be even more if state income taxes are also applied to the capital gains.

The calculations change if the basic exemption amount could suddenly decrease, as is scheduled to happen in 2026. Now, the

math would indicate that individuals with death taxable estates should use the exemption rather than lose it.

Example #2: Assume a taxpayer has $10,000,000.00 in wealth in 2025, with a scheduled reduction in the basic exclusion amount in 2026 to $5,000,000.00. If the taxpayer keeps the $10,000,000.00 and dies in 2026 when the exemption is $5,000,000.00, the taxpayer's estate will pay estate tax on $5,000,000.00. Estate tax on $5,000,000.00 could have been avoided had the taxpayer gifted the $5,000,000.00 in 2025. The tax cost of exposing $5,000,000.00 to the estate tax in 2026 is $2,000,000.00 ($5,000,000.00 x 40%). This is an estate tax that did not have to be paid, absent the clawback. The beneficiaries will receive a full step-up in basis for the remaining $8,000,000.00 net estate assets, with no gain or loss on their subsequent sale for that value. If the same taxpayer had given $5,000,000.00 of zero basis assets away in 2025, he would have died with a gross estate of $5,000,000.00 and no death tax, absent a clawback. The $5,000,000.00 retained at death would get a full step-up in basis, with no gain or loss on their subsequent sale for that value. The beneficiaries could sell the $5,000,000.00 gifted property with a zero basis and recognize a long-term capital gain tax of $1,000,000.00 ($5,000,000.00 x 20%).

If the scheduled reduction in exemption amount takes place, the ideal solution would be to die on December 31, 2025 with wealth equivalent to exactly the available exemption amount. This would result in no estate tax and a step-up in basis for the maximum amount of wealth. Absent planning for a timely death, wealthy taxpayers will use the exemption amount rather than lose it.

The super wealthy (wealth in excess of $22,400,000) will probably be best served by making immediate gifts of the extra exemption in the most tax favored way. Those gifts may involve leveraging with discounts and other techniques. How much survivor life insurance could be acquired on a husband and wife for a single premium payment of $10,200,000.00 or $20,400,000.00? Consider a sale to a grantor trust. Assuming a debt-to-equity ratio of 10:1, $10,000,000.00 of seed money would support a $100,000,000.00 sale of assets to the grantor trust. Obviously, if the super wealthy client has not made transfers fully utilizing the generation-skipping tax exemptions, that would be advisable.

For the very wealthy with estates pushing the exemption amounts, but not greatly exceeding them, a wait-and-see approach may be taken. Again, ideally the client will die with wealth exactly equivalent to the exemption amount resulting in a full step-up in basis and no estate tax. For the wealthy with estates well under the exemption amount, the estate tax and gift tax is no longer an issue.

Flexibility. Flexibility in planning will still be important. The basic choice between portability and a credit shelter trust is still in play. Portability has the benefit of a second step-up in basis at the death of the second to die. The drawback is that the DSUEA is not indexed with inflation. The benefit of the credit shelter trust is that appreciation in the trust is not subject to estate tax on the death of the second to die. The drawback with the credit shelter trust is that there is no second step-up in basis at the death of the second to die. Most of these results can be drafted around.

Disclaimer Trust. Disclaimer trust technique has been in use forever, and still has application. The disclaimer results in the funding of the credit shelter trust. The absence of a disclaimer results in an outright marital bequest. If the surviving spouse does not disclaim, there is a marital deduction for the estate and DSUEA available. As noted, the DSUEA is not indexed with inflation. As also noted, the marital bequest outright or in trust will result in a step-up in basis for the subject property at the death of the second spouse to die. If the surviving spouse disclaims, the funds are passed into a credit shelter trust. A credit shelter trust would abrogate DSUEA. The appreciation in the assets in the credit shelter trust would escape transfer tax on the death of the second to die. There would be no step-up in basis for those assets at the death of the second to die.

QTIP Trust. A QTIP trust would work much the same way. The funds would pass into a QTIP trust and the executor would be afforded eighteen (18) months to make the QTIP election. If the QTIP election is made, the trust would qualify for the marital deduction under Section 2056(b)(7). There would be a Section 2044 inclusion of those assets, with a step-up in basis upon the death of the second to die. With the QTIP election, DSUEA would be available, but the DSUEA amount is not indexed with

inflation. A QTIP election would allow a reverse QTIP election with respect to the generation-skipping tax exemption of the first to die. If the QTIP election is not made, the trust is a defacto credit shelter trust. The credit shelter trust abrogates DSUEA and there is no step-up in basis for the trust property on the death of the second to die. The appreciation in the assets in the credit shelter trust would escape transfer tax.

Review Existing Estate Plans. Existing estate plans should be reviewed to determine how they will be impacted by TCJA. Consider the results of formula apportionment for credit shelter shares and GST exemption shares, in light of TCJA. How may zero federal estate tax plans are out there with a formula pecuniary or fractional share apportionment between a credit shelter share and a marital deduction share? It is one thing when the credit shelter share is $5,600,000. It is another thing altogether when the credit shelter share is $11,200,000. Consider whether existing trusts are available for a step-up in basis without generating an estate tax. If possible, it may be best to vest credit shelter trust assets in the surviving spouse, to obtain a step-up in basis on the death of the surviving spouse.

Inflation Indexing

I. Calculation of Annual Rate of Increase in the Basic Exclusion Amount

2011 - 2012
2.4% rate of increase (120,000/5,000,000 = 0.024)

2012 - 2013
2.5% rate of increase (130,000/5,120,000 = 0.02539)

2013 - 2014
1.7% rate of increase (90,000/5,250,000 = 0.01714)

2014 - 2015
1.68% rate of increase (90,000/5,340,000 = 0.01685)

2015 - 2016
0.4% rate of increase (20,000/5,430,000 = 0.0036)

2016 - 2017
0.7% rate of increase (40,000/5,450,000 = 0.0073)

2017 - 2018
2.0% rate of increase (110,000/5,490,000 = 0.02003)

II. Calculation of the Average Annual Rate of Increase in the Basic Exclusion Amount

Average Rate of Increase: $\frac{(2.4 + 2.5 + 1.7 + 1.68 + 0.4 + 0.7 + 2.0)}{7} = 1.625\%$

III. Increase in Estate Tax Basic Exclusion Amount Over Next 8 Years:

Year		1.0% Rate of Increase Basic Exclusion Amount	1.0% Rate of Increase Basic Exclusion Amount
2018	=	5,600,000	11,200,000
2019	=	5,656,000	11,312,000
2020	=	5,712,560	11,425,120
2021	=	5,769,686	11,539,372
2022	=	5,827,383	11,654,766
2023	=	5,885,657	11,771,314
2024	=	5,944,514	11,889,028
2025	=	6,003,959	12,007,918

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