TAXATION AND REPRESENTATION
ALL THE NEW TAX LAW FOR ESTATES AND TRUSTS

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I. THE TAX CUTS AND JOBS ACT OF 2017 (the "TCJA").

A. Official Name. Actually, the Tax Cuts and Jobs Act is not its official name, but it is what most everyone, including the U.S. Department of the Treasury and the Internal Revenue Service, is calling it. For the curious, because of a quirk in how the House of Representative's and Senate's versions of the competing bills were resolved, the official name is:

> "An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for the Fiscal Year 2018."

B. Big Reform Act; No Recodification. The TCJA is the biggest, most substantial reform of the Internal Revenue Code since the Tax Reform Act of 1986, which resulted in the Code's recodification as the "Internal Revenue Code of 1986." Nonetheless, enactment of the TCJA did not result in a recodification. Except as otherwise noted, section references in this outline are to the Internal Revenue Code, as amended.

C. Limitations of this Outline. Because the TCJA made so many changes to the tax laws, this outline can only address the author's assessment of the most significant of those changes. Accordingly, it should not be relied upon as a comprehensive discussion of all of the provisions of the TCJA.

D. TCJA Development and Passage.

1. Although the House Republican's June 24, 2016 "Blueprint for Tax Reform" was a summary proposal for tax reform and the Trump presidential campaign issued a summary as well, there were no detailed proposals for tax reform (from the out-of-power Democrats either, of course) until the TCJA legislation was filed. After a very short period of debate and no Democrat votes in favor of the TCJA in either the House of Representatives or the Senate, the TCJA was signed into law on December 22, 2017, as Public Law No. 115-97, 131 Stat. 2504.

2. Compare that with the development and passage of the Tax Reform Act of 1986. Its provisions had been debated in detail on a bipartisan basis for over two years and passage was accomplished with considerable bipartisan support. Unlike today, when both houses of Congress and the White House are controlled by a single party, in 1986 the Democrats controlled the House of Representatives and the Republicans the Senate. Republican President Reagan occupied the White House (although, for what it is worth, note that he previously was a Democrat).

E. TCJA Post-Enactment Political and Federal Revenue Considerations. These considerations do not bode well for the longevity of the TCJA's provisions. Those considerations include:

1. The solitary party (Republican) passage of the TCJA (consider how controversial the Patient Protection and Affordable Care Act (nicknamed "Obamacare") has been, which passed with only Democrat votes);

2. The TCJA's static estimated revenue cost: a $1.5 trillion reduction in federal revenues over the ten year budget reconciliation law time period;

3. If the TCJA individual income tax provisions (including the 20% qualified business income deduction) that are set to expire at the end of 2025 (i.e., those that are to "sunset") are instead extended, the static estimated revenue cost of that extension is projected to be over $650 billion over the ensuing decade;

4. The political contentiousness in the United States today;

5. Democratic congressional leaders' announcements opposing the TCJA, issued before and after its passage, including the TCJA's doubling of the gift and estate tax applicable exclusion base from $5,000,000 to $10,000,000 compared to the Democrats' proposal to reduce it back to $3,500,000;

6. The Democratic 2016 presidential candidate's (Hillary Clinton's) campaign position was similar to that of the Democratic congressional leaders; it also proposed a significantly higher rate on the megawealthy; and

7. The possibility of a shift in political control from the Republicans to the Democrats in Congress in 2018 and in the White House in 2020 and beyond.

F. But wait, stay tuned! TCJA Version 2.0 was filed in three separate bills on September 10, 2018; all three were voted out of the House Ways and Means Committee. There appears to be momentum among House Republicans to take up and pass this legislation before the November 2018 midterm elections, at least to have it as an election issue. Nonetheless, Senate Republicans so far have seemed less enthusiastic and they would need Democratic votes to overcome budget reconciliation act limitations for the legislation to become law. The three bills are:

1. H.R. 6760, the "Protecting Family and Small Business Tax Cuts Act of 2018" would make permanent the TCJA's individual tax cuts and all other provisions, the

pass through businesses 20% deduction, and the gift and estate tax exemption increase, but also the state and local tax deduction limitation, which is unpopular in high taxing states;

2. H.R. 6757, the "Family Savings Act of 2018", from taxpayers' perspectives, would improve various retirement and savings plan provisions, including allowing penalty-free withdrawals from retirement plans by parents upon birth or adoption of a child and expand the utility of § 529 education savings plans (because of these noncontroversial provisions, this bill has the greatest chance of passage among the three bills);

3. H.R. 6756, the "American Innovation Act of 2018" would expand start-up organization expenditures deductions and certain net operating losses and tax credits.

II. TCJA EFFECTIVE DATE. In general terms, most of the TCJA's provisions became effective January 1, 2018, but their duration depends generally on the category of tax involved (e.g., individual versus corporate) and in some cases on the specific provision. Some of the provisions only are effective during 2018 through 2025, and thus they "sunset" in 2026 and revert to their 2017 status at that time (but see the discussion above about Tax Reform 2.0). Those items are identified below as "**Sunsets**." The 2018 through 2025 period is referred to below as the "suspension period" and the pre-2018 provisions are referred to below as being "suspended." Other provisions do not have a specifically limited period of effectiveness. Those items are identified below as "**Permanent**."

III. Future Inflation Adjustments with "Chained CPI" (Permanent). Various provisions under the TCJA are to be adjusted over time for inflation (e.g., the income tax brackets and the gift and estate tax exemption), but the TCJA specifies a change in the Consumer Price Index to be used to determine those adjustments. New inflation adjustments are to be made using what is known as "Chained CPI," which is expected to result in smaller adjustments than the previous Consumer Price Index did. More specifically, Rev. Proc. 2018-18 in Appendix 2 provides that:

> Section 11002 of the [TCJA] amends § 1f(3) to provide a permanent cost-of living adjustment based on the Chained Consumer Price Index for All Urban Consumers (C-CPI-U). Any existing items that are not reset for 2018 will be adjusted for inflation after 2017 based on the C-CPI-U. Items that are reset for 2018 will be adjusted for inflation after 2018 based on the C-CPI-U.

IV. INDIVIDUAL INCOME TAX PROVISIONS. The new 2018 tax rates and brackets are displayed in the "Individual, Estates & Trusts Federal Income Tax Tables for 2018" in Appendix 1. They also are shown in Rev. Proc. 2018-18 in Appendix 2, along with other individual income tax features of the TCJA, such as the Adoption Credit, Earned Income Credit, and Low-Income Housing Credit.

A. Why the Individual Income Tax Provisions Are Important for Estates and Trusts. Section 641(b) provides that the "[t]he taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part."

B. Income Tax Rates: reduced up and down the brackets (Sunsets). New top rate of 37%. See the "Individual, Estates & Trusts Federal Income Tax Rates Tables for 2018" in Appendix 1.

C. Rate Brackets (Sunsets): lower brackets static, upper brackets improved from taxpayers' perspectives. See the "Individual, Estates & Trusts Federal Income Tax Rates Tables for 2018" in Appendix 1.

D. Standard Deduction (Sunsets): increased (e.g., to $24,000 for married filing jointly). This will significantly reduce the percentage of individual taxpayers who itemize their deductions. Planners should recommend that their clients consider bunching as many of their itemized deductions as they can into one tax year, while merely utilizing the increased standard deduction in another tax year. The use of donor advised funds to make deductible charitable contributions in one tax year to be distributed to the ultimate charities in later tax years is one technique to accomplish such bunching.

E. Personal Exemptions (Sunsets): eliminated. This change might be fiscally painful for individual taxpayers with large numbers of dependents, but for those with fewer to no dependents its impact in most cases will be offset by the increase in the standard deduction.

F. Alimony: payments are not deductible from gross income by the payor, nor are they includable in gross income by the recipient (Permanent). This change has a delayed effective date and applies to a divorce decree issued or separation agreements executed after December 31, 2018 and to any divorce decree issued or separation agreement executed before then, but modified thereafter if the modification expressly provides that this TCJA change applies to it. **See also the discussion below in the Estate and Trust Income Tax Provisions section about the repeal of § 682, Income of an estate and trust in case of divorce, etc. and IRS Not. 2018-37 in Appendix 3 for further information.**

G. Medical and Dental Expenses: for 2017 through 2018, the threshold for the deduction is reduced to 7.5% of Adjusted Gross Income rather than 10%

H. State and Local Taxes Deduction ("SALT deduction"): generally capped. Note that this provision has special implications for estates and trusts, as discussed in the section below focused on those entities. The deduction is limited to $10,000 (not indexed) for married filing jointly and $5,000 (not indexed) for married filing separately, but the limitation does not apply to such taxes that are trade or business related or are § 212 investment activity taxes. The taxes to which the limitation applies are state and local income, property, sales, and other taxes. This limitation obviously is hugely unpopular among wealthy, high income individuals who reside in high tax states, like New Jersey, New York, and California. It will likely continue to fuel relocations from those states to lower tax states such as Florida. Several high tax states have filed lawsuits in what probably will prove to be a futile attempt to have this limitation invalidated by the courts. In addition, several high tax states have been working to enact legislation to enable taxpayers subject to the limitation to ameliorate its effect by treating certain charitable contributions as creating credits against the taxpayers' state income tax liabilities. The Treasury has responded by saying it will challenge such attempts to avoid the SALT deduction limitation, in part because no charitable contribution is allowed to the extent the taxpayer receives a corresponding benefit, like a tax credit. IRS Not. 2018-54 in Appendix 4.

I. Home Mortgage Loan Interest Deduction: acquisition indebtedness incurred after December 15, 2017 is limited to $750,000 (not indexed), down from $1 million. See the special rules for pre-TCJA incurred debt (generally the old rules still apply) and to refinancing of those loans. Deductions for home equity loan (e.g., home equity line of credit ("HELOC")) interest is suspended during 2018-2025.

J. Charitable Contribution Deduction: increased percentage limitation on cash contributions to public charities. The "contribution base" (in general modified adjusted gross income ("modified AGI")) is increased from 50% to 60%. But be careful that any companion noncash contribution (of other property) would taint the full deduction and limit it to 50%. The former 80% charitable contribution deduction for university athletic seating privileges was eliminated.

K. Casualty and Theft Losses: deductions limited during suspension period only to those losses attributable to a Presidentially-declared disaster.

L. Miscellaneous Itemized Deductions: generally suspended from 2018 through 2025 for individuals. § 67(g). (Note that there has been concern about this provision among estate and trust practitioners, as described more fully in that section below.) In general, individuals will not be able to deduct during that time period unreimbursed employee expenses, tax planning and compliance expenses, safe deposit box expenses, etc.

1. "Miscellaneous itemized deductions" are itemized deductions other than those specifically listed in § 67(b), which include deductions for the payment of interest, taxes, charitable contributions by individuals **or trusts and estates,** medical expenses, and **estate tax attributable to § 691(c) income in respect of a decedent.** See IRS Not. 2018-61 in Appendix 5 for more discussion.

M. Kiddie Tax: "simplified." the TCJA simplifies the Kiddie Tax by applying the trusts and estates ordinary income and capital gains tax rates to the child's unearned income, even though those rates may be higher than the child's parents' rates.

N. Moving Expenses: generally eliminated (Sunsets). The deduction for expenses for moving to a new job and the exclusion from income of moving expense reimbursements from an employer are suspended, except in certain cases for military service personnel.

O. Roth IRAs: recharacterization of conversions no longer permitted (Permanent). Taxable individual retirement accounts may be converted to Roth IRAs at the cost of income taxation on the taxable converted amount. Previously, taxpayers could convert and then "wait and see" if the converted assets declined in value after the conversion. If that happened, the taxpayer could elect to recharacterize the Roth IRA back into a taxable IRA to avoid the required taxable income recognition resulting from the conversion. The TCJA prohibits such recharacterizations after 2017.

P. 529 College Savings Plans: expanded application to certain education expenses. Distributions up to $10,000 per student can be made in any taxable year for elementary or secondary school tuition.

Q. Obamacare Health Insurance Mandate: repealed. Beginning in 2019, the TCJA repealed the requirement to have qualifying health insurance under the Patient Protection and Affordable Care Act (i.e., "Obamacare").

R. Child Tax Credit: doubled (not indexed). The TCJA doubled the previous $1,000 credit to $2,000 for children under age 17, but it is not indexed for inflation. In addition, the phaseout amounts increased as did the refundable part of the credit.

S. Alternative Minimum Tax: exemption increased. The increase is from $78,750 to $109,400 (indexed). The threshold for the phaseout increased dramatically, from $150,000 to $1,000,000 (indexed) for married filing jointly.

V. ESTATES AND TRUSTS INCOME TAX PROVISIONS.

A. Reminder: Why the Individual Income Tax Provisions Are Important for Estates and Trusts. What was stated above in the Individual Income Tax Provisions section deserves repeating here: § 641(b) provides that the "[t]he taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part."

B. Income Tax Rates: reduced up and down the brackets (Sunsets). New top rate of 37%. See the "Individual, Estates & Trusts Federal Income Tax Rates Tables for 2018" in Appendix 1.

C. Rate Brackets (Sunsets): lower brackets static, upper brackets changed. See the "Individual, Estates & Trusts Federal Income Tax Rates Tables for 2018" in Appendix 1.

D. Estate and Trust Personal Exemptions: unchanged with exception. The pre-TCJA estate and trust personal exemptions are unchanged, except that the personal exemption for a "qualified disability trust" is increased to $4,150 (indexed) for the 2018 to 2025 suspension period. § 642(b)(2)(C)(iii). See IRS Not. 2018-37 in Appendix 3.

E. State and Local Taxes Deduction ("SALT deduction"): planning opportunity with multiple trusts. The SALT deduction limitation applicable to individuals described above also applies to estates and trusts, entity by entity. As a result, practitioners should consider whether a client's circumstances might benefit from utilizing multiple trusts, for example, to hold real estate for the benefit of multiple beneficiaries, as a means to take advantage of multiple $10,000 limitations. Nonetheless, caution must be exercised because § 643(f) contains an antiabuse prohibition of using multiple trusts in certain circumstances. More particularly, § 643(f) provides that pursuant to Treasury Regulations two or more trusts will be treated as a single trust (with only one $10,000 SALT deduction limitation, rather than multiple ones) if the trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries and a principal purpose of the trusts is to avoid income tax. Note though that no such regulations have yet been issued.

F. Miscellaneous Itemized Deductions As They Relate to Estates and Trusts: an area of concern for which Treasury is to propose regulations. As described above in the Individual Income Tax Provisions section, new § 67(g) **(Sunsets)** provides that individuals will not be able to deduct during the suspension period miscellaneous itemized deductions, such as unreimbursed employee expenses, tax planning and compliance expenses, safe deposit box expenses, etc.

1. Several commentators have called into question whether the miscellaneous itemized deduction suspension also will apply to deductions for estates and trusts.

2. Without getting into the nuances of that concern, suffice it to say that expenses incurred by a trust or estate that "would not have been incurred if the property were not held in such trust or estate," such as trustee or personal representative fees and other miscellaneous trust and estate expenses remain deductible under § 67(e), notwithstanding new § 67(g).

3. IRS Not. 2018-61 in Appendix 5 states that Treasury and the IRS plan to issue regulations clarifying that estates and nongrantor trusts may continue to deduct expenses under § 67(e)(1) and amounts allowable as deductions under §§ 642(b), 651, or 661. Additionally, the regulations will clarify that deductions under § 67(b) and (e) continue to be outside of the definition of "miscellaneous itemized deductions" and thus are not disallowed by new § 67(g).

4. Note though that estate and trust expenses that would not have been incurred if the property were not held in an estate or trust are not § 67(e) expenses. Thus, such expenses will be suspended by § 67(g), unless they are allowed under § 67(b). Allowed § 67(b) expenses include interest, taxes, charitable, and § 691(c) income in respect of a decedent estate tax deductions.

5. See IRS Not. 2018-61 in Appendix 5 for more discussion.

G. Termination of Estate or Trust: this is very tricky!

1. **Excess Deductions on Termination of an Estate or Trust--Allowance to Beneficiaries: appear <u>NOT</u> to be allowed under the TCJA.** Section 642(h)(2) allows excess deductions over the last taxable year's income of an estate or trust to be claimed by the beneficiaries who get the entity's property (other than the entity's personal exemptions or charitable contributions) in accordance with Treasury Regulations. Nonetheless, under Treas. Regs. § 1.642(h)-1(b), such deductions are "allowed only in computing taxable income . . . [and are] not allowed in computing adjusted gross income." Since they are miscellaneous itemized deductions, they appear to be disallowed during the 2018-2025 suspension period under new § 67(g).

2. **Net Operating Loss or Capital Loss Carryovers at Termination of Estate or Trust—Allowance to Beneficiaries: Appear Still To Be Allowed Under the TCJA.** Section 642(h)(1) allows net operating loss or capital loss carryovers on the termination of an estate or trust as deductions by the beneficiaries who get the entity's property in accordance with Treasury Regulations. Under Treas. Regs. § 1.642(h)-1(b),

such loss carryovers are taken into account in computing the adjusted gross income of the beneficiaries. Accordingly, they are not miscellaneous deductions, nor are they itemized deductions to the beneficiaries subject to the deduction suspension under new 67(g). Accordingly, they are deductible by the beneficiaries.

3. IRS Not. 2018-61 in Appendix 5 states that § 642(h)(2) excess deductions appear to be included as deductions disallowed under new 67(g). Nonetheless, the notice states that the IRS is studying whether to exercise its discretion in issuing regulations to allow beneficiaries to claim such deductions of an estate or trust when they pass out to the beneficiaries. For related reasons, the same issue presents if the estate and trust beneficiaries are another trust. Presumably that too will be resolved with the same regulations, if and when issued. Likewise, in the instance of decanting, if the decanted trust is treated as having terminated, excess deductions may be lost. Note though, that a couple of private rulings have treated the successor trust as a continuation of the decanted trust.

H. Electing Small Business Trusts ("ESBITs") of S Corporations: Changes Regarding Nonresident Aliens and Charitable Contribution Deductions (Permanent).

1. The TCJA allows a nonresident alien individual to be a beneficiary (or potential beneficiary) of an ESBIT.

2. Charitable contributions recast as deductible under § 170, rather than under § 642(c). Section 642(c) imposes several restrictions on the deductibility of charitable contributions by a trust that are not present in the individual charitable contribution deduction provisions in § 170, including that the contribution must be made from gross income, pursuant to the governing instrument strictly applied, and no excess contribution carryover is allowed. The TCJA moves the deductibility for ESBIT charitable contributions from § 642(c) to § 170, thus allowing carryforwards of excess contributions for up to five years, but applying the individual percentage limitations and substantiation requirements.

I. Income of an estate or trust in case of divorce, etc.: repealed (Permanent). Section 682 used to provide that if one spouse created a grantor trust for the other spouse, after their divorce trust income would not be includable by the grantor-spouse, but instead the beneficiary-spouse would have to include such income he or she is "entitled to receive." That section is now repealed permanently. The same deferred effective date rules apply as in the alimony provisions described above under the "Individual Income Tax Provisions." See IRS Not. 2018-37 in the Appendix for further information.

VI. BUSINESS INCOME TAX PROVISIONS.

A. Duration. In general, the business income tax provisions are "'permanent," but for the 20% pass through businesses deduction in new § 199A described below, which sunsets at the end of 2025.

B. Corporate income tax rate: reduced from 35% to 21% (Permanent). It has been rumored that the new rate was going to be only 20%, but that a tweak was needed in the static estimated revenue numbers to meet the $1.5 trillion budget deficit increase target, so it had to be raised by one percent to 21%.

C. New Qualified Business Income Deduction: 20% Deduction for Certain Pass Through Business Income Under New § 199A (Sunsets). What follows is a brief discussion of this new deduction. There are many complex (and so far uncertain) aspects to qualifications for the deduction. As a result of the decrease in the C corporation income tax rate from 35% to 21%, there was a clamoring to provide similar tax rate relief, if not parity, for pass through business entities, such as partnerships, S corporations, limited liability companies, and sole proprietorships. Keep in mind though that pass through business income is only subject to income taxation at the owner level, while C corporation income generally is taxable at both the corporate and owner levels. The pass through businesses tax relief comes in the form of new § 199A, which provides a 20% deduction for certain pass through entity business income. See the "After Income Tax Effect of Business Entity Distribution" tables in the Appendix 6, which compare the effects of the 21% C corporation income tax rate with the 20% pass through entity deduction across several different taxable income retention/distribution scenarios.

1. Treasury issued proposed regulations on August 8, 2018: Prop. Treas. Regs. §§ 1.199A-1 through 6 and § 1.643(f).

2. The so-called "roach motel" ("you can check in, but you can't check out" (easily)) aspect of business entity form change rules discourages pass through entities from converting to C corporation status to take advantage of the much lower 21% corporate income tax rate and then to switch back to pass through entity status when C corporation status no longer is advantageous.

3. Conversion to C corporation status still may be prudent for:

   a) Entities that are designed to retain, rather than to distribute, taxable income;
   b) Corporations that qualify for § 1202 stock treatment; and
   c) Entities the income of which can be retained until the owner's death to yield tax free basis step up.

VII. GIFT, ESTATE, AND GENERATION SKIPPING TRANSFER TAX PROVISIONS.

A. Duration: changes generally temporary (Sunsets).

B. Base Exemption: doubled from $5 million to $10 million, plus indexed for inflation since 2011 (Sunsets). For clients with substantial wealth, this change creates what may be a short-lived opportunity to "use it or lose it" before the changes expire in 2026 (or earlier if political winds so dictate). It applies to "estates of decedents dying, generation-skipping transfers, and gifts made" after 2017 and before 2026.

C. Inflation Indexing Using "Chained CPI" (Permanent). The effect of the change to "Chained CPI" can be illustrated by the effect on the exemption for 2018. Under the former CPI, the 2018 indexed exemption was expected to have been $11.2 million. Applying

"Chained CPI," the indexed exemption dropped slightly to $11.18 million. See Rev. Proc. 2018-18, § 3.35, in Appendix 2.

D. Maximum Rate: stays at 40%.

E. Annual Exclusion: $15,000 for 2018 (indexed).

F. Annual Exclusion for Noncitizen Spouse: $152,000 (indexed).

G. Deceased Spouse Unused Exemption ("DSUE") Portability: continued.

H. Tax Free Basis Adjustment at Death: continued.

I. Clawback: Critically Important Issue(s). What happens if a taxpayer makes a gift during the 2018-2025 suspension period covered by then-sufficient exemption, the exemption reverts back to $5 million (indexed) in 2026, and then the taxpayer dies sometime in 2026 or later to the extent the lifetime gift exceeds the date of death exemption? Will the gift amount over the death date exemption be added back and taxed on the estate tax return? That is, is the taxpayer's estate at risk now for greater estate taxes for making an excess gift if the exemption later drops below that amount? This issue has come to be known as "clawback." It arises because the procedures for calculating the estate tax take into consideration lifetime gifts in determining the total lifetime, plus death, consumption of the exemption. This issue was also presented in 2012, when the exemption was scheduled to revert back to $1 million from $3.5 million, but was resolved when the 2012 act (signed into law in the early hours of 2013) increased the exemption to $5 million (indexed). Consequently, "clawback" was not addressed definitively then. If the now-doubled exemption is made permanent for 2026 and after, clawback will not have to be addressed under the TCJA.

1. The TCJA added new § 2001(g)(2), which directs the Treasury to issue regulations to address any difference in the basic exemption amount upon gift and upon death.

2. It is expected, although not certain, that such new regulations will not impose "clawback" under the scenario described if the exemption amount at death is less than the exemption amount at the time of lifetime gifts.

3. There are some other wrinkles to "clawback," including what is being called "reverse clawback" and "off the top gifts" and also concerns about how a DSUE amount is to be treated by the surviving spouse. Hopefully, all of those will be addressed favorably by new regulations.

J. Prospects for Full Federal Estate Tax Repeal: mixed.

1. Over the last twenty years, the estate tax exemption has grown from $600,000 to $1 million to $2 million to $3.5 million to $5 million (indexed) and now to $10 million (indexed) through 2025. Does this steep upward progression reveal a long term political strategy of continually reducing the share of federal revenue coming from

estate taxes so that the taxes ultimate repeal will not have a significant adverse effect on federal revenues and thus be more palatable to the populace?

2. Note that even if the estate tax is repealed, the gift tax is likely to be retained because it backstops not just the estate tax (the gift tax discourages lifetime gifts to avoid death taxation), but also the income tax (the gift tax discourages lifetime gifts to generations enjoying lower tax rates than the donor to lower aggregate family income taxes).

3. If the estate tax ultimately is repealed, watch out for the concomitant repeal of IRC § 1014 fair market value basis adjustment at death to be replaced by a complex carryover basis regime.

APPENDIX 1

INDIVIDUAL, ESTATES & TRUSTS FEDERAL INCOME TAX RATE TABLES FOR 2018

BEFORE & AFTER TAX CUTS & JOBS ACT

Before TCJA					After TCJA			
Taxable Income Greater Than					Taxable Income Greater Than			
Filing Status		Estates & Trusts	Tax Rate		Filing Status		Estates & Trusts	Tax Rate
Single	Married Joint				Single	Married Joint		
$-0-	$-0-	N/A	10%		$-0-	$-0-	$-0-	10%
$9,525	$19,050	$-0-	15%		$9,525	$19,050	N/A	12%
$38,700	$77,400	$2,600	25%		$38,700	$77,400	N/A	22%
$93,700	$156,150	$6,100	28%		$82,500	$165,000	$2,550	24%
$195,450	$237,950	$9,300	33%		$157,500	$315,000	N/A	32%
$424,950	$424,950	N/A	35%		$200,000	$400,000	$9,150	35%
$426,700	$480,050	$12,700	39.6%		$500,000	$600,000	$12,500	37%

APPENDIX 2

Table 2018–1
Monthly Yield Curve for January 2018
Derived from January 2018 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
12.0	3.71	32.0	4.12	52.0	4.20	72.0	4.24	92.0	4.26
12.5	3.75	32.5	4.12	52.5	4.21	72.5	4.24	92.5	4.26
13.0	3.78	33.0	4.13	53.0	4.21	73.0	4.24	93.0	4.26
13.5	3.80	33.5	4.13	53.5	4.21	73.5	4.24	93.5	4.26
14.0	3.83	34.0	4.13	54.0	4.21	74.0	4.24	94.0	4.26
14.5	3.85	34.5	4.14	54.5	4.21	74.5	4.25	94.5	4.27
15.0	3.87	35.0	4.14	55.0	4.21	75.0	4.25	95.0	4.27
15.5	3.89	35.5	4.14	55.5	4.21	75.5	4.25	95.5	4.27
16.0	3.91	36.0	4.14	56.0	4.21	76.0	4.25	96.0	4.27
16.5	3.92	36.5	4.15	56.5	4.22	76.5	4.25	96.5	4.27
17.0	3.93	37.0	4.15	57.0	4.22	77.0	4.25	97.0	4.27
17.5	3.95	37.5	4.15	57.5	4.22	77.5	4.25	97.5	4.27
18.0	3.96	38.0	4.15	58.0	4.22	78.0	4.25	98.0	4.27
18.5	3.97	38.5	4.16	58.5	4.22	78.5	4.25	98.5	4.27
19.0	3.98	39.0	4.16	59.0	4.22	79.0	4.25	99.0	4.27
19.5	3.99	39.5	4.16	59.5	4.22	79.5	4.25	99.5	4.27
20.0	4.00	40.0	4.16	60.0	4.22	80.0	4.25	100.0	4.27

26 CFR 601.602: Tax forms and instructions. (Also Part I, §§ 1, 23, 32, 42, 45R, 55, 59, 63, 68, 135, 137, 146, 147, 151, 179, 220, 223, 512, 513, 877A, 911, 2010, 4261, 6039F, 6323, 6334, 6651, 6652, 6695, 6721, 6722.)

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.21 Loan Limits on Agricultural Bonds	147(c)(2)

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes certain sections of Rev. Proc. 2017–58, 2017–45 I.R.B. 489, and supersedes Rev. Proc. 2017–37, 2017–21 I.R.B. 1252, to reflect statutory amendments by An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. 115–97, 131 Stat. 2504 (the Act).

SECTION 2. CHANGES

.01 Section 11001(a) of the Act amends § 1 to provide a temporary modification to the tax rate tables for taxable years beginning after December 31, 2017, and before January 1, 2026. The Act changes the beginning and ending dollar amounts for the brackets, and replaces the existing tax rates with seven new rates: 10%, 12%, 22%, 24%, 32%, 35%, and 37%.

.02 Section 11001(b) of the Act amends § 6695(g) to include due diligence requirements for return preparers with respect to determining eligibility requirements to file as head of household (as defined in section 2(b)) for taxable years beginning after December 31, 2017.

.03 Section 11002 of the Act amends § 1f(3) to provide a permanent cost-of-living adjustment based on the Chained Consumer Price Index for All Urban Consumers (C-CPI-U). Any existing items that are not reset for 2018 will be adjusted for inflation after 2017 based on the C-CPI-U. Items that are reset for 2018 will be adjusted for inflation after 2018 based on the C-CPI-U.

.04 Section 11021 of the Act amends § 63(c)(2) to provide a temporary increase in the basic standard deduction for taxable years beginning after December 31, 2017, and before January 1, 2026. Under § 63(c)(2), the basic standard deduction is: $12,000 for single individuals and married individuals filing separate returns; $18,000 for heads of households; and $24,000 for married individuals filing a joint return and surviving spouses. These amounts will be adjusted for inflation for taxable years beginning after December 31, 2018.

.05 Section 11041 of the Act amends § 151(d) to provide a temporary set dollar amount of $0 for the personal exemption deduction, for taxable years beginning after December 31, 2017, and before January 1, 2026.

.06 Section 11046 of the Act amends § 68 to provide a temporary suspension of the limitation on itemized deductions for taxable years beginning after December 31, 2017, and before January 1, 2026.

.07 Section 11061 of the Act amends section § 2010(c)(3) to provide a temporary increase to $10,000,000 of the estate tax exemption, effective for estates of decedents dying after December 31, 2017, and before January 1, 2026. The $10,000,000 amount is indexed for inflation for taxable years beginning after December 31, 2017.

.08 Section 12003 of the Act amends § 55(d) to provide a temporary increase of the exemption amounts and the phaseout threshold amounts for the individual alternative minimum tax (AMT), for taxable years beginning after December 31, 2017, and before January 1, 2026. The AMT exemption amounts are increased to $109,400 for married taxpayers filing a joint return (half this amount for married taxpayers filing a separate return), and $70,300 for all other taxpayers (other than estates and trusts). The phaseout threshold amounts are increased to $1,000,000 for married taxpayers filing a joint return, and $500,000 for all other taxpayers (other than estates and trusts).

.09 Section 13101 of the Act amends § 179(b) to provide a permanent increase of the maximum amount a taxpayer may expense under § 179(b)(1) to $1,000,000, and of the phaseout threshold amount under § 179(b)(2) to $2,500,000. These amounts will be adjusted for inflation for taxable years beginning after December 31, 2018.

SECTION 3. 2018 ADJUSTED ITEMS AS MODIFIED AND SUPERSEDED

To reflect statutory amendments made by the Act, sections 3.01, 3.03, 3.05, 3.08, 3.09, 3.10, 3.11, 3.14, 3.15, 3.18, 3.19, 3.20, 3.21, 3.24, 3.25, 3.27, 3.29, 3.30, 3.33, 3.34, 3.35, 3.39, 3.42, 3.43, 3.44, 3.46, 3.47, 3.48, 3.51, and 3.52 of Rev. Proc. 2017–58 are modified and superseded to read as follows:

.01 *Tax Rate Tables*. For taxable years beginning in 2018, the tax rate tables under § 1 are as follows:

TABLE 1 - Section 1(a) - Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:	*The Tax Is*:
Not over $19,050	10% of the taxable income
Over $19,050 but not over $77,400	$1,905 plus 12% of the excess over $19,050
Over $77,400 but not over $165,000	$8,907 plus 22% of the excess over $77,400
Over $165,000 but not over $315,000	$28,179 plus 24% of the excess over $165,000
Over $315,000 but not over $400,000	$64,179 plus 32% of the excess over $315,000
Over $400,000 but not over $600,000	$91,379 plus 35% of the excess over $400,000
Over $600,000	$161,379 plus 37% of the excess over $600,000

TABLE 2 - Section 1(b) – Heads of Households

If Taxable Income Is:	*The Tax Is*:
Not over $13,600	10% of the taxable income
Over $13,600 but not over $51,800	$1,360 plus 12% of the excess over $13,600
Over $51,800 but not over $82,500	$5,944 plus 22% of the excess over $51,800
Over $82,500 but not over $157,500	$12,698 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$30,698 plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$44,298 plus 35% of the excess over $200,000
Over $500,000	$149,298 plus 37% of the excess over $500,000

TABLE 3 - Section 1(c) – Unmarried Individuals (other than Surviving Spouses and Heads of Households)

If Taxable Income Is:	*The Tax Is*:
Not over $9,525	10% of the taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$45,689.50 plus 35% of the excess over $200,000
Over $500,000	$150,689.50 plus 37% of the excess over $500,000

TABLE 4 - Section 1(d) – Married Individuals Filing Separate Returns

If Taxable Income Is:	*The Tax Is:*
Not over $9,525	10% of the taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $300,000	$45,689.50 plus 35% of the excess over $200,000
Over $300,000	$80,689.50 plus 37% of the excess over $300,000

TABLE 5 - Section 1(e) – Estates and Trusts

If Taxable Income Is:	*The Tax Is:*
Not over $2,550	10% of the taxable income
Over $2,550 but not over $9,150	$255 plus 24% of the excess over $2,550
Over $9,150 but not over $12,500	$1,839 plus 35% of the excess over $9,150
Over $12,500	$3,011.50 plus 37% of the excess over $12,500

.03 *Adoption Credit.* For taxable years beginning in 2018, under § 23(a)(3) the credit allowed for an adoption of a child with special needs is $13,810. For taxable years beginning in 2018, under § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to $13,810. The available adoption credit begins to phase out under § 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $207,140 and is completely phased out for taxpayers with modified adjusted gross income of $247,140 or more. (See section 3.19 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.05 *Earned Income Credit.*

(1) *In general.* For taxable years beginning in 2018, the following amounts are used to determine the earned income credit under § 32(b). The "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed. The "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out. The "completed phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) at or above which no credit is allowed. The threshold phaseout amounts and the completed phaseout amounts shown in the table below for married taxpayers filing a joint return include the increase provided in § 32(b)(3)(B)(i), as adjusted for inflation for taxable years beginning in 2018.

Number of Qualifying Children				
Item	*One*	*Two*	*Three or More*	*None*
Earned Income Amount	$10,180	$14,290	$14,290	$6,780
Maximum Amount of Credit	$3,461	$5,716	$6,431	$519
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$18,660	$18,660	$18,660	$8,490
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$40,320	$45,802	$49,194	$15,270
Threshold Phaseout Amount (Married Filing Jointly)	$24,350	$24,350	$24,350	$14,170
Completed Phaseout Amount (Married Filing Jointly)	$46,010	$51,492	$54,884	$20,950

The instructions for the Form 1040 series provide tables showing the amount of the earned income credit for each type of taxpayer.

(2) *Excessive Investment Income.* For taxable years beginning in 2018, the earned income tax credit is not allowed under § 32(i)(1) if the aggregate amount of certain investment income exceeds $3,500.

.08 *Low-Income Housing Credit.* For calendar year 2018, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) $2.40 multiplied by the State population, or (2) $2,760,000.

.09 *Employee Health Insurance Expense of Small Employers.* For taxable years beginning in 2018, the dollar amount in effect under § 45R(d)(3)(B) is $26,600. This amount is used under § 45R(c) for limiting the small employer health insurance credit and under § 45R(d)(1)(B) for determining who is an eligible small employer for purposes of the credit.

.10 *Exemption Amounts for Alternative Minimum Tax.* For taxable years beginning in 2018, the exemption amounts under § 55(d)(1) are:

Joint Returns or Surviving Spouses	$109,400
Unmarried Individuals (other than Surviving Spouses)	$70,300
Married Individuals Filing Separate Returns	$54,700
Estates and Trusts	$24,600

For taxable years beginning in 2018, under § 55(b)(1), the excess taxable income above which the 28 percent tax rate applies is:

Married Individuals Filing Separate Returns	$95,550
Joint Returns, Unmarried Individuals (other than surviving spouses), and Estates and Trusts	$191,100

For taxable years beginning in 2018, the amounts used under § 55(d)(3) to determine the phaseout of the exemption amounts are:

Joint Returns or Surviving Spouses	$1,000,000
Unmarried Individuals (other than Surviving Spouses)	$500,000
Married Individuals Filing Separate Returns and Estates and Trusts	$500,000

.11 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax."* For taxable years beginning in 2018, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) $7,600.

.14 *Standard Deduction.*

(1) *In general.* For taxable years beginning in 2018, the standard deduction amounts under § 63(c)(2) are as follows:

Filing Status	*Standard Deduction*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	$24,000
Heads of Households (§ 1(b))	$18,000
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	$12,000
Married Individuals Filing Separate Returns (§ 1(d))	$12,000

(2) *Dependent.* For taxable years beginning in 2018, the standard deduction amount under § 63(c)(5) for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of (1) $1,050, or (2) the sum of $350 and the individual's earned income.

(3) *Aged or blind.* For taxable years beginning in 2018, the additional standard deduction amount under § 63(f) for the aged or the blind is $1,300. The additional standard deduction amount is increased to $1,600 if the individual is also unmarried and not a surviving spouse.

.15 *Overall Limitation on Itemized Deductions.* For taxable years beginning in 2018, the overall limitation on itemized deductions under § 68 does not apply.

.18 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses.* For taxable years beginning in 2018, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above $119,300 for joint returns and $79,550 for all other returns. The exclusion is completely phased out for modified adjusted gross income of $149,300 or more for joint returns and $94,550 or more for all other returns.

.19 *Adoption Assistance Programs.* For taxable years beginning in 2018, under

§ 137(a)(2), the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is $13,810. For taxable years beginning in 2018, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for other adoptions by the employee is $13,810. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $207,140 and is completely phased out for taxpayers with modified adjusted gross income of $247,140 or more. (See section 3.03 of this revenue procedure for the adjusted items relating to the adoption credit.)

.20 *Private Activity Bonds Volume Cap*. For calendar year 2018, the amounts used under § 146(d) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) $105 multiplied by the State population, or (2) $310,710,000.

.21 *Loan Limits on Agricultural Bonds*. For calendar year 2018, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $533,500.

.24 *Personal Exemption*. For taxable years beginning in 2018, the personal exemption amount under § 151(d) is $0.

.25 *Election to Expense Certain Depreciable Assets*. For taxable years beginning in 2018, under § 179(b)(1), the aggregate cost of any § 179 property that a taxpayer elects to treat as an expense cannot exceed $1,000,000. Under § 179(b)(2), the $1,000,000 limitation is reduced (but not below zero) by the amount the cost of § 179 property placed in service during the 2018 taxable year exceeds $2,500,000.

.27 *Medical Savings Accounts*.

(1) *Self-only coverage*. For taxable years beginning in 2018, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than $2,300 and not more than $3,450, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $4,550.

(2) *Family coverage*. For taxable years beginning in 2018, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $4,550 and not more than $6,850, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $8,400.

.29 *Treatment of Dues Paid to Agricultural or Horticultural Organizations*. For taxable years beginning in 2018, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is $165.

.30 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns*.

(1) *Low cost article*. For taxable years beginning in 2018, for purposes of defining the term "unrelated trade or business" for certain exempt organizations under § 513(h)(2), "low cost articles" are articles costing $10.80 or less.

(2) *Other insubstantial benefits*. For taxable years beginning in 2018, under § 170, the $5, $25, and $50 guidelines in section 3 of Rev. Proc. 90–12, 1990–1 C.B. 471 (as amplified by Rev. Proc. 92–49, 1992–1 C.B. 987, and modified by Rev. Proc. 92–102, 1992–2 C.B. 579), for the value of insubstantial benefits that may be received by a donor in return for a contribution, without causing the contribution to fail to be fully deductible, are $10.80, $54.00, and $108, respectively.

.33 *Tax Responsibilities of Expatriation*. For taxable years beginning in 2018, the amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by $711,000.

.34 *Foreign Earned Income Exclusion*. For taxable years beginning in 2018, the foreign earned income exclusion amount under § 911(b)(2)(D)(i) is $103,900.

.35 *Unified Credit Against Estate Tax*. For an estate of any decedent dying in calendar year 2018, the basic exclusion amount is $11,180,000 for determining the amount of the unified credit against estate tax under § 2010.

.39 *Passenger Air Transportation Excise Tax*. For calendar year 2018, the tax under § 4261(b)(1) on the amount paid for each domestic segment of taxable air transportation is $4.10. For calendar year 2018, the tax under § 4261(c)(1) on any amount paid (whether within or without the United States) for any international air transportation, if the transportation begins or ends in the United States, generally is $18.30. Under § 4261(c)(3), however, a lower amount applies under § 4261(c)(1) to a domestic segment beginning or ending in Alaska or Hawaii, and the tax applies only to departures. For calendar year 2018, the rate is $9.10.

.42 *Notice of Large Gifts Received from Foreign Persons*. For taxable years beginning in 2018, § 6039F authorizes the Treasury Department and the Internal Revenue Service to require recipients of gifts from certain foreign persons to report these gifts if the aggregate value of gifts received in the taxable year exceeds $16,076.

.43 *Persons Against Whom a Federal Tax Lien Is Not Valid*. For calendar year 2018, a federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than $1,560, or (2) a mechanic's lienor under § 6323(b)(7) who repaired or improved certain residential property if the contract price with the owner is not more than $7,820.

.44 *Property Exempt from Levy*. For calendar year 2018, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed $9,360. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed $4,680.

.46 *Failure to File Tax Return*. In the case of any return required to be filed in 2019, the amount of the addition to tax under § 6651(a) for failure to file a tax return within 60 days of the due date of such return (determined with regard to any extensions of time for filing) shall not be less than the lesser of $210 or 100 percent of the amount required to be shown as tax on such returns.

.47 *Failure to File Certain Information Returns, Registration Statements, etc.* For returns required to be filed in 2019, the penalty amounts under § 6652(c) are:

(1) for failure to file a return required under § 6033(a)(1) (relating to returns by exempt organization) or § 6012(a)(6) (relating to returns by political organizations):

Scenario	Daily Penalty	Maximum Penalty
Organization (§ 6652(c)(1)(A))	$20	Lessor of $10,000 or 5% of gross receipts of the organization for the year.
Organization with gross receipts exceeding $1,046,500 (§ 6652(c)(1)(A))	$100	$52,000
Managers (§ 6652(c)(1)(B))	$10	$5,000
Public inspection of annual returns and reports (§ 6652(c)(1)(C))	$20	$10,000
Public inspection of applications for exemption and notice of status (§ 6652(c)(1)(D))	$20	No Limits

(2) for failure to file a return required under § 6034 (relating to returns by certain trusts) or § 6043(b) (relating to terminations, etc., of exempt organizations):

Scenario	Daily Penalty	Maximum Penalty
Organization or trust (§ 6652(c)(2)(A))	$10	$5,000
Managers (§ 6652(c)(2)(B))	$10	$5,000
Split-Interest Trust (§ 6652(c)(2)(C)(ii))	$20	$10,000
Any trust with gross receipts exceeding $261,500 (§ 6652(c)(2)(C)(ii))	$100	$52,000

(3) for failure to file a disclosure required under § 6033(a)(2):

Scenario	Daily Penalty	Maximum Penalty
Tax–exempt entity (§ 6652(c)(3)(A))	$100	$52,000
Failure to comply with written demand (§ 6652(c)(3)(B)(ii))	$100	$10,000

.48 *Other Assessable Penalties With Respect to the Preparation of Tax Returns for Other Persons*. In the case of any failure relating to a return or claim for refund filed in 2019, the penalty amounts under § 6695 are:

Scenario	Per Return or Claim for Refund	Maximum Penalty
Failure to furnish copy to taxpayer (§ 6695(a))	$50	$26,000
Failure to sign return (§ 6695(b))	$50	$26,000
Failure to furnish identifying number (§ 6695(c))	$50	$26,000
Failure to retain copy or list (§ 6695(d))	$50	$26,000
Failure to file correct information returns (§ 6695(e))	$50 per return and item in return	$26,000
Negotiation of check (§ 6695(f))	$520 per check	No limit
Failure to be diligent in determining eligibility for head of household filing status, child tax credit, American opportunity tax credit, and earned income credit (§ 6695(g))	$520 per return	No limit

.51 *Failure to File Correct Information Returns*. In the case of any failure relating to a return required to be filed in 2019, the penalty amounts under § 6721 are:

(1) for persons with average annual gross receipts for the most recent three

taxable years of more than $5,000,000, for failure to file correct information returns are:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6721(a)(1))	$270	$3,275,500
Corrected on or before 30 days after required filing date (§ 6721(b)(1))	$50	$545,500
Corrected after 30th day but on or before August 1 (§ 6721(b)(2))	$100	$1,637,500

(2) for persons with average annual gross receipts for the most recent three taxable years of $5,000,000 or less, for failure to file correct information returns are:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6721(d)(1)(A))	$270	$1,091,500
Corrected on or before 30 days after required filing date (§ 6721(d)(1)(B))	$50	$191,000
Corrected after 30th day but on or before August 1 (§ 6721(d)(1)(C))	$100	$545,500

(3) for failure to file correct information returns due to intentional disregard of the filing requirement (or the correct information reporting requirement) are:

Scenario	Penalty Per Return	Calendar Year Maximum
Return other than a return required to be filed under §§ 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, or 6050L (§ 6721(e)(2)(A))	Greater of (i) $540, or (ii) 10% of aggregate amount of items required to be reported correctly	No limit
Return required to be filed under §§ 6045(a), 6050K, or 6050L (§ 6721(e)(2)(B))	Greater of (i) $540, or (ii) 5% of aggregate amount of items required to be reported correctly	No limit
Return required to be filed under § 6050I(a) (§ 6721(e)(2)(C))	Greater of (i) $27,290, or (ii) amount of cash received up to $109,000	No limit
Return required to be filed under § 6050V (§ 6721(e)(2)(D))	Greater of (i) $540, or (ii) 10% of the value of the benefit of any contract with respect to which information is required to be included on the return	No limit

.52 *Failure to Furnish Correct Payee Statements.* In the case of any failure relating to a statement required to be furnished in 2019, the penalty amounts under § 6722 are:

(1) for persons with average annual gross receipts for the most recent three taxable years of more than $5,000,000, for failure to file correct information returns are:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6722(a)(1))	$270	$3,275,500
Corrected on or before 30 days after required filing date (§ 6722(b)(1))	$50	$545,500
Corrected after 30th day but on or before August 1 (§ 6722(b)(2))	$100	$1,637,500

(2) for persons with average annual gross receipts for the most recent 3 taxable years of $5,000,000 or less, for failure to file correct information returns are:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6722(d)(1)(A))	$270	$1,091,500
Corrected on or before 30 days after required filing date (§ 6722(d)(1)(B))	$50	$191,000
Corrected after 30th day but on or before August 1 (§ 6722(d)(1)(C))	$100	$545,500

(3) for failure to file correct payee statements due to intentional disregard of the requirement to furnish a payee statement (or the correct information reporting requirement) are:

Scenario	Penalty Per Return	Calendar Year Maximum
Statement other than a statement required under §§ 6045(b), 6041A(e) (in respect of a return required under § 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6050L(c) (§ 6722(e)(2)(A))	Greater of (i) $540, or (ii) 10% of aggregate amount of items required to be reported correctly	No limit
Payee statement required under §§ 6045(b), 6050K(b), or 6050L(c) (§ 6722(e)(2)(B))	Greater of (i) $540, or (ii) 5% of aggregate amount of items required to be reported correctly	No limit

SECTION 4. 2018 INFLATION ADJUSTED AMOUNTS FOR HEALTH SAVINGS ACCOUNTS UNDER § 223

Annual contribution limitation. For calendar year 2018, the annual limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $3,450. For calendar year 2018, the annual limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is $6,850.

High deductible health plan. For calendar year 2018, a "high deductible health plan" is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,350 for self-only coverage or $2,700 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $6,650 for self-only coverage or $13,300 for family coverage.

SECTION 5. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes sections 3.01, 3.03, 3.05, 3.08, 3.09, 3.10, 3.11, 3.14, 3.15, 3.18, 3.19, 3.20, 3.21, 3.24, 3.25, 3.27, 3.29, 3.30, 3.33, 3.34, 3.35, 3.39, 3.42, 3.43, 3.44, 3.46, 3.47, 3.48, 3.51 and 3.52 of Rev. Proc. 2017–58.

This revenue procedure also supersedes Rev. Proc. 2017–37.

SECTION 6. EFFECTIVE DATE

.01 *General Rule.* Sections 3.01, 3.03, 3.05, 3.09, 3.10, 3.11, 3.14, 3.15, 3.18, 3.19, 3.24, 3.25, 3.27, 3.29, 3.30, 3.33, 3.34, 3.42, 3.46, 3.47, 3.48, 3.51 and 3.52 of Rev. Proc. 2017–58 are modified and superseded for taxable years beginning in 2018.

.02 *Calendar Year Rule.* Sections 3.08 (low-income housing credit), 3.20 (private activity bonds volume cap), 3.21 (loan limits on agricultural bonds), 3.35 (unified credit against estate tax), 3.39 (passenger air transportation excise tax), 3.43 (persons against whom a federal tax lien is not valid), and 3.44 (property exempt from levy) of Rev. Proc. 2017–58 are modified and superseded for transactions or events occurring during calendar year 2018. Section 4 of this revenue procedure is effective for calendar year 2018.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is William Ruane of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Ruane at (202) 317-4718 (not a toll-free number).

APPENDIX 3

Guidance in Connection with the Repeal of Section 682

Notice 2018-37

SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue regulations providing clarification of the application of the effective date provisions concerning the repeal of § 682 of the Internal Revenue Code (Code) enacted on December 22, 2017, by "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115-97 (Act). This notice also requests comments on whether guidance is needed with respect to the application of §§ 672(e)(1)(A), 674(d), and 677 of the Code to trusts for the benefit of a spouse following a divorce or separation.

SECTION 2. BACKGROUND

Section 71 of the Code as in effect prior to the Act provides rules regarding the tax treatment of alimony and separate maintenance payments, with § 71(a) providing that gross income includes amounts received as alimony or separate maintenance payments. Along with certain restrictions, § 71(b)(1) defines the term "alimony or separate maintenance payment" to mean any payment in cash if such payment is received by (or on behalf of) a spouse under a divorce or separation instrument. Section 71(b)(2) defines the term "divorce or separation instrument" to mean (A) a decree of divorce or separate maintenance or a written instrument incident to such a decree, (B) a written separation agreement, or (C) a decree (not described in former § 71(b)(2)(A)) requiring a spouse to make payments for the support and maintenance of the other spouse.

Section 682 of the Code as in effect prior to the Act provides rules regarding the tax treatment of the income of certain trusts payable to a former spouse who was divorced or legally separated. Section 682(a) provides that there shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for former § 682, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of subtitle A of the Code, be includible in the gross income of such husband. Section 682(a), however, does not apply to any trust income payable under the terms of such decree or agreement or the trust instrument for the support of the husband's minor children.

Section 682(b) provides that, for purposes of computing the taxable income of the trust and the taxable income of a wife to whom § 682(a) applies, such wife shall be considered as the beneficiary specified in part I of subchapter J of chapter 1 of the Code.

Section 7701(a)(17) as in effect prior to the Act provides that, as used in § 682, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of former § 682, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband;" and, if the payments described in former § 682 are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of former § 682, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

Section 11051(b)(1)(B) and (C) of the Act prospectively repeal §§ 71 and 682, and § 11051(b)(4)(A) makes conforming amendments to § 7701(a)(17). Section 11051(c) of the Act provides that the amendments made by § 11051 shall apply to: (1) any divorce or separation instrument (as defined in former § 71(b)(2)) executed after December 31, 2018, and (2) any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by such section apply to such modification.

SECTION 3. TRUSTS TO WHICH SECTION 682 CONTINUES TO APPLY

The regulations will provide that § 682, as in effect prior to December 22, 2017, will continue to apply with regard to trust income payable to a former spouse who was divorced or legally separated under a divorce or separation instrument (as defined in § 71(b)(2)) executed on or before December 31, 2018, unless such instrument is modified after that date and the modification provides that the changes made by § 11051 of the Act apply to the modification.

SECTION 4. REQUEST FOR COMMENTS

Section 672(e)(1)(A) of the Code provides that the grantor of a trust shall be treated as holding any power or interest in such trust held by any individual who was the spouse of the grantor at the time of the creation of such power or interest.

Section 674(a) of the Code provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party (as defined in § 672(b)), or both, without the approval or consent of any adverse party (as defined in § 672(a)). However, § 674(d) provides that § 674(a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of § 674(b)(6) or (7) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument.

Section 677(a) of the Code provides that the grantor of a trust shall be treated as the owner of any portion of a trust, whether or not the grantor is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be distributed to the grantor or the grantor's spouse, or held or accumulated for future distribution to the grantor or the grantor's spouse.

The Treasury Department and IRS request comments on whether guidance is needed regarding the application of §§ 672(e)(1)(A), 674(d), and 677 following a divorce or separation in light of the repeal of former § 682.

Written comments may be submitted by July 11, 2018 to Internal Revenue Service, CC:PA:LPD:PR (Notice 2018-37), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to Notice.Comments@irscounsel.treas.gov (please include "Notice 2018-37" in the subject line). Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2018-37), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. Comments will be available for public inspection and copying.

SECTION 5. CONTACT INFORMATION

The principal author of this notice is Jennifer N. Keeney of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Jennifer N. Keeney at (202) 317-6850 (not a toll-free call).

APPENDIX 4

Guidance on Certain Payments Made in Exchange for State and Local Tax Credits

NOTICE 2018-54

SECTION 1. PURPOSE

This notice informs taxpayers that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to propose regulations addressing the federal income tax treatment of certain payments made by taxpayers for which taxpayers receive a credit against their state and local taxes.

SECTION 2. BACKGROUND

Section 11042 of "The Tax Cuts and Jobs Act," Pub. L. No. 115-97, limits an individual's deduction under § 164 for the aggregate amount of state and local taxes paid during the calendar year to $10,000 ($5,000 in the case of a married individual filing a separate return). State and local tax payments in excess of those amounts are not deductible. This new limitation applies to taxable years beginning after December 31, 2017, and before January 1, 2026.

In response to this new limitation, some state legislatures are considering or have adopted legislative proposals that would allow taxpayers to make transfers to funds controlled by state or local governments, or other transferees specified by the state, in exchange for credits against the state or local taxes that the taxpayer is required to pay. The aim of these proposals is to allow taxpayers to characterize such transfers as fully deductible charitable contributions for federal income tax purposes, while using the same transfers to satisfy state or local tax liabilities.

Despite these state efforts to circumvent the new statutory limitation on state and local tax deductions, taxpayers should be mindful that federal law controls the proper characterization of payments for federal income tax purposes.

SECTION 3. GUIDANCE TO BE ISSUED

The Treasury Department and the IRS intend to propose regulations addressing the federal income tax treatment of transfers to funds controlled by state and local governments (or other state-specified transferees) that the transferor can treat in whole or in part as satisfying state and local tax obligations. The proposed regulations will make clear that the requirements of the Internal Revenue Code, informed by substance-over-form principles, govern the federal income tax treatment of such transfers. The proposed regulations will assist taxpayers in understanding the relationship between the federal charitable contribution deduction and the new statutory limitation on the deduction for state and local tax payments.

SECTION 4. DRAFTING INFORMATION

The principal authors of this notice are Mon Lam and Merrill Feldstein of the Office of Associate Chief Counsel (Income Tax & Accounting). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Ms. Lam or Ms. Feldstein at (202) 317-5100 (not a toll-free call).

APPENDIX 5

Part III - Administrative, Procedural, and Miscellaneous

Clarification Concerning the Effect of Section 67(g) on Trusts and Estates

Notice 2018-61

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue regulations providing clarification of the effect of newly enacted section 67(g) of the Internal Revenue Code (Code) on the deductibility of certain expenses described in section 67(b) and (e) and §1.67-4 of the Income Tax Regulations that are incurred by estates and non-grantor trusts. Section 67(g) was added by "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115-97 (Act), which was enacted December 22, 2017. This notice also requests comments on issues relating to section 642(h)(2) and §1.642(h)-2(a) in light of new section 67(g).

SECTION 2. BACKGROUND

Section 11045 of the Act added section 67(g) to the Code, which generally provides that, notwithstanding section 67(a), no miscellaneous itemized deductions shall be allowed for any taxable year beginning after December 31, 2017, and before January 1, 2026.

Section 61(a) defines gross income as all income from whatever source derived, including (but not limited to) the items listed in sections 61(a)(1) through (15), except as otherwise provided in subtitle A.

Section 62(a) defines the term "adjusted gross income" for purposes of subtitle A as, in the case of an individual, gross income minus the deductions listed in sections 62(a)(1) through (21).

Section 63(a) defines "taxable income" for individuals who itemize their deductions, for purposes of subtitle A, as gross income minus the deductions allowed by chapter 1 (other than the standard deduction).

Section 63(d) defines the term "itemized deductions" for purposes of subtitle A as the deductions allowable under chapter 1 other than (1) the deductions allowable in arriving at adjusted gross income, (2) the deduction for personal exemptions provided by section 151, and (3) the deduction provided in section 199A.

Section 67(a) provides generally that, in the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income.

Section 67(b) defines the term "miscellaneous itemized deductions" for purposes of section 67 as meaning the itemized deductions other than those listed in sections 67(b)(1) through (12).

Section 67(e) provides that, for purposes of section 67, the adjusted gross income of an estate or trust shall be computed in the same manner as that of an individual, except that (1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such estate or trust, and (2) the deductions allowable under sections 642(b), 651, and 661 shall be treated as allowable in arriving at adjusted gross income.

Section 1.67-4(a) states that section 67(e) provides an exception to the 2-percent floor on miscellaneous itemized deductions for costs that are paid or incurred in the administration of an estate or a trust not described in §1.67-2T(g)(1)(i) (a non-grantor trust) and that would not have been incurred if the property were not held in such estate or trust. A cost is subject to the 2-percent floor to the extent that it is included in the definition of miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust, and commonly or customarily would be incurred by a hypothetical individual holding the same property.

Section 1.67-4(b) provides generally that, in analyzing a cost to determine whether it commonly or customarily would be incurred by a hypothetical individual owning the same property, it is the type of product or service rendered to the estate or non-grantor trust in exchange for the cost, rather than the description of the cost of that product or service, that is determinative. It further provides specific examples of costs that will be considered commonly or customarily incurred by individuals and those that will not.

Section 1.67-4(c) provides that, subject to certain exceptions, if an estate or non-grantor trust pays a single fee, commission, or other expense for both costs that are subject to the 2-percent floor and costs (in a more than de minimis amount) that are not, then, except to the extent provided otherwise by guidance published in the Internal Revenue Bulletin, the single fee, commission, or other expense (bundled fee) must be allocated, for purposes of computing the adjusted gross income of the estate or non-grantor trust in compliance with section 67(e), between the costs that are subject to the 2-percent floor and those that are not.

SECTION 3. REGULATIONS TO BE ISSUED ADDRESSING THE EFFECT OF SECTION 67(g) ON CERTAIN ESTATE AND NON-GRANTOR TRUST EXPENSES

Commentators have suggested that new section 67(g) might be read to eliminate the ability of estates and non-grantor trusts to deduct any expenses described in section 67(e)(1) and §1.67-4 for the taxable years during which the application of section 67(a) is suspended. The Treasury Department and the IRS do not believe that this is a correct reading of section 67(g). For the taxable years during which it is effective, section 67(g) denies a deduction for miscellaneous itemized deductions. Section 67(b) defines miscellaneous itemized deductions as itemized deductions other than those listed therein. Section 63(d) defines itemized deductions by excluding personal exemptions, section 199A deductions, and deductions used to arrive at adjusted gross income. Therefore, neither the above-the-line deductions used to arrive at adjusted gross income nor the expenses listed in section 67(b)(1) – (12) are miscellaneous itemized deductions. Section 62(a) defines adjusted gross income of an individual, and section 67(e) provides that the adjusted gross income of a trust or estate is determined in the same way as for an individual, except that expenses described in section 67(e)(1) and deductions pursuant to sections 642(b), 651, and 661 are allowable as deductions in arriving at adjusted gross income. Thus, section 67(e) removes the expenses described in section 67(e)(1) from the category of itemized deductions (and thus necessarily also from the subset of miscellaneous itemized deductions) and instead treats them as above-the-line deductions allowable in determining adjusted gross income under section 62(a). Therefore, the suspension of the deductibility of miscellaneous itemized deductions under section 67(a) does not affect the deductibility of payments described in section 67(e)(1). However, an expense that commonly or customarily would be incurred by an individual (including the appropriate portion of a bundled fee) is affected by section 67(g) and thus is not deductible to the estate or non-grantor trust during the suspension of section 67(a). Nothing in section 67(g) impacts the determination of what expenses are described in section 67(e)(1).

Additionally, nothing in section 67(g) affects the ability of the estate or trust to take a deduction listed under section 67(b). These deductions remain outside of the definition of “miscellaneous itemized deduction.” For example, section 691(c) deductions (relating to the deduction for estate tax on income in respect of the decedent), which are identified in section 67(b)(7), remain unaffected by the enactment of section 67(g)).

The Treasury Department and the IRS intend to issue regulations clarifying that estates and non-grantor trusts may continue to deduct expenses described in section 67(e)(1) and amounts allowable as deductions under section 642(b), 651 or 661, including the appropriate portion of a bundled fee, in determining the estate or non-grantor trust's adjusted gross income during taxable years, for which the application of section 67(a) is suspended pursuant to section 67(g). Additionally, the regulations will clarify that deductions enumerated in section 67(b) and (e) continue to remain outside the definition of “miscellaneous itemized deductions” and thus are unaffected by section 67(g).

SECTION 4. REQUEST FOR COMMENTS CONCERNING A BENEFICIARY'S ABILITY TO CLAIM EXCESS DEDUCTIONS PURSUANT TO SECTION 642(h)

The Treasury Department and the IRS are aware of some concerns that the enactment of section 67(g) will affect a beneficiary's ability to deduct section 67(e) expenses upon the termination of the trust or estate as provided in section 642(h).

Section 642(h) provides that if, on the termination of an estate or trust, the trust or estate has: (1) a net operating loss carryover under section 172 or a capital loss carryover under section 1212, or (2) for the last taxable year of the estate or trust, deductions (other than the deductions allowed under section 642(b) (relating to personal exemption) or section 642(c) (relating to charitable contributions)) in excess of gross income for such year, then such carryover or such excess shall be allowed as a deduction, in accordance with the regulations prescribed by the Secretary, to the beneficiaries succeeding to the property of the estate or trust.

Section 1.642(h)-1(b) provides, in part, that net operating loss carryovers and capital loss carryovers are taken into account when determining adjusted gross income. Therefore, they are above-the-line deductions and thus are not miscellaneous itemized deductions on the returns of beneficiaries. Conversely, §1.642(h)-2(a) provides that if, on the termination of an estate or trust, the estate or trust has for its last taxable year deductions (other than the deductions allowed under section 642(b) (relating to personal exemption) or section 642(c) (relating to charitable contributions) in excess of gross income, the excess is allowed under section 642(h)(2) as a deduction (section 642(h)(2) excess deduction) to the beneficiaries. However, the section 642(h)(2) excess deduction is allowed only in computing the taxable income of the beneficiaries and must be taken into account in computing the items of tax preference of the beneficiaries. Therefore, a section 642(h)(2) excess deduction is not used in computing the beneficiaries' adjusted gross income and is treated as a miscellaneous itemized deduction of the beneficiaries. See sections 63(d) and 67(b).

The section 642(h)(2) excess deduction may include expenses described in section 67(e). As previously discussed, prior to enactment of section 67(g), miscellaneous itemized deductions were allowed subject to the restrictions contained in section 67(a). For the years in which section 67(g) is effective, miscellaneous itemized deductions are not permitted, and that appears to include the section 642(h)(2) excess deduction. The Treasury Department and the IRS are studying whether section 67(e) deductions, as well as other deductions that would not be subject to the limitations imposed by sections 67(a) and (g) in the hands of the trust or estate, should continue to be treated as miscellaneous itemized deductions when they are included as a section 642(h)(2) excess deduction. Taxpayers should note that section 67(e) provides that appropriate adjustments shall be made in the application of part I of subchapter J of chapter 1 of the Code to take into account the provisions of section 67.

The Treasury Department and the IRS intend to issue regulations in this area and request comments regarding the effect of section 67(g) on the ability of the beneficiary to deduct amounts comprising the section 642(h)(2) excess deduction upon the termination of a trust or estate in light of sections 642(h) and 1.642(h)-2(a). In particular, the Treasury Department and the IRS request comments concerning whether the separate amounts comprising the section 642(h)(2) excess deduction, such as any amounts that are section 67(e) deductions, should be separately analyzed when applying section 67. Written comments may be submitted by U.S. Postal Service to Internal Revenue Service, CC:PA:LPD:RU (Notice 2018-61), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044, or by hand delivery (between the hours of 8:00 am to 4:00 pm) to CC:PA:LPD:RU (Notice 2018-61), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224.

Comments may also be submitted by email to Notice.Comments@irscounsel.treas.gov. Comments submitted by email should include Notice 2018-61 in the subject line as well as in the body of the email. Comments will be available for public inspection and copying.

SECTION 5. EFFECTIVE DATE

This notice is effective July 13, 2018. Estates and non-grantor trusts may rely on this notice for taxable years beginning after December 31, 2017.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Meghan M. Howard of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Howard at (202) 317-5279 (not a toll-free number).

APPENDIX 6

AFTER INCOME TAX EFFECT OF BUSINESS ENTITY DISTRIBUTION OF 100% OF NET INCOME TO INDIVIDUAL OWNER IN TOP BRACKET & SUBJECT TO NET INVESTMENT INCOME TAX

	C Corporation	Pass Through, Disregarded Entity & Sole Proprietorship
Entity Taxable Income	$100,000	$100,000
Entity Federal & State (5%) Income Taxes	($26,000)	($-0-)
Net Entity Income After Income Tax	$74,000	$100,000
Individual Federal & State (5%) Income Taxes	($21,312)	($45,800)
Net Cash to Individual Owner	$52,688	$54,200

AFTER INCOME TAX EFFECT OF BUSINESS ENTITY DISTRIBUTION OF <u>50%</u> OF NET INCOME TO INDIVIDUAL OWNER IN TOP BRACKET & SUBJECT TO NET INVESTMENT INCOME TAX

	C Corporation	Pass Through, Disregarded Entity & Sole Proprietorship
Entity Taxable Income	$100,000	$100,000
Entity Federal & State (5%) Income Taxes	($26,000)	($-0-)
Net Entity Income After Income Tax	$74,000	$100,000
50% Distribution to Owner	$37,000	$50,000
Individual Federal & State (5%) Income Taxes	($10,656)	($45,800)
Net Cash to Owner	$26,344	$4,200
Entity Retained Cash Plus Net Cash to Owner	$63,344	$54,200

AFTER INCOME TAX EFFECT OF BUSINESS ENTITY DISTRIBUTION OF <u>NO</u> NET INCOME TO INDIVIDUAL OWNER IN TOP BRACKET & SUBJECT TO NET INVESTMENT INCOME TAX

	C Corporation	**Pass Through, Disregarded Entity & Sole Proprietorship**
Entity Taxable Income	$100,000	$100,000
Entity Federal & State (5%) Income Taxes	($26,000)	($-0-)
Net Entity Income After Income Tax	<u>$74,000</u>	<u>$100,000</u>
No Distribution to Owner	$-0-	$-0-
Individual Federal & State (5%) Income Taxes	$-0-	($45,800)
Net Cash to Owner	<u>$-0-</u>	<u>$45,800</u>
Entity Retained Cash Plus Net Cash to Owner	<u>$74,000</u>	<u>$54,200</u>

AFTER INCOME TAX EFFECT OF BUSINESS ENTITY DISTRIBUTION OF 100% OF NET INCOME TO INDIVIDUAL OWNER IN TOP BRACKET & SUBJECT TO NET INVESTMENT INCOME TAX, PLUS § 199A DEDUCTION

	C Corporation	Pass Through, Disregarded Entity & Sole Proprietorship
Entity Taxable Income	$100,000	$100,000
Entity Federal & State (5%) Income Taxes	($26,000)	($-0-)
Net Entity Income After Income Tax	$74,000	$100,000
100% Distribution to Owner	$74,000	$100,000
Less: § 199A 20% Deduction	N/A	($20,000)
Individual Federal & State (5%) Income Taxes	($21,312)	($36,640)
Net Cash to Owner	$52,688	$63,360

AFTER INCOME TAX EFFECT OF BUSINESS ENTITY DISTRIBUTION OF 50% OF NET INCOME TO INDIVIDUAL OWNER IN TOP BRACKET & SUBJECT TO NET INVESTMENT INCOME TAX, PLUS § 199A DEDUCTION

	C Corporation	Pass Through, Disregarded Entity & Sole Proprietorship
Entity Taxable Income	$100,000	$100,000
Entity Federal & State (5%) Income Taxes	($26,000)	($-0-)
Net Entity Income After Income Tax	$74,000	$100,000
50% Distribution to Owner	$37,000	$50,000
Less: § 199A 20% Deduction	N/A	($20,000)
Individual Federal & State (5%) Income Taxes	($10,656)	($36,640)
Net Cash to Owner	$26,344	$13,360
Entity Retained Cash Plus Net Cash to Owner	$63,344	$63,360

AFTER INCOME TAX EFFECT OF BUSINESS ENTITY DISTRIBUTION OF NO NET INCOME TO INDIVIDUAL OWNER IN TOP BRACKET & SUBJECT TO NET INVESTMENT INCOME TAX, PLUS § 199A DEDUCTION

	C Corporation	**Pass Through, Disregarded Entity & Sole Proprietorship**
Entity Taxable Income	$100,000	$100,000
Entity Federal & State (5%) Income Taxes	($26,000)	($-0-)
Net Entity Income After Income Tax	$74,000	$100,000
Less: § 199A 20% Deduction	N/A	($20,000)
No Distribution to Owner	$-0-	$-0-
Individual Federal & State (5%) Income Taxes	($-0-)	($36,640)
Net Cash to Owner	$-0-	($36,640)
Entity Retained Cash Plus Net Cash to Owner	$74,000	$63,360

COMBINED EFFECTIVE TAX RATES OF BUSINESS ENTITY & OWNER (IN TOP TAX BRACKET) TAXATION OF BUSINESS ENTITY INCOME & SUBJECT TO NET INVESTMENT INCOME TAX

	C Corporation	Pass Through, Disregarded Entity & Sole Proprietorship
Business Entity Distribution of:		
- Without § 199A Deduction:		
100% of Net Income	47.3%	45.8%
50% of Net Income	36.7%	45.8%
-0-% of Net Income	26%	45.8%
- With § 199A Deduction:		
100% of Net Income	N/A	36.64%
50% of Net Income	N/A	36.64%
-0-% of Net Income	N/A	36.64%