

February 12, 2018

The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Dear Acting Commissioner Kautter:

On behalf of the National Association of Enrolled Agents (NAEA), which represents the interests of over 53,000 enrolled agents, I write to provide our input on guidance priorities in light of the recently-passed Tax Cuts and Jobs Act (TCJA). As tax experts who prepare tax returns as well as provide advice and represent taxpayers, we are on the front lines of tax administration and frequently explain and interpret tax code provisions to our clients. We are well placed to provide practical, common sense observations.

While we acknowledge a number of areas—such as the Section 199A, qualified business income deduction and application of the new small business accounting changes—need swift Treasury guidance, we believe those matters will be well covered by our professional brethren. We instead focus on three items affecting a broad scope of individual taxpayers: the \$10,000 state and local tax cap, mortgage interest changes, and business meals and entertainment costs.

Allocation of state and local taxes for purposes of the \$10,000 cap

The TCJA allows an individual itemized deduction for the aggregate state and local property and income taxes (or sales taxes in lieu of income taxes) up to \$10,000 (\$5,000 MFS) under IRC Section 164(b).

- For taxpayers with a combined total of state and local property and income taxes above \$10,000, we wonder whether IRS will establish allocation or ordering rules between property taxes and income or sales taxes. A state income tax refund from a prior year is includible in the taxable income in the year received, and taxpayers naturally will be inclined to use property taxes to meet the \$10,000 cap.
- Taxpayers with net investment income (NII) benefit from using the state income taxes they pay in the computation to reduce NII. Under prior law, that full amount was taken on Schedule A and an allocation was made to the portion appropriate for NII reduction. If a taxpayer has state and local income taxes in excess of \$10,000 or uses up the entire \$10,000 cap with real property taxes, can they still use the full amount of state and local income taxes as an offset to NII under the new law?
- The IRS should consider providing guidance on defining *ad valorem* versus sales taxes.

Deductibility of home equity loans

Under the new law, a taxpayer's qualified residence interest deduction is limited to acquisition indebtedness of no more than \$750,000. While the prior acquisition debt limitations are grandfathered for acquisition indebtedness incurred before December 15, 2017, the deduction for interest on home equity indebtedness is suspended until tax year 2026.

- IRS will need to clarify Section 163(h)(3), which provides that equity loans used to construct, reconstruct or improve a personal residence is defined as acquisition indebtedness. The suspension of the deduction for home equity indebtedness may leave taxpayers under the impression that they will no longer be able to deduct a second loan used for these purposes.
- Do the existing interest-tracing rules still apply for a taxpayer taking a home equity loan when a portion of the loan is used for other purposes, such as business or investment?

Meals and entertainment costs

The TCJA repeals the deduction for entertainment, amusement, or recreation that is directly related to (or associated with) the active conduct of the taxpayer's trade or business.

Under the new law, expenses associated with providing any qualified transportation fringe benefits to employees of the taxpayer, and except as necessary for ensuring the safety of an employee, any expense incurred for providing transportation for commuting expenses, are also no longer allowed.

Taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business (*e.g.*, meals consumed by employees on work travel) and the new law expands this 50 percent limitation to expenses of the employer associated with providing food and beverages to employees through an eating facility that meets requirements for *de minimis* fringes and for the convenience of the employer.

- Does the 50 percent deduction limitation of food and beverages on premises extend to water, coffee and tea and other *de minimis* services for both customers and employees?
- Similarly, while we believe the 50 percent deduction applies to the costs of a break or lunch room, it would be helpful to confirm that and also address whether it applies to the cost of operating a company cafeteria for the benefit of the employer?

More broadly, employees need to understand the two percent miscellaneous itemized deduction for unreimbursed business expenses is gone, but that reimbursements may still be tax free as long as their employer uses an accountable plan. Employers should also be reminded (or made aware) of the distinctions between accountable plans and nonaccountable reimbursement plans and the requirements for accountable plans.

We believe the more complex aspects of the new law require formal guidance. At the same time, we appreciate that some guidance may be provided via FAQs or other less formal means. To that end, we urge the agency to leverage its partners as soon as possible on the issues we have highlighted. If taxpayers

(and tax professionals) are not educated, we should expect unpleasant (or catastrophic) surprises in early 2019 when taxpayers start seeing the full impacts of TCJA.

Thank you for considering the guidance priorities of the National Association of Enrolled Agents. We look forward to continuing this discussion.

Sincerely,

A handwritten signature in black ink, appearing to read 'RK', with a long horizontal flourish extending to the right.

Robert Kerr
Executive Vice President
National Association of Enrolled Agents

cc: Ms. Carol Campbell, Director, Return Preparer Office
Ms. Nina Olson, National Taxpayer Advocate
Mr. Stephen Whitlock, Director, Office of Professional Responsibility