Updated as of: December 18, 2017

TAX CUTS AND JOBS ACT
2017 YEAR-END AND POST YEAR-END PLANNING IDEAS

The TCJA is currently proceeding through Congress, with votes set this week. The TCJA appears to be the most sweeping tax legislation that would be enacted in the past several decades, so it carries a number of tax planning ideas in its wake.

This document is intended to identify both (1) the major year-end planning ideas that can be implemented over the remaining weeks of 2017 to take advantage of the expected changes to the Tax Code, and (2) the post-year planning that taxpayers should start considering now but may not need to execute on immediately.

Please click on link for an analysis of the House GOP Tax Cuts Job Act
this will also be updated on our Website in the next few days. www.Hjerpecpa.com

INDIVIDUAL TAX PLANNING

Background

Under the TCJA, it is expected that rates will be lowered either directly or through widened brackets while many deductions will be repealed or taxpayers will cease itemizing deductions. Thus, most planning items for individuals involve deferring income into 2018 and accelerating deductions into 2017. However, the benefit of some deductions will be limited if the taxpayer is subject to Alternative Minimum Tax (AMT) or if the item will put the taxpayer in AMT.

Year-End Individual Tax Planning Ideas

* **Accelerate 2017 State and Local Taxes**

Make all state and local tax payments due for the 2017 tax year by the end of 2017 - including income taxes, real property taxes, personal property taxes, sales tax, etc. These may not be deductible if paid in 2018 or the taxpayer may not be itemizing in 2018 because of the increased standard deduction. You may need to evaluate any processes necessary to make advance payments of certain taxes. Further, taxes are generally only deductible by a taxpayer to the extent the payment represents a good faith estimate of the tax. Check with your local property tax body to determine if you are allowed to pay your 2018 property taxes early, they each have different rules. Cash flow is key, but if possible this may be the one time in tax history to do it early.

* **Accelerate 2018 State and Local Taxes**

There is a question as to whether the payment of 2018 taxes in 2017 is deductible in 2017 (i.e., paying a 2018 estimated tax payment in December 2017).The IRS does not have direct guidance on this matter and the strength of a position is currently being evaluated. Several commentators have weighed in concluding that this deduction is not supported by current law. However, to the extent that cash flow is not an overriding concern, taxpayers should consider making these payments because they will certainly not be able to take advantage of it if the position is determined to be viable after December 31, 2017 but payments were not made. Still, taxpayers must be made aware that such payment does not guarantee a 2017 deduction, especially if a tax filing position of sufficient strength cannot be supported or if subsequent guidance from the IRS prevents the deduction.

Any taxpayer entertaining this planning idea should take caution to ensure that the payments are made specifically for 2018 taxes and not for 2017 taxes with the intent to carry them into 2018. The IRS may disallow a deduction for excess 2017 payments citing a lack of good faith when estimating the 2017 tax liability or applying the tax-benefit rule to require recognition of income in 2018 which would mitigate much, if not all, of the benefit. The payment of 2018 taxes might avoid the tax-benefit rule because the 2018 taxes paid in 2017 are not truly refundable during 2018- they are only potentially refundable when the 2018 tax return is filed in 2019. Further, it is not clear how much of a future tax liability can be paid in 2017 and still be considered deductible.

* **Maximize and Accelerate Medical Expenses in 2017**

Accelerating and maximizing medical expenses in 2017 will both bunch deductions into a year where claiming itemized deductions is more likely (given the increasing standard deduction).

* **Accelerate Charitable Contributions**

If a taxpayer is more likely to claim the increased standard deduction in 2018 but will itemize in 2017, accelerating charitable contributions into 2017 will ensure that some benefit is obtained.

* **Accelerate Charitable Contributions for College Athletic Seats**

The TJCA would eliminate the current 80% deduction for charitable contributions required to be made to a school for the right to purchase tickets to athletic events. These contributions should be accelerated into 2017 to ensure at least 80% deductibility.

* **Accelerate Mortgage Interest Payments**

To the extent that any mortgage interest has accrued by year-end, make the payment by the end of the year. This is most common with mortgages where payments are due the 1st of each month where the January 1, 2018 payment can be accelerated to December 31, 2017.

* **Accelerate Employee Business Expenses and Miscellaneous Itemized Deductions**

The TCJA proposes the repeal of employee business expenses as well as many other itemized deductions and for-AGI deductions. To the extent that the taxpayer is eligible for any of these items, accelerate and bunch expenses into 2017 to either maximize the deduction or the chance that a certain pool of deductions would exceed the 2% AGI threshold for miscellaneous itemized deductions.

* **Defer Income Recognition**

In general, the widening of tax brackets and marriage penalty relief will result in more income being subject to lower rates in 2018. Taxpayers should evaluate where they stand in the current bracket structure compared to the proposed brackets and consider deferring income into 2018.This may be done through having employers push final paychecks or year end bonuses into 2018, deferring distributions from retirement plans, not selling ordinary income assets until 2018, etc. However, the deferral of employment compensation may be difficult to achieve since it may run counter to the business owner's goal of maximizing deductions in 2017.

Post Year-End Individual Tax Planning Ideas

* **Have More Kids!**

Additional children would qualify for the enhanced child tax credit.

The attached tax briefing is also on our website. It is labeled House GOP Tax Cuts Job Act on the home page located at www.hjerpecpa.com.

BUSINESS TAX PLANNING

The TCJA is also expected to significantly reduce the tax burden on most businesses regardless of their form. As a result of lower tax rates, the value of deductions and other tax attributes in later years will be reduced.

The legislation is also expected to modify certain deductions for businesses. Some credits will also be repealed either directly or through alterations of the AMT which those credits cannot offset.

Overall, given that the effective rate on business income will be decreased for most taxpayers, most planning items for businesses revolve around deferring income into 2018 and accelerating deductions into 2017.

Year-End Tax Planning

* Depreciation

Significant changes are proposed for depreciation rules including an increase in bonus depreciation to 100% and a significant increase in §179 expense. The 100% bonus depreciation rules would apply to assets both acquired and placed in service after September 27, 2017. To the extent that assets can be placed in service before rates decrease, the increased deductions can save taxes. This is true whether the asset is only eligible for 50% expensing or if it could qualify for the increased 100% expensing.

However, there may be reverse tax planning for real estate acquisitions. The TCJA would decrease the depreciable life of acquired/constructed real estate to 25 years and reduce the life of qualified improvement property to 10 years. It would also liberalize the bonus depreciation and §179 expensing rules with respect to certain real property. Therefore, it may be more beneficial to place some real estate property in service in 2018 rather than 2017. However, this will depend on a detailed analysis of the taxpayer's benefits under current law and the taxpayer's assumptions used to determine the net present value of tax savings.

* Net Operating Loss

Beginning in 2018, NOL carrybacks would no longer be permitted. All NOLs would have to be carried forward but even then could only offset up to 80% of future income. Therefore, even if losses exist in 2017 but there is income in 2015 and 2016 that additional losses could offset, maximizing the NOL through the various strategies discussed here could not only provide for a permanent rate benefit by offsetting income in prior years taxed at higher rates but would also create significant net present value savings by permitting an immediate utilization on a carryback rather than an uncertain and less lucrative carryforward.

* Business Interest Expense

The plan would limit the deduction for business interest expense to the sum of business interest income plus 30% of the adjusted taxable income. The limitation would apply both to C corporations and pass-through entities. Exceptions would exist for certain small businesses. To the extent that any pending transaction would result in a significant amount of interest expense being recognized in the foreseeable future, closing that transaction in 2017 could be advisable.

Post Year-End Tax Planning

* Pension Plan Payments

The payment of pension plan and other qualified retirement plan payments follows the same general planning as the rest of the tax accounting method considerations discussed above. However, it is worthy of its own separate item here because taxpayers have extreme flexibility to decide upon the payments that they make into qualified pension plans and when those payments are deductible. As a result, this can often be both the easiest and most impactful tax planning item in a period of decreasing tax rates. Generally, a taxpayer simply needs to make a payment by September 15, 2018 and report that payment on the 2017 pension plan return in order to deduct that amount in 2017. To the extent that rates decrease significantly in the subsequent year, businesses should consider using excess cash or borrowed cash to increase pension plan funding to obtain permanent tax rate arbitrage benefits. However, consideration must also be given to the ceiling on deductible pension plan contributions for that year and the long-term cash flow ramifications of this planning if the excess payments do not directly reduce future funding obligations in the short-term to a significant enough degree.

* **Depreciation**

Depreciation planning items are discussed above but one significant depreciation planning item that can still be accomplished after year-end is the performance of a cost segregation study or fixed asset analysis. These studies can help to identify assets that may be eligible for additional depreciation that was not previously claimed including real estate that may have personal property components, qualified property improvements that might not have claimed bonus depreciation, qualified leasehold or restaurant property that may be entitled to shorter lives, or personal property with special shorter class lives that are not being utilized. All of these opportunities can often be accomplished using automatic accounting method changes after year-end.

* **Business Interest Expense**

As discussed above, businesses may have limitations to interest expense deductions going forward. To the extent that a business is projecting that it will face this limitation, consideration should be given to alternative arrangements that may be more tax efficient (i.e., not result in interest income being taxes while no interest deductions are able to be claimed). This is particularly true for related party debt. Alternative arrangements may include restructuring existing debt as preferred equity that has similar economics and legal rights to debt but may even provide the effect of a deduction to the business through allocations of income.

- **Entity Choice**

If corporate tax rates decrease substantially while pass-through business income rates decrease at a slower rate, it will cause C corporations to look more attractive than they have been historically. However, all of the other considerations that go in to entity choice decisions will not change. It is likely that even though C corporations may look more attractive than they did before, there will still be many cases where a pass-through structure is more advantageous when all factors are considered. Still, a more thorough analysis will likely be required for most flow-through businesses to ensure that the current structure still meets their current needs.

STATE AND LOCAL TAXPLANNING

While the TCJA does not have direct impacts on state and local taxes, the residual impacts of changes to adjusted gross income and taxable income will have far reaching effects on state and local taxes. However, the specific impact will depend on how/whether each state adopts the Internal Revenue Code and whether states decouple from various provisions such as enhanced bonus depreciation and the pass-through business income deduction, among other items.

State and local tax implications will certainly be a very fluid area for an extended period of time after any federal legislation is enacted. Taxpayers will likely have to begin considering 2018 estimated tax payments long before there is clarity on the application of TCJA to particular states.

The attached tax briefing is also on our website. It is labeled House GOP Tax Cuts Job Act on the home page located at www.hjerpecpa.com

Sincerely,

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