RECENT CHANGES TO MOVING, MILEAGE, AND TRAVEL EXPENSES

The Tax Cuts and Jobs Act (TCJA) includes the following changes to moving, mileage, and travel expenses:

MOVE-RELATED VEHICLE EXPENSE

The new law suspends the deduction for tax years beginning after December 31, 2017, through January 1, 2026. During the suspension, no deduction is allowed for use of an auto as part of a move using the mileage rate listed in IRS Notice 2018-03. This does not apply to members of the Armed Forces on active duty who move related to a permanent change of station.

UNREIMBURSED EMPLOYEE EXPENSES

TCJA also suspends all miscellaneous itemized deductions subject to the 2% of adjusted gross income floor. This change affects unreimbursed employee expenses such as uniforms, union dues, and the deduction for business-related meals, entertainment, and travel.

STANDARD MILEAGE RATES FOR 2018

The standard mileage rates for the use of a car, van, pickup, or panel truck for 2018 remain as follows:

- 54.5 cents for every mile of business travel driven, a 1 cent increase from 2017.
- 18 cents per mile driven for medical purposes, a 1 cent increase from 2017.
- 14 cents per mile driven in service of charitable organizations, which is set by statute and remains unchanged.

INCREASED DEPRECIATION LIMITS

The recent legislation also increases the depreciation limitations for passenger autos placed in service after December 31, 2017, for purposes of computing the allowance under a fixed and variable rate plan. The maximum standard automobile cost may not exceed $50,000 for passenger automobiles, trucks, and vans placed in service after December 31, 2017.

For more information about this article, please contact our tax professionals at taxalerts@windes.com or toll free at **844.4WINDES** (844.494.6337).

IRS Offers Penalty-Filing Relief to Many Subject to New Transition Tax on Foreign Earnings

The IRS announced that it will waive certain late-payment penalties relating to the transition tax under Internal Revenue Code (IRC) Section 965 and provided additional information for individuals subject to the transition tax regarding the due date for relevant elections. The IRS explained the relief in three new FAQs on its tax reform web page. These supplement 14 existing questions and answers that provide detailed guidance to taxpayers on reporting and paying the tax.

IRC Section 965, enacted in December 2017, imposes a transition tax on untaxed foreign earnings of foreign corporations owned by U.S. shareholders by deeming those earnings to be repatriated. Foreign earnings held in the form of cash and cash equivalents are taxed at a 15.5% rate, and the remaining earnings are taxed at an 8% rate. The transition tax generally may be paid in installments over an eight-year period when a taxpayer files a timely election under IRC Section 965(h).

In general, the questions and answers indicate the following:

- In some instances, the IRS will waive the estimated tax penalty for taxpayers subject to the transition tax who improperly attempted to apply a 2017 calculated overpayment to their 2018 estimated tax, as long as they made all required estimated tax payments by June 15, 2018.

- For individual taxpayers who missed the April 18, 2018 deadline for making the first of the eight annual installment payments, the IRS will waive the late-payment penalty if the installment is paid in full by April 15, 2019. Absent this relief, a taxpayer's remaining installments over the eight-year period would have become due immediately. This relief is only available if the individual's total transition tax liability is less than $1 million. Interest will still be due. Later deadlines apply to certain individuals who live and work outside the U.S.

- Individuals who have already filed a 2017 return without electing to pay the transition tax in eight annual installments can still make the election by filing a 2017 amended tax return with the IRS. The amended tax return, Form 1040, generally must be filed by October 15, 2018. For more information about the transition tax and other tax reform provisions, visit www.irs.gov/newsroom/tax-reform.

For more information about this article, please contact our tax professionals at taxalerts@windes.com or toll free at **844.4WINDES** (844.494.6337).

U.S. Supreme Court Rules Physical Presence Not Required to Collect Use Tax

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In a 5-4 decision, the U.S. Supreme Court ruled that states may now require internet retailers to collect use tax on sales made to customers in their state even if the out-of-state retailer does not have physical presence in the state. (*South Dakota v. Wayfair, Inc.* (June 21, 2018) U.S. Supreme Court, Case No. 17-494) This decision reverses the Court's earlier decision in *Quill Corp. v. North Dakota*. ((1992) 504 U.S. 298)

Wayfair involved the constitutionality of South Dakota's law that requires out-of-state retailers to collect use tax on sales made to South Dakota customers if the seller on an annual basis:

- delivers more than $100,000 of goods or services into South Dakota; or
- engages in 200 or more separate transactions for the delivery of goods and services into the state.

The Court remanded the case back to the South Dakota Supreme Court to determine whether the law meets the other requirements of the Commerce Clause, but indicated that it thought the law was otherwise constitutional.

Forty-one states, including California and the District of Columbia filed briefs in support of South Dakota, so it is highly likely that these states will be enacting similar legislation in the very near future.

The decision can be viewed at: www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf.

For more information about this article, please contact our tax professionals at taxalerts@windes.com or toll free at **844.4WINDES** (844.494.6337).

IRS Expects to Issue Guidance on the New Tax Deduction on Passthrough Income

The IRS expects to issue guidance on the Internal Revenue Code (IRC) Section 199A passthrough deduction in July, Acting IRS Commissioner David Kautter has said.

Proposed Guidance

More specifically, the proposed guidance on the passthrough deduction is expected to be released by the end of July. "The goal of the guidance is to get things out that are complete," the IRS spokesperson said. "But, it will not cover every question that taxpayers have," the spokesperson added.

Passthrough Deduction

The new passthrough deduction was enacted under the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) last December. The new law provides a 20% deduction for income from passthrough entities. The deduction is limited by certain controversial factors, including business activities, wages paid by the business, and property values.

Questions Expected

Generally, Kautter anticipates initial follow-up questions from taxpayers and practitioners after the proposed guidance is released. Kautter has said that it would be better to get the guidance out in "fairly good shape," to allow for public comment and input, rather than taking more time to draft the guidance internally, according to several reports. Kautter has reportedly said that not everyone may agree with that approach, but that a "better product" will likely be created because of it.

For more information about this article, please contact our tax professionals at taxalerts@windes.com or toll free at **844.4WINDES** (844.494.6337).

Regulations Clarified In Response to Suit Over Affordable Care Act (ACA) Emergency Services Rules

The Treasury Department and the IRS, along with the Department of Labor and the Department of Health and Human Services, issued a notice of clarification to more thoroughly explain their decision not to adopt recommendations made by the American College of Emergency Physicians (ACEP) and certain other commenters regarding T.D. 9744. The challenged regulations govern the coverage of emergency services by group health plans and health insurance issuers under the ACA's copayment and coinsurance limitations.

The ACEP had sued the federal government over the final regulations, which were issued in 2015 under the Patient Protection and Affordable Care Act (ACA) (P.L. 111-148). Among other things, ACEP argued that the federal government did not adequately respond to their public comments regarding the regulations. On August 31, 2017, the court sent the matter back to the Departments of Health and Human Services, Labor, and Treasury to respond to the public comments from ACEP.

Greatest of Three Regulations

Under T.D. 9744, a plan or issuer satisfies the copayment and coinsurance limitations in the statute if it provides benefits for out-of-network emergency services in an amount equal to the greatest of three possible amounts:

- the amount negotiated with in-network providers for the emergency service furnished;
- the amount for the emergency service calculated using the same method the plan generally uses to determine payments for out-of-network services (such as the usual, customary, and reasonable charges), but substituting the in-network cost-sharing provisions for the out-of-network cost sharing provisions; or
- the amount that would be paid under Medicare for the emergency service.

Each of these amounts is calculated excluding any in-network copayment or coinsurance imposed with respect to the participant, beneficiary, or enrollee. This is sometimes referred to as the "Greatest of Three" or the "GOT" regulation, because it sets a floor on the amount that nongrandfathered group health plans, and health insurance issuers offering nongrandfathered group or individual health insurance coverage are required to pay for out-of-network emergency services under this provision at the greatest of the three listed amounts.

Clarification of Regulations

In their clarification, the departments state that the regulations provide a reasonable and transparent methodology to determine appropriate payments by nongrandfathered group health plans and health insurance issuers offering nongrandfathered group or individual health insurance coverage for out-of-network emergency services. In addition, the departments maintain that ACEP and other commenters did not provide adequate information to support their assertion that the methods used for determining the minimum payment for out-of-network emergency services under the GOT regulation are not sufficiently transparent or reasonable.

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IRS Outlines New Five-Year Strategic Plan

The IRS has issued a new five-year strategic plan to guide its programs and operations and to help meet the changing needs of taxpayers and members of the tax community. "Providing service to taxpayers is a vital part of the IRS mission and the new Strategic Plan lays out a vision of ways to help improve our tax system," remarked IRS Acting Commissioner David Kautter.

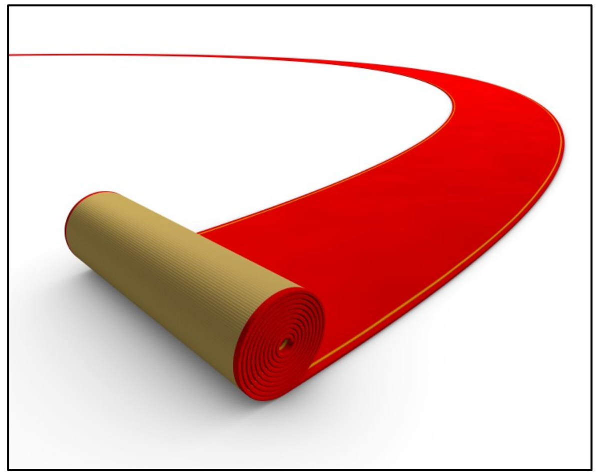
The Fiscal Year 2018-2022 IRS Strategic Plan focuses on six goals aimed at improving customer service:

- empowering and enabling all taxpayers to meet their tax obligations;
- protecting the integrity of the tax system by encouraging compliance through administering and enforcing the tax code;
- proactively collaborating with external partners to improve tax administration;
- cultivating a well-equipped, diverse, flexible and engaged workforce;
- advancing data access, usability and analytics to inform decision-making and improve operational outcomes; and
- driving increased agility, efficiency, effectiveness and security in IRS operations.

The Service further urged taxpayers to be aware of their fundamental rights under the Taxpayer Bill of Rights when dealing with the IRS.

For more information about this article, please contact our tax professionals at taxalerts@windes.com or toll free at **844.4WINDES** (844.494.6337).

LB&I Rolls Out Additional Issue-Based Compliance Campaigns



The IRS Large Business and International (LB&I) Division has identified and selected six additional compliance campaigns. The IRS previously announced 13 campaigns on January 31, 2017, followed by an additional 11 on November 3, 2017, and five more on March 13, 2018. These campaigns help LB&I move in the direction of issue-based examinations. In addition, a compliance campaign process helps the organization decide which compliance issues present risks and the best way to respond to such risks.

The additional campaigns were identified through LB&I data analysis and suggestions from IRS employees. LB&I's goal is to improve return selection, identify issues representing a risk of noncompliance, and make the greatest use of limited resources.

The six campaigns selected for the rollout are:

- Interest Capitalization for Self-Constructed Assets;
- Form 3520/3520-A, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, Non-Compliance and Campus Assessed Penalties;
- Forms 1042/1042-S, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, Compliance;
- Nonresident Alien Tax Treaty Exemptions;
- Nonresident Alien Schedule A and Other Deductions; and
- Nonresident Alien Tax Credits.

The campaigns themselves fall within the Withholding & International Individual Compliance practice area.

For more information about this article, please contact our tax professionals at taxalerts@windes.com or toll free at **844.4WINDES** (844.494.6337).

Life Insurance Transfer Transition Guidance Planned

The IRS intends to provide guidance on the new information reporting obligations for certain life insurance contract transactions under Internal Revenue Code (IRC) Section 6050Y. The proposed regulations will provide guidance on the modifications to the transfer for valuable consideration rules for life insurance contracts under IRC Section 101(a). In addition, the IRS has delayed the reporting requirements under IRC Section 6050Y until the final regulations are issued.

Transfers for Value Rules

For transfers after December 31, 2017, the exceptions to the transfer for value rules do not apply to the transfer of a life insurance contract, or any interest in such a contract, that is a reportable policy sale. Thus, some portion of the death benefit ultimately payable under the contract may be includable in income. A "reportable policy sale" means the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured apart from the acquirer's interest in the life insurance contract. A "reportable death benefit" is an amount paid at the death of the insured under a life insurance contract that was transferred in a reportable policy sale.

Reporting Requirements Delayed

The new reporting requirements of IRC Section 6050Y apply to reportable death benefits paid and reportable policy sales made after December 31, 2017. However, the transition guidance delays any reporting under IRC Section 6050Y until final regulations are issued.

Under IRC Section 6050Y, information returns must be filed in the following situations:

- By anyone who acquires a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale.
- By an issuer of a life insurance contract upon notice of a transaction required to be reported above, or upon any notice of a transfer of a life insurance contract, or any interest in a life insurance contract, to a foreign person.
- By any payor of reportable death benefits.

Proposed Regulations

The proposed regulations will describe the manner in which, and time at which, the reporting requirements of IRC Section 6050Y must be satisfied. They will also clarify which parties are subject to the reporting requirements and other definitional issues. For example, the Treasury and the IRS intend to define the term "reportable policy sale" in the proposed regulations to include a viatical settlement. In addition, the proposed regulations will clarify the extent to which IRC Section 6050Y applies to sales or acquisitions affected by transferors and transferees outside the United States, and to sellers and issuers that are foreign persons for purposes of these reporting rules.

The IRS is requesting public comment on the intended proposed regulations implementing these reporting requirements.

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California Proposed Tax on Services Rears Its Head Once Again

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For the fourth time in the last five years, legislation has been introduced to impose a sales tax on services. However, while the other bills were legislative intent bills, SB 993 actually provides specifics. It would:

- phase in a 3% sales tax on business-to-business services starting on January 1, 2020;
- provide a corresponding 2% decrease on the sales tax on goods (making the bill revenue neutral);
- provide numerous exemptions, such as for small businesses (gross receipts under $100,000), health care, education, residential construction, day care, etc.; and
- require sellers of the services to collect the tax at the time of sale if the benefit of the service is received in California.

Purpose

The author of the bill, Senator Hertzberg, has been advocating this broadening of the sales tax base for years, arguing that this is the only way to prevent the volatility that arises from California's reliance on the personal income tax, while providing a taxing system that more closely reflects our service-based economy.

Strong Opposition

The Senate Governance and Finance Committee held its first hearing on the bill on May 16, 2018. This hearing was a "conversation starter" and will be followed by numerous other hearings. However, if this hearing is any indication, this bill, like other bills introduced in previous sessions, could be dead on arrival.

In the bill's legislative analysis, there are over 100 businesses and associations listed as opposed in contrast to "unknown" supporters. This was also reflected at the hearing, with two unions voicing support, while dozens of business organizations spoke against the bill. (One lobbyist representing the union actually then turned around and voiced opposition on behalf of another business group he was representing.)

The concerns voiced include the following:

1. **Increased costs to consumers**: The tax will result in increased costs to consumers as a result of the pyramiding effect. One example included a hospital whose services are exempt, but it would still be required to pay tax on legal, billing, and accounting services, which would increase its costs that would be passed on to patients. Herzberg responded that for many businesses, the tax on services will be offset by the reduced tax on goods.

2. **Pushing jobs outside California**: If businesses with low profit margins must pay increased costs, they may be forced to move outside California. Hertzberg countered that it is anticipated that 20% of the tax will be paid by out-of-state businesses.

3. **Compliance nightmares**: This will be a compliance nightmare for businesses that have never been previously subjected to the tax, plus they will need to determine where the benefit of the service is received. This will especially impact small businesses that cannot perform many legal, consulting, and design services in-house. Hertzberg argued that these taxpayers can just purchase a $12 software package to perform these functions.

4. **It has not worked in other states**: Four other states have enacted a broad-based tax on services, and all of them repealed the tax.

5. **Is this even needed now**? With federal tax reform, the new gas tax, the new cannabis tax, the cap and trade program, and the expanded real estate transfer tax, California has more than enough revenues coming in. Hertzberg's response was that it is better to take advantage of this time of prosperity to develop a reasoned approach to tax reform rather than wait until there is another recession and we are operating in crisis mode.

Is there a ballot initiative coming?

During an exchange between Senator Hertzberg and a committee member, it was hinted that if the Legislature does not adopt the service tax, this may be headed to the ballot. Senator Murdoch noted that this would be an easy sell to the voters, as it could easily be sold as a tax on big business and a corresponding reduction in tax to the people. Hertzberg acknowledged that the concept polled very well.

For more information about this article, please contact our tax professionals at taxalerts@windes.com or toll free at **844.4WINDES** (844.494.6337).

IRS Compliance Campaigns for Large and International Businesses - Top Audit Issues

The IRS has announced various compliance campaigns for large and multi-national companies. A large company is any company whose total assets exceed $10 million. The information is available on the IRS website at www.irs.gov/businesses/large-business-and-international-compliance-campaigns.

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