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TAX CUTS AND JOBS ACT and YEAR END PLANNING IDEAS

INTRODUCTION

The **"Tax Cuts and Jobs Act" (TCJA)** signed into law in late 2017 represents the most substantial tax reform legislation since 1986, and most of its provisions **are first effective in 2018.** For example, **generally starting in 2018,** TCJA: Reduces income tax rates for the vast majority of individual taxpayers; Reduces or eliminates altogether certain itemized deductions; Substantially increases the standard deduction; Expands or modifies certain child and dependent tax incentives; Almost doubles the estate tax exemption; Significantly reduces the corporate income tax rate; Provides for more rapid business write-offs for capital expenditures; Creates a new 20% deduction for owners of certain pass-through business entities (e.g., proprietorships, partnerships, LLCs, S corporations); and much more. It is no overstatement to say that this mammoth tax bill is already having a major impact on many, if not most, businesses and individuals.

We are sending you this letter so you can stay informed on the provisions of TCJA that we believe are having the greatest impact on individual clients. The IRS continues releasing a steady stream of guidance on many of TCJA's more important provisions. Therefore, this letter also includes a discussion of the most important IRS guidance that has been released to date on TCJA.

Caution! Even though the IRS has released guidance on various TCJA provisions, we are still waiting for further IRS clarifications on several important provisions. The IRS continues to release guidance sporadically, but it is impossible to predict the IRS's time table for releasing additional guidance in the future. We closely monitor these IRS releases on an ongoing basis. Please call our firm for the latest IRS notifications and announcements regarding any TCJA provision that we do not address in this letter. Also, **we suggest you call our Firm before implementing any tax planning technique discussed in this letter.** You cannot properly evaluate a particular planning strategy without calculating your overall tax liability with and without that strategy. This letter contains ideas for Federal income tax planning only. **State income tax issues are not addressed.**

The **FIRST PART of this letter** discusses changes and planning ideas we believe will have the most **significant impact on "INDIVIDUALS."** The **LAST PART** discusses changes and planning ideas we believe will have the **greatest impact on "BUSINESSES."**

SELECTED TAX REFORM PROVISIONS PRIMARILY IMPACTING INDIVIDUALS

PLEASE NOTE - Each of the changes below **impacting "Individual"** taxpayers **is first effective in 2018** and will **sunset after 2025** (unless we indicate otherwise)!

CHANGES IN TAX RATES, STANDARD DEDUCTION, PERSONAL EXEMPTIONS, AMT, AND CREDITS

Changes In The Individual Income Tax Rates. Before TCJA, there were seven regular income tax rate brackets as follows: 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%. **Starting in 2018 and through 2025,** TCJA changes the seven tax rate brackets to: 10%, 12%, 22%, 24%, 32%, 35%, and 37%. As compared to prior law, TCJA's regular income tax rates generally reduce the tax rate on comparable levels of taxable income. **Caution!** TCJA **did not change** the **3.8% Net Investment Income Tax** on investment income (e.g., capital gains, dividends, passive income) which will continue to apply once the modified adjusted gross income of married taxpayers filing jointly exceeds $250,000 (exceeds $200,000 if single). **Observation.** Although TCJA lowers the actual tax rates at most income levels (regardless of filing status), the overall tax impact on a particular individual or family as compared to prior law will vary due to other changes in TCJA, such as: an increase in the standard deduction, loss of personal and dependency exemptions, the elimination or limitation of certain itemized deductions, increases in the child tax credit, higher income phase-outs for the child credit, and a new credit for certain qualifying dependents.

Minor Changes In The Tax Rates For Long-Term Capital Gains And Qualified Dividends. Starting in 2018 and through 2025, TCJA retains the same 0%, 15%, and 20% rates that applied before 2018 to long-term capital gains and qualified dividends. Under TCJA, the 0%, 15%, and 20% rates apply at income levels similar to prior law.

Increased Standard Deduction. In an attempt to help simplify the income tax rules for individuals, TCJA substantially increases the standard deduction **starting in 2018 and through 2025.** It is expected that far fewer people will benefit from itemizing their deductions, and therefore their record-keeping will be simplified. TCJA increases the Standard Deduction to the following levels for 2018: Joint Return - $24,000 (up from $13,000); Single - $12,000 (up from $6,500); and Head-of-Household - $18,000 (up from $9,550).

Reduction Of Personal Exemption Deduction Amount To Zero. Starting in 2018 and through 2025, TCJA **reduces the personal exemption deduction** for taxpayers and their dependents **to zero!** Under prior law, the personal exemption amount for 2018 was scheduled to be $4,150. **Observation.** Under prior law, to be a "dependent" of a taxpayer, the person had to be either the Taxpayer's "Qualifying Child" or "Qualifying Relative." Although the personal exemption deduction **is reduced to zero** for dependents, TCJA retains the previous definitions of "Dependent," "Qualifying Child," and "Qualifying Relative," for other purposes, such as: Head-of-Household status; the Earned Income Credit; the American Opportunity Tax Credit; the increased Child Tax Credit; and the new $500 Family Tax Credit (discussed in more detail below).

Enhanced Child Tax Credit. For 2017, subject to certain income phase-out thresholds, individuals were allowed a maximum Child Tax Credit of $1,000 for each **"Qualifying Child"** who **had not reached age 17** by the end of the tax year. **Starting in 2018 and through 2025,** TCJA doubles the maximum Child Tax Credit for each **"Qualifying Child"** to **$2,000,** and also significantly increases the income level where the credit begins phasing out. Under TCJA, the Child Tax Credit begins phasing out as the individual's modified adjusted gross income (MAGI) **exceeds $400,000** on a **Joint Return** (up from the previous $110,000), or **exceeds $200,000 if Single** (up from the previous $75,000). For purposes of TCJA's enhanced Child Tax Credit, the term **"Qualifying Child"** has the same definition as under prior law (i.e., a child who meets certain residency, age, relationship, and support tests). **Tax Tip!** Due to the doubling of the maximum Child Tax Credit (from $1,000 to $2,000) and the substantial increases in the income phase-out thresholds, the Child Tax Credit will be more valuable and more widely available than under prior law. Also, TCJA allows **up to $1,400** (up from $1,000) of the Child Tax Credit to be "refundable." **Please note that** a **"refundable"** credit generally means to the extent the credit exceeds the taxes you would otherwise owe with your individual income tax return without the credit, the IRS will send you a check for the excess.

New $500 Family Tax Credit. TCJA creates a **new non-refundable "Family Tax Credit" of up to $500** for each person the taxpayer could have claimed as a dependent under prior law but who does not qualify for the $2,000 Child Tax Credit. This $500 Family Tax Credit will generally be available for a: **1)** "Qualifying Child" who does not qualify for the $2,000 Child Tax Credit because the child is 17 or older, and **2)** "Qualifying Relative." Generally, **a "Qualifying Relative"** is a person who is not a Qualifying Child but who meets certain residency, gross income, and relationship tests. This $500 Family Tax Credit is added to any other child tax credits and the total credits begin phasing out once a taxpayer's MAGI exceeds $400,000 on a joint return or $200,000 for singles.

Changes To The Alternative Minimum Tax For Individuals. Although TCJA **retains** the **"Alternative Minimum Tax"** (AMT) for individual taxpayers, **starting in 2018 and through 2025** the Act offers new relief by: **1)** Increasing the AMT exemption amounts for joint filers to $109,400 (up from $86,200) and for single filers to $70,300 (up from $55,400), and **2)** Increasing the amount of alternative minimum taxable income where the AMT exemption amount begins to phase out for joint filers to $1 million (up from $164,100) and for single filers to $500,000 (up from $123,100). **Tax Tip!** Due to these and other changes under TCJA, it has been estimated that the number of individuals subject to AMT will drop from approximately 5 million down to a level closer to 200,000.

SELECTED CHANGES TO VARIOUS TAX DEDUCTIONS FOR INDIVIDUAL TAXPAYERS

Impact Of TCJA On Certain "Above-The-Line" Deductions. So-called**"above-the-line"** deductions reduce both your "adjusted gross income" (AGI) and your "modified adjusted gross income" (MAGI), while **"itemized"** deductions (i.e., below-the-line deductions) do **not** reduce either AGI or MAGI. Deductions that reduce your AGI (or MAGI) can potentially generate multiple tax benefits by: **1)** Reducing your taxable income and allowing you to be taxed in a lower tax bracket; **2)** Freeing up deductions (and tax credits) that phase out as your AGI (or MAGI) increases (e.g., Child Tax Credit; Family Tax Credit; certain IRA contributions; certain education credits; adoption credit, etc.); **or 3)** Reducing your MAGI below the income thresholds for the 3.8% Net Investment Income Tax (i.e., 3.8% NIIT only applies if MAGI exceeds $250,000 if married filing jointly; $200,000 if single). Many of the popular **"above-the-line"** deductions were retained under TCJA. For example, the following above-the-line deductions were retained: IRA and Health Savings Account (HSA) contributions; Health insurance premiums for self-employed individuals; Qualified student loan interest; Business expenses for a self-employed individual.

Planning Alert! The deduction for qualified **"Moving Expenses"** was an above-the-line deduction and an employer's reimbursement of an employee's qualified moving expenses was a tax-free fringe benefit. **Starting in 2018 and through 2025,** except for certain active members of the Armed Forces, TCJA generally **suspends** the deduction for **"Moving Expenses"** and also suspends the income exclusion of employer-reimbursed moving expenses.

In addition, currently an individual making qualified alimony payments is allowed an "above-the-line" deduction for the payments and the recipient of the payments must include the payments in income. **Effective for "Divorce or Separation Instruments" executed after 2018,** TCJA **repeals altogether** the deduction for **alimony payments,** and the alimony payments **will no longer be taxable to the payee.** If the divorce instrument is **executed before 2019,** the alimony payments will continue to be deductible by the individual making the payments (and taxable to the recipient) unless the divorce instrument is **modified to expressly provide** that the alimony payments are to be nondeductible to the payer and nontaxable to the recipient. **Planning Alert!** Individuals contemplating divorce must **"execute"** a **"Divorce or Separation Instrument" before 2019** to ensure that any alimony payments will be deductible. Individuals who anticipate receiving alimony payments can avoid being taxed on those payments if they delay **"executing"** any **"Divorce or Separation Instrument"** until **after 2018. Caution!** The repeal of the deduction for alimony payments **has no sunset date!**

New Limitations On Certain "Itemized Deductions." "Itemized Deductions" (i.e., below-the-line deductions) do **not** reduce your AGI or MAGI, but may still provide tax savings if they exceed in the aggregate your Standard Deduction. Since TCJA substantially increases the Standard Deduction, it will take a larger amount of itemized deductions to generate a tax benefit after 2017. However, TCJA not only increases the amount of the Standard Deduction, it also repeals or places new limits on several popular itemized deductions. Consequently, it is anticipated that far fewer individuals will "itemize" deductions after TCJA.

<u>New Limits On The Home Mortgage Interest Deduction.</u> Before TCJA, individuals were generally allowed an itemized deduction for home mortgage interest: **1)** Paid on up to $1,000,000 ($500,000 for married individuals filing separately) of **"Acquisition Indebtedness"** (i.e., funds borrowed to purchase, construct, or substantially improve your principal or second residence and secured by that residence), and **2)** Paid on up to $100,000 of **"Home Equity Indebtedness"** (i.e., funds borrowed that do not qualify as "Acquisition Indebtedness" but are secured by your principal or second residence - regardless of how the funds are used). TCJA makes the following changes:

- **<u>Reduction In Cap For "Acquisition Indebtedness."</u>** For **Acquisition Indebtedness incurred after December 15, 2017,** TCJA reduces the dollar cap for "Acquisition Indebtedness" **from $1,000,000 to $750,000** ($375,000 for married filing separately) for **2018 through 2025.** There are two **"grandfather"** rules that allow you to use the $1,000,000 cap for: **1)** Any "Acquisition Indebtedness" you **incurred on or before December 15, 2017,** or **2)** Any Acquisition Indebtedness that was incurred pursuant to a binding written contract entered into **<u>before</u> December 15, 2017** to close on the purchase of a **"principal residence"** before **January 1, 2018,** provided the individual purchased that residence **before April 1, 2018.** **<u>Caution!</u>** The $750,000 cap that generally applies to "Acquisition Indebtedness" incurred after December 15, 2017 is reduced by the outstanding balance of any grandfathered "Acquisition Indebtedness." **<u>Planning Alert!</u>** Subject to limited exceptions, if a taxpayer incurred Acquisition Indebtedness on or before December 15, 2017 (i.e., grandfathered Acquisition Indebtedness), the refinancing of that indebtedness after December 15, 2017 will still be entitled to the $1,000,000 cap (to the extent of the outstanding balance of the original Acquisition Indebtedness on the date of the refinancing).

  <u>Suspension Of Interest Deduction For "Home Equity Indebtedness."</u> For 2018 through 2025, taxpayers may not deduct interest with respect to "Home Equity Indebtedness" (i.e., up to $100,000 of funds borrowed that do not qualify for "Acquisition Indebtedness" but are secured by your principal or second residence). **<u>Caution!</u>** Unlike the interest deduction for "Acquisition Indebtedness," TCJA **does not grandfather** any interest deduction for **"Home Equity Indebtedness"** that was **outstanding before 2018.** **<u>Planning Alert!</u>** Loans that have been labeled by your lender as a home equity loan, home equity line of credit (HELOC), or second mortgage on a Qualified Residence can be classified as "Acquisition Indebtedness" if the borrowed funds were used to **"substantially improve**" your Qualified Residence that secures the loan. Consequently, the interest on this type of home improvement loan continues to be deductible after 2017, subject to the $1,000,000 or $750,000 loan limitation, whichever applies.

<u>$10,000 Cap On The "State And Local" Tax Deduction.</u> **From 2018 through 2025,** the aggregate itemized deduction for state and local real property taxes, state and local personal property taxes, and state and local income taxes (or sales taxes if elected) is **limited to $10,000** ($5,000 for married filing separately).

However, deductions continue to be allowed for state, local, and foreign **"property"** or **"sales"** taxes, and **foreign income, war profits,** or **excess profits taxes** paid or incurred in carrying on the taxpayer's **trade or business** (e.g., taxpayer's Schedule C, Schedule E, or Schedule F operations) or in connection with the taxpayer's production of income.

Changes To The Charitable Contribution Deduction. TCJA retains the charitable contribution deduction with the following changes: **1) From 2018 through 2025,** the 50% AGI limitation under prior law for cash contributions to public charities and certain other organizations **is increased to 60%,** and **2) Starting in 2018** (with no sunset date), a charitable contribution deduction is no longer allowed for contributions made to colleges and universities in exchange for the contributor's right to purchase tickets or seating at an athletic event (prior law allowed the taxpayer to deduct 80% as a charitable contribution).

Modifications To The Deduction For Qualified Medical Expenses. TCJA generally retains the existing rules for medical expense deductions. However, for **tax years beginning in 2017 and 2018** (for both regular tax purposes and AMT purposes), a taxpayer may deduct medical expenses to the extent they **exceed 7.5%** (down from 10%) of his or her AGI. The 7.5% threshold reverts back to 10% **after 2018.**

Suspension Of Miscellaneous Itemized Deductions Subject To The 2% Phase-Out Threshold. Before TCJA, certain "miscellaneous itemized deductions" were allowed only to the extent they exceeded in the aggregate 2% of the taxpayer's adjusted gross income (AGI). **Starting in 2018,** TCJA not only repeals this 2% reduction rule, but also **suspends through 2025** any deduction for "Miscellaneous Itemized Deductions" that were subject to the 2% of AGI reduction. Two important examples of the expenses that are suspended include: **Un-reimbursed employee business expenses;** and, Expenses attributable to the **management of investments**. **Planning Alert!** Although **"un-reimbursed"** employee business expenses are **not deductible after TCJA,** employee business expenses that are **reimbursed** under the employer's qualified Accountable Reimbursement Arrangement are not taxable to the employee. **Please call our Firm** if you need assistance in establishing or maintaining an Accountable Reimbursement Arrangement.

529 Plans Allowed To Pay K-12 Tuition. Previously, tax-favored distributions from 529 plans could only be made for post-high school education expenses. **Starting in 2018,** TCJA allows 529 plans to pay **up to $10,000 per beneficiary per year** of qualified tuition in connection with the enrollment or attendance of the designated beneficiary at **a public, private, or religious elementary or secondary school.** This provision has no sunset date!

Estate And Gift Tax Exemption Amount Increased To $11,180,000. Effective for individuals dying and gifts made after 2017 and before 2026, TCJA increases the **Basic Unified Exclusion Amount** for estate and gift tax purposes **to $11,180,000 for 2018** (after indexing for inflation). Previously, the exemption amount for 2018 was scheduled to be $5,600,000.

SELECTED MISCELLANEOUS YEAR-END PLANNING CONSIDERATIONS

Consider Increasing Withholding If Facing An Estimated Tax Underpayment Penalty. If you have failed to pay sufficient estimated taxes during 2018 potentially causing an estimated tax underpayment penalty, **increasing your withholdings before the end of 2018** may solve the problem. Any income tax withholding (including withholdings at the end of 2018 from a year-end bonus or an IRA distribution) is generally deemed paid in quarterly installments by each quarter's estimated tax payment due date (i.e., April 17, 2018; June 15, 2018; September 17, 2018; and January 15, 2019). Therefore, amounts **withheld on or before December 31, 2018** may reduce or eliminate your penalty for underpaying estimated taxes. **Planning Alert!** If you take an IRA distribution and have taxes withheld from the distribution to avoid an underestimate penalty, you must roll the distribution (unreduced by the withheld taxes) into an IRA within 60 days of the distribution to avoid paying taxes (and possibly a 10% penalty) on the IRA distribution. You are allowed to take a distribution from an IRA and roll it over into a new IRA, **only one time every 12 months** (beginning with the date you received the distribution). **Caution!** If you used this withholding technique last year by having taxes withheld from an IRA distribution in 2017, **be very careful** that you do not violate the **one-rollover-per-year** rule if you plan to use this technique again this year. Please call our Firm before you initiate an IRA distribution in order to increase your tax withholdings.

The "Premium Tax Credit" Under The Affordable Care Act (ACA) Is Not Repealed. TCJA **did not repeal** the refundable **"Premium Tax Credit" or "PTC"** under ACA for eligible low-and-middle income individuals who purchase health insurance through a State or Federal Exchange. The PTC is generally paid **in advance directly to the insurer** ("Advance Payments").

- **Certain Individuals May Be Required To Pay Back Some Or All Of Their "Advance Payments."** Any individual who received Advance Payments for 2018 **is required to file** a **2018 income tax return** to reconcile: **1)** The amount of the **"actual"** PTC (based on the individual's **"actual"** 2018 Household Income) with **2)** The **Advance Payments** of the PTC (which were determined by the Exchange based on the individual's **"projected"** 2018 Household Income). If an individual's Advance Payments for 2018 exceed the "actual" PTC, the **excess must be paid back** on the **2018 tax return** as an **"additional tax liability."**

SELECTED TAX REFORM PROVISIONS PRIMARILY IMPACTING BUSINESSES

PLEASE NOTE - Unless we indicate otherwise, each of the changes below **have no scheduled sunset date!**

Reduction In Corporate Tax Rate. For tax years **beginning after 2017,** TCJA provides for a flat tax rate of 21% (down from a top 35% rate) for regular "C" corporations. **Planning Alert!** The IRS has confirmed that a fiscal-year C corporation essentially uses a blended tax rate for the fiscal year that includes January 1, 2018. Please call our Firm if you have a fiscal-year C corporation and you need information on determining this blended tax rate for your corporation.

Repeal Of "Corporate" Alternative Minimum Tax (AMT). TCJA **repeals** the **corporate AMT** for **tax years beginning after 2017.** A corporation will be allowed a **refundable credit** for each of the **tax years beginning in 2018, 2019, and 2020** equal to **50%** of unused AMT credit carryovers to those respective years in excess of the regular tax for those years. Any **AMT credit carryover amount** that remains unused after applying it to the **2021** regular tax is 100% refundable. **Planning Alert!** The IRS has also confirmed that a fiscal-year C corporation essentially uses a blended AMT rate for the fiscal year that includes January 1, 2018.

NEW 20% DEDUCTION FOR QUALIFYING INCOME

Overview. One of the most significant and far-reaching provisions under TCJA is the new provision that may allow certain individuals to qualify for a **20% Deduction** with respect to **"Qualified Business Income," "Qualified REIT Dividends,"** and **"Publically-Traded Partnership Income."** This deduction is available **for tax years beginning after 2017 through 2025.** The 20% Deduction does not reduce your adjusted gross income (AGI) or impact your calculation for self-employment tax. Instead, the deduction simply reduces your Taxable Income (regardless of whether you itemized deductions or claim the standard deduction). In other words, the 20% Deduction is allowed **in addition to** your itemized deductions or your standard deduction.

What Type Of Income Qualifies For The 20% Deduction? The following types of income are eligible for the 20% Deduction: Qualified REIT Dividends, Qualified Publically-Traded Partnership Income, and Qualified Business Income. The rules for determining the 20% Deduction for Qualified REIT Dividends and Publicly-Traded Partnership Income are relatively straight forward and, as expected, generally apply only to those who own an interest in a REIT or Publicly-Traded Partnership. However, the 20% Deduction for **"Qualified Business Income"** is expected to have the biggest impact on the greatest number of individual taxpayers, and in certain situations can be complicated and tricky.

<u>Who Could Qualify For The 20% Deduction With Respect To "Qualified Business Income" (QBI)?</u> Taxpayers who may qualify for the 20% Deduction for "Qualified Business Income" (QBI) generally include taxpayers who report certain types of business income as: Individual owners of S corporations and partnerships; Sole Proprietors; Trusts and Estates; and Certain beneficiaries of trusts and estates.

<u>Planning Alert!</u> It is not feasible to provide a thorough discussion of the 20% Deduction with respect to **Qualified Business Income (QBI)** in this letter. However, you need to be aware that if you own an interest in a business operation as a sole proprietor, as an S corporation shareholder, or as a partner in a partnership, you could very likely be a good candidate for the 20% Deduction for QBI. Moreover, although taxpayers at all income levels may qualify for the 20% Deduction, in certain situations it will be easier to qualify for the 20% Deduction for QBI for sole proprietors, S corporation shareholders, or partners in a partnership if their 2018 "Taxable Income" is $157,500 or below ($315,000 or below if filing joint return). Consequently, if you are in this situation, please call our Firm because you may have an additional tax incentive to defer taxable income and/or increase deductions that cause your **Taxable Income for 2018** to **drop below** the **$157,500** or **$315,000 thresholds.**

<u>EXPANDED WRITE-OFFS FOR CERTAIN CAPITAL EXPENDITURES</u>

<u>100% First-Year 168(k) Bonus Depreciation Deduction.</u> For the past several years, one of the most popular tax-favored deductions has been the 168(k) Bonus Depreciation deduction. Before TCJA, the 168(k) Deduction was equal to 50% of the cost of qualifying **new** depreciable assets placed-in-service. TCJA generally increased the 168(k) Bonus Depreciation deduction **to 100%** for qualifying property acquired and placed-in-service **<u>after September 27, 2017</u>** and **before January 1, 2023.** After 2022, the 100% deduction begins phasing out and phases out completely after 2026.

- **<u>TCJA Expands 168(k) Bonus Depreciation To "Used" Property.</u>** Previously, only **"new"** qualifying property was eligible for the 168(k) Bonus Depreciation deduction. For qualifying property acquired and placed-in-service **after September 27, 2017 and before 2027,** TCJA allows the 168(k) Bonus Depreciation to be taken on **"new" or "used"** property. Therefore, under TCJA, property that generally qualifies for the 168(k) Bonus Depreciation includes **"new"** or **"used"** business property that has a depreciable life for tax purposes of **20 years or less** (e.g., machinery and equipment, furniture and fixtures, sidewalks, roads, landscaping, computers, computer software, farm buildings, and qualified motor fuels facilities). **<u>Caution!</u>** Although used property acquired and placed-in-service **after September 27, 2017 and before 2027** may qualify for the 168(k) Bonus Depreciation deduction, used property will not qualify if the taxpayer previously depreciated the property or acquired the property from certain parties related to the taxpayer.

- **Annual Depreciation Caps For Passenger Vehicles Increased.** Vehicles used primarily in business generally qualify for the 168(k) Bonus Depreciation. However, there is a dollar cap imposed on business cars, and also on trucks, vans, and SUVs that have a **loaded vehicle weight of 6,000 lbs or less.** More specifically, these vehicles **acquired and placed-in-service in 2017** and used 100% for business were generally allowed **maximum depreciation of $3,160** ($3,560 for trucks and vans) **for 2017.** Also, these caps were increased by $8,000 if the vehicle otherwise qualified for the 168(k) Bonus Depreciation.

  For qualifying vehicles placed-in-service **after 2017** and used 100% for business, TCJA increases the annual depreciation caps (without regard to the $8,000 increase) as follows: **1st year - $10,000** (up from $3,160 if placed-in-service in 2017); **2nd year - $16,000** (up from $5,100); **3rd year - $9,600** (up from $3,050); **fourth and subsequent years - $5,760** (up from $1,875). Moreover, if the vehicle (new or used) otherwise qualifies for the 168(k) Bonus Depreciation, the first year depreciation cap is increased by $8,000 (i.e., from $10,000 to $18,000). **Planning Alert!** Thus, a vehicle otherwise qualifying for the 168(k) Bonus Depreciation deduction with loaded **Gross Vehicle Weight (GVW) of 6,000 lbs or less** used **exclusively for business** and **placed-in-service in 2018** would be entitled to a **depreciation deduction for 2018 of up to $18,000,** whether purchased new or used. Even better, if the same new or used business vehicle (which is used 100% for business) has a loaded GVW **over 6,000 lbs, 100% of its cost** (without a dollar cap) could be deducted **in 2018** as a **168(k) Bonus Depreciation deduction.**

TCJA Expands The 179 Deduction. Another popular and frequently-used business tax break is the up-front Section 179 deduction ("179 Deduction"). Generally TCJA makes the following changes to the 179 Deduction:

- **Increased Caps.** Effective for **property placed-in-service in tax years beginning after 2017,** TCJA **increases the 179 Deduction limitation** to **$1,000,000** (up from $510,000 for 2017) and increases the **phase-out threshold** to **$2,500,000** (up from $2,030,000 for 2017). These caps are to be indexed for inflation after 2018. Also, the current $25,000 cap for SUVs remains, but will be indexed for inflation beginning in 2019. **Planning Alert!** The $25,000 cap for SUVs applies only for purposes of the 179 deduction. This $25,000 cap **does not apply** with respect to the 100% 168(k) Bonus Depreciation deduction (discussed above) taken on SUVs!

- **Qualifying Property Generally Expanded.** Generally, "depreciable" property qualifies for the **179 Deduction** if: **1)** It is purchased **new or used, 2)** It is "tangible personal" property, **and 3)** It is used primarily for business purposes (e.g., machinery and equipment, furniture and fixtures, business computers, etc.). Off-the-shelf business software also qualifies. **Planning Alert!** Prior law did not allow the 179 deduction for property used in **connection with lodging** (other than hotels, motels, etc.). **Effective for property placed-in-service in tax years beginning after 2017,** TCJA removes this restriction, so the 179 Deduction **is now allowed** for otherwise qualifying property used in connection with lodging (e.g., the cost of furnishing a home that the owner is renting to others would now qualify).

- **<u>New Definition Of “Qualified Real Property.”</u> Before TCJA,** property that qualified for the 179 Deduction also included **“Qualified Real Property”** (i.e., certain leasehold improvements to existing commercial buildings; certain costs of acquiring and/or improving restaurant buildings; and, certain costs of improving the interior of existing buildings used for retail sales). **Effective for property placed-in-service in tax years beginning after 2017,** TCJA changed the definition of **“Qualified Real Property”** (which qualifies for the 179 Deduction) to mean any of the following “improvements” to an existing commercial (i.e., nonresidential) building that are placed-in-service after the commercial building was first placed-in-service: **1) “Qualified Improvement Property”** (certain improvements to the interior of the commercial building), **2) Roofs, 3) Heating, Ventilation, and Air-Conditioning Property, 4) Fire Protection and Alarm Systems,** and **5) Security Systems. <u>Tax Tip!</u>** Determining whether a major repair to a building’s roof should be capitalized or deducted immediately as a repair under the voluminous capitalization regulations, is not always an easy task. Since new roofs with respect to an existing commercial building may now qualify for the Section 179 deduction after 2017, in many situations the “capitalization vs. repair” issue relating to the replacement of roofs should largely be eliminated where the 179 limitations for the year are not exceeded.

<u>OTHER SELECTED MISCELLANEOUS BUSINESS CHANGES</u>

<u>Simplified Accounting For Certain Small Businesses.</u> Generally effective for tax years beginning after 2017, TCJA provides the following accounting method relief for businesses with **Average Gross Receipts (AGRs)** for the **Preceding Three Tax Years** of **$25 Million or Less: 1)** Allows “C” corporations to use the cash method of accounting (before TCJA, a C corporation, other than a personal service C corporation, could use the cash method only if it had AGRs of $5 million or less), **2)** Generally allows a business to use the cash method even if the business has inventories, **3)** Generally allows simplified methods for accounting for inventories, **4)** Generally exempts businesses from applying UNICAP, and **5)** Liberalizes the availability of the completed-contract method. **<u>Planning Alert!</u>** The IRS has released detailed procedures to follow for taxpayers who qualify and wish to change their accounting methods in light of these new relief provisions. Please call our Firm if you think you may qualify, and we will provide you with additional details.

<u>Repeal Of Deductions For Certain Entertainment, Amusement, And Recreation Activities.</u> Effective for amounts paid or incurred after 2017, TCJA repeals all business deductions with respect to: **1)** An activity generally considered to be entertainment, amusement or recreation, **2)** Membership dues with respect to any club organized for pleasure, recreation or other social purposes, or **3)** A facility or portion of a facility used in connection with either of the above. **<u>Planning Alert!</u>** Initially, some questioned whether this new provision also eliminated the current 50% deduction for business meals with customers or clients. Fortunately, the IRS recently announced that taxpayers can still generally deduct 50% of the cost a taxpayer incurs for meals with a business associate (i.e., a current or potential business customer, client, consultant, or similar business contact).

In addition, the IRS stated that a taxpayer could deduct 50% of the cost of food and beverages provided during a nondeductible entertainment activity with a business associate provided the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts.

SELECTED TRADITIONAL YEAR-END PLANNING CONSIDERATIONS FOR BUSINESSES

Salaries For S Corporation Shareholder/Employees. For 2018, an employer generally must pay FICA taxes of 7.65% on an employee's wages up to $128,400 and FICA taxes of 1.45% on wages in excess of $128,400. In addition, an employer must withhold FICA taxes from an employee's wages of 7.65% on wages up to $128,400 and 1.45% of wages in excess of $128,400. Generally, the employer must also withhold an additional Medicare tax of .9% for wages paid to an employee in excess of $200,000. If you are a shareholder/employee of an S corporation, this FICA tax is generally applied only to your W-2 income from your S corporation.
Other income that passes through to you or is distributed with respect to your stock is generally not subject to FICA taxes or to self-employment taxes.

- **Compensation Must Be "Reasonable."** If the IRS determines that you have taken unreasonably "low" compensation from your S corporation, the Service will generally argue that other amounts you have received from your S corporation (e.g., distributions) are disguised "compensation" and should be subject to FICA taxes. **Caution!** Determining "reasonable" compensation for an S corporation shareholder is a case-by-case determination, and there are no rules of thumb for determining whether the compensation is "reasonable." However, recent Court decisions make it clear that the compensation of S corporation shareholders should be supported by independent data (e.g., comparable industry compensation studies), and should be properly documented and approved by the corporation.

S Corporation Shareholders Should Check Stock And Debt Basis Before Year-End. If you own S corporation stock and you think your S corporation will have a tax loss this year, you should contact us as soon as possible. These losses will not be deductible on your personal return unless and until you have adequate "basis" in your S corporation. Any pass-through loss that exceeds your "basis" in the S corporation will carry over to succeeding years. You have basis to the extent of the amounts paid for your stock (adjusted for net pass-through income, losses, and distributions), **plus** any amounts you have personally loaned to your S corporation. **Planning Alert!** If an S corporation anticipates financing losses through borrowing from an outside lender, the best way to ensure the shareholder gets **debt basis** is to: **1)** Have the shareholder personally borrow the funds from the outside lender, and **2)** Then have the shareholder formally (with proper and timely documentation) loan the borrowed funds to the S corporation. It also may be possible to restructure (with timely and proper documentation) an existing outside loan directly to an S corporation in a way that will give the shareholder debt basis, however, the loan must be restructured before the S corporation's year ends. **Caution!** A shareholder cannot get debt basis by merely guaranteeing a third-party loan to the S corporation. **Please do not attempt to restructure your loans without contacting us first.**

<u>Establishing A New Retirement Plan For 2018.</u> Calendar-year taxpayers wishing to establish a qualified retirement plan for 2018 (e.g. profit-sharing, 401(k), or defined benefit plan) generally must adopt the plan **no later than December 31, 2018.** However, a SEP may be established by the due date of the tax return (including extensions), but a **SIMPLE plan** must have been established **no later than October 1, 2018.**

<u>Year-End Accruals To Employees.</u> Generally, if an accrual-basis business accrues year-end compensation to its rank-in-file employees (non-shareholder employees), the accrual must be paid no later than the 15th day of the third month after year-end to be deductible for the year of the accrual. Otherwise, the accrual is not deductible until paid.

<u>Accruals To "Related Parties."</u> Year-end accruals to certain cash-basis recipients must satisfy the following rules in order for an accrual-basis business to deduct the accruals. **These rules apply to fiscal year as well as calendar year businesses:**

- **Regular "C" Corporations.** If a C corporation accrues an expense (e.g., compensation, interest, etc.) to a cash basis stockholder owning **more than 50%** (directly or indirectly) of the company's stock, the accrual is not deductible by the corporation until the **"day"** it is includable in the stockholder's income.

- **S Corporations And Personal Service Corporations.** If your S corporation or personal service C corporation accrues an expense to any shareholder (regardless of the amount of stock owned), the accrual is not deductible until the **day** it is includable in the shareholder's income.

- **Partnerships, LLCs, LLPs.** If your business is taxed as a partnership, its accrual of an expense to **any owner** will not be deductible until the **day** it is includable in the owner's income.

- **Other Related Entities.** Generally, an expense accrued by one related partnership or corporation to another **cash-basis** related partnership or corporation is not deductible until the **day** it is includable in the cash-basis entity's income.

<u>FINAL COMMENTS</u>

The **Tax Cuts And Jobs Act Of 2017** is mammoth in its scope and reach, and we have attempted to discuss only selected provisions that we believe will have the greatest impact on the largest number of our clients. If you have heard of a provision in TCJA that we did not address in this letter (or if you want additional information on a topic we did discuss), please contact us. In addition, please call us before implementing any planning ideas discussed in this letter, or if you need additional information. **Note!** The information contained in this material represents a general overview of selected provisions in the **Tax Cuts And Jobs Act Of 2017** and should not be relied upon without an independent, professional analysis of how any of the items discussed may apply to a specific situation.

Disclaimer: Any tax advice contained in the body of this material was not intended or written to be used, and cannot be used, by the recipient for the purpose of promoting, marketing, or recommending to another party any transaction or matter addressed herein. The preceding information is intended as a general discussion of the subject addressed and is not intended as a formal tax opinion. The recipient should not rely on any information contained herein without performing his or her own research verifying the conclusions reached. The conclusions reached should not be relied upon without an independent, professional analysis of the facts and law applicable to the situation.