2018 TAX A Supplement

NOTE – This document continues to be updated through mid-January 2019. You might want to just use it online rather than print it. Also, the links are live.

For updates related to TCJA also see Nellen TCJA Guidance Chart at http://mntaxclass.com.

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Errata – Corrections to the Outline or Slides

While we work hard to be complete and accurate, a mistake can happen.

Chapter 1: TCJA: Individual Items without §199A

Donations by Entities For Which State/Local Tax Credit is Received – Rev. Proc. 2019-12 (12/28/18)

Per the IRS: "Revenue Procedure 2019-12 provides safe harbors under section 162 of the Internal Revenue Code (Code) for certain payments made by a C corporation or a specified pass-through entity to or for the use of an organization described in section 170(c) if the C corporation or specified pass-through entity receives or expects to receive a state or local tax credit in return for such payment."

The safe harbor only applies if the credit is received for against a tax directly imposed on the entity, such as an excise tax or property tax. It won't apply to an income tax paid by owners of a passthrough entity.

Key to this guidance is the following statement from Rev. Proc. 2019-12: "To the extent a C corporation receives or expects to receive a state or local tax credit in return for a payment to an organization described in section 170(c), it is reasonable to conclude that there is a direct benefit to the C corporation's business in the form of a reduction in the state or local taxes the C corporation would otherwise have to pay and, therefore, to the extent of the amount of the credit received or expected to be received, there is a reasonable expectation of financial return to the C corporation commensurate with the amount of the transfer."

Examples from the revenue procedure:

- C corp donates $1,000 to a charity and gets credit against real property taxes of:
  - (a) $1,000
    - Result: Treat entire payment as a §162 business expense under the safe harbor.
  - (b) $800
    - Result: Treat $800 as a §162 business expense under the safe harbor.
    - Treatment of the remaining $200 – depends on facts and circumstances; not affected by Rev. Proc. 2019-12.
- Similar examples are provided for a passthrough entity. Key to understanding of this guidance is that the credit must be against a tax imposed directly on the entity. Thus, it won't apply to income taxes paid by owners of passthrough entities.

This revenue procedure was issued to clarify IR-2018-178 (9/5/18) and the FAQ on the topic.

Charitable Giving Expected to Drop Post-TCJA

On 11/15/18, the Tax Policy Center released a report – *Reforming Charitable Tax Incentives: Assessing Evidence and Policy Options*. The Center states those calming a charitable donation deduction "will decline substantially." Their research shows "that the number of taxpayers who will receive a tax benefit from the charitable deduction will decline from roughly 36 million (21 percent of taxpayers) in 2017 to about 15 million (9 percent of taxpayers) in 2018." The data shows that the change in percent of taxpayers claiming a charitable donation will not change for the top 1% of taxpayers. In contrast, for taxpayers in the 80-90 cash income percentile, claiming a charitable donation deduction will change from 84% in 2017 to 51% in 2018.

The Center also cites data from Indiana University's Lily Family School of Philanthropy that in 2000, about 67% of households donated at least $25, but only 56% in 2014.

Expanded Due Diligence Preparer Penalty of Section 6695(g) – HH & ODC

While the TCJA was explicit in expanding this penalty to include returns where the client claims head-of-household status, it was not explicit that by including the new $500 other dependent credit in Section 24, it also falls under this penalty provision. Thus, when a paid preparer files a return where the client claims EITC, Child Tax Credit, Other Dependent Credit (ODC), AOTC, or head-of-household status, additional questions must be asked. These questions and the answers must be documented and any records obtained, must be kept for at least three years after filing the return. In addition, Form 8867 must be completed and attached to the return to avoid a $530 per violation penalty.

See additional information in the Chapter 1 slides and the Nellen TCJA Guidance Chart at http://mntaxclass.com.

IRS Memorandum on Standard Paragraphs and Explanation of Adjustments for TCJA

A 12/13/18 memo from SBSE to examiners lists 18 short explanations for adjustments related to TCJA change. For example:

> "#7319 – CTC/ACTC – Disallowed for noncitizen nonresident (all tax years) –Because you have not shown that one or more children were residents of the United States, we have adjusted the child tax credit (CTC) and additional child tax credit (ACTC). A child who is not a United States citizen or national must be a United States resident to be eligible for the CTC and ACTC.
>
> #7320 – Credit for Other Dependents – Disallowed for noncitizen nonresident (tax years 2018-2025) – Because you have not shown that one or more dependents were residents of the United States, we adjusted the credit for other dependents. A dependent who is not a United States citizen or national must be a United States resident to be eligible for the credit for other dependents."

Chapter 2: TCJA: §199A

Chapter 3: TCJA: Depreciation, §179, NOLs, §461(l)

Depreciation Elections – Rev. Proc. 2019-08 (12/21/18)

Rev. Proc. 2019-08 "provides guidance under §§ 13101(b), 13204(a)(3), and 13205 of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) (the "TCJA"). Section 13101(b) of the TCJA amended § 179 of the Internal Revenue Code by modifying the definition of qualified real property that may be eligible as § 179 property under § 179(d)(1). Section 13204(a)(3) of the TCJA amended § 168 by (i) requiring certain property held by an electing real

property trade or business, as defined in § 163(j)(7)(B), to be depreciated under the alternative depreciation system in § 168(g), and (ii) changing the recovery period under the alternative depreciation system from 40 to 30 years for residential rental property. Section 13205 of the TCJA amended § 168 by requiring certain property held by an electing farming business, as defined in § 163(j)(7)(C), to be depreciated under the alternative depreciation system. This revenue procedure also modifies Rev. Proc. 87-57, 1987-2 C.B. 687, to provide an optional depreciation table for residential rental property depreciated under the alternative depreciation system with a 30-year recovery period, and Rev. Proc. 2018-31, 2018-22 I.R.B. 637, to provide guidance for calculating a § 481(a) adjustment for a change in method of accounting due to a change in the use of depreciable tangible property."

Also see IR-2018-257 (12/21/18).

Chapter 4: 2018 Legislation, 2019 Inflation Adjusted Amounts

Inflation Adjusted Amounts for 2019 – Rev. Proc. 2018-57 (11/15/18

Rev. Proc. 2018-57 (11/15/18) – Numerous items are adjusted for inflation each year. Below are commonly encountered provisions and the 2019 amount.

a. Standard Deduction
   i. MFJ = $24,400
   ii. Single = $12,200
   iii. Head of household = $18,350

b. Gross income for a qualifying relative under §152(d) $4,200

c. Where 37% rate starts:

i.	MFJ	$612,350
ii.	Single and HH	$510,300
iii.	Estate and Trusts	$ 12,750

d. Net capital gain rate structure

Filing Status and Rate Start Amount (taxable income)					Rate
MFJ	HH	Single	MFS	Estates/ Trusts	
$0	$0	$0	$0	$0	0%
$78,750	$52,750	$39,375	$39,375	$2,650	15%
$488,850	$461,700	$434,550	$244,425	$12,950	20%

e. AMT Exemption
   i. MFJ $111,700
   ii. Unmarried $71,700
   iii. Estates and trusts $25,000

f. 199A taxable income thresholds
   i. $160,700 (up from $157,500)
   ii. MFJ $321,400 (up from $315,000)
   iii. MFS $160,725

g. §461(l) excess business loss threshold $255,000 or $510,000 for MFJ.

h. Qualified transportation fringe for transit or parking $265

i. Foreign earned income exclusion (§911) = $105,900.

j. Threshold for small business under §448(c) = $26,000,000.

k. Estate tax exclusion = $11,400,000.

l. Annual gift exclusion = $15,000.

m. §6695(g) preparer due diligence penalty = $530 per failure

Also see summary in IR-2018-222 (11/15/18).

Chapter 5: IRA and Retirement Plan Developments

Notice 2018-90 (11/20/18) - Extension of Transition Relief Under Rev. Rul. 2018-17 on Withholding and Reporting with Respect to Payments From IRAs to State Unclaimed Property Funds

Per the IRS: "Notice 2018-90 provides that transition relief in Rev. Rul. 2018-17 (Withholding and Reporting With Respect to Payments from IRAs to State Unclaimed Property Funds) is extended so that a person will not be treated as failing to comply with the withholding and reporting requirements described in Rev. Rul. 2018-17 with respect to payments made before the earlier of January 1, 2020, or the date it becomes reasonably practicable for the person to comply with those requirements."

REG-107813-18 (11/14/2018) -- Prop. Regs. Make It Easier to Take Hardship Distributions from Section 401(k) Plans.

Excerpt from proposed regulation preamble (in italics):

Deemed Immediate and Heavy Financial Need

The proposed regulations modify the safe harbor list of expenses in current §1.401(k)-1(d)(3)(iii)(B) for which distributions are deemed to be made on account of an immediate and heavy financial need by: (1) adding "primary beneficiary under the plan" as an individual for whom qualifying medical, educational, and funeral expenses may be incurred; (2) modifying the expense listed in §1.401(k)-1(d)(3)(iii)(B)(6) (relating to damage to a principal residence that would qualify for a casualty deduction under section 165) to provide that for this purpose the new limitations in section 165(h)(5) (added by section 11044 of the TCJA) do not apply; and (3) adding a new type of expense to the list, relating to expenses incurred as a result of certain disasters. This new safe harbor expense is similar to relief given by the IRS after certain major federally declared disasters, such as the relief relating to Hurricane Maria and California wildfires provided in Announcement 2017-15, 2017-47 I.R.B. 534, and is intended to eliminate any delay or uncertainty concerning access to plan funds following a disaster that occurs in an area designated by the Federal Emergency Management Agency (FEMA) for individual assistance.

Distribution Necessary to Satisfy Financial Need Pursuant to BBA 2018 sections 41113 and 41114, the proposed regulations modify the rules for determining whether a distribution is necessary to satisfy an immediate and heavy financial need by eliminating (1) any requirement that an employee be prohibited from making elective contributions and employee contributions after receipt of a hardship distribution, and (2) any requirement to take plan loans prior to obtaining a hardship distribution. In particular, the proposed regulations eliminate the safe harbor in current §1.401(k)-1(d)(3)(iv)(E), under which a distribution is deemed necessary to satisfy the financial need only if elective contributions and employee contributions are suspended for at least 6 months after a hardship distribution is made and, if available, nontaxable plan loans are taken.

In addition, the proposed regulations eliminate the rules in current §1.401(k)-1(d)(3)(iv)(B) (under which the determination of whether a distribution is necessary to satisfy a financial need is based on all the relevant facts and circumstances) and provide one general standard for determining whether a distribution is necessary. Under this general standard, a hardship

distribution may not exceed the amount of an employee's need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution), the employee must have obtained other available distributions under the employer's plans, and the employee must represent that he or she has insufficient cash or other liquid assets to satisfy the financial need. A plan administrator may rely on such a representation unless the plan administrator has actual knowledge to the contrary. In light of the timing of the publication of these proposed regulations, the requirement to obtain this representation would only apply for a distribution that is made on or after January 1, 2020.

The proposed regulations clarify that a plan generally may provide for additional conditions, such as those described in 26 CFR 1.401(k)-1(d)(3)(iv)(B) and (C) (revised as of April 1, 2018) or, for distributions made before January 1, 2020, the representation described in the preceding paragraph, to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need of an employee. To implement Congress' purpose in enacting section 41113 of BBA 2018 (for example, Congress' concern that a suspension impedes an employee's ability to replace distributed funds), the proposed regulations do not permit a plan to provide for a suspension of elective contributions or employee contributions as a condition of obtaining a hardship distribution. However, in light of the timing of the publication of these proposed regulations, this prohibition would only apply for a distribution that is made on or after January 1, 2020. Expanded Sources for Hardship Distributions

Pursuant to section 41114 of BBA 2018, the proposed regulations modify §1.401(k)-1(d)(3) to permit hardship distributions from section 401(k) plans of elective contributions, QNECs, QMACs, and earnings on these amounts, regardless of when contributed or earned. However, plans may limit the type of contributions available for hardship distributions and whether earnings on those contributions are included. Safe harbor contributions made to a plan described in section 401(k)(13) may also be distributed on account of an employee's hardship (because these contributions are subject to the same distribution limitations applicable to QNECs and QMACs). See §1.401(k)-3(k)(3)(i).

Applicability Dates and Reliance

The changes to the hardship distribution rules made by BBA 2018 are effective for plan years beginning after December 31, 2018, and the proposed regulations provide that they generally would apply to distributions made in plan years beginning after December 31, 2018.

Chapter 6: Non-TCJA Cases and Rulings

Time Sensitive Acts – Rev. Proc. 2018-58 (11/20/18)

Per the IRS: "Revenue Procedure 2018-58 updates Revenue Procedure 2007-56, providing clear guidance with regard to time-sensitive acts that may be postponed for taxpayers affected by a federally-declared disaster, a terroristic or military action, or individuals serving in a combat

zone. The list of acts in the revenue procedure supplements the list of postponed acts in section 7508(a)(1) of the Internal Revenue Code and Treas. Reg. § 7508A-1(c)(1)(vii)."

IRS Tips for Businesses Impacted by Disaster

IRS Tax Tip 2018-180 (11/21/18), Businesses can take these steps after a disaster, is reproduced below.

When disaster strikes, many business owners might find themselves needing to reconstruct records. This will help them prove a loss, which may be essential for tax purposes, getting federal assistance, or insurance reimbursement.

Here are tips for businesses that need to reconstruct their records:

- To create a list of lost inventories, business owners can get copies of invoices from suppliers. Whenever possible, the invoices should date back at least one calendar year.

- For information about income, business owners can get copies of last year's federal, state and local tax returns. These include sales tax reports, payroll tax returns, and business licenses from the city or county. These will reflect gross sales for a given period.

- Owners should check their mobile phone or other cameras for pictures and videos of their building, equipment and inventory.

- Business owners who don't have photographs or videos can simply sketch an outline of the inside and outside of their location. For example, for the inside the building, they can draw out where equipment and inventory was located. For the outside of the building, they can map out the locations of items such as shrubs, parking, signs, and awnings.

More Information:

- IRS Disaster Assistance Hotline at 866-562-5227/Monday - Friday from 7 a.m. to 10 p.m. local time
- Publication 2194, Disaster Resource Guide for Individuals and Businesses
- Federal Emergency Management Agency
- Small Business Administration
- DisasterAssistance.gov

California Wildfire Disaster Relief - CA-2018-13 (11/13/18)

Tax Relief for Victims of California Wildfires – CA-2018-13 (11/13/18) – The IRS notes that the President declared parts of California to be disaster areas starting on 11/8/18 due to the wildfires. The affected areas are Butte, Los Angeles and Ventura counties. Generally, affected taxpayers have until April 30, 2019 to file returns otherwise due during the disaster time, OTHER than Information returns (W-2, 1094, 1095, 1097, 1098, or 1099 series + Forms 1042-S, 3921, 3922, 8027, and employment and excise tax deposits). Penalties on deposits cue on or after 11/8/18 and before 11/23/18 will be abated as long as made by 11/23/18. Be sure to see CA-2018-13 for additional tax relief measures.

Also see FTB information at https://www.ftb.ca.gov/individuals/disaster.shtml?WT.mc_id=Warning_wildfire_2018.

FEMA information at https://www.fema.gov/disaster/4407.

August wildfires in Shasta County - https://www.fema.gov/news-release/2018/08/06/4382/shasta-county-residents-may-register-fema-assistance

Other areas - https://www.fema.gov/disasters

Hurricane Michael Donations – Notice 2018-89 (11/19/18)

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave Based Donation Programs to Aid Victims of Hurricane Michael - Notice 2018-89 provides that where an employer allows employees to give up leave so the employer may donate it to a charitable organization providing relief to victims of Hurricane Michael, it will not be treated as income to the employee and the employee does not get a charitable contribution deduction. This applies for donations made before 1/1/20.

Revenues Not Enough to Indicate Business – *Ford*, TC Memo 2018-8 (1/25/18), aff'd No. 18-1524 (6th Cir., 11/5/18, not for publication)

Ford, TC Memo 2018-8 (1/25/18), aff'd No. 18-1524 (6th Cir., 11/5/18, not for publication) – F used to be recording artist and spend most of her life promoting and performing country music. For the years under exam - 2012 through 2014, she owned and operated the Bell Cover Club in Tennessee on her own. Earlier, she and her husband operated this club (starting in 1986) and wanted it to be a place where artists could perform for talent scouts and producers. It closed when her husband died in 1999 but Joy reopened it in 2008. Customers only had to pay $5 for admission and a small amount for food. F paid performers. Losses were generated. F had some plans she pursued to convert the club into a restaurant or televise the performances, but these changes did not materialize. The IRS disallowed the losses finding the club not operated for profit. The court agreed finding the club was operated mostly for personal pleasure rather than profit with the losses offsetting investment income of F.

F appealed to the 6th Circuit which upheld the Tax Court decision as it did not find any error in that court's analysis. At the start, the 6th Circuit notes:

""Find a job doing something you love." Perhaps that is sound advice. But deducting business losses from your taxes when you are not trying to profit from the business you love is not a sound strategy. Here, the Tax Court found that the appellant did just that: ran a business doing something she loved, accumulated substantial losses, and deducted those losses from her income. Because the court below did not commit clear error in making this determination, we AFFIRM." The court re-examined the factors under Reg. 1.183-2 and concluded that the club wasn't operated in a for-profit manner. For example, the court noted that Ford did nothing to reduce costs, leaving empty refrigerators and stage lights running even when the club wasn't open for business. Also, she did not adjust the cover charge to help make a profit. In addition, she did not want to serve alcohol, but let patrons bring int heir own. Per the court: "The record paints a picture of a business operated without regard to cost or profit. There is nothing indicating Ford operated in a "business-like manner.""

Observations: The Tax Court generally applied Reg. 1.183-2 without going through a detailed analysis of each of the nine factors. In contrast, the 6th Circuit analyzed each of the nine factors. But both courts concluded that the club was an activity not engaged in for profit (a hobby). Often, we think that an activity with customers and revenues is automatically a business. But, more is needed under 162 and 183 and the regulations and court cases. Today, this issue can arise with some occasional, part-time gig workers. They generate income from, for example, using the Uber platform, but do not set prices, have no business plan, do not regularly engage in the activity, do not have separate financial records, may be doing the activity to generate cash for bills and/or pass the time. These individuals may fall into the same situation as Joy Ford. A tax adviser can help these individuals to convert their hobby or activity at risk of being a hobby into a business by following the Reg. 1.183-2 factors to make the activity a business. After the TCJA, a hobby means report all of the revenue, but you get no deductions.

Phase-Out of Plug-in Electric Drive Credit for Tesla – Notice 2018-96 (12/14/18)

Per the IRS: "Notice 2018-96 announces the credit phase-out schedule for new qualified plug-in electric drive motor vehicles sold by Tesla, Inc. Section 30D provides a credit of up to $7,500 for new qualified plug-in electric drive motor vehicles sold after December 31, 2009. Section 30D of the Internal Revenue Code provides for a credit determined under § 30D(b) for certain new qualified plug-in electric drive motor vehicles. The new qualified plug-in electric drive motor vehicle credit begins to phase out for a manufacturer's qualified plug-in electric drive motor vehicles in the second calendar quarter after the calendar quarter in which at least 200,000 of the manufacturer's vehicles that qualify for the credit have been sold for use or lease in the United States (determined on a cumulative basis for sales after December 31, 2009)."

Tesla reached the 200,000 limit for the quarter ended 9/30/18. Thus, the credit starts to phase out 1/1/19. The phase-down schedule is:

Qualifying Vehicle	Full Credit When Purchased through 12/31/2018; *(first quarter =100% credit allowed)*	Reduced Credit When Purchased from 1/1/2019 through 6/30/2019 *(2nd & 3rd quarters = 50% credit allowed)*	Reduced Credit When Purchased from 7/1/2019 through 12/31/2019 *(4th & 5th quarters = 25% credit allowed)*	Credit available starting 1/1/2020
All Tesla Vehicles	$7,500	$3,750	$1,875	$0

Expansion of Hardship Exemptions for 2018 – Notice 2019-05 (12/21/18)

Per the IRS: "Notice 2019-05 expands, for the 2018 tax year, the current list of hardship exemptions that may be claimed on Federal income tax return to include all hardship exemptions available under 45 CFR 155.605(d)(1). In guidance released on September 12, 2018, HHS announced that all hardship exemptions available under 45 CFR 155.605(d)(1) may be claimed by a qualifying individual (or the taxpayer who may claim a qualifying individual as a dependent) on a Federal Income Tax return for the 2018 tax year without obtaining a hardship exemption certificate from the Marketplace."

Also see IRS website on mandate exemptions.

Mileage Rates for 2019 – Notice 2019-02 (12/14/18)

Per Notice 2019-02 (12/14/18) and IR-2018-251 (12/14/18) - The updated, optional standard mileage rates starting 1/1/19 are:

Business: 58¢/mile [up from 54.4¢]

Medical and Moving: 20¢/mile [up from 18¢]

Charitable: 14¢ [set by statute, IRS can not adjust]

As with prior years, various limitations exist as explained in Rev. Proc. 2010-51. For example, parking and tools are deductible in addition to the mileage rate, but not depreciation because the business rate includes depreciation (26¢/mile for 2019; 25¢/mile for 2018).

IRS Update on Changed Procedures on Transcripts

IR-2018-256 (12/19/18) – The IRS reminds preparers that due to security concerns, it previously announced that it would not longer fax transcripts (as of February 4, 2019). IR-2018-256 explains alternatives for obtaining transcripts such as asking the IRS for a "masked tax account

transcript" to be mailed to the taxpayer's last address of record. It also lays out alternatives to transcripts such as Wage and Income Transcripts. Additional information is available at:

1. Fact Sheet 2018-20, Steps for Tax Professionals to Obtain Wage and Income Transcripts Needed for Tax Preparation
2. Fact Sheet 2018-21, IRS Offers Tips to Tax Professionals to Reduce CAF Number Errors, Better Protect Data from Cyberthieves

Updated Voluntary Disclosure Practice

LB&I Memo of 11/20/18 (LB&I-09-1118-014) – Excerpt:

> This memorandum addresses the process for all voluntary disclosures (domestic and offshore) following the closing of the Offshore Voluntary Disclosure Program (2014 OVDP) on September 28, 2018.
>
> **Background and Overview of Updated Procedures**
>
> The 2014 OVDP began as a modified version of the OVDP launched in 2012, which followed voluntary disclosure programs offered in 2011 and 2009. These programs were designed for taxpayers with exposure to potential criminal liability or substantial civil penalties due to a willful failure to report foreign financial assets and pay all tax due in respect of those assets. They provided taxpayers with such exposure potential protection from criminal liability and terms for resolving their civil tax and penalty obligations. Taxpayers with unfiled returns or unreported income who had no exposure to criminal liability or substantial civil penalties due to willful noncompliance could come into compliance using the Streamlined Filing Compliance Procedures (SFCP), the delinquent FBAR submission procedures, or the delinquent international information return submission procedures. Although they could be discontinued at any time, these other programs are still available.
>
> Voluntary disclosure is a long-standing practice of the IRS to provide taxpayers with criminal exposure a means to come into compliance with the law and potentially avoid criminal prosecution. See I.R.M. 9.5.11.9. This memorandum updates that voluntary disclosure practice. Taxpayers who did not commit any tax or tax related crimes and do not need the voluntary disclosure practice to seek protection from potential criminal prosecution can continue to correct past mistakes using the procedures mentioned

Annual Rev. Proc. For Where Disclosure on The Return Is Adequate – Rev. Proc. 2019-9

Per the IRS: "Revenue Procedure 2019-9 updates Rev. Proc. 2018-11, and updates the annual adequate disclosure revenue procedure. It identifies circumstances under which the disclosure

on a tax return with respect to an item or position is adequate for the purposes of the accuracy penalty of section 6662 and return preparer penalty under 6694."

IRS Shutdown Contingency Plan for FY2019

This 110-page plan provides the following as part of its overview:

> The IRS Lapse Appropriations Contingency Plan describes actions and activities for the first five (5) business days following a lapse in appropriations. The plan is updated annually in accordance with guidance from the Office of Management and Budget (OMB) and the Department of Treasury. While we do not anticipate using the plan, prudent management requires that agencies prepare for this contingency.
>
> If the IRS is confronted by a lapse in appropriations at any time outside of the filing season (January 1 - April 30, 2019) in fiscal year 2019, activities in preparation for the Tax Filing Season will continue, along with certain other activities authorized under the Anti-Deficiency Act. In the event the lapse extends beyond five (5) business days, the Deputy Commissioner for Operations Support will direct the IRS Human Capital Officer to reassess ongoing activities and identify necessary adjustments of excepted positions and personnel.

With respect to implementation of the TCJA, the report notes: "In enacting the TCJA, Congress provided the Treasury Department with funds that will remain available until September 30, 2019. See Consolidated Appropriations Act, 2018, Pub. L. No.115-141, Div. E, Title I, § 113 (Mar. 23, 2018). Thus, some implementation activities would not be affected by a lapse in appropriations in Fiscal Year 2019. Additional activities would continue to protect incoming tax revenues during the upcoming filing season. (Some of these functions could also be deemed necessary to support the functions funded by two-year TCJA funds.) The excepted positions required to carry out identified activities to implement the TCJA for the upcoming Filing Season are identified within each Business Unit plan where these activities are carried out. Two-year TCJA funds are expended based on TCJA implementation work performed by employees and tracked via unique TCJA internal order codes."

Also, about 12.5% of almost 10,000 personnel are exempt from the shutdown.

2018 IRSAC Report

On 11/15/18, Internal Revenue Service Advisory Council (IRSAC), issued its annual report (IR-2018-221). A few highlights of this 134-page report:

- The IRS must have adequate and reliable funding.
- The IRS should have statutory authority to create and enforce minimum standards of competence for all tax practitioners, including tax return preparers.
- The IRS should "launch a secure, online account for tax professionals (Tax Pro Account) as soon as possible."
- Let taxpayers pay in virtual currency.

- "We recommend the creation of an affirmative and disciplinary duty under Circular 230 for practitioners and their firms to meet a standard of competency related to technology."
- "IRSAC recommends that the IRS develop a process to coordinate its various electronic communications to tax professionals, reduce duplicative messaging and send out non-essential, non-emergency communications in a more consolidated fashion." The report notes that the IRS did not timely communicate to taxpayers that about 30 provisions were extended for 2017 on 2/9/18 even though it affected some individuals who had already filed. It also noted that people learned of the "hardware failure" of 4/15/18 from sources other than the IRS.

Transcript Requests for Filing Season

IRS News Release IR-2018-225 (11/19/18) on getting ready for tax season includes an explanation of how to get a transcript if needed. Per the IRS:

"Plan ahead. Delivery times for online and phone orders typically take five to 10 days from the time the IRS receives the request. Taxpayers who order by mail should allow 30 days to receive transcripts and 75 days for tax returns."

The IRS provides information on the three ways to get a transcript – by phone, my mail or online.

The IRS also notes: "The IRS is now redacting tax transcripts so that sensitive information, such as the taxpayer's name, address and Social Security number, is partially masked. However, all financial entries, such as the adjusted gross income, are visible. The redacted transcript will better protect taxpayers from identity theft."

Transcript Scams - IR-2018-226 (11/19/18)

IR-2018-226 (11/19/18) - IRS warns of "Tax Transcript" email scam; dangers to business networks – Excerpt from the news release:

> "The scam is especially problematic for businesses whose employees might open the malware because this malware can spread throughout the network and potentially take months to successfully remove.
>
> This well-known malware, known as Emotet, generally poses as specific banks and financial institutions in its effort to trick people into opening infected documents. The Summit partnership of the IRS, state tax agencies and the nation's tax industry remind taxpayers to watch out for this scam.

However, in the past few weeks, the scam masqueraded as the IRS, pretending to be from "IRS Online." The scam email carries an attachment labeled "Tax Account Transcript" or something similar, and the subject line uses some variation of the phrase "tax transcript." These clues can change with each version of the malware. Scores of these malicious Emotet emails were forwarded to phishing@irs.gov recently."

United States v. Adams, No. 0:17-cr-00064-DWF-KMM (D. Minn. Oct. 27, 2018) – Attorney-Client Privilege Where Accountants Worked with Tax Attorney on Criminal Tax Case with *Kovel* Arrangement

On October 27, the US District Court for the District of Minnesota addressed numerous attorney-client privilege issues relevant to accountants working alongside tax attorneys.

The arguments of the taxpayer and government are summarized by the court:

> "Mr. Adams has invoked the attorney-client privilege over numerous communications between himself and accountants at Murry LLC, who were retained by his tax counsel under a so-called Kovel arrangement. See *United States v. Kovel*, 296 F.2d 918, 921-22 (2nd Cir. 1961) (holding that attorney-client privilege may apply to an individual's communications with an accountant if the communications are 'made in confidence for the purpose of obtaining legal advice from the lawyer'). The government raises three challenges to this assertion of privilege. First, the government argues that the protections provided under *Kovel* are not applicable to the individual communications before the Court for in camera review. Even if the protections of Kovel did apply, the government asserts that any protection was waived by Mr. Adams's subsequent filing of amended tax returns. Finally, the government argues that the crime-fraud exception vitiates any claim of privilege."

The District Court explained its interpretation of *Kovel* as follows:

> "With respect to the government's argument that the protections of Kovel do not apply to the Murry communications, the Court finds that [the tax attorney's] Declaration … sufficiently demonstrate that the attorney-client privilege extends to the documents at issue. In these declarations, [the tax attorney] thoroughly explains how communications with Murry LLC and the information Mr. Adams provided to the accountants assisted in Mr. Brever's provision of legal advice to his client regarding tax-related matters. This is sufficient to invoke the attorney-client privilege. (explaining that where an attorney retains an accountant to assist the lawyer in providing legal advice to a client concerning tax issues, the attorney-client privilege may extend to communications between the client and the accountant); see also United States v. Cote, 456 F.2d 142, 144 (8th Cir. 1972) (concluding that attorney-client privilege may apply where 'the accountant's aid to the lawyer preceded the advice and was an integral part of it'). The Court's in

camera review of the communications does not contradict Mr. Brever's explanation." (citations omitted)

The Court concludes that the amended returns did not result in a waiver of the privilege:

> "The Court also concludes that Mr. Adams's subsequent filing of amended tax returns for 2008, 2009, and 2010 do not result in a waiver of the privilege as to the Murry communications submitted for in camera review. In Cote, after concluding that the privilege could apply to communications between a client and an accountant who is retained to assist an attorney in providing legal advice on tax matters, the Eighth Circuit reasoned as follows:
>
> > 'Notwithstanding our recognition that the attorney-client privilege attached to the information contained in the accountant's workpapers under the circumstances existing here, we find that by filing the amended returns the taxpayers communicated, at least in part, the substance of that information to the government, and they must now disclose the detail underlying the reported data.' 456 F.2d at 144.
>
> However, the court cautioned that "[t]oo broad an application of the rule of waiver requiring unlimited disclosure by reason of filing an income tax return might tend to destroy the salutary purposes of the privilege which invite confidentiality between the attorney and his client." *Id.* at 145 n.4. The *Cote* court distinguished between "workpapers [that] contain detail of *unpublished* expressions which are not part of the data revealed on the tax returns," and other workpapers to which the rule of waiver would apply. *Id.* (emphasis in original).

Chapter 7: California Individual Developments

2018 Rates and Dollar Figures

Phaseout of exemption credits

Higher-income taxpayers' exemption credits are reduced as follows:

Filing status	Reduce each credit by:	For each:	Federal AGI exceeds:
Single	$6	$2,500	$194,504
Married/RDP filing separately	$6	$1,250	$194,504
Head of household	$6	$2,500	$291,760
Married/RDP filing jointly	$12	$2,500	$389,013
Qualifying widow(er)	$12	$2,500	$389,013

When applying the phaseout amount, apply the $6/$12 amount to each exemption credit, but do not reduce the credit below zero. If a personal exemption credit is less than the phaseout amount, do not apply the excess against a dependent exemption credit.

Standard deductions

The standard deduction amounts for:

Filing status	Deduction amount
Single or married/RDP filing separately	$4,401
Married/RDP filing jointly, head of household, or qualifying widow(er)	$8,802
The minimum standard deduction for dependents	$1,050

For additional figures, see https://www.ftb.ca.gov/forms/2018-California-Tax-Rates-and-Exemptions.shtml.

Combat-Injured Veterans Tax Fairness Act of 2016 and Application to California

Generally, California does not conform to this 2016 federal legislation (PL 114-292) (covered in Chapter 6). However, the FTB explains how a veteran might be able to get a refund after filing for the federal refund. See December 2018 FTB newsletter.

POA versus TIA

In its December 2018 newsletter, the FTB explains the differences between a Power-of-Attorney relationship and a Tax Information Authorization one. An excerpt follows:

	POA	TIA
Authority	Allows a taxpayer to grant a specific person permission to obtain their confidential information and act on the taxpayer's behalf to represent them in FTB matters (such as protests, appeals, settlement, and litigation).	Allows a taxpayer to grant a specific person permission to obtain their limited confidential tax information.
Tax Years	Either: • All tax years • Specific tax year(s) indicated on declaration.	All tax years
Expiration	6 years from the signature date (for POA declarations submitted after January 2, 2018)	Either: • 13 months from the signature date. • Date the TIA client was added or renewed on MyFTB.
Forms		

FTB and California Wildfires

FTB information at https://www.ftb.ca.gov/individuals/disaster.shtml?WT.mc_id=Warning_wildfire_2018.

See federal information in Chapter 6 update above.

CDTFA and California Wildfires

Emergency tax relief information from the California Department of Tax and Fee Administration (CDTFA) - http://www.cdtfa.ca.gov/services/state-of-emergency-tax-relief.htm.

Chapter 8: Looking Forward