



2019-2020
BUSINESS AND PERSONAL
LEGAL PLANNING GUIDE

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

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Dear Clients and Friends:

Enclosed is the 2019-2020 Business and Personal Legal Planning Guide that we have put together for our clients and friends. This Planning Guide includes important articles about important issues and changes in business, real estate, estate planning, tax, family law, and government benefits. We hope you can 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 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 2020. 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,

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A. BUSINESS LAW UPDATES

Your Business's Professional Team

- Who is on your business's professional team? Do you have a professional team? A professional team is a group of professional experts that you, the business owner, outsource tasks to, so you can focus on growing and maintaining your business.
- Professionals that every business owner should work with:
 - CPA – Every business should have a financial advisor for tax purposes. A Certified Public Accountant (CPA) is preferable to a general accountant, because a CPA can represent you if you are audited by the IRS. A CPA can assist with financial planning and business valuation, in addition to assisting with taxes, accounting, and auditing
 - Insurance Agent – Every business has multiple insurance needs, which may require more than one type of insurance agent. For example, one might need a business insurance agent for property, workers compensation, or product liability insurance; and a health insurance agent for securing health plans for your employees.
 - Attorney – An attorney can assist with setting up your business's structure (LLC, Corporation, etc.). Once your business is formed, an attorney can assist with contracts (employees, customers, vendors), commercial leases, and legal compliance. In the event of litigation, it is good to have an attorney who is already familiar with your business.
 - Business Mentor – A business mentor can provide insight and an outsider's opinion regarding your business. People, by nature, love help other people, and business leaders are no exception. However, you may have to kiss a few frogs before you find the right mentor for your business.
 - Recruiter – Finding the right candidate is time-consuming. Recruiters are professionals that can pre-screen qualified candidates for your business, so that you only have to take time to meet with high-potential candidates for a position.
- Being a business owner requires attending to many different important tasks aside from selling your product or service. Outsourcing these tasks to trained professionals, can save time, money, and ensure your company continues to run smoothly.



Successful Succession Planning

- Have a written “contingency plan” detailing how the business will function if key personnel unexpectedly become unavailable, in order to reduce the risk of operational disruptions.
- When selling to a third party, you should anticipate and address risk factors that an outside buyer would have issues with. For example, audit the business’s legal, financial, and operation records.
- When selling to key employees, incentivize such employees to stay long-term with perks such as profit-sharing plans and cash bonus plans. These plans should be documented in writing.
- Work to reduce the business’s dependency on the owners by establishing an experienced and trained management team
- Perhaps the most important and most difficult task is identifying the right successors. It’s never too early to identify that key employee and start training them to take over. Also, with a family business, consider whether a family member has the qualifications and experiences to take over running the business.

Selling Your Business: Allocation of Purchase Price

- When selling your businesses there are many requirements to consider and address. One requirement that can get overlooked, but can result in significant tax savings, is the allocation of the purchase price.
- Allocating the purchase price means assigning a portion of the purchase price to each asset being sold, such as equipment, inventory, goodwill, and a noncompete.
- As the seller, you will want to allocate as much of the purchase price as possible to goodwill. This is because goodwill is taxed to the seller as a capital gain, which has a lower tax rate than ordinary income assets.
- This important requirement of a business sale should be negotiated and agreed upon early in the process so that it does not delay closing.

Responding to Negative Reviews

- We live in a world where “word-of-mouth” now includes the Internet. Your business should have a plan in place for responding to negative reviews of your business posted on services such as Google, Yelp, and other social media platforms.
- Current and future customers may form opinions about your business based on what others have said, as well as how you have responded.
- Without a plan in place, your business could end up going weeks without noticing and responding to a negative review. There are monitoring tools available to notify you when your business has received a review. That way you can respond immediately, if necessary.
- A response to a negative review should be timely, polite, and professional. Do not take it personally or let emotions influence how you respond. However, do not be afraid to stick up for your business.
- Responding to a negative review is not just a response to that particular individual, it is a response to the public. Your response is an opportunity to present your brand and try to resolve the situation, even if the individual is being unreasonable. Be sincere and welcome the feedback. If a future customer sees a polite and professional response to a negative review, they are usually willing to overlook it.
- You do not need to respond to every negative review, such as one a reviewer is simply venting. Sometimes, you may be able to contact the review site to have the review removed.

Small Organization Oversight

- There are many small organizations that provide services to the community that rely on volunteers and supporters to carry out their operations, such as youth sports, literacy programs, and community revitalization.
- Unfortunately, all too often we hear about these types of organizations being taken advantage of by certain individuals, leaving the small organization broke.
- Small organizations should implement the following practices and carry out the following responsibilities in order to protect itself:
 - Structure – It is important to know how the organization was formed. This ensures that it is meeting all legal and reporting requirements.
 - Internal Controls – The governing board should ensure that there is a good system of internal controls. Internal controls are the rules and procedures implemented to ensure the integrity of financial/accounting information, promote accountability, and prevent fraud. Internal controls should be documented and updated annually.

- Due Diligence- The governing board should carefully review monthly financial reports and minutes. Do not just accept them.
- Regularly Scheduled Meetings- Conducting meetings of the governing board on a regular basis leads to better organizational oversight. One annual meeting is not enough.
- Budget Monitoring- Monitoring budgets not only helps to see where the organization is at financially, but it also is an effective internal control. Comparing the budgeted numbers with the actual numbers for a short time period can identify significant unexpected variances, which should be investigated.
- Accountability – Deadlines for financial reporting will hold individuals accountable. Proper review by the governing board will ensure that everything is operating as it should. Demonstrating proper controls and monitoring to the public will make people more willing to donate resources.

Nonprofit Organizations – Planning for Long-Term Growth

- Nonprofit organizations have a mission, often involving a social purpose. However, by definition, nonprofit organizations are still a business, which requires focusing on profitability to further its mission.
- Nonprofit organizations can learn from for-profit organizations, in order to ensure long-term growth.
- Do not focus on programming, at the expense of neglecting operations. Look at operations with a business mindset to find the appropriate balance between program spending and investing for long-term growth. Is the current level of program spending sustainable? Are some programs having less impact than expected? What could most help advance the organization’s mission?
- Focus on future growth. Look for growth opportunities by partnering with similar nonprofits. Consider changes to fundraising campaigns to better reach millennials and younger generations, who tend to communicate primarily through social media and are interested in getting involved with the causes they donate to.
- Do not neglect leadership succession planning. Examine the leadership qualities that will help the organization achieve its future goals.

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

Tips on Terminating Employees

- Employee terminations can have high stakes, such as litigation and the resulting impact on the workplace. Terminating an employee requires you to consider many factors and issues.
- Does the employee have an employment agreement providing for just-cause termination, or is the employee an at-will employee who can be terminated without cause and without notice? Is there documentation in place establishing the employee as an at-will employee, such as a company handbook?
- Just because an employee is at-will does not mean there are no risks with terminating them. Is the employee in a protected class under statutory law, such as race, age, or disability? Has the employee raised concerns that could lead to a retaliation or whistleblower claim?
- Review performance evaluations, discipline, and performance improvement plans if terminating for poor performance. Has the employee been warned of the consequences for their behavior?
- Give the employee an opportunity to address your concerns before terminating them, so that you can determine if there is an explanation for their behavior.
- How will terminating (or not terminating) the employee affect the workforce? A significant morale issue could develop among the workforce if the workforce believes termination was an overreaction (or if the workforce believes that the employee's conduct warranted termination).
- Consider an employment separation agreement to avoid legal risks and provide certainty.
- If the decision to terminate has been made, always have witnesses present at the termination meeting. Someone should take detailed notes of the meeting. Termination should be conducted respectfully, allowing the employee to have an opportunity to be heard, without debating the merits of the decision to terminate employment, and allowing the employee the opportunity to vacate the premises with dignity.



Maintaining Drug-Free Workplaces

- Despite Proposal 1 passing last year, legalizing the recreational use of marijuana, employers can still have a drug-free workplace policy at their business.
- Employers can still refuse to hire an applicant that tests positive for marijuana and can still terminate an employee that tests positive for marijuana.
- A challenge for employers will be how to determine that an employee is working while under the influence of marijuana, as the new law does not define the term “under the influence.”
- Employers should use caution in taking adverse action against an employee or job applicant for their use of medical marijuana. Prior Michigan caselaw has held that a medical marijuana user can have their employment terminated. However, another case found that a medical marijuana user that had their employment terminated was entitled to unemployment benefits. It is still an open question whether employers must accommodate medical marijuana usage pursuant to the Michigan’s Persons with Disability Civil Rights Act.
- An employer is not required to accommodate an employee’s use of medical marijuana on work premises during working hours. However, courts could ultimately require an employer to accommodate the use of medical marijuana off work premises during non-working hours by providing a waiver to a drug-free policy.
- Whatever an employer decides, it is important to make job candidates clearly understand the company’s substance abuse policy. That policy needs to be in writing and made clear.

New Overtime Rule Returns

- On May 16, 2016, the United States Department of Labor (“the DOL”) announced new rules regarding overtime pay under the Fair Labor Standards Act. These new rules were to go into effect on December 1, 2016.
- Under the old rules, executive, administrative, and professional (“EAP”) employees were exempted from receiving overtime pay if certain tests were met. One of these tests, the “salary level test,” provided that EAP employees were exempt if they earned a weekly salary of \$455 (\$23,660 annually).
- The rules proposed in 2016 increased this amount to a weekly salary of \$913 (\$47,476 annually). The DOL estimated that this change would have extended overtime pay to an estimated 4.2 million employees who were currently exempt.
- On November 22, 2016, a Federal Judge in Texas issued a nationwide injunction to block the 2016 overtime exemption rules from taking effect. The 2016 rules would have doubled the maximum salary a worker can earn and still be eligible for mandatory overtime pay.

- Now, nearly three years later, the DOL announced new rules regarding overtime pay, which are set to go into effect on January 1, 2020. The new rules update the salary level to a weekly salary of \$684 (\$35,568 annually). This change is far less drastic than the change proposed in 2016 and is expected to impact only 25% of the workers that would have been affected by the 2016 rule.
- Under the new rules, the salary level will be reviewed every four years, with changes made only after giving notice of proposed changes and an opportunity for comments from the public.
- Under the new rules, employers are allowed to use non-discretionary bonuses and incentive payments (including commissions) that are paid annually to satisfy up to 10% of the salary level.
- Employers will have to decide whether to give salaried employees making less than \$35,568 annually a raise, or to reclassify them as hourly employees and begin paying them overtime.

PMA Can Help!

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

C. REAL ESTATE LAW UPDATES

Family Cottage LLC Update

- A common practice in Michigan for families owning cottages has been to transfer the cottage into a limited liability company (“LLC”).
- Some of the reasons for doing so are to limit the family’s liability for claims related to the property, efficient management of the property, and passing the property to future generations.
- However, due to a recent Michigan Court of Appeals case, such a transfer could result in uncapping property taxes.
- In Michigan, unless a “transfer of ownership” occurs, the taxable value of property can only be increased each year by the rate of inflation or 5 percent, whichever is less. If there is a “transfer of ownership,” then the taxable value is “uncapped,” which means the taxable value is increased to the state equalized value (“SEV”). The SEV is the state’s appraisal of the fair market value of the property.
- Previously, a family owned cottage could be transferred into an LLC without uncapping the taxable value, if the same individual or individuals that owned the property also owned the LLC in the same percentages. This exception is known as a transfer between two entities “under common control.”
- In *Scott v South Haven*, the Michigan Court of Appeals affirmed the decision of the tax tribunal that the transfer of a cottage from Joan Scott to an LLC owned solely by Scott was a transfer of ownership because it was not a transfer between two entities “under common control.”
- The Court agreed with the tax tribunal that in order to qualify as a transfer between two entities “under common control” the entities must engage in business activity. Engaging in business would have made Scott an entity, such as a sole proprietor. But since she didn’t, she was simply a natural person, not an entity.
- As a result, if a family wants to transfer the family cottage into an LLC, the family risks uncapping the property’s taxable value. Depending on the difference between the cottage’s current taxable value and its SEV, an uncapping could lead to a significant increase in property taxes. These tax implications must be weighed against the benefits of transferring the cottage into an LLC when making the decision.



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

Philanthropy After Tax Reform

- “Bunching” Deductions – make 3 years of charitable giving every third year; itemize tax deductions in that year and use the standard deduction in the not-itemizing years.
- “Boost” Gifts – fulfill larger gift commitments to a single charity in a single year, rather than over an extended pledge-payment period.
- “Bypass” Income Stream – An individual over 70 ½ can direct up to \$100,000 a year directly from an IRA to one or more qualifying charities. Such a qualified charitable distribution (QCD) does not result in a federal income tax charitable deduction, but the distributed amount does not have to be reported as income in the same manner as a regular IRA distribution. Thus, the QCD is equivalent to a 100% income tax deduction. The QCD also counts against the required minimum distribution.
- Gift Appreciated Assets – An individual can still donate stock and other appreciated assets that have grown in value to a charity. As a result, the individual will avoid the capital gains that would have been incurred had they sold the appreciated asset, while the gain in the asset’s value is fully tax deductible.
- Charitable Gift Annuities – The charitable gift annuity avoids paying capital gains taxes on the sale of an appreciated asset like securities.
- Charitable Remainder Trusts – A charitable remainder trust can accomplish the following:
 - Avoids paying any capital gains taxes when an appreciated asset transferred to the trust is sold by the trust;
 - Assures a lifetime income stream to the beneficiary to address longevity concerns;
 - Protects the trust’s assets from the beneficiary’s creditors;
 - Creates a large current charitable income tax deduction equal to the value of the charitable remainder interest in the trust; and
 - Assures the charity that it will receive the balance of the assets in the trust on the beneficiary’s death.



LLC Tax Partner Update

- In January of 2019, the IRS changed the method by which it will govern partnership audits. As a result, all audits of multi-member limited liability companies that have elected to be treated as partnerships for income tax purposes.
- The new system is called the Centralized Partnership Audit Regime (“CPAR”). Under the CPAR, a “Partnership Representative,” which does not have to be an actual partner or member of the business and can be a separate entity, is now required to be appointed by the LLC. If the LLC is ever audited in the future, that Partnership Representative makes all the decisions concerning the audit, including, but not limited to:
 - Assisting in producing what is now an internally-created audit for the calendar year in question to be presented to the IRS pursuant to its guidelines;
 - Determining (**without** the input of the members required) if the LLC itself will be responsible to pay any back taxes, penalties, and/or interest due for the audit year, or, if that tax, penalty and interest should be passed (“Pushed Out”) to the individual members of the company in accordance with their representative ownership membership interests. Members have no right to protest. However, if that election is made, then all the back amounts due are taxed at the current-year tax rate and not the year when the profits under audit were generated (this is called the “Alternative Election”), or;
 - If the Partnership Representative does not meet the new audit and election timelines as to the required internal audit or as to the determination of responsibility concerning any back taxes, penalties, and interest as owed, then the IRS has the option to default the LLC, via the “Default Method”, and order the LLC itself to pay all back taxes, penalties, and interest due **AT THE HIGHEST INDIVIDUAL OR CORPORATE TAX RATE OF ANY MEMBER OF THE COMPANY, and if the LLC cannot afford these back taxes, penalties, and interest as determined at the highest income tax rate of any member or corporate member, then the IRS has the ability to order all members to contribute personal funds to the LLC until the tax obligation is fulfilled.**
- Obviously, this new position of Partnership Representative creates not only obligations never-before seen under the Michigan Limited Liability Company Act but also places an immense burden on the Partnership Representative when it comes to tax knowledge and the tax ramifications of election that is beyond the capability of most members. These obligations create potential liability that could fall upon the Partnership Representative for failure to timely elect, or properly elect, the tax treatment that is appropriate for each business and its various owners.
- In light of this drastic change to the responsibility and ramifications of the “tax member”, we are recommending that all our so-situated LLCs discuss this issue at their Annual Meeting at our office for 2020 or contact our office to set a time to discuss the legal options for this determination.

- The legal options to be discussed include:
 - Whom or what entity should be named the “Partnership Representative” for the 2019 tax year and beyond;
 - If the Operating Agreement and/or Business Succession Plans of the limited liability company should be modified; and
 - If the company and its members want to indemnify or hold harmless the Partnership Representative from said elections for tax treatment.

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

401(k) and IRA Contribution Limits for 2020

- The contribution limit for employees who participate in 401(k), 403(b), and most 457 plans is increased from \$19,000 to \$19,500.
- The catch-up contribution limit for employees aged 50 and over who participate in these plans is increased from \$6,000 to \$6,500.
- The limitation regarding SIMPLE retirement accounts for 2020 is increased to \$13,500, up from \$13,000 for 2019.
- The limit on annual contributions to an IRA remains unchanged at \$6,000.
- The additional catch-up contribution limit for individuals aged 50 and over is not subject to an annual cost-of-living adjustment and remains \$1,000.



Updating Your Beneficiary Designations

- Many people forget to update their beneficiary on retirement and other financial accounts after important life events such as marriage or divorce.
- Beneficiary designations supersede a Will, which means the beneficiary designation controls and overrides what a Will says.
- Beneficiary designations allow you to designate a “primary” beneficiary and a “contingent” beneficiary, who inherits if the “primary” beneficiary is no longer living.
- A trust can be listed as a beneficiary. Often, couples with a living trust will name their spouse as the “primary” beneficiary and their trust as the “contingent” beneficiary.
- If there is no beneficiary designation in place on an account, then that asset will have to go through probate court administration and would then be subject to the terms of a Will, if any, or state law, to determine who receives the asset.
- When reviewing or updating your estate plan, remember to include reviewing and updating your beneficiary designations as part of the process.

Digital Asset Planning

- As part of your estate planning, you should consider what happens to email accounts, online bank accounts, social media accounts, and the like after you die.
- Almost everyone has some type of online account, such as for social media, online bill pay or banking, or storing digital photos and videos.
- It is important to keep login information, including passwords, protected during one's life, but this can create problems when the individual dies and no one has access to the login information.
- One solution is to use a password management program, such as LastPass, which acts as a vault for all your login information, including passwords. Password management programs are accessible with one master password, which you will want to make sure someone has in the event of your death.
- In addition to using a password management program, you should grant access to digital assets in your estate planning documents. This authority can be granted in a Durable Power of Attorney, during your lifetime, and in a Will or Trust, upon your death.
- Lastly, make sure to keep a list of your digital assets with your estate planning documents, so that your survivors know what digital assets you have, where they can find them, and how they can access them.

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

Speaking to Adult Children about Your Finances



- It is important for your adult children to be aware of your financial interests so that your wishes can be respected upon your death.
- Consider a personal financial organizer (many options are available for purchase online) which will store, in one place, your insurance, financial, and retirement savings information, as well as real estate, personal property, and tax information. You can also list professional contacts and the location of important documents.
- Having all this information in one place will save your adult children a lot of time and effort, but make sure the information is updated as things change.
- Consider introducing your children to your financial advisor. In many cases, they will need to work with your financial advisor to open beneficiary accounts after your death.
- Consider discussing your Will or Trust with your children, especially if your assets are not going to be distributed evenly, so that you can explain why you made the decisions you did.

PMA Can Help!

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

G. FAMILY LAW UPDATES

The New Domestic Relations Final Order Rule



- Effective January 1, 2019, the Michigan Court Rules regarding appeals in postjudgment domestic relations cases were amended, limiting “appeals of right” to an order that “grants or denies a motion to change legal custody, physical custody, or domicile” of a minor.
- An “appeal of right” is an appeal that is guaranteed and the appellate court cannot refuse to listen to the appeal; whereas, an “appeal by leave” is an appeal where the appellate court has the discretion to grant or deny the request to appeal.
- Prior to this change, “appeals of right” in postjudgment domestic relations cases were limited to orders “affecting the custody of a minor.” Different interpretations of this language and evolving caselaw led to the new change, which, with its narrower language, restricts “appeals of right” in postjudgment domestic relation cases.
- Under the new rule, it appears various postjudgment orders, such as parenting time, and legal custody issues such as school enrollment, healthcare, and religious upbringing are now only appealable “by leave.”
- However, the new rule may be open to interpretation. For example, what is a change in legal or physical custody? Could that include postjudgment orders from motions that effectively result in a change of custody? It is possible that a motion to modify parenting time or a motion to change schools could result in a change of custody.
- If supported by the particular facts in a case, it should be considered whether such motions that would effectively result in a change of custody or domicile be titled as a motion to change physical custody, legal custody, or domicile.
- Such an approach may make it more likely that an “appeal of right” is available, which would benefit both parties in a postjudgment domestic relations case. If the motion is granted, the non-moving party will have an “appeal of right.” If the motion is denied, the moving part will have an “appeal of right.”

PMA Can Help!

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

H. GOVERNMENT BENEFITS UPDATE

Medicaid Numbers

- The Michigan Department of Health and Human Services (MDHHS) has released new numbers for Medicaid for 2019, including the penalty divisor and resource and maintenance needs 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	\$8,469.00
Individual Resource Allowance	\$2,000.00
Monthly Personal Needs Allowance	\$60.00
Minimum Community Spouse Resource Allowance	\$25,284.00
Maximum Community Spouse Resource Allowance	\$126,420.00
Minimum Monthly Maintenance Needs Allowance	\$2,057.50
Maximum Monthly Maintenance Needs Allowance	\$3,160.50

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

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Dear Clients and Friends:

Year-end tax planning in 2019 remains as complicated as ever. Notably, we are still coping with the massive changes included in the biggest tax law in decades—the Tax Cuts and Jobs Act (TCJA) of 2017—and pinpointing the optimal strategies. This monumental tax legislation includes a myriad of provisions affecting a wide range of individual and business taxpayers.

Among other key changes for individuals, the TCJA reduced tax rates, suspended personal exemptions, increased the standard deduction and revamped the rules for itemized deductions. Generally, the provisions affecting individuals went into effect in 2018, but are scheduled to “sunset” after 2025. This provides a limited window of opportunity in some cases.

The impact on businesses was just as significant. For starters, the TCJA imposed a flat 21% tax rate on corporations, doubled the maximum Section 179 “expensing” allowance, limited business interest deductions and repealed write-offs 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 **2019 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.

INDIVIDUAL TAX PLANNING

Itemized Deductions

Among the most prominent tax changes for individuals, the TCJA essentially doubled the standard deduction while modifying the itemized deduction rules for 2018 through 2025. For 2019, the inflation-indexed standard deduction is \$12,200 for single filers and \$24,400 for joint filers.

YEAR-END ACTION: With the assistance of your professional tax advisor, figure out if you will be claiming the standard deduction or itemizing deductions in 2019. The results of this analysis will likely dictate your tax planning approach at the end of the year.

Some or all of these TCJA provisions on itemized deductions may affect the outcome.

* 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, but you can still write off interest on “acquisition debt” (e.g., to purchase your principal residence) within generous limits.

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

* The deduction for miscellaneous expenses is eliminated, but certain reimbursements made by employers may be tax-free to employees.

* The threshold for deducting medical and dental expenses, which was temporarily lowered to 7.5% of adjusted gross income (AGI), reverts to 10% of AGI, beginning in 2019.

Tip: Depending on your situation, you may want to accelerate deductible expenses into the current year to offset your 2019 tax liability. However, if you do not expect to itemize deductions in 2019, you might as well postpone these expenses to 2020 or beyond.

Charitable Donations

Generally, itemizers can deduct amounts donated to qualified charitable organizations, as long as substantiation requirements are met. Note that the TCJA increased the annual deduction limit for monetary contributions from 50% of AGI to 60% for 2018 through 2025. Any excess is carried over for up to five years.

YEAR-END ACTION: Absent extenuating circumstances, try to “bunch” charitable donations in the year they will do you the most tax good. For instance, if you will be itemizing in 2019, boost your 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 2020.

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 typically limited to your initial 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 intend to donate securities to a charity, you might choose securities that you have held longer than one year and have appreciated substantially in value. Conversely, it may be preferable to keep securities you have owned less than a year.

Tip: If you donate to a charity by credit card late in the year—for example, if you are making an online contribution—you can write off the donation on your 2019 return, even if you do not actually pay the credit card charge until 2020.

Alternative Minimum Tax

Briefly stated, the alternative minimum tax (AMT) is a complex calculation made parallel to your regular tax calculation. It features several technical adjustments, inclusion of “tax preference items” and subtraction of an exemption amount (subject to a phase-out based on your income). After comparing AMT liability to regular tax liability, you effectively pay the higher of the two.

YEAR-END ACTION: Have your AMT status assessed. Depending on the results, you may then shift certain income items to 2020 to reduce AMT liability for 2019. For instance, you might postpone the exercise of incentive stock options (ISOs) that count as tax preference items.

Thanks to the TCJA, the AMT is now affecting fewer taxpayers. Notably, the TCJA substantially increased the AMT exemption amounts (and the thresholds for the phase-out), unlike the minor annual “patches” authorized by Congress in the recent past. The chart below illustrates the exemptions for the last five years and includes a dramatic jump for 2018-19.

Filing status	2015	2016	2017	2018	2019
Single filers	\$53,600	\$53,900	\$54,300	\$70,300	\$71,700
Joint filers	\$83,400	\$83,800	\$84,500	\$109,400	\$111,700
Married filing separately	\$41,700	\$41,900	\$42,250	\$54,700	\$55,850

Tip: The two AMT rates for single and joint filers for 2019 are 26% on AMT income up to \$194,800 (\$97,400 if married and filing separately) and 28% on AMT income above this threshold. Note that the top AMT rate is still lower than the top ordinary income tax rate of 37%.

Education Tax Breaks

The tax law provides tax benefits to parents of children in college, within certain limits. These tax breaks, including a choice involving two higher education credits, have been preserved by the TCJA.

YEAR-END ACTION: When appropriate, pay qualified expenses for next semester by the end of the year. Generally, the costs will be eligible for a credit in 2019, even though the semester does not begin until 2020. Therefore, you may be able to increase your current credit amount.

Typically, you must choose between the American Opportunity Tax Credit (AOTC) and the Lifetime Learning Credit (LLC). The maximum AOTC of \$2,500 is available for qualified expenses of each student, while the maximum \$2,000 LLC is claimed on a per-family basis. Thus, the AOTC is usually preferable. Both credits are phased out based on modified adjusted gross income (MAGI).

The TCJA also allows you to use Section 529 plan funds to pay for up to \$10,000 of K-12 tuition expenses tax-free. Previously, qualified expenses only covered post-secondary schools.

Tip: In the past, a tuition deduction could be claimed in lieu of a credit. Although the deduction expired after 2018, Congress might reinstate it.

Estimated Tax Payments

The IRS requires you to pay federal income tax through any combination of quarterly installments and tax withholding. Otherwise, it may impose an “estimated tax” penalty.

YEAR-END ACTION: No estimated tax penalty is assessed if you meet one of these three “safe harbor” exceptions under the tax law.

1. Your annual payments equal at least 90% of your current liability;
2. Your annual payments equal at least 100% of the prior year’s tax liability (110% if your AGI for the prior year exceeded \$150,000); or
3. You make installment payments under an “annualized income” method. This method may be available to taxpayers who receive most of their income during the holiday season.

Tip: Due to the complexity of the TCJA, the IRS lowered the 90% safe harbor rule to 80% for the 2018 tax year. There has been no word yet on any reduction for 2019.

Miscellaneous

* Bunch non-emergency medical expenses in the year in which you have the best chance of clearing the 10%-of-AGI threshold. For instance, you may schedule a physical exam or dental cleaning for 2019 or postpone those expenses to 2020 if it better suits your purposes.

* Make home improvements that qualify for mortgage interest deductions as acquisition debt. This includes loans to substantially improve your principal residence or one other home.

* Transfer income-producing property to family members in lower tax brackets. However, the “kiddie tax” generally applies to unearned income above \$2,200 received in 2019 by a dependent child under age 18 or full-time student under age 24. Under the TCJA, the kiddie tax is based on the tax rates for estates and trusts, which will often produce a higher tax than it would have previously.

* Consider the tax impact of a divorce or separation. The TCJA repealed the deduction for alimony expenses for payers, and the corresponding inclusion in income for recipients, for divorce and separation agreements executed after 2018. Note that deductions may still be available for pre-2019 agreements that are modified after 2018.

* If you own property that was damaged in a federal disaster area in 2019, you may qualify for fast casualty loss relief by filing an amended 2018 return. The TCJA suspended the deduction for casualty losses for 2018 through 2025, but retained a current deduction for disaster-area losses.

BUSINESS TAX PLANNING

Depreciation-Related Deductions

Under the TCJA, a business may benefit from a combination of three depreciation-based tax breaks: (1) the Section 179 deduction, (2) “bonus” depreciation and (3) regular depreciation.

YEAR-END ACTION: Acquire property and make sure it is placed in service before the end of the year. Typically, a small business can then write off most, if not all, of the cost in 2019.

1. Section 179 deductions: This tax code section allows you to “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 gradually over the last decade, but the TCJA gave it a massive boost, beginning in 2018, as shown below.

Tax year	Deduction limit	Phase-out threshold
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	\$2.50 million
2019	\$1.02 million	\$2.55 million

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 2019.

2. Bonus depreciation: The TCJA doubled the previous 50% first-year bonus depreciation deduction to 100% for property placed in service after September 27, 2017. It also expanded the definition of qualified property to include used, not just new, property.

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

3. Regular depreciation: Finally, if there is any remaining acquisition cost, the balance may be deducted over time under the Modified Accelerated Cost Recovery System (MACRS).

Tip: A MACRS depreciation deduction may be reduced if the cost of business assets placed in service during the last quarter of 2019 (October 1 through December 31) exceeds 40% of the cost of all assets placed in service during the year (not counting real estate).

Travel Expenses

Although the TCJA repealed the deduction for entertainment expenses beginning in 2018, you can still deduct expenses for travel and meal expenses while you are away from home on business, subject to certain limits. The primary purpose of the trip must be business-related.

YEAR-END ACTION: Schedule business trips for the end of 2019. 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.

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 2019 is 58 cents per business mile (plus tolls and parking fees). Annual depreciation deductions for “luxury cars” are limited, but the TCJA generally enhanced those deductions for vehicles placed in service in 2018 and thereafter.

Tip: The IRS recently issued a ruling that explains when food and beverage costs are deductible when those costs are stated separately from entertainment on invoices or receipts.

QBI Deductions

The TCJA authorized a deduction of up to 20% of the “qualified business income” (QBI) earned by a qualified taxpayer. This deduction may be claimed by owners of pass-through entities—partnerships, S corporations and limited liability companies (LLCs)—as well as sole proprietors.

YEAR-END ACTION: The QBI deduction is reduced for some taxpayers based on the amount of their income. Depending on your situation, you may accelerate or defer income at the end of the year, according to the figures.

First, however, it must be determined if you are in a “specified service trade or business” (SSTB). This includes most personal service providers. Then three key rules apply.

1. If you are a single filer with income in 2019 below \$160,725 or a joint filer below \$321,400, you are entitled to the full 20% deduction.

2. If you are a single filer with income in 2019 above \$210,700 or a joint filer above \$421,400, your deduction is completely eliminated if you are in an SSTB. For non-SSTB taxpayers, the deduction is reduced, possibly down to zero.

3. If your income falls between the thresholds stated above, your QBI deduction is reduced, regardless of whether you are in an SSTB or not.

Tip: Other rules and limits may apply, including new guidelines for real estate activities. Consult with your tax advisor for more details about your situation.

Business Repairs

While expenses for business repairs are currently deductible, the cost of improvements to business property must be written off over time. The IRS recently issued regulations that clarify the distinctions between repairs and improvements.

YEAR-END ACTION: When appropriate, complete minor repairs before the end of the year. The deductions can offset taxable business income in 2019.

As a rule of thumb, a repair keeps property in efficient operating condition while an improvement prolongs the life of the property, enhances its value or adapts it for a different use. For example, fixing a broken window is a repair, but adding a new building wing is an improvement.

Tip: A safe harbor rule in the regulations allows a business to currently deduct costs of \$2,500 or less, or \$5,000 or less for a business with an “applicable financial statement” (AFS).

Business Interest

Prior to 2018, business interest was fully deductible. But now the TCJA generally limits the deduction for business interest to 30% of adjusted taxable income (ATI).

YEAR-END ACTION: Determine if you qualify for a special exception. The limit does not apply to a business with average gross receipts of \$25 million or less for the three prior years.

For these purposes, ATI is defined as your business income without regard to any income, deduction, gain or loss not properly allocable to a business; business interest income and expense; net operating losses (NOLs); the 20% QBI deduction; and, for tax years beginning before 2022, depreciation, amortization or depletion.

Tip: If the new business interest limit applies, you can carry forward the excess indefinitely until it is exhausted.

Miscellaneous

* Stock up on routine business supplies before the end of the year. Usually, your company can deduct the costs of the supplies in 2019, even if all of them are not used until 2020.

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

* If you pay year-end bonuses to employees in 2019, the bonuses are generally deductible by your company and taxable to the employees in 2019. A calendar-year company operating on the accrual basis may be able to deduct bonuses paid as late as March 16, 2020 on its 2019 return.

* Gather proof needed to claim a bad business debt deduction. Generally, the deduction is available in the year the debt becomes worthless, so step up collection activities and keep records.

* Hire disadvantaged workers eligible for the Work Opportunity Tax Credit (WOTC). The WOTC, which is generally a maximum of \$2,400 per worker, is scheduled to expire after 2019.

* Get a start-up venture up and running. The tax law permits a small-business owner to claim a first-year deduction of up to \$5,000 for qualified start-up costs. Any remainder must be amortized over 180 months. However, the \$5,000 write-off is phased out for costs above \$50,000.

* 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 to wages paid to employees earning no more than \$72,000 annually, is currently scheduled to expire after 2019.

FINANCIAL TAX PLANNING

Securities Transactions

Frequently, investors engage in securities transactions at year-end to improve their tax situation. This requires a basic understanding of the current tax rules for capital gains and losses.

First, capital gains and losses are used to offset each other. Second, 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. Third, long-term capital gains from sales of securities owned longer than one year are taxed at a maximum rate of 15% (20% for high-income investors). Conversely, short-term capital gains are taxed at ordinary income rates reaching up to 37% in 2019.

YEAR-END ACTION: Review your investment portfolio. 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, including capital loss carryovers.

Be aware of even more favorable tax treatment for certain long-term capital gains. Notably, a 0% rate applies to taxpayers below applicable income levels, such as young children or grandchildren. 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.

Tip: The tax rate structure for long-term capital gains also applies to qualified dividends. These are most dividends paid by U.S. companies or qualified foreign companies.

Installment Sales

Normally, when you sell real estate at a gain, you must pay tax on the full amount of capital gain in the year of the sale.

YEAR-END ACTION: Arrange to sell real estate on the installment basis. If you receive installment payments over two or more tax years, the tax on a gain is paid over the years in which payments are actually received. This tax deferral treatment is automatic for most installment sales other than sales by “dealers” like real estate developers.

The taxable portion of each payment is based on the “gross profit ratio.” Gross profit ratio is determined by dividing the gross profit from the real estate sale by the price.

Not only does the installment sale technique defer some of the tax due on a real estate deal, it will often reduce your overall tax liability if you are a high-income taxpayer. Reason: By spreading out the taxable gain over several years, you may pay tax on a greater portion of gain at the 15% capital gains rate as opposed to the 20% rate.

Tip: If it suits your purpose, you may “elect out” of installment sale treatment when you file your tax return. This means the entire amount of tax is due on the return for the year of the sale. You might do this if 2019 is otherwise a low tax year.

Net Investment Income Tax

In addition to capital gains tax, a special 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. (Note: 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 ACTION: Assess the amount of your NII and your MAGI at the end of the year. When it is possible, you may be able to reduce your NII tax liability in 2019 or avoid it altogether.

For example, you might add municipal bonds (“munis”) to your portfolio. Interest income generated by 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.

Required Minimum Distributions

As a general 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 life expectancy tables and your account balance at the end of last year.

YEAR-END ACTION: Arrange to receive RMDs before December 31. 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 your regular tax liability.

Do not procrastinate if you have not arranged RMDs for 2019 yet. It may take some time for your financial institution to accommodate these transactions.

Conversely, if you are still working and do not own 5% or more of the business employing you, you can postpone RMDs from an 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.

Estate and Gift Taxes

Since the turn of the century, Congress has gradually increased the federal estate tax exemption, while eventually establishing a top estate tax rate of 40%. 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. Finally, the TCJA doubled the exemption from \$5 million to \$10 million, inflation-indexed to \$11.4 million in 2019. The following table shows the progression of the estate tax exemption and top estate tax rate during the last decade.

Tax year	Estate tax exemption	Top estate tax rate
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%
2019	\$11.40 million	40%

YEAR-END ACTION: 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.

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 permanent, so incorporate it into your estate planning decisions.

Tip: With the gift tax exclusion, you can give each recipient, such as a younger family member, up to \$15,000 in 2019 without paying any federal gift tax. This annual gift tax exclusion is effectively doubled to \$30,000 for joint gifts made by a married couple. These gifts reduce the size of your taxable estate.

Miscellaneous

* Contribute up to \$19,000 to a 401(k) in 2019 (\$25,000 if you are age 50 or older). If you clear the 2019 Social Security wage base of \$132,900 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.

* Be wary of 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.

* Consider a Roth IRA conversion. Although the conversion is subject to current tax, you generally can receive tax-free distributions in retirement, unlike the taxable distributions from a traditional IRA. But note that the TCJA removed the ability to “recharacterize” a Roth conversion back into a traditional IRA for 2018 and thereafter.

* If you are age 70½ or older, transfer IRA funds directly to a charity. Even though the contribution cannot be deducted as a charitable donation on your 2019 tax return, 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,

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