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Dave DuVal • Dec. 07, 2018

As tax practitioners, we wear many hats: tax aficionado, document sorter, government form translator, timekeeper, empathetic ear, and counselor. For practitioners, one hat that will be well-worn by the end of the 2018 tax season is that of the navigator. There is a plethora of information (and more pointedly, misinformation) about the Tax Cuts and Jobs Act of 2017 (TCJA) that taxpayers are taking as gospel and applying to their 2018 tax situation.

One of these misconceptions is that alimony is no longer deductible for anyone. Many taxpayers who normally take an income adjustment for alimony paid may be pacing the floor at night, bracing for a higher tax bill that may never come. Others may have lulled themselves into a false sense of security, believing that, with the reduced tax rates and increased standard deduction, a large 2018 refund is in their future, and as such, they do not need to make their fourth quarter estimated tax payment or adjust their withholding. Like any good navigator, we need to anticipate and map-out any upcoming turns that may unintentionally divert taxpayers this tax season.

Below is a list of taxpayer misconceptions and examples of misinformation you may encounter during the upcoming tax season:

The tax changes in TCJA are permanent. Many taxpayers may assume that the tax changes within TCJA are permanent. We all know that means "permanent" until changed by Congress. Some of the business provisions ***are*** permanent. However, for the majority of the individual provisions, the changes became effective after January 1, 2018, and are set to expire after December 31, 2025. While Congress has introduced potential tax legislation for the "lame duck" session, making the individual changes

gross income. It will be crucial communicating to our clients that states may or may not have conformed to the federal changes, and it is still important to continue to retain documentation on certain deductions that may have been eliminated at the federal level but still apply at the state level. Retaining the documentation may result in lower state taxes, thereby easing the sting of losing the deductions on the federal return.

Alimony paid is no longer deductible and alimony received is no longer included in income. Since TCJA changed the alimony provisions listed in Code Section 215, many taxpayers may assume that alimony received is no longer includable in income and alimony paid is no longer deductible from total income. However, according to the provisions in TCJA, this is only true for divorce or separation instruments *executed on or after January 1, 2019*. Alimony that is paid pursuant to a divorce or separation agreement executed before January 1, 2019, will still adhere to the alimony rules in place before TCJA. Divorce or separation agreements that were in place before January 1, 2019, and are modified after December 31, 2018, will still follow the old alimony rules unless the modified agreement specifically states it now follows the new rules.

I am no longer subject to the ACA individual shared responsibility payment. Although TCJA reduced the individual shared responsibility payment to $0, it does not take effect until January 1, 2019. This means that taxpayers without health insurance during 2018 will still incur this payment unless they qualify for an exception. And TCJA did not repeal the requirement for taxpayers to pay back any excess Premium Tax Credit received during the year, so taxpayers who received an insurance subsidy through the Marketplace may still be facing a payback amount if their income increased

Personal casualty, theft, and Ponzi scheme losses are still deductible. With the

Hobby losses are still deductible. Whether it's driving for Uber, renting their home on Airbnb or making jewelry to sell to co-workers and friends, many people have a "side gig." If the side gig does not rise to the level of a trade or business, the hobby loss rules will apply. All hobby expenses are no longer deductible, as they were treated as miscellaneous itemized deductions which have been eliminated. Expenses such as mortgage interest and property taxes are deductible up to the amount allowable whether or not a taxpayer has an activity that is not engaged in for profit. Casualty and theft losses surrounding an activity not engaged in profit are not deductible.

Home mortgage interest deduction is deductible on only $750,000 of indebtedness. For taxpayers who live in states where the cost of homes is high, the thought of not being able to deduct all the mortgage interest they were able to previously is a rough blow. However, this is where we can provide a ray of light. Any acquisition indebtedness that originated prior to December 16, 2017, is grandfathered into the $1,000,000 acquisition indebtedness ($500,000 for those who use the Married Filing Separate filing status) and not $750,000 limitation under TCJA. Furthermore, if loans that were established before December 16, 2017, are refinanced after December 15, 2017, the $1,000,000 limit remains, as long as additional debt was not added to the refinanced loan. Keep in mind, if a taxpayer refinances a grandfathered debt after December 15, 2017, and borrows an additional amount of money, even if it is for home improvements, the loan is no longer considered grandfathered in and is subject to the $750,000 limitation.

What about Equity Mortgage Interest? Equity mortgage interest is still deductible, as long as it is used to improve the home. Many taxpayers will be in for a shock when they learn that the mortgage interest paid on their home equity mortgages may no longer be deductible when the proceeds are not used to improve the home. With the passage of TCJA, home equity indebtedness is generally no longer deductible, even if the loan is equal to or less than $100,000, unless the proceeds were used in such a

deduction. Many small business taxpayers are anticipating a big tax break this year due to the new 20% qualified business income deduction. Those small businesses that are organized as C corporations may be wanting to switch to a sole proprietorship or S corporation in order to take advantage of the deduction as fast as possible. Hopefully, these taxpayers will be contacting us first and not an online legal site where they can make the switch themselves. Many small business owners are not aware of the limitations and complexities to this deduction. Furthermore, there may have been very important reasons why a business formed as a C corporation that goes beyond taxes. By switching entities, these reasons may fall by the wayside.

My tax return can be filed on a postcard now, so the tax preparation fees will be lower. Although this is not part of TCJA, the 2018 tax year will debut a new "simplified" Form 1040 that fits on a large postcard. Additionally, Forms 1040A and 1040EZ were eliminated. Some taxpayers will be lulled into a false sense that this means taxes are now simpler, and therefore the fee to prepare the return will be lower. As we know, expensive things can come in small packages. With all the changes courtesy of TCJA and state nonconformity, this tax season may be one of the most complicated we have seen. As such, we will need to educate our clients on this and caution them that the preparation fee may be larger this year.

One thing is for certain about the upcoming tax season – just about every tax return is going to take extra time and care. As such, it may be prudent to schedule longer appointment times with our clients to address the questions, misconceptions, and tax planning for 2019. While meeting with clients, it will be important to set expectations regarding extensions and possibly even amended returns, as there may be many corrected Forms 1098 and 1099, as payment agencies work to comply with the new reporting rules. Whether taxpayers see their 2018 tax situation through a glass that is half empty or half full, we, as tax practitioners, need to be ready to navigate our clients through the brambles of TCJA so that taxpayers can move