TAX AND WEALTH ADVISOR ALERT: SALES TAX COLLECTION IN WISCONSIN STARTS OCTOBER 1ST–ARE YOU READY?

Beginning October 1, 2018, Wisconsin will enforce sales tax collection from out-of-state sellers who sell taxable products and services in Wisconsin even if they have no physical presence in Wisconsin. Previously, Wisconsin could not enforce collection for sellers who sold taxable products and services in Wisconsin but who did not have a physical presence, i.e. through having a store or warehouse in Wisconsin. This allowed many retailers to sell over the Internet without charging sales tax. In theory, Wisconsin residents should have claimed and paid tax on those purchases when they filed their income tax returns each year, but compliance rates by residents (in most states across the country) were abysmal.

Thanks to a recent United States Supreme Court decision, *South Dakota v. Wayfair*, states across the country now can enact laws to enforce collection against sellers whether those sellers have a physical presence in the state or not.

You're likely wondering, is this decision good or bad for my business? If you're a business located in Wisconsin, this decision may help your business. Your competitors may have sold products and services in Wisconsin without charging customers for sales tax, but because you had a physical presence here, you would have charged sales tax. Now, the playing field will be leveled, and both you and your competitor will have to charge sales tax. However, this goes both ways; if you sell products or services in other states where you don't have a physical presence, you may now have to charge sales tax on those sales. You will have to learn the local rules in each state, and charge, collect, and remit sales tax in those states. The administrative burden may seem overwhelming.

The Supreme Court approved an exception for small businesses and businesses doing a small amount of business. The exception applies to those who do not have annual sales of products and services of more than $100,000 in a state or who make less than 200 sales per year in a state. This exception will not apply if the business has a physical presence. States could enact their own exceptions similar to this one discussed by the Court.

While we wait to see how the states will react, we will continue counseling our Wisconsin-based clients to ensure their compliance with out-of-state rules, and we will advise our out-of-state clients to ensure their compliance with Wisconsin sales tax collection–starting October 1st!

TAX AND WEALTH ADVISOR ALERT: SALES TAX RELIEF FOR WISCONSIN CONTRACTORS

Thanks to Wisconsin Senate Bill (SB) 227, contractors working with tax-exempt clients will benefit from a sales tax exemption. Generally, contractors are deemed the final consumers of materials that they incorporate into real property and must pay sales tax on the purchase of those materials. Consequently, exempt clients must purchase those materials directly, or contractors must pass along that expense in the form of a higher contract price. SB 227 now exempts contractors from sales tax when they buy materials for construction projects for tax-exempt organizations or municipal governments.

This legislation reduces administrative burdens for both contractors and exempt entities. Contractors will rely less on related purchasing companies to buy construction materials for exempt entity contracts, and exempt entities should be able to negotiate lower purchase prices with contractors.

The legislation specifies that the purchased construction materials must be incorporated into a "facility," which is defined as "any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility, but does not include a highway, street, or road."

Not all contracts will be exempt under the legislation, such as contracts with the State of Wisconsin and federally recognized Native American Tribes. Contractors and tax-exempt entities should review the law to ensure it applies to their facts.

TAX AND WEALTH ADVISOR ALERT: WHAT SHOULD BUSINESSES KNOW ABOUT THE TAX PLAN?

If you've been following our posts, this is the third installment in our series on the Tax Cuts and Jobs Act, the tax-legislation overhaul passed by Congress and the President at the end of 2017. Previously, we highlighted the most important changes affecting individuals and non-profits. This week, we're discussing big changes affecting businesses claiming deductions. Most people have heard that Congress reduced the corporate tax rate, but people may not

realize that Congress paid for that reduction by changing how businesses claim deductions. We'll discuss some of those changes here.

To start, net operating losses (NOLs) can no longer be carried back to prior tax years, and taxpayers must limit their deduction to 80% of their taxable income instead of 100%. These changes may increase taxable income for businesses each year (relative to what taxable income would have been without this change). The good news is that NOLs may now be carried forward to future tax years indefinitely. So, businesses won't lose the benefit of their NOLs, they just lose the benefit of timing.

For businesses claiming research and development expenditures, they can no longer immediately deduct them. Instead, businesses have to capitalize these costs and deduct them over five years. This means businesses have to reduce their taxable income slowly over time instead of claiming a larger deduction immediately. This will increase taxable income; however, businesses have until 2022 before this rule takes effect.

The Act reduced some businesses' ability to deduct interest expenses. Starting in 2018, businesses must determine the amount of interest they can deduct based on a formula. Luckily for small businesses, Congress created an exception to this limitation. "Small businesses" are those with average annual gross receipts of $25 million or less. You might wonder if partners and S corporation shareholders get around this rule because their businesses pass through taxation–they do not; however partners and S corporation shareholders may be able to carry forward interest expense unused by the partnership or S corporation to future years.

Although not great news, the Act explained the above-mentioned changes relatively clearly. Congress explained another change less clearly, and it's causing disagreement among tax practitioners. Previously, businesses could claim a deduction for meal and entertainment expenses, ranging from 50-100% of those expenses. The Tax Cuts and Jobs Act made several changes to the rules governing this deduction, including eliminating the deduction for entertainment expenses (yes, this means those company Brewers tickets are no longer deductible), reducing the deduction for meals provided to employees at the employer's convenience from 100% to 50%, and *potentially* eliminating the deduction for meals with clients, referral sources, and business prospects. For relationship-based businesses, this latter change may be substantial. Tax practitioners interpreting the plain meaning of the law say those meals with clients, referral sources, and business prospects will not be deductible. Tax practitioners interpreting the intent of the law say those meals will still be deductible because Congress didn't eliminate this deduction on purpose. At this point, the confusion makes it nearly impossible for these businesses to plan for their tax liability in 2018.

On April 2, 2018, the American Institute of CPAs (the AICPA) asked the U.S. Treasury Department and IRS to issue guidance on this issue immediately. Until the Treasury or the

IRS speaks up, businesses taking a conservative approach to tax planning might assume these expenses will not be deductible. As with all changes to the tax code, we will keep an eye out for updates and advise our clients as guidance is released.

TAX AND WEALTH ADVISOR ALERT: WHAT SHOULD NON-PROFITS KNOW ABOUT THE TAX PLAN?

If you've been following our posts, this is the second installment in our series on the tax plan. Previously, we highlighted the most important changes affecting individuals. (Read full article here) This week, we're discussing the most important changes affecting non-profits. Spoiler alert: the tax plan may cause non-profits to see less revenue and owe more tax in the future! Why would Congress disadvantage non-profit organizations, you ask? In most instances, non-profits were collateral damage.

For starters, we discussed in last week's post that Congress doubled the standard deduction, which will benefit some individuals. By doubling the standard deduction, fewer taxpayers will itemize deductions. Because those who claim the standard deduction do not receive a tax break for donations to charity, those taxpayers have less incentive to donate. This means non-profit organizations may see fewer donations coming through the door. All hope is not lost, however, because the tax plan increased the itemized deduction available to those taxpayers who do receive a tax break for donations to charity. However, this may mean non-profits have to push for larger donations from fewer donors.

Not only did Congress reduce the incentive to give to charity each year, but it reduced the incentive to give at death, too. We also discussed in last week's post that the tax plan doubled the amount someone may leave at death estate-tax free (up to $11,200,000 in 2018), which will benefit the wealthiest individuals. Because fewer estates will receive a tax break for donating to charity, it's possible fewer individuals will provide for charitable donations in their estate plans.

If non-profits weren't already panicking, they should take a seat for the next few changes to the tax code. The tax plan tried to curb what some see as excessive compensation by imposing a 21% excise tax on salary and benefits paid to any one employee in excess of $1,000,000. Although $1,000,00 may seem lofty for a non-profit and may seem like an appropriate limit for non-profit employees such as college football coaches, this change will hurt charitable organizations trying to attract talent away from the private sector through

competitive compensation packages. This excise tax may make such compensation packages cost prohibitive.

Further, non-profit organizations may see an increase in the tax they owe on Unrelated Business Taxable Income (UBTI). For those who aren't familiar, the UBTI rules require a non-profit organization to pay tax on income earned through activities unrelated to charitable purpose. Previously, if a non-profit organization engaged in multiple activities unrelated to its charitable purpose, it could offset the gains and losses from those activities against each other, possibly eliminating taxable income. Going forward, non-profits can't offset gains and losses across activities. UBTI will also be increased by certain fringe benefits paid by a non-profit organization to its employees. Again, this will make it more difficult for these organizations to attract talent away from the private sector.

In sum, non-profits should know that they will see a handful of changes to their tax returns, and they won't likely be happy with the changes. These organizations might consider separating operations into different legal entities to avoid the $1,000,000 cap or condensing unrelated activities to avoid the rule against offsetting gains and losses. As of now, we will continue brainstorming creative solutions for our non-profit clients so they can pursue their charitable missions with tax efficiency.

TAX AND WEALTH ADVISOR ALERT: WHAT SHOULD INDIVIDUALS KNOW ABOUT THE TAX PLAN?

I'm sure you've heard the news by now–Congress passed sweeping tax legislation at the end of 2017. These changes to the tax code will affect everyone from hairdressers to private equity fund managers. Everyone now wonders, what do I need to know about the tax plan? Over each of the next several weeks, we will tailor our summary of the tax plan by interest group, providing you with what you need to know based on your interests. This week, we will discuss the most important tax law changes affecting individuals. In the following weeks, we will discuss the changes affecting non-profits, businesses claiming deductions and credits, and businesses considering pass-through or corporate taxation.

When I said this week's post would discuss tax law changes affecting individuals, you probably thought to yourself, doesn't that mean everyone? Yes, it does. Any individual who files an individual income tax return (Form 1040) will see a change on his or her tax return for 2018. You've likely heard about the big-ticket changes–the elimination of many itemized

deductions, the doubling of the standard deduction, and the overall reduction of the tax rate. It's important to note that Congress left unchanged the preferential 20% tax rate for long-term capital gains and qualified dividend income. Also, Congress modified the alternative minimum tax (AMT) system, meaning fewer individuals will be subject to AMT than before.

The tax bill made numerous changes to the deductions available to individuals. For those who itemized in the past, the deductions you once claimed may have been eliminated, like the miscellaneous itemized deduction for tax preparation fees or the deduction for interest paid on home equity lines of credit, or the deductions may have been limited, like the deductions you claimed for property taxes and state and local income taxes (now limited to $10,000 combined). By doubling the standard deduction, many individuals who itemized previously will now claim the standard deduction. Although this sounds like it will cause you to pay more tax, the modification of the tax brackets and reduction in tax rates (such as the top rate changing from 39.6% to 37%), may balance out your tax bill.

For the wealthiest individuals, the tax plan gives your estate a break at death. In 2018, individuals can leave $11,200,000 free of estate, gift, and generation-skipping transfer tax (up from roughly $5,500,000). The other rules affecting the estate and gift tax regime, such as the surviving spouse's ability to use the deceased spouse's remaining exemption, remain unchanged. This means married couples have an exemption of $22,400,000.

Now that we've discussed all the major changes, what changes to the tax code have received less media attention? For starters, the tax plan repealed the deduction for moving expenses and the exclusion from income for moving expenses reimbursed by your employer. These changes will have a negative impact on your tax bill if they apply to you. Alternatively, the tax plan expanded the qualified use of section 529 plan funds (a tax-advantaged savings plan for education expenses) to elementary or secondary public, private, or religious school tuition and eligible expenses. This change will have a positive impact on your tax bill if it applies to you.

For those taxpayers subject to the "kiddie tax" (the regime previously applying the parents' income tax rate to a child's income), they will see a change on their tax return going forward. Now, earned income will be taxed at rates applied to single filers, and unearned income will be taxed at rates applied to trusts and estates. These changes will likely increase the amount of tax owed on a child's income. For those taxpayers borrowing from their retirement plans, the tax plan gives you more time to pay off that balance, potentially saving you income tax.

As you can now glean, the new tax laws are all over the map–some increase the amount of tax you will owe and others decrease it. It's important to note that most of these changes will expire on December 31, 2025. Until then, we'll continue helping clients assess important decisions in light of the new tax code.

DON’T SELL YOURSELF SHORT: EARLY TAX PLANNING TO MAXIMIZE THE SALE OF YOUR BUSINESS

What part of selling a business is most important to sellers? Most would respond that receiving the highest purchase price is most important. At first blush, this makes sense. However, sellers often focus on the number of zeros in the purchase price and ignore the fact that paying a large amount of income taxes will effectively reduce the purchase price. *Really*, sellers hope to walk away with the most cash in their pockets, i.e. the most after-tax proceeds. Sellers can maximize their after-tax proceeds by engaging in tax planning early. Too often, sellers lose out on tax savings by not considering the tax consequences of a sale sooner.

Prior to engaging with a buyer, sellers can identify tax opportunities and risks that affect the purchase price through sell-side due diligence. Generally, buyers prefer to purchase assets (as opposed to stock) and will pay a premium to do so. Sellers prefer stock sales to take advantage of favorable capital gains rates. However, a seller could identify early on that its net operating losses (NOLs) create an opportunity that allows the seller to negotiate a higher purchase price in an asset sale with peace of mind that it can offset its gains with NOLs. Alternatively, if a seller can pass on its NOLs to a buyer through a stock sale, the seller could demand a higher purchase price as the NOLs create value to the buyer by reducing the buyer’s future tax liabilities.

Sellers should also pinpoint tax risks that may drive down the purchase price. For example, a seller may discover any of the following in due diligence: failure to file all required income and sales and use tax returns in all required jurisdictions; use of improper accounting methods; poorly designed compensation plans; and failure to comply with local tax laws and transfer pricing methodologies. Ideally, a seller will identify these issues before a buyer does and correct them before the buyer can knock down the purchase price.

Sellers should negotiate certain “minor” aspects of a transaction earlier. Generally, sellers lose leverage and buyers gain leverage as a transaction proceeds. Sellers would often benefit from negotiating certain terms as early as the letter-of-intent stage of a deal, because these “minor” terms have meaningful tax consequences to the seller. For example, parties usually negotiate purchase price allocation at the very end of a transaction when the seller has much less bargaining power even though the purchase price allocation will directly impact the seller’s bottom line. Also, if not negotiated early on, the seller may have difficulty renegotiating the form(s) of consideration used even though the range of possible forms of

consideration – cash, debt, rollover equity, escrows, earn outs, etc. – creates a range of tax consequences to the seller.

Overwhelmed yet? Most business owners know that differing overall structures create differing tax consequences when selling a business; however, most do not think about the less obvious aspects of a transaction that could have a meaningful impact on the seller's bottom line. By the time many of these tax planning opportunities and risks are identified, the seller has lost the leverage to make meaningful changes. Sellers should engage early in tax planning and sell-side due diligence if they plan to sell a business. Not doing so could leave the seller with a much smaller effective purchase price than expected.

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TAX AND WEALTH ADVISOR ALERT: TAX COURT AFFIRMS DISCOUNT FOR FAMILY PARTNERSHIP

The United States Tax Court is reminding some taxpayers to run their family like a business. In the *Estate of Barbara M. Purdue* decision, the court affirmed the use of discounts in an estate tax dispute involving a family partnership, which was critical to minimizing the estate's tax liability. Most importantly, the court affirmed the use of discounts because the family actually treated the partnership like a business.

While taxpayers and tax practitioners wonder what will come of the IRS's threat to disallow discounts under this method of estate planning, this case is a good reminder to taxpayers that they should follow through with all the steps of their family partnership based estate plan if they want it to be effective. A plan on paper alone will not cut it.

The court in the *Estate of Barbara M. Purdue* cited to several actions taken by the family that proved the family partnership was formed for a nontax reason—to consolidate and manage the family's investments. To start, the partnership formalities were respected: The decedent maintained assets outside of the partnership to pay for living expenses, the partnership had its own bank accounts, and she did not comingle her assets with the partnership's assets. Further, the five children ran the business like a business. The Purdue children held an initial partnership meeting and agreed to hire a professional management advisory firm and to hold annual meetings. At the meetings, the children discussed the family's accounts and assets, approved distributions, heard presentations from the investment manager, and received estate tax planning updates and advice.

All families already managing or considering managing their assets under this type of estate plan should take note; the court barely mentioned the formal planning documents in this case. Although such documents are important, planning does not stop after the documents have been signed.