PLACHTA MURPHY & ASSOCIATES

attorneys and counselors at law

2018-2019
BUSINESS AND PERSONAL LEGAL PLANNING GUIDE

Provided as a Professional Courtesy to the
Friends and Preferred Clients of Plachta, Murphy & Associates

124 E. Fulton Street, Suite 100
Grand Rapids, MI 49503
Phone: (616) 458-3994
Fax: (616) 458-2410
www.pmalawpc.com

Brian J. Plachta	—	bplachta@pmalawpc.com
Miles J. Murphy III	—	mmurphy@pmalawpc.com
Bryan D. Reeder	—	breeder@pmalawpc.com
Jeffrey M. Black	—	jblack@pmalawpc.com
Bert S. Irwin	—	birwin@pmalawpc.com

PLACHTA, MURPHY & ASSOCIATES
attorneys and counselors at law

Brian J. Plachta
Miles J. Murphy III
Bryan D. Reeder
Jeffrey M. Black
Bert S. Irwin

Grand Rapids
Loraine Professional Bldg.
124 E. Fulton Street, Suite 100
Grand Rapids, MI 49503
telephone 616.458.3994
fax 616.458.2410
www.pmalawpc.com

Holland
42 E. Lakewood Blvd.
Holland, MI 49424
telephone 616.796.0743
of counsel:
William A. Sikkel IV
Mary A. Owens

Dear Clients and Friends:

Enclosed is the 2018-2019 Business and Personal Legal Planning Guide that we have put together for our clients and friends. This Planning Guide includes important articles about changes in business, real estate, estate planning, tax, family law, and government benefits. We hope you are able to use this Planning Guide in your life for planning, evaluating, and keeping up on of changes in Michigan and federal law that can impact you both personally and professionally.

We offer this annual Planning Guide as a professional courtesy to all of our clients and friends as one small token of our appreciation for allowing us to serve you.

As a client-focused full service law firm, we appreciate the opportunity to serve each of our clients with a standard of excellence and the highest quality of legal services possible. We hope that you find the topics and other information in this Planning Guide helpful.

Our best wishes to you, your family, and your business colleagues at the end of this year and in 2019. Please feel free to contact us if we can be of further assistance or if you have any questions regarding the topics outlined in this year's Business and Personal Legal Planning Guide.

Respectfully,

PLACHTA, MURPHY & ASSOCIATES, P.C.

Brian J. Plachta
Brian J. Plachta

Miles J. Murphy III
Miles J. Murphy III

Bryan D. Reeder
Bryan D. Reeder

Jeffrey M. Black
Jeffrey M. Black

Bert S. Irwin
Bert S. Irwin

TABLE OF CONTENTS

A. BUSINESS LAW UPDATES

Successful Family Business Succession

- The majority of small business owners know that it is important to have a business succession plan as retirement approaches, yet a majority of small business owners do not have a business succession plan in place.

- Common excuses for not having a business succession plan in place are: no time for planning, too early for planning, and it is too complicated.

- Tips for a successful family business succession:

    - Start Early – No less than three years before transition.
    - Enlist Help from Professionals – Attorney, accountant, financial planner, etc.
    - Involve Stakeholders in the Process – Discuss with family members. Who will be involved in running the business? Will others that are nonactive in running business receive financial benefit?
    - Formalize the Succession Plan – When will successors have duties and what will they be?
    - Communication – Have difficult conversations now so everyone knows their role, their benefit, and what to expect.

Standard Mileage Rates for 2018

- Beginning January 1, 2018, the standard mileage rate for business travel was increased to **54.5 cents**.

- Taxpayers and companies can deduct this new standard mileage rate amount for recorded business miles in a personal vehicle on their 2018 tax return.

Email Marketing Laws

- If your business uses email as part of your marketing strategy, compliance with the CAN-SPAM Act is necessary in order to avoid the risk of a lawsuit.

- CAN-SPAM Act does not apply to business emails with “transactional” or “relationship” content, such as emails regarding receipt of payment, shipping notifications, etc.

- Opt-Out Requirement – marketing emails must include instructions for the recipient to unsubscribe, and a request to unsubscribe must be honored within 10 days. Have a “unsubscribe” link in your marketing emails.

- Sender Identity – the "from", domain name, and email address must be accurate and identify who sent the email.

- Subject Line – Deceptive and misleading subject lines on marketing emails are illegal.

- Contact Information – Every marketing email must include a valid, physical postal address in the email body.

Restrictive Covenants

- Restrictive covenants are permissible in Michigan. A restrictive covenant must protect against the employee's gaining some unfair advantage in competition with the employer, but not prohibit the employee from using general knowledge or skill.

- Noncompetition Agreements – Michigan law permits reasonable noncompetition agreements between employers and employees.

    - "Reasonableness" is determined by duration, geographical area, and the type of employment or line of business.
    - Generally, duration of no more than one-year, geographical scope limited to a 100-mile radius, and prohibiting an employee from working for competitors of the employee, will likely be determined as reasonable under Michigan law.
    - Michigan courts are empowered to modify noncompetition agreements to render them reasonable.

- Nonsolicitation Agreements

    - Prohibits an employee from attempting to persuade other employees to leave the employer or trying to convince employer's customers to do business elsewhere.
    - Michigan courts have provided relief for isolated violations of a nonsolicitation agreement that present a direct and immediate threat to the employer's business.

- Nondisclosure Agreements

    - Michigan Court of Appeals has permitted Michigan employers to protect all of their confidential information.
    - Confidential information includes, but is not limited to, trade secrets, customer identity, customer information, and customer lists.
    - Confidential information should be defined in broad terms and restrict employees' ability to use or disclose any confidential information.

Types of Business Agreements

- When forming a business, an important component is the governing documents for the entity. Governing documents, along with statutory law and caselaw, determine the rights and obligations of business owners.

- Shareholder Agreements and Bylaws

    - A corporation's shareholder agreements and bylaws are contracts that provide for the regulation and management of the corporation's affairs.
    - The Michigan Supreme Court has held that violations of a shareholder agreement may constitute evidence of shareholder oppression.
    - The Michigan Court of Appeals held that minority shareholders of a company claiming they were made directors at a restaurant meeting were not, in fact, elected directors, because the bylaws of the company set forth a specific procedure for electing directors and the company's records did not reflect that the minority shareholders were directors.

- Articles of Incorporation

    - Michigan statutory law allows the Articles of Incorporation of a corporation to include the following provisions:
        - Regarding management of the business and conduct of the affairs of the corporation.
        - Creating, defining, limiting, or regulating the powers of the corporation and its directors and shareholders.
        - Limiting or eliminating a director's liability to the corporation or its shareholders, except liability for intentional infliction of harm on the corporation or the shareholders.
    - The Michigan Court of Appeals held that the statute did not protect directors that devalued the company's stock in order to force a going-private transaction to take place and lower the value paid to minority shareholders.

- Operating Agreements

    - Operating agreements for an LLC include important provisions related to distributions, membership, and management, as well as procedures for admitting or removing members and dissolving the LLC.
    - It is important to closely follow the operating agreement's provisions to obtain its protections.

PMA Can Help!

If you need assistance with planning for business succession, business entity agreements, or any business-related legal matter, contact the PMA Business & Corporate Law Team.

B. EMPLOYMENT LAW UPDATES

Pregnancy in the Workplace

- Pregnancy discrimination involves treating a female employee unfavorably because of pregnancy, childbirth, or a related medical condition.

- Know the Laws – The federal Family and Medical Leave Act guarantees 12 weeks unpaid leave to certain employees to care for their child, but only covers a company with at least 50 employees working within a 75-mile radius. The federal Pregnancy Discrimination Act, which makes pregnancy a protected class against discrimination, does not apply unless the employer has 15 or more employees. Michigan's Elliot-Larsen Civil Rights Act prohibits discrimination based on sex, which includes, pregnancy, childbirth, or related medical conditions. Local ordinances vary and should be reviewed.

- Have Written Policies and Procedures – Policy should strictly prohibit discrimination against a pregnant employee and have a clear reporting system for complaints. Consider and include what benefits will be available (length of maternity leave, paid or unpaid, etc.).

- Have Protocol for Addressing Complaints – Employers need to respond promptly to complaints and to assure the employee that the complaint is taken seriously and will be investigated. Gather information. Have the complaining employee make the complaint in writing (action alleged, who violated, any witnesses, etc.) with any supporting documentation.

- Reasonable Accommodations – Because pregnancy may be considered a disability under the Americans with Disability Act, reasonable accommodations should be given, such as changed duties, reduced hours, time off for medical appointments, etc.

- Don't Discriminate – Do not single out or treat pregnant employees unfairly compared to other employees. Employers may not base employment decisions on a pregnant employee's capabilities and health issues.

PMA Can Help!

For assistance with employee-related legal matters, contact the PMA Employment Law Team.

C. REAL ESTATE LAW UPDATES

Kent County Collecting Airbnb Tax

- On August 1, 2018, Kent County began collecting a 5% lodging and excise tax on Airbnb rentals.

- Airbnb is part of the "sharing economy" and allows homeowners to rent out part of their homes for guests to spend the night.

- Airbnb collects the tax and sends it to Kent County.

- Kent County Treasurer Ken Parrish indicated that Airbnb was a revenue stream that needed to be tapped from a fairness point of view, noting that traditional hotels have been paying lodging and excise tax for more than 40 years.

- The lodging and excise tax is used to support Experience Grand Rapids, the county's convention and visitors marketing agency, and to pay down the debt that was used to construct and expand the DeVos Place Convention Center.

Caselaw Update: "Uncapping" of Taxable Value of Real Estate

- The General Property Tax Act provides for the taxation of real property. A property's taxable value is determined by the lesser of the property's current state equalized value, or the property's taxable value in the previous year, multiplied by 1.05 or the inflation rate. This limitation effectively "caps" increases on a property's taxable value so that any yearly increase is no more than 5 percent.

- A property's taxable value is "uncapped" when the property is transferred. However, there are several exceptions, set forth by statute, where a transfer of ownership will not "uncap" the property's taxable value.

- The State Tax Commission ("STC") routinely publishes transfer of ownership guidelines interpreting the exceptions.

- One of these exceptions is for a transfer of real property among corporations or other legal entities if the entities involved are commonly controlled.

- The STC's guidelines for the commonly controlled entities exception rely on Revenue Administration Bulletin ("RAB") 1989-48, which provides that common control only exists when ownership is identical, or when the same five or fewer people have an 80% interest in both entities.

- In the recent case of *TRJ & E Props, LLC v City of Lansing*, which dealt with the commonly controlled entities exception, the Michigan Court of Appeals held that the Tax Tribunal was not bound to follow STC guidelines that imposed requirements not present within the statute's plain language.

- The Court held that the Tax Tribunal did not have to consider RAB 1989-48, as it did not provide any statutory construction, and it properly interpreted the plain language of the commonly controlled entity exception by finding that both entities were commonly controlled because the same siblings owned a controlling interest in each entity. Going forward, determining common control requires an examination of how the business is actually controlled based on its corporate structure.

- This is a "win" for property owners and should provide several significant planning opportunities for property owners. However, the City of Lansing has filed leave to appeal to the Michigan Supreme Court, so this may not be the end of the story.

PMA Can Help!

If you have questions about "uncapping" or need assistance with any other real estate-related legal matter, contact the PMA Real Estate Team.

D. TAX LAW UPDATES

Highlighting Changes in the Tax Cuts and Jobs Act

- The Tax Cuts and Jobs Act, passed in December of 2017, made several significant changes to federal taxation for individuals and businesses. Here are just a few examples. We recommend consulting with a tax professional to be aware of all the changes that will affect you or your business.

- Individual Tax Rates and Brackets – The new tax brackets for individuals are: 10%, 12%, 22%, 24%, 32%, 35%, and 37%.

- Personal Exemption – The deduction for personal exemptions was eliminated.

- Standard Deduction – substantially increased from $6,350 to $12,000 for single or married filing separately, from $9,350 to $18,000 for head of household, and from $12,700 to $24,000 for married filing jointly.

- Itemized Deductions – many have been eliminated or reduced. Medical expenses are reduced from 10% to 7.5% of adjusted gross income. State and local property and income taxes are limited to $10,000 ($5,000 for married filing separately). A deduction for interest on home equity indebtedness is eliminated.

- Child Tax Credit – The credit has doubled to $2,000 per qualifying child under the age of 17.

- Corporate Tax Rates – For businesses, the maximum corporate tax rate for C corporations was cut from a previous maximum of 35% to a new maximum rate of 21%.

- Qualified Business Income Deduction – For pass-through entities, such as S corporations and limited liability companies, a new 20% deduction applies to an owner's allocable share of income, after which a reduced rate of 29.6% is applied. This benefit phases out starting at $315,000.

Health Savings Accounts

- A health savings account ("HSA") is a tax-advantaged savings account available to taxpayers who are enrolled in a high-deductible health plan that can be used for out-of-pocket medical expenses.

- A HSA has many benefits. Contributions to a HSA are 100% tax-deductible, withdrawals to pay for qualified medical expenses are tax-exempt, interest earnings grow tax-free, and unused money is not forfeited at the end of the year.

- A little-known benefit is that HSAs can be used to accumulate emergency savings for non-healthcare expenses. When a non-medical emergency arises that requires access to funds, you can seek reimbursement from your HSA for past qualified healthcare expenses that you have already paid for with non-HSA funds. If the past qualified healthcare expenses occurred after the HSA was established, the withdrawal to reimburse those past qualified health care expenses will be tax-free. Reimbursement can occur many years after the expense occurred,

- To take advantage of this little-known benefit, you should save proper documentation, such as receipts, invoices, HSA contribution records and statements.

PMA Can Help!

If you have tax-related questions, contact Kari Thames with the Tax Resolution Specialists Team at (616) 458-4700.

E. ESTATE PLANNING UPDATES

Legislative Update: Disinheriting Children and the Exempt Property Allowance

- In probate administration of a decedent's estate there are certain statutory allowances that get paid before beneficiaries receive any assets of the decedent's estate.

- One of these allowances is the exempt property allowance, which is currently $15,000, and is paid to the surviving spouse. If there is no surviving spouse, then it divided in equal shares among the surviving children, whether they are minors or adults.

- In 2015, the Michigan Court of Appeals held that a child was entitled to the exempt property allowance, even though the parent's Will specifically states that the child should inherit nothing.

- Legislation has now been passed, effective as of August 8, 2018, allowing a decedent to exclude one or more of decedent's children from receiving the exempt property allowance by expressly stating so in their will.

Naming a Trust as IRA Beneficiary

- For many people, retirement accounts, such as IRAs, are their most significant asset that they plan to pass on after their death.

- Naming beneficiaries of an IRA is an important part of estate planning. Common beneficiaries of IRAs are the surviving spouse as primary and the children as contingent. However, sometimes it may be appropriate to name a trust as the beneficiary of an IRA.

- Designating a trust as an IRA beneficiary can accomplish the following goals:

    - Protection – Protect against creditors of trust beneficiaries (Generally, inherited IRAs are not protected from the IRA beneficiary's creditors).
    - Control – Retain control over the funds after your death by directing when distributions will occur and how much may be distributed (Generally, individual beneficiaries of an IRA are free to do whatever they want with the funds).
    - "Stretch" – IRA payments may be "stretched" over the lifetime of the trust beneficiaries.

- The IRS has special requirements for a trust beneficiary to qualify as a designated beneficiary of an IRA:
    - The trust must be valid under state law.
    - The trust must be irrevocable, or by its terms become irrevocable upon the death of the IRA owner.
    - The beneficiaries of the trust must be identifiable from the trust instrument.
    - A final list of all beneficiaries of the trust or a copy of the actual trust document must be provided to the IRA plan administrator by October 31 of the year following the IRA owner's death.
    - All trust beneficiaries must be individuals.

- Great care should be taken in deciding to name a trust as the beneficiary of an IRA and an attorney and financial advisor should be consulted regarding in this decision.

Tax Reform Effect on Estate and Gift Tax

- As part of the Tax Cut and Jobs Act ("Act"), passed in December of 2017, the lifetime exemption amount for estate, gift, and generation-skipping taxes was doubled.

- For 2018, the lifetime exemption amount for estate and gift taxes of $5.6 million per individual is now $11.18 million under the Act. A married couple can also combine their individual exemptions for a total of $22.36 million, however, doing so is not automatic. The surviving spouse must transfer the first spouse's unused exemption to the surviving spouse by filing an estate tax return for the first spouse, even if no estate tax is due.

- This doubling of the exemption amount is good for years 2018 through 2025. This means, without further Congressional action, the exemption amount would no longer be doubled, starting in 2026. Therefore, individuals that can, are encouraged to take advantage of their exemption amount now in case the doubling of the exemption amount ends in 2026.

- Separately, the annual gift tax exemption amount has been increased for the first time since 2013. For 2018 it is $15,000, up from $14,000. This is totally separate from the lifetime exemption amount. An individual can give $15,000 to as many individuals as they like in 2018. These annual gifts do not count towards the lifetime exemption amount.

Marital Deduction Trusts

- Marital deduction trusts were a very popular estate planning tool for married couples whose gross estate would reasonably be subject to federal estate tax. Such trusts allow married persons to effectively double federal estate tax exclusion.

- Married couples were much more likely to have their gross estate be subject to federal estate tax prior to 2001, when the federal estate tax exemption amount was below $1 million, and, therefore, a marital deduction trust made sense for many married couples.

- However, with the enactment of the American Taxpayer Relief Act of 2012, the federal estate tax exemption amount has gone up to over $5 million during the past few years, and, now, the Tax Cuts and Jobs Act passed late last year has nearly doubled that amount to $11.18 million in 2018.

- Due to these dramatically increased exclusion amounts and new "portability" options, which allows a surviving spouse to claim the unused portion of a deceased spouse's exclusion amount, marital deduction trusts may no longer be necessary for most married couples.

- In fact, having a marital deduction trust still in place could leave the surviving spouse with nothing, which would not be what the married couple intended.

- Many marital deduction trusts require that upon the death of the first spouse, a "credit shelter trust" is funded first, up to the maximum federal estate tax exclusion amount. Then, the remainder is passed to the surviving spouse. With the current maximum federal estate tax exclusion amount being $11.18 million, most surviving spouses would be essentially disinherited.

- Married couples with existing marital deduction trust should review their trust with an estate planning attorney and either modify their funding requirements or consider replacing their marital deduction trust with a joint trust.

PMA Can Help!

If you need assistance with putting an estate plan in place or reviewing your estate plan to make sure it is up to date with current laws, contact the PMA Estate Planning Team.

F. ELDER LAW UPDATES

Beware IRS Scams

- Everyone is susceptible to scams, whether it be by phone, mail, or email. However, elderly individuals are the most frequent targets of scams, and one of the most prevalent scams is IRS scams.

- The IRS will **never** do the following:

    - Call to demand payment.
    - Call to discuss taxes without first mailing a bill.
    - Demand payment of taxes without giving you the opportunity to question or appeal.
    - Require use of a specific payment method, such as a prepaid debit card.
    - Ask for credit or debit card numbers over the phone.
    - Threaten to bring in police or law-enforcement to arrest you for not paying.

Important Questions to Ask Aging Parents

- Talking with parents about their health, finances, and future plans can be uncomfortable, but is important if you will need to make decisions for a parent when a crisis occurs.

- It is best to start these conversations when your parents are still in good health.

- Common questions to ask are as follows:

    - Where are your financial assets located (financial institutions)?
    - What professionals do you work with (attorney, financial planner, accountant)?
    - Do you have a durable power of attorney for finances?
    - Do you have a designation of patient advocate (medical power of attorney)?
    - Do you have a will or trust?
    - Are beneficiary designations on your insurance policies, IRAs, and investment accounts up to date?
    - What doctors do you currently see?
    - What medications are you currently taking?
    - What kind of health insurance do you have?
    - Do you plan to stay in your home for the foreseeable future?
    - Do you need any improvements made to your home to make it safer?

PMA Can Help!

If you have questions or need assistance with elder law planning, contact the PMA Elder Law Solutions Team.

G. PROBATE ADMINISTRATION

Unclaimed Property

- As the personal representative of an estate, one of your duties is to determine and collect all the assets of the estate. This task is easier said than done.
- As part of this task, a personal representative should always check to see if the decedent has any unclaimed property being held by the State of Michigan.
- The State of Michigan takes possession of unclaimed property from financial institutions and other companies when they are unable to locate the owner.
- Unclaimed property includes such assets as: bank accounts, insurance policy benefits, uncashed checks, and stocks.
- The State of Michigan holds unclaimed property for the owner until it is claimed.
- The State of Michigan's Department of Treasury website (www.michigan.gov/treasury) has a link to search for unclaimed property by name.
- If a match is found, the personal representative should download the Unclaimed Property Inquiry Form, which is available for download on the same website. The form contains instructions for additional documentation that is needed to be submitted for a deceased property owner.
- If the decedent lived in other states besides Michigan, search on www.missingmoney.com.
- Also search www.unclaimedretirementbenefits.com, which maintains a database of unclaimed retirement plan accounts.

PMA Can Help!

If you have questions or need assistance with probate administration, contact the PMA Probate Estate and Trust Administration Team.

H. <u>FAMILY LAW UPDATES</u>

<u>Tax Reform Implications for Divorce Cases</u>

- The Tax Cuts and Jobs Act made several changes that affect most taxpayers. Some of these changes are relevant to parties going through a divorce and can affect agreements and negotiations.

- <u>Spousal Support</u>

    - For agreements entered into after December 31, 2018, alimony is no longer taxable to the recipient or deductible to the payor.
    - This new could also affect modifications to previous agreements. However, the IRS issued guidance that modifications made after December 31, 2018, to agreements made prior to 2019 may keep the old tax treatment if there is specific language stating that the old law applies.

- <u>Child Tax Credit</u>

    - The Child Tax Credit has doubled to $2,000 per child. Additionally, $1,400 of the $2,000 credit is refundable.
    - Because the Child Tax Credit directly reduces taxes and is now partially refundable, it may be useful and of greater importance as a negotiation tool in settlements.

<u>PMA Can Help!</u>

If you need assistance with a divorce or other family law matters, contact the PMA Family Law Solutions Team.

I. GOVERNMENT BENEFITS UPDATE

Medicaid Numbers

- The Michigan Department of Health and Human Services (MDHHS) has released new numbers for Medicaid for 2018, including the penalty divisor and resource, income, and expense allowances, which are used to determine eligibility for long-term care Medicaid benefits. Plachta, Murphy & Associates' Elder Law attorneys can provide further assistance with your long-term care planning. Michigan's Medicaid program is administered by the MDHHS.

Divestment Penalty Divisor	\$8,261.00
Maximum Asset Limit	\$2,000.00
Monthly Personal Needs Allowance	\$60.00
Minimum Community Spouse Resource Allowance	\$24,720.00
Maximum Community Spouse Resource Allowance	\$123,600.00
Minimum Community Spouse Income Allowance	\$2,030.00
Maximum Community Spouse Income Allowance	\$3,090.00

Changes to VA Pension Benefits Take Effect

- In last year's guide we wrote about proposed rule changes that would significantly affect the eligibility standards for the Department of Veterans Affairs ("VA") pension benefits. At that time there was still no indication if and when these changes would take effect.
- On September 18, 2018 the VA finally amended the rules, which went into effect on October 18, 2018.
- The VA failed to implement these changes in Congress. Interestingly, the VA decided to implement the changes unilaterally, arguing that they have the authority to do so.
- As expected, these new rules drastically change planning for VA pension benefits, and include the following:
  - Look-Back Period – There is now a 3-year look-back period from the date of the pension application regarding transfers of assets for less than fair market value. Such transfers will be subject to a penalty period of up to five years.
    - Exceptions – There is no penalty if the transfer is to a trust established for a child that is incapable of self-support, or if the applicant's net worth is already below the net worth limit (see below), regardless of the transfer.
    - Annuity Treatment – If an annuity can be liquidated it is treated as an asset, if not, then distributions are considered income. A penalty is imposed for the purchase of an annuity during the look-back period.

        - Cure – The VA will allow the applicant 90 days to cure a penalty by transferring property back to the applicant.
        - Divisor – The divisor used to calculate the penalty period is the Maximum Monthly Pension Rate for aid and attendance for a Veteran with one dependent as of the application date (currently $2,169.00).

    - Net Worth Limit – The net worth limit for an applicant is the maximum Community Spouse Resource Allowance allowed by Medicaid (currently $123,600.00).
        - Spend-Down – The applicant can spend-down assets by purchasing goods and services for fair market value.
        - Homestead – The applicant's homestead is not countable, however, there is a two-acre limit. If the applicant's homestead is more than two acres, the value of additional acres may be included in calculating the applicant's net worth.
        - Personal Effects – The value of "personal effects suitable to and consistent with a reasonable mode of life," such as a car and household goods, is not included in calculating the applicant's net worth.
        - Income Included – The applicant's annual income and that of certain dependents is included in calculating the applicant's net worth. However, reasonable unreimbursed medical expenses can be deducted from income.

PMA Can Help!

If you need assistance with planning for Medicaid or VA benefits, including assistance with applications, or any other government benefits matter, contact the PMA Government Benefits Team.

J. YEAR-END TAX PLANNING LETTER

PLACHTA, MURPHY & ASSOCIATES
attorneys and counselors at law

Brian J. Plachta
Miles J. Murphy III
Bryan D. Reeder
Jeffrey M. Black
Bert S. Irwin

Grand Rapids
Loraine Professional Bldg.
124 E. Fulton Street, Suite 100
Grand Rapids, MI 49503
telephone 616.458.3994
fax 616.458.2410
www.pmalawpc.com

Holland
42 E. Lakewood Blvd.
Holland, MI 49424
telephone 616.796.0743
of counsel:
William A. Sikkel IV
Mary A. Owens

Dear Clients and Friends:

Year-end tax planning in 2018 is probably more complicated than it has ever been before. The new tax law enacted late last year—the Tax Cuts and Jobs Act (TCJA)—completely rewrites the federal tax code. This monumental new legislation has a profound effect on both individual taxpayers and businesses of all shapes and sizes.

Among other noteworthy provisions, the TCJA cuts individual tax rates, increases the standard deduction, eliminates personal exemptions and overhauls the rules for itemized deductions. Generally, the changes for individuals take effect in 2018, but are scheduled to "sunset" after 2025. This provides a limited window of opportunity in some instances.

The impact on businesses is just as significant. For starters, the TCJA imposes a flat 21% tax rate on corporations, doubles the maximum Section 179 "expensing" allowance, modifies bonus deprecation rules and repeals deductions for entertainment expenses. Unlike the changes for individuals, most of these provisions are permanent, but could be revised if Congress acts again.

Keeping all that in mind, we have prepared the following **2018 Year-End Tax Letter**. For your convenience, the letter is divided into three sections:

*Individual Tax Planning

*Business Tax Planning

*Financial Tax Planning

Be aware that the concepts discussed in this letter are intended to provide only a general overview of year-end tax planning. It is recommended that you review your personal situation with a tax professional or contact Plachta, Murphy & Associates to schedule a consultation with one of our Estate Planning attorneys.

INDIVIDUAL TAX PLANNING

Standard Deduction/Itemized Deductions

First, the TCJA revamps the graduated tax rate structure for individuals and adjusts the bracket ranges, featuring a top tax rate of 37%, down from 39.6%. Then it effectively doubles the standard deduction to $12,000 for single filers and $24,000 for joint filers, somewhat offsetting the loss of personal exemptions. In conjunction with these changes, the new law reduces the tax benefits of certain itemized deductions, while eliminating other tax breaks.

YEAR-END MOVE: With help from your professional tax adviser, figure out if you will be claiming the standard deduction or itemizing deductions in 2018. This analysis will dictate your tax planning approach at the end of the year.

Some of the key TCJA provisions for itemized deductions are as follows:

*The deduction for state and local taxes (SALT) is limited to $10,000 annually. This includes any combination of SALT payments for (1) property taxes and (2) income or sales taxes.

*The deduction for mortgage interest expenses is modified.

*The deduction for casualty and theft losses is eliminated (except for disaster-area losses).

*The deduction for miscellaneous expenses is eliminated.

*The deduction for medical and dental expenses is temporarily enhanced.

Depending on your situation, you may want to accelerate deductible expenses into the current year to offset your 2018 tax liability. However, if you do not expect to itemize in 2018, you might as well postpone these expenses to 2019.

Tip: The TCJA also technically removes the previous reduction of itemized deductions and personal exemptions for high-income taxpayers under the “Pease rule” and Personal Exemption Phaseout (PEP) rule, respectively.

Charitable Donations

Generally, itemizers can deduct amounts donated to qualified charitable organizations if substantiation requirements are met. Note that the TCJA increases the annual deduction limit on monetary contributions to 60% of adjusted gross income (AGI), up from 50% of AGI, among other changes.

YEAR-END MOVE: Absent extenuating circumstances, “bunch” charitable donations in the year they will do you the most tax good. For instance, if you will be itemizing in 2018, you can step up gift giving at the end of the year. Conversely, if you are claiming the standard deduction this year, you may decide to postpone contributions to 2019.

For donations of appreciated property that you have owned longer than one year, you can generally deduct an amount equal to the property's fair market value (FMV). Otherwise, the deduction is limited to your "basis" (i.e., the cost). Also, other special rules may apply to gifts of property. Notably, the annual deduction for property donations generally cannot exceed 30% of AGI.

If you are donating securities to a charity, you might choose those that have appreciated in value. As a result, you can deduct the FMV of the securities while the appreciation remains untaxed forever. More sophisticated arrangements include transfers to charitable remainder trusts (CRTs).

Tip: If you make an online donation in December via credit card, you can write off the donation on your 2018 return—even if you do not actually pay the credit card charge until 2019.

Alternative Minimum Tax

Despite several "patches" in recent years, the alternative minimum tax (AMT) has continued to be a thorn in the side of many moderate-to-high income taxpayers. Briefly stated, the AMT is a complex calculation including certain technical adjustments, inclusion of "tax preference items" and subtraction of an exemption amount (subject to a reduction based on your income). After comparing AMT liability to regular tax liability, you effectively pay the higher of the two.

Now the TCJA provides a major fix by substantially increasing the exemption amounts and the thresholds for the reduction. The chart below shows the exemptions for the last five years.

Filing status	**2014**	**2015**	**2016**	**2017**	**2018**
Single filers	$52,800	$53,600	$53,900	$54,300	$70,300
Joint filers	$82,100	$83,400	$83,800	$84,500	$109,400
Married filing separately	$41,050	$41,700	$41,900	$42,250	$54,700

YEAR-END MOVE: Assess your personal situation. If it makes sense, you may then shift certain tax preference items to 2019 to reduce AMT liability for 2018. For instance, you might postpone the exercise of incentive stock options (ISOs) that count as tax preference items.

For 2017, the phaseout reduction equaled 25 cents for each dollar of AMT income above $120,700 for single filers and $160,900 for joint filers. The TCJA hikes the thresholds for 2018 to $500,000 for single filers and $1 million for joint filers.

Tip: The two AMT rates for single and joint filers for 2018 are 26% on AMT income up to $191,500 and 28% on AMT income above this threshold. Note that the top AMT rate is still lower than the new top ordinary income tax rate of 37%.

Medical and Dental Expenses

Prior to the TCJA**,** taxpayers could deduct unreimbursed medical and dental expenses above 10% of their AGI. But the new law provides some temporary tax relief. Retroactive to 2017, and lasting through 2018, the TCJA lowers the threshold for deducting medical and dental expenses to 7.5% of AGI.

Usually, you have no control over when medical or dental expenses occur. At other times, however, you may be able to schedule elective expenses, such as physical examinations or dental cleanings, to your tax benefit.

YEAR-END MOVE: Move non-emergency expenses into the optimal tax year for your situation. For instance, if you are itemizing and have already surpassed the lower AGI threshold this year, or you expect to clear it soon, accelerate elective expenses into 2018. Otherwise, you might as well delay expenses until 2019, when at least you will have a chance at a deduction.

To qualify for a deduction, the expense must be for the diagnosis, cure, mitigation, treatment or prevention of disease or payments for treatments affecting any structure or function of the body. But any costs for your general health or well-being are nondeductible.

Tip: Count unreimbursed medical and dental expenses paid for your immediate family as well as for other tax dependents, such as an elderly parent or in-law. This might push you above the 7.5%-of-AGI threshold for 2018.

Miscellaneous

*If you pay a child's college tuition bill before 2019, you may qualify for one of two higher education tax credits for 2018, subject to phaseouts based on income. For instance, you might pay tuition in December for the next semester beginning in January. Note that the alternative tuition deduction expired after 2017, although it could be revived again by Congress.

*When appropriate, transfer income-producing property to family members in lower tax brackets. This form of "income-splitting" still makes sense for individuals in the upper tax brackets. But beware of the "kiddie tax" that generally applies to unearned income above $2,100 received in 2018 by a dependent child under age 18 or a full-time student under age 24. Under the TCJA, the kiddie tax is based on the tax rates in effect for estates and trusts, which often will produce a higher tax than it would have under prior law.

*Consider the tax impact of a divorce or separation. The TCJA repeals the deduction for alimony expenses for payors, and the corresponding inclusion in income for recipients, for divorce and separation agreements executed after 2018. Unlike most other changes for individuals, this provision is permanent. Note that deductions may still be available for existing agreements that are modified after 2018.

*With a Section 529 plan, you can set up an account for a child's college education that can grow without any current tax erosion. Payments for qualified expenses are exempt from tax. Beginning in 2018, the TCJA expands the use of 529 plans for tuition payments of up to $10,000 a year for a child's kindergarten, elementary or secondary school education.

*You may be liable for an estimated tax penalty if you fail to pay the required tax during the year. But you can avoid the penalty by paying enough in withholding and/or quarterly installments to satisfy a "safe harbor rule" of 90% of current tax liability or 100% of the previous year's tax liability (110% if your AGI was above $150,000). Usually, it easier to figure out payments based on 100% (or 110%) of last year's tax liability.

BUSINESS TAX PLANNING

Section 179 Deductions

Under Section 179 of the tax code, a business may "expense" (i.e., currently deduct) the cost of qualified property placed in service during the year. The maximum annual deduction is phased out on a dollar-for-dollar basis above a specified threshold.

The maximum Section 179 allowance has been raised over the last decade to $500,000, indexed for inflation. At the same time, the phaseout threshold was increased. Now the TCJA doubles the maximum allowance to $1 million with a $2.5 million phaseout threshold for 2018. The progression is shown below.

Tax year	Deduction limit	Phaseout threshold
2007	$125,000	$500,000
2008–2009	$250,000	$800,000
2010–2015	$500,000	$2 million
2016	$500,000	$2.01 million
2017	$510,000	$2.03 million
2018	$1 million	$2.5 million

YEAR-END MOVE: Make sure qualified property is "placed in service" before the end of the year. In other words, actually start using it. This will help maximize your annual deduction.

However, note that the Section 179 deduction cannot exceed the taxable income from all your business activities this year. This could limit your deduction for 2018.

Tip: Depreciation deductions may still be available for costs that cannot be expensed under Section 179. For instance, you may be able to benefit from "bonus depreciation" for qualified property.

Bonus Depreciation

Generally, a business may claim regular depreciation deductions for qualified property over a specified cost recovery period. In addition, recent tax legislation authorized "bonus" depreciation for qualified property placed in service during the year.

Under the TCJA, the previous 50% bonus depreciation deduction tax break is generally doubled from 50% to 100% for property placed in service after September 27, 2017.

YEAR-END MOVE: Maximize the benefits of 100% bonus depreciation. Factor in all the tax ramifications for your business before purchasing property at the end of the year.

Note that the TCJA gradually phases out bonus depreciation after 2022. This tax break is scheduled to disappear completely after 2026.

Tip: The TCJA expands the definition of qualified property for this purpose to include used, not just new, property.

Travel and Entertainment Expenses

The tax rules for travel and entertainment (T&E) expenses are fraught with numerous twists and turns. On one hand, you can continue to deduct expenses for travel and meal expenses while you are away from home on business, subject to certain limits. On the other hand, the TCJA repeals the deduction for entertainment expenses, beginning in 2018.

YEAR-END MOVE: Schedule business trips for the end of 2018. If you meet the strict substantiation requirements, you may deduct 100% of your travel costs and 50% of meal costs for amounts paid or incurred this year.

Generally, you can deduct reasonable costs of traveling away from home on business, including airfare and lodging. But the primary purpose of the trip must be business-related. It cannot be a disguised vacation.

If you travel by car, you may be able to deduct your actual expenses, including a depreciation allowance, or opt for the standard mileage deduction. The standard mileage rate for 2018 is 54.5 cents per business mile (plus tolls and parking fees). Annual depreciation deductions for "luxury cars" are limited, but the TCJA generally enhances those deductions for vehicles placed in service in 2018 and thereafter.

Prior to the TCJA, you could deduct 50% of your entertainment costs that were "directly-related-to" or "associated-with" your business. The entertainment deduction is no longer available. However, a new ruling issued by the IRS this year clarifies that you can continue to deduct the cost of food and beverages that is invoiced separately from the cost of entertainment activities. This might apply to expenses incurred when you treat a customer or client to tickets to a sporting event.

Tip: Despite the new law changes, you may deduct 100% of a holiday party as long as the entire workforce is invited.

Business Bad Debts

If your business is having difficulty obtaining payments for goods or services it provides, there may be a way to salvage some tax relief on your 2018 return.

YEAR-END MOVE: Step up your collection activities before 2019. For instance, you may issue a series of dunning letters to debtors asking for payment. If you are still unable to collect the unpaid amount, you can generally write off the debt as a business bad debt in 2018.

As a general rule, business bad debts are deducted from taxable income in the year they become worthless. To qualify as a business bad debt, a loan or advance must have been created or acquired in connection with your business operation and result in a loss to the business entity if it cannot be repaid.

Tip: Keep detailed records of all your collection activities—including letters, telephone calls, e-mails and efforts of collection agencies—in your files. This documentation can help support your position claiming worthlessness of the debt if the IRS ever challenges the bad debt deduction.

Business Start-up Expenses

The tax law allows a small-business owner to claim a first-year deduction of up to $5,000 for qualified start-up costs. Any remaining expenses must be amortized over 180 months. However, the $5,000 write-off is phased out for start-up costs exceeding $50,000.

YEAR-END MOVE: Make sure you are officially "open for business" before the end of the year. Otherwise, you cannot claim the current $5,000 deduction on your 2018 return.

Generally, start-up costs are expenses that would be deductible as business expenses. This includes investigatory expenses such as the following:

- An analysis of potential markets, products, labor supply, transportation facilities, etc.
- Advertisements for the opening of the business.
- Salaries and wages for employees who are being trained and those instructing them.
- Travel costs to secure prospective distributors, suppliers, customers or clients.
- Salaries and fees for executives and consultants or similar professional services.

Tip: If it suits your purposes, you can elect to have all business start-up costs amortized over 180 months. This may be preferable for an entrepreneur expecting a low tax liability in 2018.

Miscellaneous

*The TCJA creates a new deduction for up to 20% of the "qualified business income" (QBI) of pass-through entities, including sole proprietorships. But the deduction is phased out for many high-income taxpayers, especially those in personal service businesses. With assistance from your tax adviser, stay below the income thresholds, when possible.

*Stock the shelves with routine business supplies before the end of the year. Usually, your company can deduct the costs in 2018, even if all the supplies are not used until 2019.

*If you buy a heavy-duty SUV or van for business, you may claim a first-year Section 179 allowance of up to $25,000. The "luxury car" limits do not apply to certain heavy-duty vehicles.

*Generally, repairs are currently deductible, while capital improvements must be depreciated over time. Therefore, make minor repairs before 2019 to increase your 2018 deduction.

*If you pay year-end bonuses to employees in 2018, the bonuses are generally deductible by your company and taxable to the employees in 2018. A calendar-year company operating on the accrual basis may be able to deduct bonuses paid as late as March 15, 2019 on its 2018 return.

* Beginning in 2018, the TCJA limits the current deduction for business interest to 30% of adjusted taxable income. But a qualified small business with average annual receipts for the last three years of $25 million or less is exempt. Try to squeeze under this threshold.

*A business may qualify for an up-to-25% credit for paid family and medical leaves of up to 12 weeks. This credit, which only applies for wages paid to employees earning no more than $72,000 annually, expires after 2019.

FINANCIAL TAX PLANNING

Capital Gains and Losses/Dividends

Frequently, investors time sales of securities at year-end to produce optimal tax results. For starters, capital gains and losses offset each other. If you show an excess loss for the year, it then offsets up to $3,000 of ordinary income before being carried over to the next year. Long-term capital gains from sales of securities owned longer than one year are taxed at a maximum rate of 15% or 20% for certain high-income investors. Conversely, short-term capital gains are taxed at ordinary income rates reaching up to 37% in 2018.

YEAR-END MOVE: Review your investment portfolio to target "winners" and "losers." Depending on your situation, you may harvest capital losses to offset gains realized earlier in the year or cherry-pick capital gains that will be partially or wholly absorbed by prior losses.

Be aware of even more favorable tax treatment for certain long-term capital gains. Notably, a 0% rate applies to taxpayers below certain income levels, such as a young child. Furthermore, some taxpayers who ultimately pay ordinary income tax at higher rates due to their investments may qualify for the 0% tax rate on a portion of their long-term capital gains.

The 0%/15%/ 20% rate structure for long-term capital gains also applies to qualified dividends. These are dividends paid by U.S. companies or qualified foreign companies.

Tip: The TCJA retains the breakpoints for capital gains and qualified dividends in effect for 2017. Therefore, investors may be operating under two sets of tax rate structures this year. Seek guidance from your financial and tax advisers.

Net Investment Income Tax

Besides capital gains tax, an extra 3.8% tax applies to the lesser of your "net investment income" (NII) or the amount by which your modified adjusted gross income (MAGI) for the year exceeds $200,000 for single filers and $250,000 for joint filers. (These amounts are not indexed for inflation.) The definition of NII includes interest, dividends, capital gains and income from passive activities, but not Social Security benefits, tax-exempt interest and distributions from qualified retirement plans and IRAs.

YEAR-END MOVE: Where it is feasible, reduce your NII tax liability in 2018, or avoid it altogether. This requires you to assess the amount of both your NII and your MAGI at the end of the year. Then you can act accordingly

For example, you might add municipal bonds ("munis") to your portfolio. Interest income from munis does not count as NII, nor is it included in the calculation of MAGI. Similarly, if you turn a passive activity into an active business, the resulting income may be exempt from the NII tax. These rules are complex, so obtain professional assistance.

Tip: When you add the NII tax to your regular tax plus any applicable state income tax, the overall rate may approach or even exceed 50%. Factor this into your investment decisions.

Estate and Gift Taxes

During this century, Congress has gradually increased the estate tax exemption, while reducing the top estate tax rate. At one point, the estate tax was repealed, but only for 2010, while the unified estate and gift tax exclusion was severed and then reunified. Now the TCJA doubles the exemption from $5 million to $10 million, inflation-indexed to $11.18 million in 2018. The table below shows the progression of the estate tax exemption and top estate tax rate.

Tax year	Maximum estate tax exemption	Top estate tax rate
2002	$1 million	50%
2003	$1 million	49%
2004	$1.5 million	48%
2005	$1.5 million	47%
2006	$2 million	46%
2007–2008	$2 million	45%
2009	$3.5 million	45%
2010	Not applicable	Repealed
2011	$5 million	35%
2012	$5.12 million	35%
2013	$5.25 million	40%
2014	$5.34 million	40%
2015	$5.43 million	40%
2016	$5.45 million	40%
2017	$5.49 million	40%
2018	$11.18 million	40%

YEAR-END MOVE: Update your estate plan to reflect existing law. For instance, wills and trusts may be revised to accommodate the rule allowing portability of the estate tax exemption.

Note that under the "portability" provision for a married couple, the unused portion of the estate tax exemption of the first spouse to die may be carried over to the estate of the surviving spouse. This tax break is now a permanent part of the tax code.

Tip: With the gift tax exclusion, you can give each recipient up $15,000 (up from $14,000 in 2017) without paying any federal gift tax. This exclusion is effectively doubled to $30,000 for joint gifts by a married couple. Such gifts reduce the size of your taxable estate.

Required Minimum Distributions

As a rule, you must receive required minimum distributions (RMDs) from qualified retirement plans and IRAs after reaching age 70½. The amount of the distribution is based on IRS-approved life expectancy tables and your account balance at the end of last year.

YEAR-END MOVE: Arrange to receive RMDs before the December 31 deadline. Otherwise, you will have to pay a stiff tax penalty equal to 50% of the required amount (less any amount you have received), in addition to the regular tax liability.

However, if you are still working and do not own 5% or more of the business employing you, you can postpone RMDs from the employer's qualified plan until you retire. This "still working exception" does not apply to RMDs from IRAs or plans of employers where you do not work.

Tip: RMDs are not treated as NII for purposes of the 3.8% tax. Nevertheless, an RMD may still increase your MAGI used in the NII tax calculation.

Roth IRA Conversions

Although contributions to traditional IRAs may be tax-deductible, deductions are phased out for active participants in employer-sponsored retirement plans. Future distributions are taxed at ordinary income rates, currently reaching up to 37%. Conversely, Roth IRA contributions are never tax-deductible, but qualified distributions from a Roth IRA in existence at least five years are 100% tax-free. Taxation of other distributions is based on special "ordering rules."

YEAR-END MOVE: Figure out if a Roth conversion makes sense this year. Although the transfer is currently taxable, it can provide future tax-free benefits. A conversion is especially advantageous if you expect to be in a higher tax bracket in your retirement years than you are now.

Nevertheless, a Roth IRA conversion increases your MAGI for purposes of the NII tax. To reduce your overall tax liability, you might arrange a series of Roth IRA conversions over several years instead of converting all the funds this year. Manage your tax brackets accordingly.

Tip: The TCJA removes the ability to "recharacterize" a Roth conversion back into a traditional IRA if the value of the assets declines after the conversion. Essentially, it means that you have "overpaid" the tax. This crackdown is generally effective for 2018 and thereafter.

Miscellaneous

*Sell real estate on an installment basis. For payments over two years or more, you can defer tax on a portion of the sales price. Also, this may effectively reduce your overall tax liability.

*Contribute up to $18,500 to a 401(k) in 2018 ($24,500 if you are age 50 or older). If you clear the 2018 Social Security wage base of $128,400 and promptly allocate the payroll tax savings to a 401(k), you can increase your deferral without any further reduction in your take-home pay.

*From a tax perspective, it is often beneficial to sell mutual fund shares before the fund declares dividends (the ex-dividend date) and buy shares after the date the fund declares dividends.

*Watch out for the "wash sale" rule. If you sell securities at a loss and reacquire substantially identical securities within 30 days of the sale, the tax loss is disallowed. An easy way to avoid this result is to wait at least 31 days to buy back the same or similar securities.

*If you are age 70½ or older, transfer IRA funds directly to a charity. Although the contribution is not deductible, the distribution is not subject to tax and counts as an RMD.

CONCLUSION

This year-end tax-planning letter is based on the prevailing federal tax laws, rules and regulations. Of course, it is subject to change, especially if additional tax legislation is enacted by Congress before the end of the year.

Finally, remember that this letter is intended to serve only as a general guideline. Your personal circumstances will likely require careful examination. We would be glad to schedule a meeting with you to assist with all your tax-planning needs.

Respectfully,

PLACHTA, MURPHY & ASSOCIATES, P.C.

Brian J. Plachta
Brian J. Plachta

Miles J. Murphy III
Miles J. Murphy III

Bryan D. Reeder
Bryan D. Reeder

Jeffrey M. Black
Jeffrey M. Black

Bert S. Irwin
Bert S. Irwin

This year-end tax-planning letter is published for our clients, friends and professional associates. It is designed to provide accurate and authoritative information with respect to the subject matter covered. The information contained in this letter is not intended or written to be used for avoiding any penalties that may be imposed under federal tax law and cannot be used by you or any other taxpayer for avoiding such penalties. Before any action is taken based on this information, it is essential that competent, individual, professional advice be obtained.