The Contemporary Tax Journal

Volume 8
Issue 1 *The Contemporary Tax Journal Volume 8, No. 1 – Winter 2019*

Article 8

2-25-2019

Summaries for the 6th Annual IRS-SJSU Small Business Tax Institute

Daniel Currie
San Jose State University

Ruchi Chopra
San Jose State University

Chen Chen
San Jose State University

Sara Yaqin Sun
San Jose State University

Surbhi Doshi
San Jose State University

See next page for additional authors

Follow this and additional works at: https://scholarworks.sjsu.edu/sjsumstjournal

Part of the Taxation Commons, Taxation-Federal Commons, and the Tax Law Commons

Recommended Citation

Currie, Daniel; Chopra, Ruchi; Chen, Chen; Sun, Sara Yaqin; Doshi, Surbhi; and Tran, Tina (2019) "Summaries for the 6th Annual IRS-SJSU Small Business Tax Institute," *The Contemporary Tax Journal*: Vol. 8 : Iss. 1 , Article 8.
Available at: https://scholarworks.sjsu.edu/sjsumstjournal/vol8/iss1/8

This Feature is brought to you for free and open access by the Graduate School of Business at SJSU ScholarWorks. It has been accepted for inclusion in The Contemporary Tax Journal by an authorized editor of SJSU ScholarWorks. For more information, please contact scholarworks@sjsu.edu.

Summaries for the 6th Annual IRS-SJSU Small Business Tax Institute

Authors
Daniel Currie, Ruchi Chopra, Chen Chen, Sara Yaqin Sun, Surbhi Doshi, and Tina Tran

This feature is available in The Contemporary Tax Journal: https://scholarworks.sjsu.edu/sjsumstjournal/vol8/iss1/8

Summaries for the 2018 IRS-SJSU Small Business Tax Institute

Held on May 23, 2018 at the Biltmore Hotel, Santa Clara, California

Authors: Daniel Currie, Ruchi Chopra, Chen Chen, Sara Yaqin Sun, Surbhi Doshi, Tina Tran

A New Due Diligence Checklist: Let's Not Overlook Any New Tax Rules - Daniel Currie, EA, *MST Student*

Last December, many Americans found themselves scrambling at the last minute to make their final tax planning decisions before it may have been too late! It was interesting how the year ended for Enrolled Agents (EAs), CPAs, attorneys as well as other accountants and tax preparers as different versions of tax reform bills were released as to which one would pass and make a significant overhaul to the U.S. tax code that would affect millions of taxpayers, primarily businesses and individuals. The House and the Senate passed the Tax Cuts and Jobs Act (TCJA), which was later signed into law by President Trump on December 22, 2017 (P.L. 115-97). Most of the changes under the TCJA, both temporary (primarily for individuals) and permanent (primarily for businesses), are for tax years beginning after December 31, 2017. Despite what seemed to be a rollercoaster of a ride this tax season, learning the new rules surrounding tax reform is now front-and-center and practitioners can now digest more of these new tax rules, but where do we begin? Who do we ask for help? How will all of these tax changes affect individuals, corporations, partnerships, other businesses and foreign entities? And what about the fact that some of these new rules are still unclear and need further clarification by the Internal Revenue Service?

The Tax Institute at San Jose State University is working hard to help deliver some of these answers. On May 23, 2018, the IRS-SJSU 6th annual Small Business Tax Institute was held at the Biltmore Hotel in Santa Clara, California. There were several distinguished speakers who helped navigate the attendees through some of the changes made by the TCJA. The first section was presented by P. Evan Stephens, CPA, MT and Bill Abel, EA, MST, both from Sensiba San Filippo, LLP. Their presentation was titled, "A New Due Diligence Checklist: Let's Not Overlook Any New Tax Rules." One of their opening comments was a good reminder that when we last saw major changes like this during the Tax Reform Act of 1986, it took nearly two years for clear and thorough guidance to come out from the IRS. Although they are expecting to see guidance to be issued sooner this time around, it could take longer for more complete and thorough guidance to be issued and for tax practitioners to digest the information.

For 2018 there are seven federal tax brackets for individuals, but at slightly lower rates and adjusted income ranges as compared to 2017.[1] The old graduated federal tax rates for corporations are gone, and instead corporations will be taxed at a flat 21% rate.[2] However, be on the look-out for your fiscal-year corporate clients, as their 2017 fiscal year will require that both the old and the new tax rates be used to determine their 2017 tax liability, based on the number of days their fiscal year falls in calendar-year 2017 (using the old rates) and in 2018 (using the flat 21% rate).[3] This is referred to as a blending of the rates. Also for 2018, they explained that for individuals the regular tax and the alternative minimum tax (AMT) is to

[1] IRC §§1(a) – 1(d).
[2] IRC §11(b).
[3] Treas. Reg. §1.15-1.

function more like a "hybrid system" between the two, but the TCJA outright repealed the AMT for corporations.

While C corporations get the benefit of a significant reduction from its effective top federal tax rate from 35% to this new flat 21% rate, it only made sense that the TCJA would provide some equity and fairness for other types of business entities to keep pace. This was handled through the newly-created §199A which provides for a qualified business income (QBI) deduction of up to 20%[4] for individuals and estate/trust owners of pass through business entities (such as partnerships, S corporations and sole proprietorships), so long as they meet the definition of a *qualified trade or business*.[5] The QBI deduction rules are extremely complex and will likely need extensive clarification. While the QBI deduction is a great news for many businesses for 2018, a significant repeal in the TCJA was made for the Domestic Production Activities Deduction (DPAD) under IRC Section 199 which allowed for a potential 9% tax deduction for certain domestic income manufacturers, producers, and growers.[6] Perhaps the QBI deduction and lower individual rates will offset the loss of DPAD.

The DPAD is not the only deduction going away for businesses. Taxpayers will no longer be able to deduct entertainment expenses related to business, such as those expenses for sporting, for amounts paid or incurred after December 31, 2017.[7] Employer-provided meals at an employer's dining facility that are treated as a tax-free fringe benefit, which were 100% deductible, are now 50% deductible through 2025, and then nondeductible thereafter.[8] Also highlighted in the presentation were modifications to net operating loss deductions (NOLs). Effective for tax years beginning after December 31, 2017, NOL deductions are limited to 80% of the taxpayer's pre-NOL taxable income.[9] In addition, for tax years *ending* after December 31, 2017, NOL deductions will no longer be carried back 2 years, but instead will be carryforward indefinitely,[10] except for farming-related NOLs.[11]

For individuals, the mortgage interest deduction is limited to the first $750,000 of qualified mortgage interest ($375,000 for married filing separate) for most debt incurred after December 31, 2017.[12] The additional deduction for home mortgage interest for home equity debt of up to $100,000 is no longer deductible for taxable years beginning after December 31, 2017.[13] With these changes there may be more incentive for taxpayers to take a closer look at the interest-tracing rules to see if there is any interest allocated to a trade or business expenditure by looking at the uses of mortgage loan disbursements as those attributable to a trade or business are not subject to these particular limitations.[14]

[4] IRC §199A(a).
[5] IRC §199A(d).
[6] P.L. 115-97, Sec. 13305(a).
[7] IRC §274 (a)(1).
[8] IRC §274(e)(1).
[9] IRC §172(a).
[10] IRC §172(b).
[11] IRC §172(b)(1)(B).
[12] IRC §163(h)(3)(F).
[13] IRC §163(h)(3)(F)(i)(I).
[14] Treas. Reg. §1.163-8T.

For taxpayers looking to defer gain and qualify for a like-kind exchange under IRC Section 1031, they should be aware that under the TCJA, property other than real property will no longer qualify for this deferral for federal tax purposes, effective for exchanges completed after December 31, 2017.[15] For those taxpayers with heavy machinery that may have been subject to accelerated depreciation, and would have normally received the benefit of a 1031 exchange for replacement new machinery under the old rules, now they have to pay federal tax on the gain, even in a non-cash exchange. Like-kind exchanges of real property still qualify for deferral if the property being exchanged is held for productive use in a trade or business or for investment. There are no changes to the identification period (45 days) and completion period (normally 180 days) of the replacement property.[16]

An interesting discussion was made towards the end of the presentation relating to the limitation of state and local income tax deductions for individuals (also known as the SALT deduction) of $10,000 for taxable years beginning after December 31, 2017, and before January 1, 2026.[17] The issue is that high-tax states, such as California, may be facing increasing budget pressures due to the fact that individual taxpayers will no longer be as incentivized to earn income and pay tax in these states due to the overall $10,000 limit for state and local taxes for individuals on their personal tax returns as an itemized deduction. One idea that has been floated around is could taxpayers potentially characterize payments for their state and local tax liabilities as deductible charitable contributions? Interestingly, the same day of this discussion at the IRS-SJSU Small Business Institute, there was an issuance of the IRS Notice 2018-54 which explained that “substance-over-form will continue to govern the federal tax treatment of state and local tax liability payments“ and that the IRS plans to issue proposed regulations which will address the issue of states that pursue providing state tax credits to their residents for amounts paid to state-chartered purported charitable funds, but in substance it is merely an attempted circumvention of the new federal SALT deduction limitation.[18]

These were a few important highlights of the new tax rules during the first presentation at this year’s IRS-SJSU Small Business Tax Institute. While there are more questions and a need for further guidance on some of the provisions of the TCJA, there are learning opportunities to help clients with these changes to suit their unique circumstances.

[15] P.L. 115-97, Sec. 13303(a).
[16] IRC §1031(a)(3).
[17] IRC §164(b)(6)(B).
[18] Notice 2018-54, 2018-24 IRB, 05/23/2018.

New Favorable Methods for Small Businesses

- Ruchi Chopra, CPA

The 6th annual IRS/SJSU Small Business Tax institute conference on, "Successfully Navigating the TCJA (Tax Cuts and Jobs Act) for Small Business Clients" was held on May 23, 2018. Professor Annette Nellen, CPA, CGMA, Esq., Professor and Director of the MST Program at San Jose State University, gave her presentation on the topic "New Favorable Methods for Small Businesses" and discussed how the method changes under the TCJA to Sections 448, 460(e), 471 and 263A apply to small businesses. During her presentation Professor Nellen also threw some light on the term *tax shelter* and its relevance to these favorable rules and talked about how to change the method of accounting under the TCJA provisions.

Professor Nellen commenced the discussion with an overview of the term *method of accounting* and pointed that a method of accounting involves timing and answers the 'when' question and not the 'whether' question about the reporting of an income or expense item. What helped to understand the concept was the question, 'When is an item included in income?' as this is a question that deals with method of accounting matters. When it is only a timing recognition matter, the issue does not affect lifetime income of the taxpayer. In Rev Proc. 2015-13, the IRS defines *method* as a consistent and correct application of procedure in one or more tax returns. Rev. Proc. 2015-13 further provides rules for both automatic and non-automatic method changes and provides that a change in facts or a simply correction of an error is not a change in method of accounting. A change in method of accounting almost always involves filing Form 3115 (Application for Change in Accounting Method) with the IRS rather than filing an amended return.

The TCJA provides four favorable provisions on method changes for small businesses, but before delving further into the discussion, Professor Nellen helped the audience understand what a 'small business' is under the TCJA provisions - highlighting the annual gross receipts test of §448(c) as modified by the TCJA. Under the TCJA provisions, a business (1) with average annual gross receipts in the prior 3-year period of $25 million (previously $5 million) or less and (2) that is not a tax shelter per §448(d)(3), is considered a small business. Professor Nellen then discussed the four favorable provisions for small businesses, as provided by the TCJA.

One of the new provisions covers §448 that, prior to the TCJA, generally required use of the accrual method for most C corporations and partnerships with one or more C corporation partners, now provides that small businesses that are either a C corporation or partnership with a C corporation partner, are not required to use accrual method and now may use the cash method for tax years beginning after December 31, 2017. The second provision under the new TCJA rules, provides a new exception under §471(c) and highlights that small businesses with inventory are not required to account for inventory, unless the small business is a tax shelter. The third provision covers §263A and provides a new exception that small businesses are not subject to any part of the §263A UNICAP rules, unless the entity is a tax shelter. The fourth and the final provision covers §460(e) that provides an exception for having to use the percentage of completion method for certain construction contracts that previously applied for contractors with a prior three-year average annual gross receipts threshold of $10 million under the pre-

TCJA provisions. Under the TCJA provisions, the threshold is now $25 million and will allow these contractors to use the completed contract method on certain constructions contracts entered into after December 31, 2017.

Professor Nellen shared some examples to explain the term *tax shelters* under §448 and reiterated that the TCJA favorable provisions, as discussed earlier, are not applicable for businesses classified as tax shelters. Section 448 refers to §461(i)(3) to define tax shelters to include (a) enterprises (other than a C corporation) that have offered interests for sale where the offering is required to be registered with any Federal or State agency, (b) a syndicate within the meaning of §1256(e)(3)(B) (i.e., any entity (other than a C corporation) with more than 35% of losses in a year allocable to limited partners or limited entrepreneurs) or (c) any tax shelter, as defined in §6662(d)(2)(c)(ii), which generally is any plan or arrangement where a significant purpose of the plan is tax avoidance or evasion.

Professor Nellen further elaborated on §471(c), as amended under the TCJA, that now provides two alternatives for small businesses with inventory to report inventory. The two options include either (a) treating inventory as non-incidental materials and supplies, or (b) conforming to such entity's method of accounting as reflected in its applicable financial statements or if the taxpayer does not have an applicable financial statement, then according to the books and records of the taxpayer prepared in accordance with taxpayer's accounting procedures. Rev. Proc. 2001-10 provides that under the cash method, the cost of inventoriable items treated as non-incidental materials and supplies are deductible only in the year sold to a customer, or in the year in which the entity actually pays for the items, whichever is later.

The TCJA provides guidance on method changes for small business and points out that generally, these method changes are treated for purposes of §481 as initiated by the taxpayer and approved by the IRS. Also, the §460(e) changes to recognizing income for construction contractors does not involve a §481 adjustment, as it is made using the cut-off method.

To conclude, Professor Nellen, advised us to watch for further IRS guidance on how to make method changes for small businesses. There are a few additional items that tax practitioners need to know such as if a Form 3115 will be required, and if so, which lines can be skipped, or whether the cut-off option will be available with no §481(a) adjustment. In the case of §481(a) adjustments, another area to look out for is whether the adjustments are netted into a single figure or reported separately. Also, Rev. Proc. 2018-31 replaces most of the provisions of Rev. Proc. 2017-30 and provides a new list of automatic method changes. However, certain sections of Rev. Proc. 2018-31 do not include the TCJA changes in automatic method changes (those which do not require advance consent from the IRS), hence it is advised to wait for later guidance from the IRS.[1] Professor Nellen also advised about keeping accurate 2018 records assuming the taxpayer wants to adopt a new method of accounting. And last but not least, make sure to determine if the taxpayer is a tax shelter.

---

[1] Subsequent to the May 2018 IRS-SJSU Small Business Tax Institute, the IRS issued Rev. Proc. 2018-40 on how to make the method changes for small businesses.

Federal and California Considerations for Choice of Entity Consideration

-Chen Chen, *MST Student*

During the 6th annual IRS-SJSU Small Business Tax Institute on May 23, 2018, Steven Walker, Esq., of the Law Offices of Steven L. Walker, a former IRS trial attorney and an adjunct professor at the University of San Francisco School of Law, and Professor Joel Busch, Esq., CPA, of San Jose State University, presented on Federal and California choice of entity considerations under the Tax Cuts and Job Act (TCJA).

According to Mr. Walker, many business owners have considered changing their business entity type to benefit from the new lower corporate tax rate of 21% [2] or the new provision of a potential 20% deduction on the qualified business income of non-C corporation entities.[3] Both changes become effective in 2018 under the TCJA. As tax professionals, it is important to thoroughly understand each type of business entity and how they may fit based on each taxpayer's facts and circumstances.

The presenters laid out the advantages and disadvantages of each type of business entity, tax and non-tax issues surrounding entity conversion, and finally, provided examples that illustrate the tax consequences on each choice of entity according to each taxpayer's facts and circumstances.

Choice of Entity

Sole Proprietorship: This is a type of business entity which is not legally separate from its owner and is the simplest and the most common structure chosen to start a business. The proprietor personally holds all the business assets and runs the business with no legal or tax distinctions between the business and the owner. The individual can choose to operate the business under his/her own name or a fictitious name by which the taxpayer can segregate business legally without creating a formal legal entity.

Advantages: It is easy to set up a sole proprietorship with nominal costs and the owner has complete control of the business. The income and the losses are directly reported on the Schedule C (Form 1040) of the proprietor.

Disadvantages: The individual owner is held personally liable for debts and obligations of the business. Creditors of the business can claim his/her personal assets, such as houses and vehicles. Also, it is hard to raise capital because the sole proprietorship cannot sell interests and not being legally incorporated generally limits investor opportunities.

General and Limited Partnerships: A partnership is an association of two or more taxpayers to carry on as co-owners of a business for profit.[4] Typically, all partners in a general partnership are jointly and severally liable for partnership obligations. In limited partnerships, there is a

---

[2] §11(b).
[3] §199A.
[4] Reg. §301.7701-2(c).

potential liability shelter that shields the limited partners, but not the general partners, from partnership debts as long as such limited partners are primarily passive investors.

Advantages: A partnership is not subject to federal income tax. Instead, partnership income, gains, losses and credits are passed through to the partners at the partner level.

Disadvantages: A general partner is fully liable for the partnership debts and obligations.

C Corporations: This is a legal entity (a corporation), that is separate from its shareholders. It must file Articles of Incorporation with the Secretary of State in one of the states and draft by-laws to govern the corporation's operations. Generally, shareholders appoint and elect a specified number of directors for the board to carry out fiduciary duties for the company, and the board of directors elect certain officers to manage the corporation's affairs. The board of directors conduct meetings of both themselves and required annual shareholder meetings.

Advantages: The corporate form provides limited personal liability to the shareholders. There are no limitations on the number of shareholders. If a shareholder no longer wants to hold his/her ownership interest in the company, it is normally easier to transfer the ownership by selling the stock (as compared to an interest in another entity type). Moreover, the entity will not cease to exist because of retirement, death or resignation of the shareholders. Also, due to the TCJA, the corporate federal income tax has been reduced to 21% flat rate.

Disadvantages: A C corporation's earnings are subject to double taxation. The profit earned by the corporation is taxed at the corporate level first, then the earnings distributed to the shareholders in the form of dividends are taxed again at the shareholder level.

S Corporations: An S corporation files an election to allow it to pass corporate income, losses, deduction and credits to the shareholders for tax purposes similar to what a partnership does.

Advantages: The shareholders will normally be shielded from personal liability as the entity is a corporation, and the taxable income (or losses) are passed through to the shareholders and taxed at a single (shareholder) level.

Disadvantages: There are several criteria that must be met in order to qualify as an S corporation under §1361(b). They include: ① the entity must be a domestic corporation;② shareholders cannot be a partnership, corporation or a non-resident alien; ③there is only one class of stock;④ there are not more than 100 shareholders (with certain limited exceptions for certain family members); and ⑤ the entity cannot be an ineligible corporation, such as certain financial institutions and insurance companies. [5] Despite no federal income tax at the entity level, a 1.5% tax rate (for most S corporations) is imposed at the entity level by the State of California.[6]

Limited Liability Company: This is an unincorporated entity formed by one (or more) taxpayer(s). It is a hybrid entity combining the most attractive features of corporations and partnerships (and for single-member LLCs, sole proprietorships). Depending on elections made by the LLC and its members, the entity can be either treated as a partnership (the default for

[5] §1361(c)(1)(B).
[6] R&T §23802.

multi-member LLCs), or as a disregarded entity with only one member, or it can elect to be treated as a corporation.

Advantages: Usually, no member is responsible for the liability of the entity unless it is specifically stated in the operating agreement of the LLC. The income and losses are passed through to the member(s) under the conduit principal and taxed at the owner level. There are a few restrictions on ownership and operations compared to an S corporation, and it is not bound by the same rigid rules of corporations, such as annual meetings, extensive corporate records, and other corporate formalities.

Disadvantages: For California tax purposes, under R&T §17942, the LLC is potentially subject to an annual fee which can be as high as almost $12,000 per year based on its total *gross* income "from all sources derived from or attributable to California" starting at $250,000 of gross annual income.[7] In addition to a potential LLC fee, there is an annual tax of $800 (although C corporations, S corporations, LPs and LLPs have an annual $800 California tax as well).

Besides considering the above advantages and disadvantages of each of the listed entities, Mr. Walker and Professor Busch reminded us that taxpayers should consider other important non-tax factors when it comes to choosing the right entity for their business.

Illustration in Chart[8]:

	Sole Proprietorship	**General and Limited Partnership**	**C Corporation**	**S Corporation**	**Limited Liability Company**
Legal Status	Same entity as owner	Separate entity from owner	Separate entity from owner	Separate entity from owner	Separate entity from owner; not adopted by all states
Separate Taxable Entity	No	No	Yes	No	Depends on tax status
Ease of Formation	Very easy	Partnership agreement is helpful; state law must be followed to create a limited partnership	Articles of Incorporation generally required	Articles of Incorporation generally required	Operating agreement is helpful

[7] For California gross receipts of $250,000 - $499,999, the LLC fee is $900; $500,000-$999,999, fee: $2,500; $1,000,000-$4,999,999, fee: $6,000; $5,000,000 or more, fee: $11,790.
[8] Excerpted from 2010 National Association of Tax Professionals.

Number of Owners	One	More than two	Unlimited	100	Depends on tax status
Eligible Owners	Individuals	Unlimited	Unlimited	Some limitations	Depends on tax status
Owner Liability	Unlimited exposure	Unlimited if general partner; limited to investment if limited partner	Limited to investment, except for personal service	Limited to investment, except for personal service	Limited to investment, except for personal service
Ability to Raise Capital	Limited to owner assets and borrowing ability	Limited to owner asset and borrowing ability; can sell interests to raise capital	Limited to owners' contributions and borrowing ability; can sell interest to raise capital	Limited to owners' contributions and borrowing ability; can sell interest to raise capital	Limited to owners' contribution and LLC's borrowing ability; and can sell interest to raise capital
Management	Owner	May be divided among partners	Board of Directors	Board of Directors	Per articles of organization
Transferability of ownership	Only by sale of entire business or creating a different entity	Can sell all or portion of partnership interest	Can sell all or portion of stock	Can sell all or portion of stock; but must follow the restrictions on number and type of shareholders	Per articles of organization; commonly have some limitations
Tax Rate	Marginal tax rate at individual level	Pass through and marginal tax rate at individual level	21% by TCJA	Pass through and marginal tax rate at individual level	Depends on tax status

Other Important Tax Issues on Conversion of Business Entities

Due to different tax treatments for different entities, such as double taxation for a C corporation, and the "pass through" of income for a LLC, partnership or S corporation, taxpayers

should evaluate thoroughly, the potential entity conversion issues under the various federal and state tax laws because it can lead to different tax consequences. For instance, under the TCJA, Congress reduced the corporate rate to 21%, but, in case of business other than a C corporation, the owner(s) of such business types may enjoy the potential 20% deduction on their qualified business income. So, it depends on “crunching the numbers!” said Mr. Walker, to approve whether converting a pre-existing business to another form of entity would be ideal and in the best interest of the owners. Furthermore, converting an entity may raise numerous other issues such as: a change of tax identification numbers, other tax impacts, such as payroll tax, sales/use tax, property tax, and gross receipts tax under the various tax jurisdictions in which it conducts business.

Other Important Non-Tax Issues on Conversion

Besides the tax issues on entity conversion, Professor Busch also mentioned important non-tax issues, such as business licenses, contracts, worker’s compensation, other insurance matters, title transfers of assets, and other matters that can come into play in the conversion process.

In addition, Professor Busch stressed that only attorneys who work for law firms are legally allowed to undertake the non-tax aspects of business entity formations or other entity-related legal tasks, such drafting a partnership agreement. Hence, he highly suggested that the non-attorney tax practitioner work with an experienced tax/business attorney to have a full picture on the choice of business entity matters for a client.

Examples

Lastly, the presenters provided two examples which illustrate that an entity choice comes with performing a great many numerical tax calculations on a case-by-case basis.

In their first set of examples, by putting the taxpayer in a variety of entity forms, within the consideration of a 21% corporate rate and an eligible Section 199A deduction for non-C corporation entities, the most beneficial choice of entity for the taxpayer, based on total taxes paid by both the entity and/or owners was an S corporation, followed by a C corporation and then a sole proprietorship.

In their second example with a different scenario where the taxpayer was not eligible for the Section 199A deduction, the best choice of the entity was as a C corporation, followed by an S corporation and then a sole proprietorship.

Conclusion:

Since the TCJA, many business owners are considering whether they should convert their entities to a better one which can potentially save taxes. However, it is always easier said than done. Hence, as tax professionals, our job is to step into each taxpayer’s shoes, fully understand their business and needs in order to do the math, and work with a tax/business attorney to choose the best entity for the taxpayer within a big picture scenario.

Ethics, Due Diligence, and Changes to Penalty Provisions

- Sara Yaqin Sun, *MST Student*

At the 6th annual IRS-SJSU Small Business Tax Institute, a presentation on *Ethics* was given by Ms. Claudia Hill, EA, MBA, President of Tax Mam, Inc. Ms. Hill mentioned there are multiple sources that tax practitioners have to abide by when filing returns, consulting with clients, and representing taxpayers before the IRS through a power of attorney.

Ethics and Due Diligence Standards

Due diligence standards are codified primarily in the Internal Revenue Code (IRC), and all "tax return preparers"[1] are subject to these provisions. Practitioners who are EAs, CPAs, and attorneys are also covered by Circular 230[2] which requires them to meet due diligence requirements and provides for penalties for a wide variety of unethical behavior, including making false and misleading representations to the IRS. Moreover, there are standards to be followed outside of the IRC and Circular 230 depending on the type of compliance or other work the practitioner is involved with, such as state Board of Accountancy Codes of Conduct, the AICPA's Statements on Standards for Tax Services, and industry professional standards. According to Ms. Hill these professional standards provide more guidance than Circular 230 because they are more situational. However, practitioners should be familiar with both because they often have to rely on each other and reference each other in terms of interpreting the codes and penalty provisions

Penalty Provisions Amended by the TCJA - IRC §6695(g)

Talking about the changes made by the TCJA, Ms. Hill pointed out one due diligence codified penalty provision that is going to have to a broad impact is §6695(g) imposing a $500 penalty (subject to inflation) on a tax return preparer who fails to be diligent in determining eligibility for certain tax benefits. This specific provision previously covered claiming the Child Tax Credit, the American Opportunity Tax Credit, and the Earned Income Tax Credit. The TCJA added the Head of Household filing status and codified the provision into IRC 6695(g)(1). The "IRS is watching you" set of rules demand that tax return preparers complete their due diligence by asking questions of taxpayers and completing the required questionnaires, learning as much about their client's personal situation as applicable to these credits and the Head of Household status, and considering what rules and regulations apply to their circumstances.

More importantly, tax return preparers are required to confirm on the Form 8867 due diligence checklist indicating that they have asked all the questions of their client to determine whether the taxpayer qualifies for the specified tax benefits they are claiming on their return. They need to document all required worksheets and forms and keep them in their records for generally at least three years from the original due date of the return or when it was filed. The issue brought

---

[1] Tax return preparer is defined in IRC 7701(a)(36) (A) as "any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title."

[2] 31 C.F.R. Subtitle A, Part 10, commonly referred to as Circular 230.

by Ms. Hill was that when technology steps in, many of the tax software platforms automatically pre-fill/complete the due diligence process for return preparers, but it could be wrong.

By giving examples (in a slightly different context), she illustrated how tax preparation software could cause taxpayers to make mistakes or make the return preparer fail to be duly diligent. One of the examples involved simply using the data contained on Form 1099-B for sales of stock related to the exercise of stock options. Tax software can pull the 1099 numbers automatically and created a Form 8949, but it does not have the substantively correct cost basis figures for same-day option sales. Another example was that one provider experienced problems with sending in certain first quarter estimated taxes to California, and at the time of the presentation, they were still in the process of notifying preparers that those e-payments were not made. Sometimes, tax preparers were tripped up by these software or online filling platforms. She emphasized that we cannot trust technology 100 percent and that we still have to do our due diligence to make sure the conclusions the software draws are correct.

Penalty on Unreasonable Positions - IRC §6694(a)

There is another kind of penalty that may come up when dealing with returns that are challenged by the IRS under exam. It is a penalty on the preparer of record on the return if they have taken an unreasonable position. However, this penalty does not happen every time a return is examined and a client owes tax. IRC §6694(a) provides that if a return preparer prepares a return or claim for refund with an understatement of liability due to an "unreasonable position" and the preparer knew (or should have known) that the position taken was unreasonable, then a penalty can be imposed if there is an understatement of tax liability as a result of the unreasonable position. A "reasonable basis" standard / penalty exclusion applies if the position is adequately disclosed in the return or in a statement attached to the return. To make sure of an adequate disclosure, refer to Rev. Proc. 2018-11 for guidance for purpose of meeting the standards, as well as Form 8275 Disclosure Statement. There is even a Form 8275-R if a practitioner chooses to not follow a regulation, but can justify the reason for departure.

Conclusion

To get to the level of a reasonable basis on transactions while filing returns for clients, practitioners need to pay attention to the primary sources of law for guidance on these issues. These primary sources include the IRC, Treasury Regulations, Revenue Rulings and Revenue Procedures. Judicial sources like court cases are also primary sources, but we are not going to see any cases on the new laws in these areas anytime soon. Other documents, like IRS publications, are not legal authority that can be relied upon in taking positions on tax returns.

Ms. Hill ended her presentation emphasizing that when practitioners take on the obligation to prepare a tax return they must prepare the tax return substantially correct to the best of their ability and that practitioners should bear in mind that they have to meet the due diligence requirements when they interview their clients.

Section 199A's Qualified Business Income Deduction

- Surbhi Doshi, *MST Student*

One of the biggest changes brought by the Tax Cuts and Jobs Act of 2017 is the §199A qualified business income deduction. In the 6th annual IRS/SJSU Small Business Tax Institute conference held on May 23, 2018, Gary McBride CPA, J.D., LL.M, Professor Emeritus at California State University, East Bay, and Rico J. Delodovici, EA, owner of Tax and Business Consulting, shed some light on the newly enacted section 199A deduction.

What is the Section 199A Deduction?

For tax years beginning after December 31, 2017, a deduction of up to 20 percent of the taxpayer's combined qualified business income (which is generally comprised of the business net operating income – details to follow below) with respect to a (or multiple) qualified trade(s) or business(es) will be allowed to non-corporate taxpayers (i.e., individuals, estates and trusts). The section 199A deduction is a from-AGI deduction (i.e., below the line) and is available to both itemizers and non-itemizers. In addition to having this deduction apply to qualified business income, it also applies (separately) to qualified REIT dividends (QRD), and qualified traded partnership income (QPTPI) received by non-corporate taxpayers (for the examples below we will assume no REIT dividends or publicly traded partnership income is applicable).

Qualified Business Income (QBI):

§199A(c) defines QBI to include the net amount of income, gains, deduction and loss with respect to any qualified trade or business (subject to the exclusions noted below). In case of a net loss from a qualified traded or business, the applicable portion of the loss is carried forward to the succeeding taxable year as a potential reduction of the QBI deduction in that year.

The definition of QBI *excludes*:

a. Any capital gains, dividends, dividend equivalent, interest income (unless allocable to the trade or business), annuity income and other specified types of non-operating income.
b. Any wage compensation received by the taxpayer from the qualifying trade or business of the taxpayer for services rendered.
c. Any guaranteed payments made to a partner /member for services rendered by him with respect to the trade or business.[1]

Qualified REIT Dividends: Per §199A(e)(3), it includes any dividend received from a real estate investment trust during the taxable year, but excludes capital gain dividends and any qualified dividend income.

Qualified Publicly Traded Partnership Income: Per §199A(e)(4), from any qualified trade or business, this is the sum of the taxpayer's allocable share of income, gain, deduction or loss from a publicly traded partnership that is not treated as a corporation, and any gain recognized by the

[1] IRC §199A(c)(3)(B).

taxpayer upon disposition of its interest in the partnership to the extent such gain is treated as an amount realized from the sale or exchange of property other than a capital asset under §751(a).

Eligible Taxpayers and Forms of Business: The section 199A deduction is available to individuals, trusts and estates from QBI derived from sole proprietorships, partnerships, S corporations, limited liability companies (LLCs) and co-operatives (so long as they are not taxed as C corporations for federal tax purposes). To be clear, the deduction is available to owners of S corporations, partnerships and LLCs at the *shareholder/partner/member* level – not at the business entity level. This deduction is not available to C corporations.

How to Calculate the Deduction?

For many eligible taxpayers (subject to the additional limitations below for certain high-income taxpayers) the QBI deduction from income derived from non-specified service businesses (SSBs – to be discussed later) is the lesser of the amount determined under A or B below:

A. The taxpayer's combined qualified business income (CQBI), or

B. 20% of the taxable income of the taxpayer for the year, minus net long-term capital gain and qualified dividends ("modified taxable income").

Taxable income, per Step A above, is calculated *before* considering the §199A deduction. The determination of the combined qualified business income amount (CQBIA) is a complicated one. § 199A(b) explains CQBIA, which is the sum of the amounts calculated per items a and b below for each trade/business and then combined together.

When the taxpayer's modified taxable income exceeds $157,500 (non-MFJ filing status) or $315,000 (MFJ), the qualified wages (or the qualified wages plus the unadjusted basis of qualified property limitations) of the qualified business comes into play when determining the potential QBI deduction. Subject to the modified taxable income limitation (as noted above), the amount applicable for the QBI deduction for any qualified trade or business is the *lesser* of:

a. 20% of the taxpayer's qualified business income with respect to the qualified trade or business or

b. The *greater* of:
   i. 50% of the qualifying W-2 wages with respect to each qualified trade or business[2], or
   ii. The sum of 25% of the qualifying W-2 wages with respect to the qualified trade or business, *plus* 2.5% of the *unadjusted basis* immediately after the acquisition (UBIA) of all qualified property,

plus (if applicable):

c. 20% of the aggregate amount of the qualified REIT dividends and qualified publicly traded partnership income of the taxpayer for the year [see chart 1 below].

[2] Qualifying W-2 wages are generally the total amount of W-2 taxable wages paid to employees, plus any elective employee deferrals under most retirement plan contributions.

§199A does not define unadjusted basis, but it defines qualified property as any tangible property subject to depreciation that is held and available for use by the qualifying business at the end of the year, was used at any point during the year in the production of QBI, and the depreciable period for the asset has not ended before the close of the year (or if later, 10 years after the asset was placed in service).[3]

The UBIA and W-2 wage limits are phased-in proportionately when the taxpayer's modified taxable income exceeds $157,500 (non-MFJ) or $315,000 (MFJ) – up to $207,500 (non-MFJ) or $415,000 (MFJ).

If modified taxable income does not exceed the $157,5000/$315,000 threshold amounts, then the taxpayer has complete relief from the W-2 (or W-2 plus UBIA) potential limitations.

If modified taxable income exceeds $415,000 (MFJ) or $207,500 (other filing statuses), then the W-2 (or W-2 plus UBIA) potential limitations fully apply.

Qualified Trade or Business (QTB): A qualified trade or business is any business other than a specified service trade or business (SSB) or, the trade or business of performing services as an employee.[4]

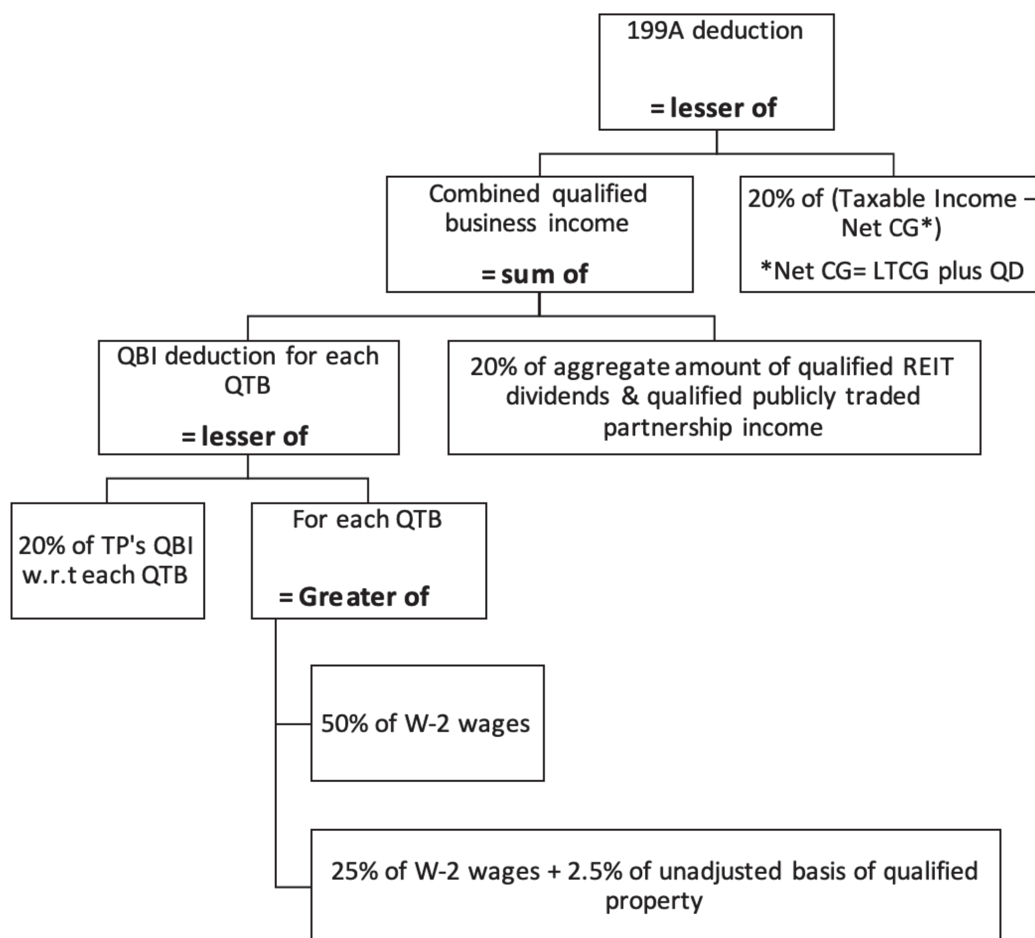
Specified Service Business (SSB): This is defined as "[a]ny trade or business involving performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 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".[5] [6]

Generally, specified service businesses are not considered a qualified trade or business. However, IRC 199A(d)(3) provides an exception which allows income generated by specified service business to be included in qualified business income. If the entity is a SSB, and the owner's modified taxable income is below $157,500 or $315,000 (MFJ), the taxpayer qualifies for the (up to) 20% qualified business income deduction. However, if the taxpayer's modified taxable income is greater than the above thresholds, but less than $207,500 or $415,000 (MFJ), the taxpayer will still be eligible for partial QBI deduction (see example #2 below). If modified taxable income exceeds the $207,500/$415,000 amounts, then no deduction is allowed.

---

[3] IRC §199A(b)(6).
[4] IRC §199A(d)(1).
[5] IRC §199A(d)(2).
[6] Note that subsequent to this presentation, the IRS has limited the skill or reputation factor for a potential SSB classification to essentially only endorsement activities – Treas. Reg. §1.199A-5(b)(2)(xiv).

Chart 1: Calculation of the Section 199A Deduction for Owners of Non-SSBs – for Very High-Income Taxpayers[7]



*If modified taxable income is less than $157,500 or $315,000 (MFJ) then:

- The above wage and UBIA limitations do not apply;
- The SSB status of trade and business is ignored; and
- The aggregate of all qualified trade or business income is considered.

Gary McBride explained some of the complex QBI deduction calculations with the help of examples.

Example 1: A married couple owns rental real estate (a non-SSB) that constitutes a qualified trade or business and earns a net profit (QBI) of $200,000. The couple files a joint return. The modified taxable income of the couple is $420,000 (pre-§199A). The unadjusted basis in the real property is $2,000,000. No wages are paid in the business.

[7] Those with modified taxable income of $207,500 or more ($415,000 or more for MFJ filers) in 2018.

The §199A deduction is the lesser of 20% of (1) the couple's modified taxable income or (2) CQBI as calculated below (a and b):

a. 20% of QBI (i.e. 20% of $200,000) = $40,000
b. CQBI is sum of the 20% of the Qualified REIT and QPTPI (which is 0 in the above case) and the lesser of:
   i. W-2+UBIA limit: (A) greater of 50% of W-2 wages = $0

      OR

      25% of W-2 wages + 2.5% of unadjusted basis (UBIA)= $0 + 2.5% of $2,000,000 = $50,000

   ii. 20% of modified taxable income (i.e. 20% of $420,000 = $84,000).

The potential QBI limitation figure of $50,000, which is calculated above as a percentage of wage and unadjusted basis, is higher than the straight 20% of QBI (or $40,000). In addition, 20% of the couple's modified taxable income is $84,000. Hence, the section 199A deduction is $40,000 which is lesser of $40,000 (CQBIA), $50,000 (the W-2 + UBIA limitation), and $84,000 (20% of $420,000 (modified TI).

In the above example, if we change the unadjusted basis of the building from 2,000,000 to $640,000 then, the W-2 + UBIA amount will be 25% of W-2 wages ($0) + 2.5% of $640,000 = $16,000.

Therefore, everything else remaining constant, the new §199A deduction is $16,000, which is lesser of $16,000 (CQBIA), $84,000 (20% of $420,000 modified TI) and $40,000 (20% of QBI).

Example 2: Calculation for an SSB.

S1, who is married, is the sole proprietor of a law practice (an SSB) that earns a net profit (QBI) of $200,000. The couple files a joint return. The couple's modified taxable income is $340,000. Regardless of the amount of qualified wages or property of the business, the maximum potential QBI deduction applicable to this taxpayer related to this business is $30,000. This is because the couple's modified taxable income is 25% into the phase-out range of the QBI deduction (i.e., $25,000 (out of $100,000) over the beginning phase-out threshold of $315,000). This 25% reduction of applicable QBI results in an applicable QBI of only $150,000. 20% of $150,000 applicable QBI is $30,000.

Other things to Remember:

Here are some important pointers to keep in mind for the §199A deduction:

- First, the §199A deduction is not allowed for self-employment tax purposes, but is available for AMT purposes.
- Second, the W-2 + UBIA limit does not apply to qualified REIT dividends, qualified publicly traded partnership income and qualified cooperative dividends.
- Third, if the qualified business income for any year is less than zero, then it will be treated as a loss from the qualified trade or business and will be carried forward to the

next succeeding year. This will potentially reduce the subsequent year's §199A deduction which is a reduction in the deduction.

- §199A(g) applies to "specified agriculture or horticulture cooperatives" and their patrons who receive qualified payments from the cooperatives. Recent changes in the QBI guidance eliminates the provision that allows patrons a 20% deduction based upon gross sales (not gross income) to cooperatives.

Planning Considerations:

Mr. Delodovici focused on how important it is to examine your client base before suggesting some planning strategies so that clients are eligible for the deduction and to maximize their potential deduction. One of his illustrations was about a single, sole proprietor of an SSB. His modified taxable income for 2018 was more than $207,500, which makes him ineligible for the §199A deduction. However, there are ways in which the client could legitimately lower his taxable income. The taxpayer could buy some furniture or equipment he needs for the business, or donate to some charity if he has a charitable intent, which will bring his income level below $207,500 and hence potentially qualify him for the deduction. Now is the time to make such planning decisions and advise the clients so that they do not lose the §199A deduction.

Another example was where the taxpayer had no qualified business income. A single taxpayer is in a rental business (which happens to constitute a qualified business) with gross rents of about $80,000. She also incurs about $80,000 in expenses on the rental, of which $35,000 amounts to mortgage interest. If the taxpayer can make the interest amount disappear, such as paying off the mortgage (if feasible), she could have a QBI of $35,000 and a §199A deduction of up to $7,000. Emphasis was also laid out on shifting of income in some cases. For instance, suppose we have a partnership with equal partners who receive guaranteed payments, where there is little or no QBI, as guaranteed payments do not generate QBI for the partners and are an ordinary deduction for partnership. To help mitigate this problem, the partners could reassess their partnership agreement and move money from their guaranteed payments to distributive shares. This simple shifting of income will provide a significant tax benefit by increasing QBI of the partnership through lower deductions (without the guaranteed payment deductions).

Conclusion:

Section 199A is certainly one of the more complicated provisions added to the Internal Revenue Code by the Tax Cuts and Jobs Act of 2017. It offers significant tax savings for taxpayers in that it has the potential to effectively "close the gap" between non-C corporation business owners and C corporations, which are taxed at a flat 21% after the TCJA, with this potential large tax reduction.

Depreciation and Deductions for Section 1231 Assets Under the Tax Cuts and Jobs Act

- Nhi (Tina) Tran, *CPA, MST Student*

In the 6th annual IRS/SJSU Small Business Tax Institute conference held on May 23, 2018, a panel of experts from accounting firms collaborated and discussed the relevance of the Tax Cuts and Jobs Act (P.L. 115-97) with regards to depreciation and deductions for Section 1231 assets. The panel included Mark O'Connell from KPMG LLP, Roger Burggrabe from Moss Adams LLP, and Joel Busch, professor from the MST program at San Jose State University who joined as a moderator. The panel addressed tax changes brought by the Tax Cuts and Jobs Act (TCJA), relevant tax rules that remain unchanged, and some considerations in practice. This article will mainly focus on the details of the new law and its application.

New Tax Changes under TCJA

Mr. O'Connell and Mr. Burggrabe started off their presentation with the changes brought by TCJA with respect to depreciation deductions as summarized below:

Topics	Pre-TCJA[1]	Post-TCJA
Section 179	Dollar limitation was $510,000 in 2017	Dollar limitation: increased to $1,000,000
	The beginning phase-out threshold (for Section 179 assets placed in service): $2,030,000 in 2017	The beginning phase-out threshold is increased to $2,500,000
	Definition of section 179 property was very limited in regard to assets other than tangible personal property	Definition of section 179 property is expanded to include: - Qualified improvement property (QIP) - Nonresidential real property improvements such as roofs, HVAC, fire protection systems, alarm systems, and security systems - Personal property used predominantly in lodging
Bonus Depreciation	50% first-year bonus deduction for qualified assets placed in service	100% first-year bonus depreciation deduction for qualified assets acquired and placed in service between September 28, 2017 and December 31, 2022
	Bonus depreciation was only applied to new or original-use property to the taxpayer	100% bonus depreciation is allowed for not only new but also used property acquired from an unrelated party in an arm's-length transaction

	Qualifying property included: - Tangible property with a recovery life of 20 years or less - Computer software - Water utility property - Qualified improvement property with 39-year life	- The reference of 39-year qualified improvement property is removed - 100% bonus depreciation is now also available for a "qualified film or television production" placed in service on or after September 28, 2017
	Qualified property that is not required to use the ADS method of depreciation, includes: - Foreign-use property - Property leased to a tax-exempt entity	100% bonus depreciation is now also allowed for certain building property owned by an "electing real property trade or business" or "electing farming business" as defined in section 163(j)
	For qualified property acquired before September 28, 2017, bonus depreciation was scheduled to be reduced by 10% each year for 2018 and 2019, and would be completely phased out by December 31, 2019	For qualified property acquired after September 27, 2017, bonus depreciation is scheduled to be reduced 20% each year beginning in 2023, and will be fully eliminated in 2027
Passenger Automobile	Maximum deduction in 2017 for passenger cars or light duty trucks was: - $3,160 for the year the vehicle is placed in service ($11,160 if first-year bonus depreciation is elected) - $5,100 for the second year - $3,050 for the third year - $1,875 for the fourth and later years in the recovery period	Maximum deduction for passenger cars or light duty trucks placed in service after December 31, 2017: - $10,000 for the year the vehicle is placed in service ($18,000 if first-year bonus depreciation is elected) - $16,000 for the second year - $9,600 for the third year - $5,760 for the fourth and later years in the recovery period
Listed Property	Computers and peripheral equipment was used to be under "listed property" category, and required to be depreciated using the straight-line method if qualified business use falls below 50%	Computer and peripheral equipment is no longer considered "listed property"

Qualified Improvement Property (QIP)	- Qualified Improvement Property (QIP): 39-year depreciable life and eligible for bonus depreciation - Qualified Leasehold Improvements (QLHI), and Qualified Retail Improvement Property (QRIP): 15-year depreciable life and eligible to bonus depreciation - Qualified Restaurant Property (QRP): 15-year depreciable life and not eligible for bonus depreciation	For assets placed in service after 2017: - Qualified Improvement Property remains bearing a 39-year life, but now is excluded from bonus depreciation - Qualified Leasehold Improvements (QLHI), Qualified Retail Improvement Property (QRIP), and Qualified Restaurant Property (QRP) categories are now repealed

With regard to qualified improvement property, Mr. O'Connell emphasized that the Act consolidated the various improvement categories into one category – qualified improvement property. It consists of the former qualified leasehold improvements, qualified retail improvement property, and qualified restaurant property. Initially, the Act intended to provide a significant federal tax benefit to taxpayers by having this newly redefined QIP category to be classified as a 15-year depreciation life property and being eligible for both section 179 expensing and bonus depreciation. Due to a drafting error, that provision was ultimately taken out in the new tax bill; as a result, QIP acquired and placed in service after September 27, 2017 remains having 39-year recovery life, and no bonus depreciation is allowed for such property. The American Institute of CPAs (AICPA) has called for a technical correction to address the issue. Until the correction is made, QIP will remain as stated in the IRC.

Considerations in Practice

The panel additionally illustrated the application of new tax changes in practice. They provided examples on how to take advantage of the tax benefits derived from the changes by utilizing a cost segregation analysis. In general, a cost segregation study is the practice of accelerating depreciation deductions by allocating part of the capitalized costs real property which has either a 39-year life (nonresidential real property) or 27.5-year life (residential rental property) to any applicable amounts of tangible personal property with shorter class-lives, such as 5, 7, or 15-year lives. Tangible personal property, also known as "§1245 property," has a shorter recovery period and is also eligible for section 179 deduction and/or bonus depreciation. Consequently, the segregation will normally accelerate depreciation deductions and benefit taxpayers with immediate increases in cash flow.[2]

For illustration purposes, the panel prepared some facts and circumstances on an office remodel. The construction started after 9/27/2017 and was completed before 12/31/2018. The aggregate cost of the remodel is $3,000,000, of which $2,700,000 million is allocated to all interior structures (except for roof and HVAC) and $300,000 is for additional office furniture.

- Without the application of cost segregation practice, where there was only one asset for the entire remodel, the total remodeling cost, after section 179 deduction consideration,

would be most likely to be bundled and classified as a 39-year qualified improvement property depreciated on straight-line basis and no bonus depreciation is available because due to the TCJA. In this case, the section 179 deduction would apply, but be reduced from the normal $1M amount to only $500,000 because the total cost exceeds the beginning phase-out threshold of $2,500,000 by $500,000. The remaining remodeling cost of $2,500,000 million will be depreciated over a 39-year life.

- However, if the cost segregation study comes into play, the remodeling cost will be reclassified into section 179 property, tangible personal property, and qualified improvement property. In this scenario, the allocated cost to tangible personal property is qualified for the 100% bonus depreciation under the TCJA. As a consequence, the depreciation deduction is accelerated. Below is the cost break-down chart in this example.

Section 179	**5-Year & 7-Year Tangible Personal Property**	**39-Year Qualified Improvement Property**
$150,000 of roof work	$300,000 of office furniture	$1,600,000 of interior real property improvements
$250,000 of HVAC RTU	$270,000 office casework, removable finishes	
$100,000 of Fire Sprinkler	$330,000 of business related electrical and plumbing	
$500,000	**$900,000**	**$1,600,000**

Conclusion

The release of the 2017 Tax Cuts and Jobs Act has provided significantly generous tax breaks to taxpayers with respect to depreciation deduction of Section 1231 assets. Tax practitioners and advisors should get comfortable with the relevant new rules in order to make the best use of such potential tax benefits in their practice. It is also important to keep up-to-date with additional IRS guidance and publications as it relates to these significant changes.

Tax Maven

The Contemporary Tax Journal's Interview with Eileen Marshall

- Rani Vaishnavi Kothapalli, MST Student

Eileen Marshall is a partner in the tax practice at Wilson Sonsini Goodrich & Rosati. She graduated Juris Doctor (J.D.) from Yale Law School in 1996 and Bachelor of Arts (B.A.) from University of Pennsylvania in 1989 with the *Summa Cum Laude* (highest distinction). Eileen practices all aspects of domestic and cross-border mergers, acquisitions, divestitures, restructurings, tax-free reorganizations, taxable and tax-free spin-offs, incorporations, and partnership formations from Washington, D.C., and Palo Alto offices.

Eileen was selected to be included in the 2012, 2013, 2014 and 2015 editions of Washington D.C. Super Lawyers. She speaks regularly on panels for the District of Columbia Bar Taxation Section and the American Bar Association Taxation Section. She also spoke at the Practicing Law Institute, New York University Annual Institute on Federal Taxation, and Tax Executives Institute.

She authored "Practical Run-Ins between Conventional Convertible Debt Instruments and Certain Interest Disallowance Provisions of the Code," Taxation of Financial Products and Transactions, Practicing Law Institute, 2008; co-authored "A User's Guide to Call Spread Convertibles," Taxation of Financial Products and Transactions, Practicing Law Institute, 2009; "Structuring the Corporate Start-Up," New York University 64th Annual Institute on Federal Taxation, 2006; "More from the Abyss of Debt and Equity," New York University 63rd Annual Institute on Federal Taxation, 2005 to name a few. Some of her speaking engagements include "Final Section 385 Regulations: How Will the Documentation Rules Apply in the Real World," American Bar Association Taxation Section Committee, Financial Transactions Committee, January 20, 2017; "Current Issues in Section 305," District of Columbia Bar Taxation Section, Corporate Tax Committee, December 14, 2016; "High Tech M&A Developments: Selected Topics," 32nd Annual Tax Executives Institute (TEI)-San Jose State University High Tech Tax Institute, November 8, 2016.

She is a Committee Officer, Corporate Tax Committee, American Bar Association Taxation Section; Former Chair, Financial Transactions Committee, American Bar Association Taxation Section; Former Chair, Financial Products Committee, District of Columbia Bar Association Tax Section; Member, District of Columbia Bar Taxation Section; Member, American Bar Association Taxation Section.