

TCJA tidbits: Devil in the details as tax reform is implemented



The

TAX CUTS & JOBS ACT

The Tax Cuts and Jobs Act is a complicated and far-reaching law, which tax pros are still unraveling and state legislatures are still trying to come to terms with. Here's the latest.

UBIT for nonprofits. Nonprofits may be liable for unrelated business income taxes. The TCJA revises the definition of unrelated business income, on which the tax is due, to include the value of qualified transportation fringe benefits. A cascade of issues has resulted, none of which the IRS has addressed to date:

- Transportation fringes include parking benefits and employees' pretax deductions for mass transit benefits. *Problem:* Nonprofits have never viewed pretax deductions as an employer expense. They must now recalculate their tax liability for those benefits.
- Taxing transportation fringes negatively impacts nonprofits located in municipalities that mandate that the benefits be provided to employees: Berkeley, Richmond, San Francisco and the San Francisco Bay Area Air Quality Management District in California, the District of Columbia and New York City.
- Fiscal year nonprofits should report transportation fringes on Line 12 of Form 990-T.

The IRS is entertaining transition guidance on some of these issues, but it hasn't promised anything and hasn't released anything to date.

State work-around for limited SALT deduction. The TCJA limits taxpayers' deductions for state and local taxes (including property taxes) to \$10,000. It also limits taxpayers' ability to itemize deductions on Schedule A. Charitable contributions, however, remain 100% deductible.

The SALT limitation hasn't sat well in high-tax states such as Connecticut, New Jersey, New York and Oregon. The workaround these states have enacted includes allowing residents to receive a credit for making charitable contributions into state-designated funds that is roughly equivalent to their SALT liabilities. Taxpayers, therefore, could continue to deduct most of their SALT liabilities as charitable contributions on their 1040s. California and Illinois are looking at similar legislation.

A recent notice makes clear that it's the IRS, and only the IRS, that defines deductible charitable expenses for federal tax purposes. *Implication:* States' redefinition of charitable contributions will probably not fly. The notice also says that the IRS will be issuing regulations on this subject shortly. (*Notice 2018-54, IRB 2018-24*)