

TCJA Cautions and Reminders

P.L. 115-97 (12/22/17)

An Act

To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

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5/17/19

Guidance for the Tax Cuts and Jobs Act (Public Law 115-97 (12/22/17))

List is in the order presented in JCX-67-17 (12/18/17) - <https://www.ict.gov/publications.html?func=startdown&id=5053>
 Text of P.L. 115-97 - <https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.pdf>
 Conference Report for H.R. 1 - <https://www.congress.gov/115/crpt/hrpt466/CRPT-115hrpt466.pdf>
 Joint Committee on Taxation Bluebook (JCS-1-18 (12/20/18)) - <https://www.ict.gov/publications.html?func=startdown&id=5152>
 Technical Corrections bill proposed by Rep. Brady 1/2/19 + [JCT Explanation](#) (JCX-1-19; 1/2/19)
 IRS Tax Reform Website - <https://www.irs.gov/tax-reform>
 TIGTA, [Status of the Office of Chief Counsel's Issuance of Tax Cuts and Jobs Act Guidance](#), 5/14/19 – lists past and future TCJA guidance projects
 FTB Conformity Reports (California does not conform to most TCJA provisions; we are waiting for legislative action to possibly conform to some):

- FTB's Report on Federal Income Tax Changes – 2017 - <https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/2017-051618.pdf>
- Additional [information](#) from FTB on non-conformity to change to 708 on technical termination of a partnership (July 2018).
- [FTB information](#) on the TCJA transition tax of Section 965 which California does not conform to.

+ slides

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	Guidance
	INDIVIDUALS <ul style="list-style-type: none"> • IRS Pub 5307, Tax Reform: Basics for Individuals and Families for 2018 • New postcard size 1040 and its six new schedules (no 1040A or 1040EZ for 2018) + link to all forms, instructions and publications; IRS explanation of new forms for 2018 + IRS 5 Facts + IRS summary of the 6 new schedules • Relief for under-withholding and estimated tax payments for 2018 – IR-2019-03 (1/16/19) and Notice 2019-11 (1/16/19). Per the IRS: "This waiver is limited to individuals whose total withholding and estimated tax payments equal or exceed eighty-five percent of the tax shown on the return for the 2018 taxable year." (rather than usual 90% threshold) In Notice 2019-25, the IRS lowered the 85% to 80% (also see IR-2019-55 (3/22/19)). • Relief for farmers and fisherman under 6654, by changing the March 1 filing date to April 15 - Notice 2019-17 (2/28/19) and IR-2019-24 (2/28/19). California will provide similar relief (FTB, 3/8/19); check your state. 				

Key to following table: # column is just for reference in using this table.
 P = Permanent; T = Temporary (generally 2018 through 2025)

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TCJA Observations of Filing Season and Today's Conference

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First TCJA Filing Season Frustrations and Queries

1. Issue: evolving understanding of how the TCJA rules were supposed to work as filing season progressed.
 - a. IRS issued guidance throughout filing season – and software providers integrated it into the software during filing season, and as preparers informed them of issues with the way rules were being interpreted.
 - b. Returns prepared in February most likely did not incorporate PMTA 2019-01 and some IRS interpretations issued later in the filing season or even after April 15.
2. When we have a better grasp of 199A and what rentals qualify for the deduction next filing season, will our clients question us on why we didn't know what we were doing this year?
3. How will the SALT limitations, mortgage interest limitations, income thresholds in Silicon Valley vs. most of the rest of the country that affect ability to use some of the TCJA benefits affect the Gen Xers motivation to seek home ownership and family formations and even wealth accumulation goals over the coming years?

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TCJA – Select International Changes

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International Changes Affecting Individuals

Impact

- Revising forms, instructions and publications
- Updating systems and programming
- Issuing legal guidance
- Collaborating with tax partners
- Providing education and outreach to taxpayers
- Providing training to IRS employees

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Global Intangible Low-Taxed Income (GILTI)

TCJA Added IRC §951A

U.S. shareholder of any CFC must include their global intangible low-taxed income in a manner similar to how they include Subpart F income, every year.

Form 8992 for calculation of GILTI

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Deduction for FDII and GILTI

TCJA Added IRC §250.

Per Proposed Regs (REG 104464-18), a U.S. individual shareholder of a CFC who makes an election under IRC 962 may be eligible for a deduction of 50 percent of their GILTI inclusion amount.

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Sourcing Rule for Self-Made Inventory

TCJA Amended IRC §863(b).

Source of income from sales of inventory is entirely based on the place of production.

Rule with respect to sales attributable to an office or other fixed place of business in the U.S. was unchanged.

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30-day requirement for Subpart F

TCJA Amended IRC §951.

Eliminated 30-day requirement.

A U.S. shareholder is subject to U.S. tax on the CFC's Subpart F income, even if the U.S. shareholder does not own stock in the CFC for an uninterrupted period of 30 days or more during the year.

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Definition of U.S. shareholder

TCJA Amended IRC §951.

Definition of “U.S. shareholder” includes any U.S. person who owns 10 percent or more of the total value of shares of all classes of stock of a foreign corporation.

Foreign Tax Credit Baskets

TCJA Amended IRC §904.

Separate income category is allowed for non-passive GILTI.

Disallows any carryover or carryback of foreign tax credits to or from the GILTI income category.

Treatment of gain or loss on the sale of a partnership interest

AJCA Amended IRC §864.

Gain/loss from sale/exchange of a partnership interest is effectively connected with a U.S. trade or business to the extent that the transferor would have had effectively connected gain/loss had the partnership sold all its assets at fair market value as of the date of the sale or exchange.

Transferee must withhold 10% of sale/exchange, unless the transferor certifies as not a NRA

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Bonus Depreciation

- What are we doing about leasehold improvements?
- Is a technical correction coming?

Meals/Entertainment

- Client accounting and efficiencies
- California does not Conform to 100% limitation



Communicating with Clients

- Asking questions
- Documenting responses
- Tax positions
- Planning and Opportunities
- Billing



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EXCESS BUSINESS LOSSES AND BUSINESS INTEREST DEDUCTION LIMITATIONS

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EXCESS BUSINESS LOSSES

- New for 2018 (technically for TY's after 12/31/17 and before 1/1/26)
- Applies (ultimately) to individuals, estates and trusts.
- In a nutshell, allows a net maximum amount of \$250,000 (for 2018) / \$255,000 (for 2019) of most net business losses to be deducted on the individual's tax return for the year.
- MFJ returns have double the above-referenced limits (\$500,000 for 2018 and \$510,000 for 2019)
- Any excess losses are simply treated as an NOL (subject to the new NOL rules – i.e., 20-year carryforward, subject to the new 80% of modified taxable income limitation).

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COMPLIANCE MATTERS

- Business losses subject to this rule include not only losses derived by the taxpayer directly (i.e., sole proprietorships), but also from pass-through entities (i.e., partnerships and S corporations).
- Form 461 is used to report excess business loss situations.

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CALIFORNIA DOES NOT IMPOSE THE EXCESS BUSINESS LOSS LIMITATIONS

- Due to California's static IRC conformity date of 1/1/15, and with no passed legislation to adopt IRC Sect. 461(I), California does not impose an excess business loss limitation rule.



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BUSINESS INTEREST DEDUCTION LIMITATIONS – SECT. 163(J)



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OVERVIEW

- Applies to most business-related interest expenses.
- The limitation is imposed at the business-entity level.
- Applicable to tax years beginning after 12/31/17.
- Does NOT apply to small businesses (i.e., avg. gross receipts (over prior 3 years) of \$25M or less (\$26M or less for 2019)).



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STANDARD FORMULA ON MAXIMUM AMOUNT OF CURRENT YEAR DEDUCTION

- **30% of adjusted taxable income** (see next slide for details) +
- **Business interest income** +
- **Any floor plan financing (most commonly in financing of car inventory by dealers)**

..... This is normally the maximum amount of business-related debt you can deduct in the current tax year.

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ADJUSTED TAXABLE INCOME (ATI) - FOR 2018 TAX YEAR

Business-related taxable income, not including any:

- 1) NOL deduction
- 2) Business interest expense
- 3) Business interest income
- 4) Most cost recovery deductions (i.e., depreciation, amortization or depletion)
- 5) Any QBI (Sect. 199A) deductions

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COMPLIANCE NOTES

- Form 8990 normally required if:
 - 1) There is a current year business interest expense;
 - 2) Disallowed business interest expense carryforward; or
 - 3) Current year or prior year excess business interest expense

Major *exceptions* from this limitation and 8990 filing : (1) Small business taxpayer (see earlier slide); (2) Electing real property trade/business; (3) Electing farming business or (4) Certain utility companies

Also note that if a pass-through entity is not required to file Form 8990 because it is a small business taxpayer, but a partner or shareholder is required to file Form 8990, the pass-through entity may be requested to provide certain information so that the partner or shareholder can complete their return.

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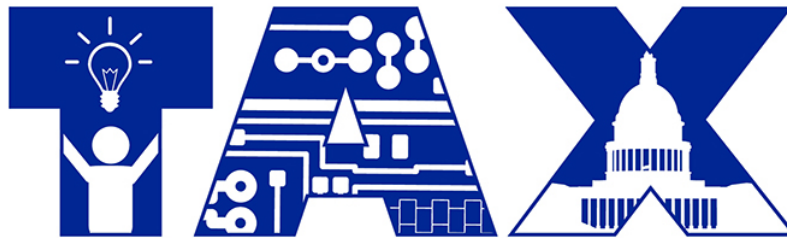
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CALIFORNIA DOES NOT CONFORM TO SECT. 163(J)

- Due to California's static IRC conformity date of 1/1/15, and with no passed legislation to adopt IRC Sect. 163(j), California does not impose a general limitation on the deductibility of business-related interest expense.



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IRS-SJSU Small Business Tax Institute TCJA Cautions & Reminders

May 30, 2019

Vicki L Mulak, EA, CFP®

California Nonconformity to TCJA

- Many taxpayers no longer itemize for federal purposes, but still need to itemize for California
 - California standard deduction is significantly less for all filing statuses
- California deductibility of Schedule A amounts no longer matches to federal

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California Nonconformity to TCJA

- **Home acquisition indebtedness**
 - Federal threshold might be \$750k, unless grandfathered
 - CA threshold remains at \$1 million
- **Home equity debt**
 - Federal law no longer allows
 - CA still allows deductibility on \$100k

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Federal Home Office Deduction Complexities (Form 8829)

- Real estate taxes for home office deduction impacted by SALT limitation have to be adjusted to **line 17, “Excess real estate taxes”**
- Interest on acquisition indebtedness, which is limited on Schedule A, is adjusted to **line 16, “Excess mortgage interest”**

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Section 199A Deduction for Rentals

- Application of safe harbor detailed in **Rev-Proc 2019-07** not that easily applied to scenarios
- Software requires “penalty of perjury” statement that taxpayer qualifies for real estate safe harbor

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Unisex Form 1040

- 6-page format on “half-sheets” is not as workable as compared to 2-page format
- Taxpayers don’t recognize it or understand it
- Not always that transparent as to how line totals were calculated

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TJCA Tips and Cautions

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Relevance of Effective Date of Regulations

Look to the regulations including preamble for information on effective date.

- Some proposed regs might be “reliance” regs – ck preamble and reg.

IRS allowed to make regulations retroactively effective per §7805(b) -----→

Also consider effective date of statute and *Argo Sales* case -----→

IRC §7805(b) RETROACTIVITY OF REGULATIONS

(1) IN GENERAL Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

- (A) The date on which such regulation is filed with the Federal Register.
- (B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.
- (C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

(2) EXCEPTION FOR PROMPTLY ISSUED REGULATIONS Paragraph (1) shall not apply to regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which the regulation relates.

(3) PREVENTION OF ABUSE The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) CORRECTION OF PROCEDURAL DEFECTS The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) INTERNAL REGULATIONS The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

(6) CONGRESSIONAL AUTHORIZATION The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

(7) ELECTION TO APPLY RETROACTIVELY The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(8) APPLICATION TO RULINGS The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

Argo Sales Company v. Comm'r., 105 TC 86 (1995)

Tax Court denied taxpayer's position that they did not have to follow something in a regulation because it wasn't effective yet because the court said the rule was in the statute (even though not as explicitly as laid out in the regulations); and the statute was effective for the year involved.

Involved whether §481(a) adjustment was part of a §1374 built-in gain.

More from *Argo Sales* case

Per court: "The absence of regulations does not relieve us of the duty of interpreting our tax laws. While it has been stated in the context of a regulation applied retroactively by the Commissioner that "if the interpretation of the statute embodied in the regulation is correct, one must conclude that the statute has meant the same thing all along, with or without the regulation", *Butka v. Commissioner*, 91 T.C. 110, 128 (1988), *affd.* 886 F.2d 442 (D.C. Cir. 1989), that does not mean that where a regulation is *not* applied retroactively that the statute has *no* meaning prior thereto without the regulation. It simply falls on us to interpret the statute without the aid of a regulation."

If get state or local tax refund – Rev. Rul. 2019-11 (3/29/19)

Example	Non-income taxes	State income taxes	Other itemized deductions	State income tax refund	How much is taxable in 2019	Explanation
1	\$4,000	\$5,000	\$5,000	\$1,500	\$1,500	Actual tax less than \$10,000 so rec'd benefit of entire deduction. So, entire refund taxable.
2	\$5,000	\$7,000	\$5,000	\$750	\$0	Actual tax of \$11,250; no benefit for \$1,250 which exceeds refund.
3	\$5,000	\$6,000	\$5,000	\$1,500	\$500	Total actual tax of \$9,500. So \$500 provided benefit relative to \$10K originally claimed.
4	\$4,250	\$6,000	\$2,500	\$1,000	\$500	If state income taxes only \$5,000, would have claimed std deduction of \$12,000

Examples are from Rev. Rul. 2019-11 of single individual for 2018.
<https://www.irs.gov/pub/irs-drop/rr-19-11.pdf>

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TCJA Favorable Methods for Small Businesses

§448 increased to \$25 million, adj for inflation

- Also see §447 for farming.

§263A new exception for small as defined in §448

§471(c) new exception for small as defined in §448

§460(e) for certain construction contracts – bumped to \$25 million (from \$10 million)

Effective date:

Tax years beginning after December 31, 2017.

Note: Same definition used for exception to §163(j) business interest expense limitation.

Small Business Definition

Gross receipts test of old §448(c) is modified

- Average annual gross receipts for prior 3 years is now \$25 million or less.
 - Prior year exception removed (before, if ever crossed \$5 million threshold of §448, were forever prohibited from using cash or hybrid).
 - Inflation adjusted amount for 2019 is \$26 million.
- See existing special rules for aggregation, short tax years, etc.
 - §448(c) and 1.448-1T(f)(2)(ii)
- For taxpayers other than corp or p/s, gross receipts test applied as if each trade or business of such taxpayer were a corporation or partnership.

Small Business Caution

§§448, 263A, 471 and 460(e) small business exemption includes:

“in the case of any taxpayer (other than a **tax shelter** prohibited from using the cash method under §448(a)(3) for any tax year)” ...

Tax Shelter under §448(d)(3)

Refers to §461(i)(3)

(A) any *enterprise* (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having the authority to regulate the offering of securities for sale [see more at §448(d)(3)]

(B) any *syndicate* (within the meaning of 1256(e)(3)(B)),

- LLC with over 35% of losses allocable to limited entrepreneurs is likely a tax shelter in year it has loss.

(C) any *tax shelter* (as defined in §6662(d)(2)(C)(ii))

- A partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

Also see Reg. 1.448-1T(b).

Balancing Work & Personal Life

1. Make time on your calendar for:
 - Yourself
 - Your Family
2. Manage Client Expectations
 - Start during tax season
3. Say “NO”
 - You don’t have to take every “problem” that walks through the door.
 - 30 minutes “FREE”
4. Get something done!
 - Don’t get stuck in “busy work”



MissionEAs.org



<http://www.sjsu.edu/taxinstitute/materials/2019smallbusinessmaterials/index.html>

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