


20 March 2019

US Federal and State Tax Update

Alex Jones & Helen Gattis

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AGENDA



- Projected inflation adjustments for 2019, statistics and TCJA
 - Developments throughout the year
 - Additional guidance, proposed regulations, examples etc
- Other updates and interesting cases
 - Passport revocation, etc
- State specific updates
 - Tax amnesties, SALT, withholding, cases etc

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US Federal and State Tax Update 2018 Individual and Transfer Taxes [and 2019 projections]



Provision	In effect as of 1 January 2018	Bloomberg Tax 2019 Projected Inflation Adjustments	
Ordinary income rates	• 10% first \$9,525 (MFJ \$19,050)	\$9,700	(MFJ \$19,400)
	• 12% up to \$38,700 (MFJ \$77,400)	\$39,475	(MFJ \$78,950)
	• 22% up to \$82,500 (MFJ \$165,000)	\$84,200	(MFJ \$168,400)
	• 24% up to \$157,500 (MFJ \$315,000)	\$160,725	(MFJ \$321,450)
	• 32% up to \$200,000 (MFJ \$400,000)	\$204,100	(MFJ \$408,200)
	• 35% up to \$500,000 (MFJ \$600,000)	\$510,300	(MFJ \$612,350)
	• 37% for singles earning more than \$500,000 (\$500,000 for MFJ)	> \$510,300	(MFJ > \$612,350)
Capital gains and dividends rates	• 0% up to \$38,600 taxable income (MFJ \$77,200)	\$39,375	(MFJ \$78,750)
	• 15% rate threshold from \$38,600 to \$425,800 (MFJ \$77,200 to \$479,000)	\$434,550	(MFJ \$488,850)
	• 20% rate threshold more than \$425,800 (\$479,000 for couples)	> \$434,550	(MFJ > \$488,850)
Health care reform increases	• 1.45% Medicare tax on first \$200,000 (\$250,000 for MFJ) unchanged		- unchanged
	• 0.9% HI tax on ordinary income over \$200,000 for singles (\$250,000 for MFJ) unchanged		- unchanged
	• 3.8% tax on investment income over \$200,000 for singles (\$250,000 for MFJ) unchanged		- unchanged
401(k) limits	• \$18,500 in 2018, overall defined contribution limit increased to \$55,000	\$19,000	Overall limit: \$56,000
IRA	• \$5,500	\$6,000	- last increased in 2013

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US Federal and State Tax Update 2018 Individual and Transfer Taxes (cont'd)



Provision	In effect as of 1 January 2018	Bloomberg Tax 2019 Projected Inflation Adjustments	
Standard Deduction	• \$12,000 Single and married filing separate	\$12,200	
	• \$24,000 MFJ	\$24,400	
	• \$18,000 Head of Household	\$18,350	
Exemption	• Suspended (\$4,050 for 2017)		Suspended
Foreign Earned Income and housing deduction	• FEIE \$104,100 (\$102,100 for 2017)	\$105,900	
	• Housing exclusion/deduction		
Notice 2018-33	• Normal maximum \$31,230 less \$16,656	\$31,770 &	\$16,944
	• London \$72,600, Surrey \$48,402		
PEP and Pease limitations	• Suspended		Suspended
AMT relief: inflation-indexed exemptions	• \$70,300 exemption (\$54,300 in 2017) (single)	\$71,700 (single)	
	• \$109,400 exemption (\$84,500 in 2017) (joint filers)	\$111,700 (MFJ)	

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US Federal and State Tax Update 2018 Individual and Transfer Taxes (cont'd)



Provision	In effect as of 1 January 2018	Bloomberg Tax 2019 Projected Inflation Adjustments
Estate and Gift Tax	• 40% top rate	40%
Estate /Gift/GSTT Exemption	• \$11.18m exemption (\$5.49m for 2017) – portable • State estate/gift tax considerations (CT)	\$11.4m
Annual Gift Tax Exclusion	• \$15,000 (\$14,000 for 2017)	\$15,000
Annual exclusion for Noncitizen Spouses	• \$152,000 (\$149,000 for 2017)	\$155,000
NRA Estate Exclusion	• \$60,000	\$60,000

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Individual Tax – IRS Statistics

IRS Budget and Workforce

- Fiscal Year 2017, IRS used 76,832 full-time equivalent positions in conducting its work, decrease of 14.9% from 2012.
- Almost 50% of these workers were dedicated to enforcement (examinations and collections). 2017 IRS Data Book – IRS examined 0.6% of all individual tax returns filed in 2017, it was 0.7% in 2016.
- 10% decrease in tax technicians from 1,227 to 1,110 – looking to recruit 400-600 for International (remember TCJA!)
- Returns in bracket \$1 to \$200,000 have less than a 1% audit selection record – this is the majority of taxpayers [81.65%]. 14.52% of total returns with over \$10m are selected for audit.

INTERNAL REVENUE SERVICE DATA BOOK, 2017

Table 9b. Examination Coverage: Individual Income Tax Returns Examined, by Size of Adjusted Gross Income, Fiscal Year 2017

Size of adjusted gross income [1]	Returns filed in Calendar Year 2016 (percent of total) [2]	Examination coverage in Fiscal Year 2017 (percent) [3]
All returns [4]	100.00	0.62
No adjusted gross income [5]	1.59	2.55
\$1 under \$25,000	36.47	0.71
\$25,000 under \$50,000	23.33	0.49
\$50,000 under \$75,000	13.26	0.46
\$75,000 under \$100,000	8.59	0.45
\$100,000 under \$200,000	12.19	0.47
\$200,000 under \$500,000	3.60	0.70
\$500,000 under \$1,000,000	0.68	1.56
\$1,000,000 under \$5,000,000	0.26	3.52
\$5,000,000 under \$10,000,000	0.02	7.95
\$10,000,000 or more	0.01	14.52

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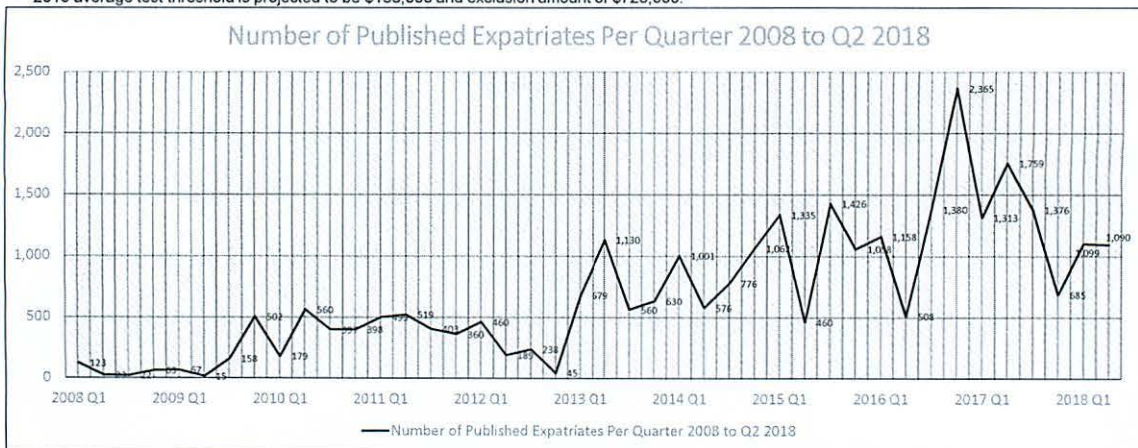
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Individual Tax – Expatriation Statistics



- Expatriation. For 2018, an individual with "average annual net income tax" of more than \$165,000 for the five tax years ending before the date of the loss of U.S. citizenship will be a covered expatriate. Under a mark-to-market deemed sale rule for 2018, the amount that would otherwise be includable in the gross income of any individual under these mark-to-market rules will be reduced by \$713,000 (\$699k for 2017). Q3 2018 – 1,104 Q4 - 686
- 2019 average test threshold is projected to be \$168,000 and exclusion amount of \$725,000.



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Individual Tax – FBAR Statistics / Cases



- Increased FBAR penalty cases
 - 2014: 13 cases
 - 2015: 22 cases
 - 2016: 30 cases
 - 2017: 66 cases
 - 2018: 55 cases [1 January to 9 September 2018]
- IRS lost important test on FBAR penalties
 - Since 2004, IRS had statutory authority for willful cases to assess penalty of up to 50% of the undisclosed balance.
 - Prior to 2004, statute permitted maximum penalties of \$100,000 per account. Regulations were never withdrawn.
 - Cases must determine whether \$100,000 maximum regulation is binding.
 - US v Colliot, 2018 WL 2271381 (W.D. TX) – taxpayer successfully argued FBAR penalties should be capped to \$100,000
 - US v Wahdan – F.Supp. 3d. 2018 WL 3454973 (D.Colo) – the Court built upon holding *Colliot* to find FBAR penalties should be capped at \$100,000
 - Norman v US 138 Fed. Cl. 189 (July 31, 2018) – the Court rejected *Colliot* holding that 2004 amendments to the Bank Secrecy Act superseded the regulations, as Congress's intent to increase FBAR penalties was clear.
 - Shinday v US 2:18-CV-06891-cas-Ex, (Dec. 3, 2018) - \$100,000 cap does not apply to total combined penalties, only per year. Where each annual penalty was below \$100,000 but over five years totalled \$257,888, the full balance stood.
 - USA v Garrity, 3:15-cv-00243-MPS, Feb. 28, 2019 – civil penalty of \$936k representing 50% of account balance applied plus interest and late payment penalty.

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Individual Tax – FBAR Penalties



- USA v Schoenfeld, 3:16-cv-1248-J-34PDB, Sep, 25 2018 – penalty imposed even when taxpayer is deceased.
- Horowitz, DC MD Jan 18, 2019
- Markus, 16-2133 Jul 16, 2018
- Willfulness standard includes not only knowing of violations but willful blindness to the requirements as well as reckless violations.
- Non-filing of FBAR can attract civil and criminal penalties.
- For penalties that are assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the IRS may assess an inflation-adjusted civil penalty not to exceed \$12,459 per violation for non-wilful violations that are not due to reasonable cause.
- For penalties assessed after January 15, 2017:
 - Negligent Violation: \$1,078
 - Each Non-Wilful Violation: \$12,921
 - Wilful Failure to file: \$129,210 or 50 per cent of the amount of an account at the time of violation, 5 year imprisonment of both.
 - Knowing and wilfully filing false FBAR: Up to \$250,000 or 50 per cent of the amount in the account at the time of violation, 5 years imprisonment or both.

2018 FBAR deadline extended for certain individuals with signing authority over (but no financial interest) employer owned foreign accounts to April 15, 2020.

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2018 TCJA



The Downside of Tax Reform

- The allowable deduction for interest payments on mortgages created after January 1, 2018 falls to loan indebtedness of \$750,000, down from \$1 million.
- Foreign real estate taxes are no longer deductible.
- Interest on home equity loans is no longer deductible.
- Deductions for casualty and theft losses will only be allowed in federally-declared disaster areas.
- Taxpayers are no longer allowed to take miscellaneous items deductions such as unreimbursed employee expenses, tax-preparation fees, investment fees and the cost of safe deposit boxes.
- Personal exemptions have been repealed. Impacts NRAs with minimal ECI or NECI.
- Deductions for income, sales and real estate taxes paid at the state and local level are capped at \$10,000. This restriction could be particularly meaningful for residents of high-tax states like Connecticut, New York, New Jersey and California.
- For divorces that are finalized after 2018, individuals who make alimony payments will no longer be allowed a deduction.
- Limitation on deduction for business interest expense from 2018, to sum of business interest income, 30% of adjusted taxable income and floor plan financing interest (**IRC s.163(j) – also see Notice 2018-28**)

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2018 TCJA

The Upside of Tax Reform



- The maximum individual tax rate fell to 37%, down from 39.6%.
- The standard deduction nearly doubled to \$12,000 for individuals and \$24,000 for married couples.
- The child tax credit increased to \$2,000 for each child under 17 years old.
- Cash contributions to charity are now limited to 60% of adjusted gross income (AGI), up from 50%. However, this may not always be the case.
- Up to \$10,000 in 529 college savings plans can now be used for K-12 tuition each year.
- The Affordable Care Act individual mandate, which penalized individuals for not having health insurance, has been permanently eliminated.
- Deductions for out-of-pocket medical expenses are now capped at 7.5% of adjusted gross income for all taxpayers. The limit was previously 10% of AGI for taxpayers under the age of 65. [Reverts back to 10% for 2019]
- IRC S 199A – 20% business income deduction for pass-through –
 - Also see Notice 2019-07 Reg 1.199A-1, through 1.199A-6 – safe harbour for real estate enterprise to be treated as a trade or business for these purposes

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2018 TCJA – Additional Considerations



- Kiddie Tax - Potentially more punitive tax rates
 - Estate and Trust rates :

Section 1(e) – Estates and Trusts	
<i>If Taxable Income Is:</i>	<i>The Tax Is:</i>
Not over \$2,550	10% of the taxable income
Over \$2,550 but not over \$9,150	\$255 plus 24% of the excess over \$2,550
Over \$9,150 but not over \$12,500	\$1,839 plus 35% of the excess over \$9,150
Over \$12,500	\$3,011.50 plus 37% of the excess over \$12,500

- Change in AMT – repealed itemised deductions certainly a factor coupled with increased AMT exemption amount and phase-out (\$1m MFJ).
 - 5.2m taxpayers subject to AMT in 2017. Anticipated that only 200k will pay through to 2025.
 - Unless income > \$1m almost certainly not exposed to AMT
 - Approximately 0.4% of taxpayers within \$200k - \$500k bracket will be subject to AMT – compared to 27% last year

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2018 TCJA – Additional Considerations



- Section 529 Plans –
 - Can be used to pay up to a total of \$10,000 tuition per beneficiary each year at an elementary or secondary public, private or religious school.
 - Notice 2018-58 interim measure until regulations, but refunds from tuition of other qualified education expenses will not be taxable if recontributed to section 529 plan within 60 days.
- Residential rental property – property placed in service from 1 January 2018 (2017 Tax Cuts and Jobs Act §13204(b)(1)) ADS recovery period shortened to 30 years
- Like-kind exchanges – restricted to real property from 2018 tax year until 2025
- S 1.446(f) withholding regarding sales of US non-publicly traded partnership interests (also see **Notice 2018-29**) – if would generate effectively connected gains
- 60% Charitable Donations – not necessarily as it seems.
 - Negative connotations from TCJA because of increased standard deduction may reduce the level of philanthropic giving.
 - Positive connotation from increase in the annual "contribution" base to 60% from 50%. However, of introduction into Section 170, 60% limit may be unavailable in many case if gifts made to both public charities and private foundations, or gifts of both cash and noncash items.
- **Notice 2018-97** – guidance on Section 83(i) regarding five year deferral election on taxes on stock options or restricted stock units for an 'qualified employee' of a 'eligible employer'
- **Pub. L. No. 115-97** - Exempt Multinationals and private equity firms caught under downward attribution argue that Congress meant to provide exception for them. Treasury encouraged to provide a regulatory fix but unlikely any time soon.
- Cross border estate planning – with new rules eliminating the requirement for a non US corporation to be held for 30 days in order to be treated as a CFC, US heirs to non US corporations holding US situs assets now subject to Subpart F rules if no planning undertaken.

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2018 TCJA – Additional Considerations



- Revised Publication 1281 on Backup withholding for TCJA changes, following fall from 28% to 24% also IR-2018-205
- 1960s loophole. Making a **s.962** election to tax Subpart F income annually at corporate tax rates – now only 21% - tax savings but further income tax charges applied when funds actually brought into the US.
- Proposed regs to prevent attempts to convert tax payments to charitable contributions in lieu of the SALT deduction (now capped at \$10,000). But OK for business taxpayers making business related payments to charities as long as qualifies as ordinary and necessary business expense.
- **Notice 218-78** extends the due date for making binding basis elections to 90 days after final s.965 regs are published.
- Federal overpayments applied to transition tax instalments before estimated taxes.
- **Prop. Regs. §1.962-1** – special deduction for US individual shareholders newly available under the GILTI provisions of the CFC rules based on application of the 1962 legislative history. Frank Hirth were one of three parties to make this case and the IRS followed this position in detail, now providing for a \$250 deduction, allowing a 50% reduction in GILTI inclusion.
- **Notice 2018-18** – carried interest directed to a single member LLC treated as an S corporation under election will still need to be held for 3 years to qualify for 20% tax rates.
- **S.682** repeal has significant impact for divorced individuals who previously created an irrevocable trust for the benefit of former spouse whilst still married.
- Home equity loans – still deductible as long as used to buy, build or substantially improve property.

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2018 TCJA – Additional Considerations



- Business meals remain tax deductible – IRS issued guidance in October 2018. Notice 2018-76

Clarifying that taxpayers may generally continue to deduct 50% of the food and beverage expenses associated with operating their trade or business, despite changes to the meal and entertainment expense deduction under Sec. 274 TCJA

According to the IRS, the amendments specifically deny deductions for expenses for entertainment, amusement, or recreation, but do not address the deductibility of expenses for business meals.

Taxpayers can rely on the guidance in the notice until the IRS issues proposed regulations.

Under the interim guidance, taxpayers may deduct 50% of an otherwise allowable business meal expense if:

- The expense is an ordinary and necessary business expense under Sec. 162(a) paid or incurred during the tax year when carrying on any trade or business;
- The expense is not lavish or extravagant under the circumstances;
- The taxpayer, or an employee of the taxpayer, is present when the food or beverages are furnished;
- The food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and
- For food and beverages provided during or at an entertainment activity, they are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts.
- The IRS will not allow the entertainment disallowance rule to be circumvented through inflating the amount charged for food and beverages.

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2018 TCJA – Additional Considerations



2018 employer reimbursements for employees' 2017 moving expenses - IRS issued guidance September 21, 2018. Notice 2018-75

- TCJA suspended the exclusion for moving expenses reimbursed or paid by an employer from 2018, making these amounts taxable
- Generally tax –free
- Reimbursements an employer pays to an employee in 2018 for qualified moving expenses incurred in a prior year are not subject to federal income or employment taxes. The same is true if the employer pays a moving company in 2018 for qualified moving services provided to an employee prior to 2018.
- To qualify, reimbursements or payments must be for work-related moving expenses that would have been deductible by the employee if the employee had directly paid them prior to Jan. 1, 2018. The employee must not have deducted them in 2017. For more information on the 2017 rules, see Form 3903 or Publication 521.
- Employers that have already treated reimbursements or payments as taxable can follow the normal employment tax adjustment and refund procedures

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Federal Tax – Developments and News for 2018



- Health Care Coverage - IRS will not accept electronically filed Forms 1040 that fail to indicate whether the taxpayer has complied with the Affordable Care Act's individual mandate health coverage requirement for the 2018 filing season
- **Underpayment/Overpayment Interest Rate now 6%**
- **2019 Social Security wage cap \$132,900**
- **IR-2018-77** – 2017 IRS Databook – 934k individual audits, lowest since 2003, 0.5% chance the lowest since 2002
- Revocation or denial of passport under Section 7345, the amount of the serious delinquent tax debt is \$51,000 for 2018. Slow launch started on Jan 2018 – **Notice 2018-01, 2018-3 IRB 299** – once certified the full tax debt must be settled. Also see **IR-2019-23, 2/27/2019**
- Launch of CPA Exam in Europe provides convenience for candidates – 9 Prometric test center locations will begin offering the CPA Exam on October 1.
 - England – Bristol, London and Manchester / Scotland – Edinburgh / Republic of Ireland – Cork and Dublin / Germany – Berlin, Frankfurt and Munich
 - Approximately 300 candidates are initially expected to take CPA exam in each country per year. Since launched in Japan in 2011, more than 14,000 candidates
- **TD 9842** – Final Due Diligence Regulation for Return Preparers Issued effective November 7th 2018 – eg sign off in respect of Head of Household claim
- PTIN user fees – **Montrois v US CA Dist Col, 123 AFTR 2d 2019-475** – agreed with IRS' ability to charge fees, although amount may still be questioned
- **IRS Notice 84 Fed Reg 3852, 2/13/2019** – IRS requesting comments on Form 4970, Tax on Accumulation Distributions of Trusts by April 15, 2019.
- **Notice 2018-20** – expanded list of jurisdictions that don't issue TINs to residents, that would be otherwise required by withholding agents
- **Publication 17** – Tax Guide for 2018

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Federal Tax – Developments and News for 2018



- Delay in processing Tax Extenders – impacts home mortgage debt forgiveness
- **Publication 4557** – Data Theft for Tax Professionals, also see IR-2018-17
- IRS notices: 3520/3520-A for reporting personal pensions as trusts
- IRA pension providers less accepting of overseas residents – forced transfer or closure *
- **IRS Information Letter: Properly Reporting Sale of Interest in PFIC (IRC §1296)** The IRS stated that in reporting a PFIC transaction, the taxpayer should determine the portion of gain attributable to years in which the investment wasn't considered a PFIC, if the investment was held in a retirement account, any income tax treaty provisions should be consulted, and an amended Form 1040X should be filed to claim a refund if the prior two situations changed the way the transaction was reported on the original return. **[IRS Info. Letter 2018-0028]**
- **Updated Voluntary Disclosure Program** – post September 28, 2018 default 75% of normal penalties, 50% FBAR, requires preclearance from IRS-CI Form 14457
- **Notice 2019-11, sbse-20-0319-0266 (Mar 5, 2019), IRM 20.1.3.2.7.2.3** – interim guidance on Estimated Tax Penalty Waiver (IRC S.6654), where ES payments before Jan 15, 2019 equal or exceed 85% of tax shown on 2018 return, now reduced to 80% paid.
- New Instructions to Form 1065 which require partnerships to report negative tax capital amounts on K-1 – also see **Notice 2019-20** re penalty relief for failure to report.
- Form 5471 being revised – included several new schedules and will be far more complex than they may have been previously, for example Schedule P which tracks Previously Taxed Income which must track all of the new categories of PTI accounts
- Form 8858 instructions released Jan 29th – changes to reflect foreign branch activity of a US person, a CFC, or CFP
- Form 5472 – failure to file penalty increased to \$25,000 for 2018 filing season

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Federal Tax – Developments and News for 2018



- Initial Taxpayer Contact in Bank Secrecy Act Examinations – Examiners will use an appropriate initial contact letter to notify taxpayers of their selection for examination and will not make initial contact by telephone to prevent phone scams and phishing. Re-issued from December 2018.
- **Crawford v United States Department of the Treasury, 868 F 3d 438 (6th Cir 2017)** – April 2, 2018, Supreme Court denied to hear an appeal from US Court of Appeals regarding the constitutionality of FATCA
- **FR Doc 2019-05390 filed March 18, 2019** – Request for comment from Notice 2006-46 regarding treatment of distributions by foreign corporations and coordination with nonrecognition provisions under s.897(d) and (e) eg re statutory mergers. 60 days from appearance in Federal Register
- TIGTA recommendations issued September 20, 2018 on Nonresident Aliens and Treaty based income exemptions
- IRS Compliance Campaigns– 5 added March 2018, 6 -May, 5-July, 5-September and 5 October, total now 50.
- Refunds in excess of \$2m for individual taxpayers are reported to the Joint Committee on Taxation (JCT). In complicated refund claims, often helps to work with IRS tam writing the report to the JCT to expedite the review process.
- US/Australian tax treaty – 45 years old. Still no provision for treatment of Superannuation Funds – foreign pension vs state sponsored privatised foreign social security?

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Case Law



- **Toso v. Commissioner, 151 T.C. No. 4 (Sept. 4, 2018)** - Statute of Limitations Not Extended For Non-Current-Year PFIC Gains (T.C.) (IRC §1291)
 - Timely filed returns for 2006, 2007 and 2008 but omitted PFICs. 3-year limitation extended to 6 years if 25% of gross income is omitted.
 - Also claimed PFIC losses should offset PFIC income - no!
 - Non-current year PFIC gains do not count as gross income.
- **Nix v. Commissioner, T.C. Memo 2018-116 (July 30, 2018)** - Profit Motive Lacking for Mary Kay Consultant
 - Deficiency penalty of \$28k for 2012 – 2014 and accuracy related penalties of \$5k
 - Determine 'profit motive', also in full time employment and incentivised by 50% discount
 - No bookkeeping, no business records or no evidence of separate business account.
 - Income totalling \$4k and expenses totalling \$85k
 - Travel expenses of \$28k over 27 separate trips – [20 x volleyball, European and Disney World, college sorority] ; > 600% gross receipts
- **Trusted Media Brands, Inc. v. United States, No. 17-3733-cv (2d Cir. Aug. 10, 2018)** - Special Ten-Year Statute of Limitations Applies to Foreign Tax Credit Only (2d Cir.) (IRC §6511)

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Case Law



- **Schaeffler v United States, No. 17-10719, (May 3, 2018)** – Reduction in foreign tax liabilities does not create Refundable Overpayment
 - Tried to amend return to reduce FTCs by \$1.5m but increase AMT credits by \$6.7m.
 - Occurred 10 years after timely filing.
 - Special limitations period at IRC s.6511(d)(3)(A) did not apply as overpayment was not attributable to the allowance of a foreign tax credit.

Lucas v Commissioner, T.C. Memo 2018-80, (June 11, 2018) – Legal and professional fees incurred in divorce proceedings not allowable as a deduction.

- Taxpayer claimed that legal fees were incurred upon his divorce to defend a spousal claim for deferred profits earned in his employment.
- Position denied as not entitled to s162(a) nor s.212 deduction.
- Represent personal, living or family expenses – s262.

- **Full Circle Staffing LLC, Watchman Investment Trust, Financial & Tax Services Inc, Trustee, Tax Matters Partner, et al v Commissioner, T. C. memo 2018-66, (May 17, 2018)** – Sham Trusts

- Four partnerships majority owned by Watchman Investment Trust.
- Watchman deemed a sham trust and disregarded so income flows to owners.
- Any set up of business entities that do not have a real economic purpose (other than tax avoidance) will be treated as if they do not exist
- 20% accuracy related penalties may be assessed

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Case Law



- **Keefe, et ux v. Commissioner, T.C. Memo 2018-28 (Mar. 15, 2018)** – House renovated and sold before let out treated as a capital asset.
 - Historic residential property purchased for rental purposes requiring significant renovation.
 - Significant amounts borrowed to complete renovation.
 - Never put up for rent prior to sale.
 - Interest on borrowings capitalised.
- **Streightoff et al, v Commissioner, (2018) TC Memo 2018-178** – Gross Estate and Transfers in Trust.

- **French v Commissioner T.C. Summ. Op. 2018-36 (July 12, 2018)** - Settlement for Harassing Phone Calls Included in Income

- Settlement not excluded under disputed debt doctrine nor s.104(a)(2)
- No evidence any portion paid for physical injuries or physical sickness

Wax v Commissioner, T. C. Memo 2018-63 (May 10, 2018) – Mischaracterising Personal Expenses as Business Expenses

- Tried to claim children's college tuition, their spa trips & vehicle expenses as a Sch C deduction on the basis her children performed some services for the business!

- **Gregory v Commissioner, 152, T.C. No. 7** – Forms 2848 and 4868 do not constitute returns for purposes of updating address.
 - Deficiency note sent to the address on the most recently filed 1040 deemed sufficient even though subsequent POA and extension filed showing new address.

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Case Law



Mancini v Commissioner, T.C. Memo 2019-16 (Mar. 4, 2019) - Gambling losses not deductible as casualty losses (T.C. Memo) (IRC §165)

- Taxpayer's compulsive gambling was a side effect of a drug he was prescribed for Parkinson's disease.
- But physical damage to the taxpayers property is a pre-requisite of a casualty loss deduction.
- Not deemed that any physical damage occurred as the outcome was not sudden.
- Assessed to 20% s.6222(a) penalty as substantial understatement of tax deemed negligent due to lack of substantiation on purported losses.
- Taxpayer argued against penalty as he had substantial authority from previous agreements under audit. But previously accepted amended tax returns do not constitute the required substantial authority to override s.6222(a).
- However, penalty still not actually assessed as Commissioner failed to evidence the approval needed.

NB For 2018 returns onwards, can only take a deduction for casualty losses if arising from a Federally Declared Disaster Zone anyway.

Jordan v Commissioner, TC Memo 2019-15, 2019 RIA TC Memo 2019-15

- A deficiency petition mailed using an internet-based private postage label printed on last day of filing period but which was not received until 20 days later, and on which there were 2 official US Postal Service postmark's dated after the filing period expired was deemed untimely.
- 'Timely mailing as timely filing' not available in this case as the private postage label was disregarded per Reg. s.301.7502-1(c)(1)(iii)(B)(3).
- Timeliness measured by USPS postmarks – USPS trump non-USPS postmarks when both are present.
- Even if the petition had been measured by the private postage label, timely mailing as timely filing still would not have applied as it wasn't delivered in the normal amount of time it would have taken had it been USPS postmarked at point of origin.

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Case Law



• **Peng v US, Cite as 122 AFTR 2d 2018-5367, (Oct. 24 2018)** – Reasonable Cause, Wilful Neglect and Reliance on Professionals

- Indisputably filed late while living abroad, late filing and payment penalties stand.
- Taxpayer claimed to have relied on their CPA to prepare extensions but reliance didn't occur until after filing deadline.
- Wilfully neglected their obligations despite having a CPA as they didn't start compiling relevant documents for CPA until after filing deadline.
- First contact for tax return occurred in November - "Abraham, I completely forgot this year because you usually remind me of US taxes?! How late am I? What do you need?"

• **Ford v Commissioner, T.C. Memo 2018-8, (Nov 5, 2018)** – Deductions for Music Club Denied as Not Run for Profit.

- Taxpayer had no expertise in club ownership, did it for the love of music.
- Maintained inadequate records, disregarded expert business advice, made no attempt to reduce expenses or increase revenue, casualty offset losses against her trust income.

• **US v Shearer, No. 2:12-cv-02334-TLN-DB Aug 7, 2018** – Guilty Plea of intent to Evade Taxes

• **Bea v Commissioner, 11th Cir. No. 18-10511, Jan. 2019** – Preparer's \$11.9m Tax Refund Mistake

- Tax preparer recommended making election to carry forward NOL, bad decision.
- Taxpayers argued they didn't understand the implications of choosing to irrevocably waive this carryback despite reading and signing their return.
- Lack of knowledge deemed no excuse.

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Case Law



- **Haynes v US No.17-50816 (Jan. 29, 2019).** – Reasonable Cause, Willful Neglect and Reliance on Professionals
 - Accountant e-filed return on deadline day but it was rejected as spouse's SSN appeared on the return where an EIN should have been reported.
 - No rejection notification was received. When they did find out they submitted a paper copy and paid late filing penalty.
 - Can they reclaim the penalty under reasonable cause?

- **Zuhovitzky v Commissioner, T.C. Memo 2018-158, (Sep. 20, 2018)** – MFJ Without s.6013(g) Election
 - US sourced income from NRA spouse omitted from joint return.
 - Can they get out of understated tax liability penalties on a technicality?
 - Taxpayers now trying to get out of filing MFJ after the expiry of limitations on their earlier MFJ returns.

- **Badgely v US No. 17-cv-00877 – HSG (May 17, 2018)** – GRAT Income Included in Decedent's Gross Estate
 - Decedent deemed to have reserved a right to annual annuity payments from the GRAT and
 - Deemed to possess and enjoy benefit of the property because she retained other control over the partnership funding the GRAT.

- **US v Hardy, No. 18-10174, Mar 21, 2019** – Willfully Filing False Returns - Good faith reliance on a qualified accountant quashed where incorrect information provided to accountant.

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- **Brooks v Commissioner, T.C. Summ. Op.2019-5 (Marc. 18, 2019)** – Taxpayer not entitled to innocent spouse relief from joint and several liability.

- **US v Adams (DC MN 10/27/2018)** – Communications between a taxpayer and accountant can be protected by attorney-client privilege.
 - US v Kovel 1961 provides attorney-client privilege may apply if comms are 'made in confidence to obtain legal advice from the lawyer'
 - US v Cote 1972 provides attorney-client privilege exists where the accountant's aid to the lawyer precedes the advice and was an integral part of it
 - cant be applied in fraud or criminal cases

- **Davidson v Commissioner, T. C. Memo 2018-38 (April 2, 2018)** – Obligation to pay debts does not constitute Alimony.
 - divorce granted provided ex-husband paid all marital (including joint) debts
 - Hence court deemed alimony for ex-wife not necessary
 - Ex-husband failed to show his obligation to pay debts would terminate upon ex-wife's death
 - So not treated as alimony
 - not deductible.

- **O'Kagu v Commissioner, T.C. (Sep. 20, 2018)** – FEIE not allowed against Federal Government or US Government Agency income.

- **US v Chipungu, DC FL, 123 AFTR 2d 2019-459 (Mar. 4, 2019)** - Permanent injunction barring return preparer from acting.

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Proposed / Final Regulations



REG-112176-18, Proposed Regulation - Contributions in Exchange for State or Local Tax Credits

- Further to Notice 2018-54, 2018-24 I.R.B. 750
Treasury Department and the IRS believe that when a taxpayer receives or expects to receive a state or local tax credit in return for a payment or transfer to an entity listed in section 170(c), the receipt of this tax benefit constitutes a quid pro quo that may preclude a full deduction under section 170(a).

- **TD 9842, Reg 1.6695-2** – final regs re Tax Return Preparer Due Diligence Penalty Under Section 6695(g)

6 November 2018 – IRS issues final regulations, expanding paid preparer due diligence requirement to head of household filers. The additional requirement will apply starting with 2018 returns, prepared on or after November 7, 2018

- Must submit **Form 8867, Paid Preparer's Earned Income Credit Checklist**, with every tax return claiming any of the covered tax benefits.
 - Earned Income Credit
 - American Opportunity Tax Credit
 - Child Tax Credit
 - Credit for Other Dependents
 - **Head of Household**
- \$520 penalty for each failure to comply with the requirement
- Must determine if the taxpayer is eligible to file as head of household and whether each child is a qualifying child for purposes of the EIC and the CTC, including reasonable inquiries about the children's residency, TP's relationship to the children, the children's income, the sources of support for the children, and TP's contribution to the payment of costs related to operating the household, and the preparer must contemporaneously document these inquiries and the responses

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Proposed / Final Regulations



- **Proposed FATCA regs issued Dec 13, 2018** – address withholding and information reporting and relieve burdens including the 30% withholding on gross proceeds, and foreign pass thru payment withholding. Also clarifies the definition of an investment entity
- **Proposed Reg 1.267A-1(b)** – aimed at preventing the use of arrangements involving hybrid transactions or hybrid entities to affirmatively exploit differences in tax laws across jurisdictions relating to financial transactions – cf BEPS Hybrid Report
- **TD 9849** – Final Regs IRS eliminate 296 unnecessary tax regulations and amend another 79 as a result, as a result of EO 13777
- **REG-115420-18, Rev Rul 2018-29, IR-2018-206** – Proposed Regs regarding Qualified Opportunity Funds. Allow deferral of gain under IRC S1400Z-2 within 180 days of sale to December 31, 2026. If held for 10 years a basis step up election to avoid tax on any appreciation in the investment
- **Proposed regs on s864(c)(8)** – ECI gain or loss of foreign persons from sale or exchange of certain partnership interests
- **Final Sec. 199A regs issued January 21, 2019** – qualified business income deduction.

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Chief Counsels Advice Notes



- **CCA 201906006** – Protective Refund claims can be made with respect to Gift Taxes, also **200938021, 201411021, and IRM 21.5.3.4.7.3.1.**
- **CCA 201810007** – FMV of employer provided tax preparation services includible in wages – so also subject to FICA and tax withholding (average tax prep fee for a return according to Nat Soc of Accountants Survey?)
- **IRS Info Letter 2018-0004** – CCO advised re no dependency exemption for a not adopted stepson who is not a US citizen, taxpayer has a foreign wife

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Miscellaneous Notices etc - Individual Tax



- **Rev Rul 2019-2** – procedures on when Associate office provides technical advice in a TAM and the rights of taxpayers
- **IRS Publication 17 revised** – Your Federal Income Tax (For individuals)
- **IRS Fact Sheet FS-2019-02, IR-2019-22 & Pub 5307** – Tax Reform Basics for Individuals and Families -
- **Rev Proc 2019-09** – updated circumstances under which disclosure on a tax return is enough to reduce the understatement penalty under S.6662(d) and preparer penalty under s.6694(a)
- **IRS Practice Unit PST/C/366_01_01-01 (Feb 13, 2019)** – When a Partner's Share of Income is Subject to Self-Employment Tax
- **IRS Practice Unit TRE/T/016_07-02** – Creation of a Permanent Establishment through the Activities of a Dependent Agent in the US
- **IRS Practice Unit TRE/T/016_07-03** – Preparatory and Auxiliary Treaty Exception to Permanent Establishment Status
- **IRS Practice Unit TRE/P/016_02_01-06** – determining an individuals residency for treaty purposes
- **IRS Practice Unit TRE/C/016_12-10** – competent authority process under a MAP article
- **IRS Practice Unit FCU/T/018_02_01-08** – Transactions in a Foreign Currency, Dispositions in a Foreign Currency
- **IRS Tax Tip 2019-17** - Taxpayers and tax professionals who call the IRS will be asked to verify their identities
- **IRS Website S162(q) FAQ** – IRS noted recipient of a settlement of a sexual harassment claim is not prevented by 162(q) from deducting attorney fees related to the payment.
- **Notice 2018-68** – guidance on changes to S.162(m) and identification of "covered employees" who are subject to the \$1m deduction limit applicable to publicly held corporations
- **IRS announces five new LB&I campaigns**, in addition to 13 announced in Tax Alert 2017-0234, 11 in Tax Alert 2019-1876 and 5 in Tax Alert 2018-0577, 6 in Tax Alert 2018-1112 and 5 announced July 2, 2018 – new ones include Foreign Base Company Sales Income, 1120F interest expense/home office deductions and individuals employed by foreign governments and international organisations.

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Miscellaneous Notices etc - Individual Tax



- TAM 201903017 – Meals but not snacks includible in employees wages (unless provided for the convenience of the employer)
- PLR 201806007 – certain loans met the requirements to be in registered form under Treasury Regulation 5f.103-1
- Rev Rul 2018-11, 2018-18 IRB April 30, 2018 – inflation adjusted amounts for Qualified Debt Instruments used in sales or exchanges (S.1274A), limit now \$5,831,500, or \$4,165,000 for a cash method debt instrument
- Notice 2018-61 – IRS clarifies Estate and Nonj-grantor trust expenses not subject to Miscellaneous Itemized Deduction suspension
- PLR 201812005 – granted revocation of PFIC MTM election
- PLR 210814006 – retroactive QEF election allowed where accounting firm didn't advise re QEF elections
- PLR 201814008 – extension to make partnership basis election under s.754 granted
- FR Doc 2018-10373 May 15, 2018 & FR Doc 2019-01136 Feb 5, 2019 – List of Countries Requiring Cooperation with an International Boycott
- PLR 201825003 – potential difference in Gift Tax deduction verses Income Tax deduction when donating artwork
- Notice 2018-29 – updates withholding tax guidance on sales of US partnership interests under TCJA revised 1446(f)
- Notice 2018-41 – information reporting for certain life insurance contract transactions eg on a sale
- PLR 201903012 – extension granted for surviving spouse to file US citizenship notice and certification, related to taxation of a QDOT
- PLR 201910003 – payments to a former spouse to buyout jointly held interests were incident to divorce – no gain or loss recognised
- PLR 201852005, 201852006, 201852007, 201852008 and 201852009 – IRS approved irrevocable trusts that were incomplete gifts for gift tax purposes but non-grantor trusts for income tax – "incomplete gift trust"

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State Tax



- Arkansas
- California
- Colorado
- Connecticut
- Hawaii
- Illinois
- Indiana
- Kansas
- Kentucky
- Maine
- Maryland
- Missouri
- New Jersey
- New York
- North Carolina
- Pennsylvania
- Virginia
- Utah
- Wisconsin
- Washington

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State Tax



STATE TAX IMPLICATIONS FROM REFORM

	Description
Rolling Conformity	State adoption of the IRC conforms to the federal amendments automatically
Federal Taxable Income as Starting Point	IRC conformity not specifically addressed, but State Taxable Income starts with Federal Taxable Income
Fixed Date Conformity	Conformity to the IRC is set as of a specific date (e.g., January 1, 2017)
Select Conformity	State only adopts select provisions of the IRC

- Tax Amnesties -
- Wayfair - !
- Mobile Workforce Income Tax Simplification Bill – introduced again!
- Carried Interest "loophole" challenges continue

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Arkansas



- Ark Dep't of Fin & Admin, Docket No 19-246, 02/15/19 – Taxpayer didn't abandon domicile, despite planned job move out of state

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California



- Top tax rates extended to 2030, they were due to expire in 2018
- Federal conformity continues as of January 1, 2015 not to TCJA
- **Dynamex Operations West Inc v Superior Court, 4 Cal 5th 903, 416 P 3d 1, 232 Cal Rptr 3rd 1 (2018)** – court changed the test for determining whether a worker is an independent contractor or an employee. ABC test.
- **Holmes v County of San Mateo, et al, Ct App (1st App Dist) Dkt No A149873, 02/23/2019** – allocation between land and improvements affirmed, \$2.4m of \$2.6m purchase considered land value
- **California FTB Tax News No 02/01/2019, Appeal of Larsen, Cal Office of Tax Appeals, 2018 OTA-073, 07/25/2018** – non precedential nonemployee comp of nonresident considered CA source under market sourcing rules for sole proprietorship
- Keyshawn Johnson wins again, not resident supporting 2017 decision
- **Cal Office Tax App, Case No 18011219, 02/22/18** late individual return due to wilful neglect, 25 years of timely filing counts for naught
- **Cal Franchise Tax Bd, FTB Form 2917** - FTB issues form to request refunds of penalties due to reasonable cause
- **Cal Office Tax App, Case No 18010824, 11/29/18 & Case No 18011293 & Case No 18042765**- Office of Tax Appeals affirmed denial of refund as taxpayer failed to establish reasonable cause
- **Cal Franchise Tax Bd Nonresident Withholding Allocation Worksheet, 03/01/19** – non-resident taxpayers must complete and return to CA withholding agent

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California



- Head of Household claims denied in a number of cases
 - **Cal. Office Tax App., Case No. 18010822, 05/14/18** – The California Office of Tax Appeals (OTA) found Taxpayer's statements related to whether he lived with his spouse in the last six months of 2014 were inconsistent and thus not credible evidence to sustain his burden of proof. Therefore, the OTA sustained the FTB's proposed assessment.
 - **Cal. Office Tax App., Case No. 18011107, 05/07/18** - The OTA held that Taxpayer failed to establish that she was entitled to the status as she didn't have any qualifying person living with her. Also, Taxpayer failed to establish that the FTB erred by failing to allow her to itemize deductions. Accordingly, the OTA sustained the FTB's proposed assessment.
 - **Cal. Office Tax App., Case No. 18011076, 04/11/18** - The OTA determined that Taxpayer's unsupported assertions were insufficient to satisfy her burden of proof since she provided conflicting information relative to her marital living arrangements. Accordingly, the OTA determined that Taxpayer wasn't entitled to head of household status and sustained the FTB's proposed assessment
- California Sustains Denial of Tax Refund, Penalty Abatement
 - **Cal. Office Tax App., Case No. 18011221, 03/06/18** - The California Office of Tax Appeals (OTA) sustained the Franchise Tax Board's (FTB) denial of a refund of individual income tax and abatement of a late payment penalty and interest. Taxpayer failed to file his return on time, claiming that he wasn't a California resident and that he was unaware that he had California source income until he received a California Schedule K-1 after April 18, 2016. However, Taxpayer failed to establish that his failure to file a 2015 California tax return was due to reasonable cause and not willful neglect. The OTA stated that the FTB's imposition of interest was mandatory and it wasn't allowed to abate interest except where authorized by law. Taxpayer failed to prove that he was entitled to interest abatement because there were no errors or delays in the performance of ministerial or managerial acts by an FTB employee or officer. Accordingly, the OTA sustained the FTB's denial of Taxpayer's claim
 - Unaware that he had CA income from partnership and should not be exposed to penalties – denied.

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Colorado



- Colorado proposes regulation 5 November 2018 to disregard legal holidays for purposes of the deadline [1 CCR 201-1].

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Connecticut



- **CT Special Notice 2017(5)** – effective Jan 2018 withholding tax obligation for CT residents of taxable pensions, deferred compensation or annuities paid by CT businesses. Recipient must complete CT-W4P
- **Conn. Dep't of Revenue Servs., Press Release 10/13/17** – new standards for commercial tax preparers from Oct 1st.
 - Before 2019 preparers must obtain a renewable two-year state permit based on evidence of at least high school completion
 - By Jan 2020 preparers must complete IRS course
 - But already regulated preparers are exempt
- **Conn Dept of Revenue Services Spec Notice SN 2017(8)** – New requirements for Income Tax preparers
- CT issues Pass-Through Entity Tax Recharacterisation Forms, new income tax on passthrough entities from 2018 on S-corps, partnerships, LLCs
- **Conn Dept of Rev Svcs, Pass-through Entities (Pes) with non-resident members who receive guaranteed payments** – allows the PTE to remit Conn tax on behalf of nonresidents receiving guaranteed payments and potentially satisfy their Conn tax filing obligation
- **New entity level tax for partnerships and s-corps doing business in state from 1/1/2018, (due to federal reform of state deduction)** – generally relieves nonresident owners from CT filing requirement, but not to the extent guaranteed payments are made – sourced to CT based on the pass-through entities apportionment factor
 - Also no statutory provisions to allow composite returns on behalf of non-resident partners taxable on guaranteed payments

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Delaware



- **Reuling v Dir of Revenue, Del State Tax App Bd No 1700, 11/02/18** – taxpayers retirement account withdrawals didn't qualify as lump-sum distributions, Delaware follows definition under IRC (1) Taxpayer didn't withdraw the entire balance from the account.

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Hawaii



- **L. 2018, S508 (Act 122), from 09/15/2018** Increase in tax withheld on disposition of real property by nonresidents from 5% to 7.25%.

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Illinois



- **Ill Dep't of Revenue, Gen Info Letter IT 18-0002-GIL, 09/09/18** – general information letter re taxation of non-residents who have Illinois domicile, longer term assignments overseas will break residence, short term will not.

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Indiana



- **Ind. Dep't of Revenue, Memorandum of Decision 01-20182119R, 02/27/19** – Former residents retirement income not subject to State Income Tax – pursuant to a retirement plan subject to IRC S.3121(v)(2)(C) (?)
- **Ind Dep't of Revenue, Supplemental Letter of Findings 01-21081885, 02/27/19** – Taxpayer wasn't resident for state income tax purposes, he had abandoned domicile the previous year

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Kansas



- Appeal of Bicknell, Kan Dist. Ct No 2017-CV-000131-P 3/5/19 – Pizza Hut Franchise did change domicile to Florida prior to selling business

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Kentucky



- Regulation 103 KAR 17:010 – tax return filing requirements for residents, part-year residents and nonresidents

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Maine



- **Warnquist v State Tax Assessor, ME Sup Jud Ct Dkt No Yor-18-115, 01/29/2019** – credit for income taxes paid to a foreign jurisdiction per Me Rev Stat Ann Title 36 S5217-A – only credit for foreign tax paid on the income taxed in both Maine and other country ie not all of the foreign tax if the taxable income there is higher

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Maryland



- **CNI Technical Services LLC et al v Comptroller Md Tax Ct Nos 17-IN-00-0743, 01/17/2019** – non-resident LLCs required to file a return even though not required to complete a federal return, Maryland income tax is calculated using federal taxable income as starting point does not mean federal tax is due, so LLC needed to complete a federal income tax form in order to complete a Maryland Return

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Missouri



- Personal Income Tax: Lawmakers Approve Tax Cut for Individuals (May 23, 2018)
 - Missouri's top individual income tax rate may decrease from 5.9% to 5.5% beginning in 2019. State lawmakers approved a bill containing the tax cut. Further Reductions The top rate could drop further to 5.1%

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New Jersey



- New legislation enacted on July 1, 2018, made several changes to the New Jersey Gross Income Tax Act as part of New Jersey's fiscal year 2019 budget.
 - New gross income tax rate for taxpayers earnings over \$5m
 - New withholding rate for 2 August 2018 onwards
 - Effective 1 January 2018, income of more than \$5m is taxed at 10.75% regardless of the filing status.
 - Withholding rate will be a catch-up rate of 15.6%
 - The Division of Taxation won't impose interest or penalties for insufficient payment of estimated tax and/or withholdings that may otherwise be due before September 1, 2018, if the insufficiency is a result of the new tax rate.
- New Jersey Division of Taxation Technical Bulletin No GIT-6, 12/01/2018 – updated publication regarding reporting issues faced by part-year residents.
- Infosys Ltd of India v Dir Div of Taxation NJ Tax Ct No 012060-2016 (March 19, 2018)– court agreed again that foreign source income not taxable at federal level was not State taxable
- New Jersey Tax Guide – Buying or Selling a Home in New Jersey – covers 1% (+1% if over \$1m) Realty transfer Fee, Property Tax Relief programs eg Homestead, sales by residents or nonresidents, PPR exclusion
- New Jersey Income Tax – Composite Return Rates 12/06/2018 – use highest bracket for 2018 of 10.75% (2017 was 8.97%)

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New York



- 2017-18 Budget legislation – April 2017,
 - 2 year extension to the end of 2019 for 8.82% millionaire tax (\$2m for taxpayers filing jointly)
 - 2 year extension to the end of 2019 on charity deduction cap, 50% of federal deduction for income between \$1-10m, 25% for income over \$10m
 - Taxes sales of an entity which included >50% NY real estate in the form of co-op shares, to align with other real property interests
 - Requires conformity between buyer and seller when buyer makes an election to treat purchase as an acquisition of partnership assets, in order to get a step up. Previously a non-resident seller may have been able to avoid tax treating the sale as of an intangible interest
- **The statute of limitations has been extended for assessments based on changes or corrections reported on amended returns. Generally, the Department may now issue an assessment on an amended return until the later of:**
 - one year from the date the amended return was filed, or
 - three years from the date the original return was filed.
 - This change applies to amended returns filed on or after April 12, 2018.
 - **[Part H of Chapter 59 of the Laws of 2018; Tax Law §§ 683(c)(12) and 11-1783(c)(9)]**
- New law allows use of itemised deduction even though not used for federal tax purposes
- **NYC Dep't of Fin. Notice of Interest Rates 02/01/19** – interest rates on corporate income overpayments 5% underpayments 10% from April 1, 2019 eg unincorp business income tax. Individual rate 5% and 8.5%
- **NY Dept of Tax'n & Fin, TSB-M-18(2)(C), (3)(I), 04/06/18** – memorandum concerning corporate and individual tax treatment of nonqualified deferred compensation to which IRC s.457A does not apply as services were prior to 1/1/2009 – residents and nonresidents
- **NY Dep't of Tax'n & Fin, TSB-M-18(1)(I), 04/06/18** – memorandum on expanded definition of source income for nonresidents, including gain or loss from sale of interests in entities that own shares in Co-ops with 100 or fewer shareholders.

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New York



- **NY Dep't of Tax'n & Fin Charitable Contributions to Local Governments and School Districts Guidance 05/16/18** - New charitable gift trust fund consisting of two accounts that may result in a tax credit equal to 85% of the donation amount for the tax year after the donation is made.
 - (1) a health charitable account; and
 - (2) an elementary and secondary education charitable account.
- **Employer Compensation Expense Tax**
 - Employers can opt in, will pay a 5% tax on their annual payroll expenses on behalf of employees that make more than \$40,000 per year.
 - A new tax credit equal to the value of the ECET will reduce the personal income tax on wages, progressive personal income tax system will remain in effect.
 - Will be phased in over three years at rates of 1.5%, 3.0% and 5.0%, beginning January 1, 2019.
- NY considers taxing non-resident owners of luxury apartments – proposes "pied-a-terre tax", over \$5m values.
- **Matter of McManus No 827116 (NY Div of Tax App 2/7/19)** – Failed to break NY domicile when moving to Connecticut – maintained and used NY property during the week
- **Chamberlain et al v NYS Dept of Tax and Fin et al NY S.Ct App Div Third Dept Dkt No 525967, 11/01/2018** – taxpayer domiciled in Ct filed as Ct residents but also Statutory Residents of NY under 183 days test, taxed without credit for Ct taxes
- **In the Matter of the Petition of Biggar NY Div of Tax App ALJ Dky No 827817, 01/10/2019** – affirmed domiciled in NY, relying on taxpayers IT-203 which did not for non-residents
- **Matter of Campaniello v NY State Div of Tax App Trib NY App Div No 2018 NY Slip Op 03400 05/10/18** – failed to show abandonment of NY domicile on favour of Florida
- **NY Dep't of Tax'n & Fin TSB-M-18(2)(I), 04/06/18** – memorandum on nonresidents sale of partnership/membership interest, taxable to the extent of NY source

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New York



- Matter of Goldman Sachs Petershill II Fund Offshore Holdings Corp, No TAT(H) 16-9(GC) (NY City Tax App Trib 12/6/18) – investment fund hit with NYC general corporation tax on sale of a minority interest in a business entity operating in the city

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North Carolina



- Tax rate lowered from 5.499% to 5.25% from Jan 2019 (SB 257)

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Pennsylvania



- Pa Bd of Fin & Revenue, In re Kossman No 1626781 01/24/18 – Penn doesn't conform to all federal like-kind-exchange
- Pa Bd of Fin & Revenue, In re Burns No 1711615, 01/24/18 – taxpayers not entitled to resident credit for taxes paid to foreign countries
- Pa Bd of Fin & Revenue, In re Dalembert, Nos 1616629, 1616630, 08/23/17 – professional basketball player did change domicile to Florida in 2008
- Pa Bd of Fin & Revenue, In re Brich No 1704132, 01/18/18 – insufficient evidence of change of domicile to Florida
- Pa Bd of Fin & Revenue, In re Kobylinski No 1708125, 02/28/18 – conduct did not reflect change of domicile to South Carolina
- Pa Bd of Fin & Revenue, In re Miltenberger Nos 1612090, 1612091, 1612095, 1612019 et al, 05/10/17 – conduct didn't support change of domicile to Florida
- Pa Bd of Fin & Revenue, In re Moore Nos 1612518 et al, 07/19/17 – had abandoned Florida domicile in favour of Penn, permanent place of abode and homestead exemption claimed in Penn

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Virginia



- HB 2526 enacted 02/15/19 – new law amending definition of "resident estate or trust" removes trusts or estates administered in Virginia, effective July 1, 2019.

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Utah



- **Taxpayers v Auditing Division, Utah State Tax Comm'n Appeal No 18-670** – individual considered to be domiciled in Utah if enrolled in a Utah institution of higher education Code JS59-10-136(1)
- **Taxpayers v Auditing Division, Utah State Tax Comm'n, Appeal No 17-2004 11/21/2018** – Utah law provides that an individual is presumed to be domiciled in Utah if the individual or their spouse claims a property tax residential exemption for primary residence unless rebutted
- **Taxpayers v Auditing Division, Utah State Tax Comm'n Appeal No 17-832, 10/31/2018** – Same spouse residential property issue, not rebutted
- **Taxpayers v Taxpayers Services Division, Utah State Tax Comm'n, Dkt No 17-0738, 07/23/2018** – Severance received after being laid off from a job in another state taxable when received after moving

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Wisconsin



- **Wis. Dep't of Revenue Publ'n 125, 03/01/19** – information on credit for tax paid to another state

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Washington



- 2018 Estate Tax exclusion \$2,193,000

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