More fun with the Tax Cuts and Jobs Act

The Tax Cuts and Jobs Act is an outstanding example of the law of unintended consequences. Here's the latest.

New York, New Jersey, Connecticut and Maryland get SALTY

We knew it was coming. We just didn't know how the arguments would be constructed.

On July 17, the attorneys general of New York, New Jersey, Connecticut and Maryland filed a complaint in federal court alleging that the TCJA's $10,000 cap on state and local tax deductions is unconstitutional.

Crux of the complaint: The $10,000 SALT cap violates the state sovereignty provision of the 10th Amendment, and the 16th Amendment, which ratified the modern federal income tax. The complaint seeks declaratory and injunctive relief invalidating the $10,000 cap.

Do the plaintiffs have a leg to stand on? We won't know until the federal government files its answer and quite probably, a motion to dismiss. We're watching this carefully.

Bottle of red. Bottle of white. It all depends on your tax bite

OK, apologies to Billy Joel.

But around here, we needed a nice glass of wine after reading that 141-page SALT complaint.

The SALT deduction limitation isn't a glitch in the law; it's a feature. The latest glitch to come to our attention concerns excise taxes and tax credits on wine. Specifically boutique wines—wines made in small amounts that never seem to make it across the California border.

What's this all about: Small wineries—wineries producing roughly 250,000 gallons a year—rarely make their own wines. Instead, bulk and bottled wine is usually transferred in bond between bonded premises. Excise tax liability, however, follows the wine, but isn't payable until it's removed from a bonded wine cellar or winery for consumption or sale.

Section 13804 of the TCJA modified the existing tax credit so that all wineries, regardless of size, can take it. However, it also inadvertently dropped the language about when the tax is due (i.e., upon removal), which *increases* small wineries' taxes.

The Alcohol and Tobacco Tax and Trade Bureau made matters worse by issuing an industry circular that said that any wine that's removed by a wine premises that also didn't produce it wouldn't be eligible for the new tax credits. *About face:* The TTB has backtracked and is allowing the excise tax credit to be available on roughly the same basis it was before.

Phew! That's a relief. I'll have another glass of Chardonnay, please.

Baseball trade deadline passes, but what about the taxes?

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Like-kind exchanges are a way of deferring taxes when assets are traded for similar assets. We wrote earlier in the year that like-kind exchanges can no longer be used to value athletes' contracts, which could leave teams owing an awful lot in current taxes when they trade players with hefty contracts for, say, minor leaguers and players to be named later.

Major league baseball and the NBA implored the IRS to clarify this. Unfortunately, the word from the IRS has been mum. The final twist is that the TCJA also ramped up the bonus depreciate rule to 100%, from 50%, which may mitigate some of the taxes now owed on traded players' contracts.

July 31 was the baseball non-waiver trade deadline. So, where does that leave the baseball teams that made some big trades, like the Dodgers, the Yankees and the Cubs? Well, we don't know. What we do know is that teams that bulked up their rosters are concerned with winning the World Series, not with the taxes they'll owe on those trades—that gift has been handed to their accounting departments.

TCJA do-over

These aren't the only glitches in the TCJA. And every tax bill goes through a technical corrections process. Congress may schedule a TCJA technical corrections bill for November or December—after the midterm elections. We're also watching that carefully.

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