IRS Congressional Update

News for members of Congress and their staffs.....September 2018

IRS issues proposed regulations on new 20 percent deduction for passthrough businesses

IRS issued proposed regulations for a new provision allowing many owners of sole proprietorships, partnerships, trusts and S corporations to deduct 20 percent of their qualified business income.

The new deduction -- referred to as the Section 199A deduction or the deduction for qualified business income -- was created by the Tax Cuts and Jobs Act. The deduction is available for tax years beginning after Dec. 31, 2017. Eligible taxpayers can claim it for the first time on the 2018 federal income tax return they file next year.

The deduction is generally available to eligible taxpayers whose 2018 taxable incomes fall below $315,000 for joint returns and $157,500 for other taxpayers. It's generally equal to the lesser of 20 percent of their qualified business income plus 20 percent of their qualified real estate investment trust dividends and qualified publicly traded partnership income or 20 percent of taxable income minus net capital gains.

Deductions for taxpayers above the $157,500/$315,000 taxable income thresholds may be limited. Those limitations are fully described in the proposed regulations.

Qualified business income includes domestic income from a trade or business. Employee wages, capital gain, interest and dividend income are excluded.

In addition, Notice 2018-64, also issued today, provides methods for calculating Form W-2 wages for purposes of the limitations on this deduction. More information in the form of FAQs on Section 199A can be found on IRS.gov.

Taxpayers may rely on the rules in these proposed regulations until final regulations are published in the Federal Register.

Written or electronic comments and requests for a public hearing on this proposed regulation must be received within 45 days of publication in the Federal Register.

Paycheck Checkup

Following the December 2017 Tax Cuts and Jobs Act, the IRS began conducting its "Paycheck Checkup" campaign. The goal is to encourage all taxpayers to check and adjust their withholding in light of tax law changes..

Under the TCJA, many taxpayers can decrease their withholding and increase their take home pay. Others need to increase their withholding to avoid a tax bill when it comes time to file their 2018 tax return.

During the week of August 13, 2018, the IRS focused its paycheck checkup campaign on specific groups of taxpayers who could be most affected by the TCJA changes. It's not too late for these taxpayers to do a paycheck checkup and adjust their withholding as they find it necessary.

Those groups and the outreach material designed to help them are:

- Taxpayers who got a big refund in 2018, see
    - Got a big tax refund? Use IRS Withholding Calculator to boost take-home pay in 2018
    - IRS tells taxpayers who got a big refund to do a "paycheck checkup"
- Taxpayers with high income or a complex return, see
    - Taxpayers with high incomes, complex returns: Check withholding soon
    - IRS urges taxpayers with high income, complex returns to check withholding
- Taxpayers with dependents, see
    - Key tax change affects taxpayers with dependents; IRS urges workers to check withholding
    - Taxpayers who support dependents should check their withholding now
- Taxpayers with children and other dependents, see
    - Taxpayers with children, other dependents should check their withholding soon
    - Taxpayers with children, other dependents should check withholding ASAP
- Taxpayers Working in the sharing economy, see
    - For people involved in the sharing economy: Do a 'Paycheck Checkup' now, avoid a surprise year-end tax bill

Any taxpayer with online access can use the IRS's Withholding Calculator to do a paycheck checkup, even those who don't have withholding. Those who don't have online access can do a paycheck checkup with the help of IRS Publication 505, Tax Withholding and Estimated Tax. To get Publication 505 by mail call 1-800-TAX-FORM.

Third quarter estimated tax payment September 17

U.S. income taxes work on a pay as you go basis. Taxes are paid throughout the year as income is earned. Taxpayers pay as they go by having their employer withhold tax from their wages, by making quarterly estimated tax payments out of their non-employee earnings, or by some combination of the two.

As the nature of work changes, fewer people make a living entirely through a traditional employer/employee relationship and more people make some, or all, of their living through non-employee earnings. As a result, more people become personably responsible for "withholding" taxes from their non-employee earnings and submitting those taxes in the form of estimated tax payments.

The IRS's Withholding Calculator, Publication 505, Tax Withholding and Estimated Tax, and the worksheet in Form 1040-ES, Estimated Tax for Individuals, can help people check their withholding and figure their payments correctly. IRS Direct Pay is the fastest and easiest way to pay.

Those without internet access can call the IRS at 1-800-TAX-FORM to have forms and publications mailed to them.

Taxpayer Advocate Services creates Tax Reform website

New site helps constituents understand how tax law changes might affect their returns

To help constituents understand how the provisions of the Tax Cuts and Jobs Act will affect them, the Taxpayer Advocate Service has created a Tax Reform Changes website that identifies the most commonly reported items under pre-tax reform law and shows how the TCJA changes that took effect for 2018 regarding these items will be reflected on tax returns filed in early 2019. The site has been designed so constituents can also see what items have *not* changed. The Tax Reform Changes website shows your constituents how the new tax law may change their future tax filings and helps them plan for these changes. The site is mobile friendly and provides line-by-line explanations and scenarios to describe how the new law may affect them. Key features of the site allow constituents to:

- Navigate the website by key tax return topics, by reviewing the associated topic on a 2017 Form 1040, or by going straight to a "How will this affect me" section;
- See how the new law may change their tax filings and allow them to consider how they want to plan for these changes;
- Explore scenarios for each topic to help explain how the change might them; and
- Most importantly, make withholding adjustments, if needed, by filing a new Form W-4, Employee's Withholding Allowance Certificate. All constituents that are considered employees should take moment to check their withholdings to see if they need to make any changes. There is a link both to determine the correct withholding and to file the W-4 Form from the Tax Reform Changes website.

The website has been designed to incorporate updated information as it becomes available. Constituents can sign up for email notifications when the site is updated by using the purple *Subscribe* button at the top of the site.

Applying for tax exempt status

Many congressional inquiries focus on a constituent's application for tax exempt status. The following is intended to help you and your constituents understand the application process.

State law governs nonprofit status. Before applying to the IRS for recognition as a tax-exempt organization, constituents must:

1. Prepare organizing documents establishing a nonprofit trust, corporation or association,
2. Register their nonprofit organization in compliance with state law, and
3. Obtain an employer ID number (EIN) from the IRS.

Federal law governs exemption from federal income tax. The constituent must decide which type of tax exempt status is appropriate:

- Charitable, Religious or Educational organization under 501(c)(3),
- Social Welfare organization under 501(c)(4), or
- Other Non-Profit or Tax-Exempt organization, 501(a).

An application for tax exempt status can then be submitted to the IRS.
Different application forms and supporting documents are required depending on the type of

exempt status sought. A complete and fully documented application expedites the process. Here's the walk-through:

- Before Applying for Tax Exempt Status
- Applying for Tax Exempt Status
    - Interactive Application Process
- What's the Status of My Exemption Application?

In general, if a constituent is eligible to use the "EZ" Application for Recognition of Exemption, they can expect to hear from the IRS in 90 days. Otherwise they can expect to hear in 180 days. If a constituent hasn't heard from IRS within these time frames, they can call the IRS to check on the status of their application. The toll-free number is 877-829-5500, 8 a.m. to 5 p.m. local time.

Many constituents want their application for tax exempt status expedited. This is not always possible. Information on when the IRS may consider expediting a tax-exempt application is available here.

Understanding and meeting tax responsibilities is vital, failure to do so can result in automatic revocation of tax exempt status. See How to Stay Exempt for more information on keeping a tax-exempt status.
Information to help charities and non-profits is available. On the IRS.gov home page, select:

Charities & Nonprofits

New law gives individuals, businesses more time to challenge a wrongful IRS levy

Individuals and businesses have additional time to file an administrative claim or to bring a civil action for wrongful levy or seizure, according to the Internal Revenue Service. The Tax Cuts and Jobs Act of 2017, the tax reform law enacted in December, extended the time limit for filing an administrative claim and for bringing a suit for wrongful levy from nine months to two years.

Tax benefits for education

As school starts, many students and parents are concerned about tuition and other expenses. Tax credits and deductions may be able to help. Information on what tax benefits are available is at the IRS's Tax Benefits for Education Information Center. The Center includes a link to the IRS's Interactive Tax Assistant, a tool taxpayers can use to help determine if they're eligible for credits and deductions.

Those planning for the longer term may be considering a 529 College Savings Plan or a Coverdell Education Savings Account. The Education Information Center covers savings plans as well. There have been some changes to 529 plans in recent years that taxpayers may want to be aware of. Information on the changes is available in this July 30, 2018, IRS News Release: IRS offers guidance on recent 529 education savings plan changes.

IRS Publication 970 (PDF), Tax Benefits for Education, has full details including an appendix with an illustrated example and a comparison chart of the various benefits. To receive the latest copy of Publication 970 by mail, call the IRS at 1-800-TAX-FORM.

You can use the IRS's Interactive Tax Assistant tool to help determine if you're eligible for educational credits or deductions, including the American Opportunity Tax Credit, the Lifetime Learning Credit and the Tuition and Fees Deduction.

Reminders

Treasury, IRS issue proposed regulations on charitable contributions and state and local tax credits

Treasury, IRS issue proposed regulations on new 100 percent depreciation

New law makes clear: Combat-zone contract workers qualify for foreign earned income exclusion

IRS on Social Media

YouTube Twitter LinkedIn IRS2Go Mobile App

The *IRS Congressional Update* is a monthly newsletter, prepared by IRS Legislative Affairs. For information on resolving taxpayer account issues, visit Taxpayer Advocate Service.

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New Tax Reform webpage for business and self-employed

Business owners and self-employed taxpayers should make IRS.gov their first stop for information on how tax reform affects both their business and individual taxes. The updated IRS.gov/tax reform page has helpful information for individuals, businesses and tax-exempt entities.

The Businesses page includes these topics and others:

- New 20 percent deduction for passthrough business
- Changes to deductions for certain fringe benefits
- New employer credit for paid family and medical leave
- Depreciation and expensing

Like-kind exchanges - real estate tax tips

Like-kind exchanges — when you exchange real property used for business or held as an investment solely for other business or investment property that is the same type or "like-kind" — have long been permitted under the Internal Revenue Code. Generally, if you make a like-kind exchange, you are not required to recognize a gain or loss under Internal Revenue Code Section 1031. If, as part of the exchange, you also receive other (not like-kind) property or money, you must recognize a gain to the extent of the other property and money received. You can't recognize a loss.

Under the Tax Cuts and Jobs Act, Section 1031 now applies only to exchanges of real property and not to exchanges of personal or intangible property. An exchange of real property held primarily for sale still does not qualify as a like-kind exchange. A transition rule in the new law provides that Section 1031 applies to a qualifying exchange of personal or intangible property if the taxpayer disposed of the exchanged property on or before Dec. 31, 2017, or received replacement property on or before that date.

Thus, effective Jan. 1, 2018, exchanges of machinery, equipment, vehicles, artwork, collectibles, patents and other intellectual property and intangible business assets generally do not qualify for non-recognition of gain or loss as like-kind exchanges. However, certain exchanges of mutual ditch, reservoir or irrigation stock are still eligible for non-recognition of gain or loss as like-kind exchanges.

Like-kind property

Properties are of like-kind if they're of the same nature or character, even if they differ in grade or quality.

Real properties generally are of like-kind, regardless of whether they're improved or unimproved. For example, an apartment building would generally be like-kind to another apartment building. However, real property in the United States is not like-kind to real property outside the United States.

An estimated tax payment in 2018 could help avoid a penalty in 2019

Taxes must be paid as you earn or receive income during the year, either through withholding, estimated tax payments or a combination of both. A Paycheck Checkup using the IRS Withholding Calculator can help you see if you need to make an additional payment to avoid an unexpected tax bill or underpayment penalty when you file your tax return next year.

You may need to make estimated payments if you:

- have multiple jobs — especially if you don't have each employer withhold taxes
- are self-employed or an independent contractor
- are a representative of a direct-sales or in-home-sales company
- participate in sharing economy activities where you are not working as an employee
- receive pension income

Visit IRS.gov to learn more.

Extension filers: deadline is Monday, Oct. 15

Filing

Taxpayers who requested an extension of time to file their 2017 income tax return have until Oct. 15 to submit their return. The IRS recommends taxpayers file their return electronically using IRS e-file or the Free File system. Both are available for taxpayers needing to file their returns.

The IRS also encourages taxpayers to see if they qualify for these and other significant credits and deductions:

- Benefits for low- and moderate-income workers and families, especially the Earned Income Tax Credit, can increase a taxpayer's refund and lower the amount of taxes they pay. The EITC Assistant can help taxpayers see if they're eligible.
- Savers credit, claimed on Form 8880, for low- and moderate-income workers who contributed to a retirement plan, such as an IRA or 401(k).
- American Opportunity Tax Credit, claimed on Form 8863, and other education tax benefits for parents and college students.

Paying

Paying in full by the due date is best but taxpayers with extensions should file their returns by the due date even if they can't pay the full amount owed. By doing so, they will avoid the late-filing penalty, normally 5 percent per month, that would otherwise apply to any unpaid balance. Late payment penalties and interest will still apply but can be reduced by making a partial payment.

IRS Direct Pay offers taxpayers a fast and easy way to pay. Direct Pay is free and allows individuals to securely pay their tax bills online directly from checking or savings accounts without any fees or pre-registration. Taxpayers can also pay by debit or credit card however the card processors, not the IRS, charges a fee for this service.

If there is still a balance due, taxpayers can request a payment plan. Plans can be requested using the IRS's Online Payment Agreement Application or by sending in Form 9465, Installment Agreement Request, with the return.

Paycheck Checkup

It is always a good idea for those who owe at the end of the year to do a "Paycheck Checkup" to ensure they will not owe again the next year. Considering significant changes in the tax laws, this year the IRS encourages all taxpayers to do a "Paycheck Checkup." Taxpayers can do a quick checkup using the IRS Withholding Calculator or by using IRS Publication 505, Tax Withholding and Estimated Tax.

Tax scams and consumer alerts

Thousands of people have lost millions of dollars and their personal information to tax scams. Scammers use the regular mail, telephone, or email to set up individuals, businesses, payroll and tax professionals.

The IRS doesn't initiate contact with taxpayers by email, text messages or social media channels to request personal or financial information. Recognize the telltale signs of a scam. See also: How to know it’s really the IRS calling or knocking on your door.

With hurricane season underway, the Internal Revenue Service is reminding taxpayers that criminals and scammers often try to take advantage of the generosity of those who want to help victims of major disasters. See the IRS June 7, 2018 news release: With hurricane season underway, IRS warns of scams related to natural disasters.

The IRS also warns of a new twist on an old phone scam as criminals use telephone numbers that mimic IRS Taxpayer Assistance Centers to trick taxpayers into paying non-existent tax bills. See the April 24, 2018 news release: IRS, Security Summit Partners warn of new twist on phone scam; crooks direct taxpayers to IRS.gov to “verity” calls.

How to Report Tax-Related Schemes, Scams, Identity Theft and Fraud

To report tax-related illegal activities, refer to our chart explaining the types of activity and the appropriate forms or other methods to use. You should also report instances of IRS-related phishing attempts and fraud to the Treasury Inspector General for Tax Administration at 800-366-4484.

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