A whole new ballgame

Businesses and advisers continue to wrestle with tax law changes

By: Martin Daks

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(DEPOSIT PHOTOS)

Accountants and other tax advisers had more than a year to prepare for the changes wrought by Tax Cuts and Jobs Act (TCJA), which was passed in December 2017. But even with that long runway, businesses and the people who prepare their tax returns are dealing with uncertainty and frustration.

Business owners and CPAs typically take a breather after the April 15 tax deadline. But this year, thanks to a combination of complexity and a shortage of IRS and state guidance — on issues ranging from the deductibility of a hot dog lunch on federal returns, to whether alimony payments are deductible on New Jersey returns — many had to file for extensions and are still hunched over their desks trying to come up with the best tax strategy, according to some front-line practitioners.

"The 2018 tax year filings were our most difficult ever," said Carl Bagell, managing partner-Southern New Jersey at the accounting and advisory firm **Friedman LLP**, and tax partner-in-charge of the firm's Marlton office. "We've had changes in the past, but nothing like this."

The high number of last-minute changes that were inserted into the TCJA, along with a lag in critical technical interpretations, or guidance, from the IRS, "meant we were filing a record number of extensions while issues get sorted out," he added. "One issue was the deductibility of PMI [private mortgage insurance] for federal purposes, which was scheduled to expire at the end of 2017." PMI is generally required by many lenders when a buyer's down payment is less than 20 percent of the purchase price.

Bagell said that Congress is still debating the issue, which poses a problem for tax preparers: "Do we file and take the deduction for clients who are paying PMI? If the deduction is later disallowed, they'll have to pony up the money later on," and possibly be subject to interest, and conceivably penalties, although that would likely be appealed. "Or do we file without the deduction now, and possibly file an amended return later if the deduction is reinstated? Neither action is desirable."

Another wrinkle involves alimony agreements made after Dec. 31, 2018. "For the 2019 tax year, the person who pays alimony is no longer able to deduct it on their federal return, and the recipient

Rubbing SALT into a wound

It's bad enough that New Jersey routinely has the highest property taxes in the nation, but for a long time, homeowners were comforted by a nice, fat federal tax deduction. The joyride appears to have ended, however, thanks to a provision in the 2017 tax law that limits state and local tax (SALT) deductions to a total of $10,000. New Jersey and a few other states are trying to fight the move — with a lawsuit, and with workarounds that would basically reclassify the property tax deduction as a charitable contribution — but the odds appear to be stacked against them.

With some reports already pointing to out-migration from the state, NJBIZ asked some experts whether they think the SALT limits could hasten an exodus from high-tax states like New Jersey.

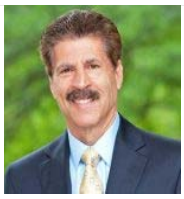
doesn't have to declare it as income," Bagell said. "But New Jersey may not follow that for state-level returns. Official guidance has not yet been made, though, and it's driving lawyers and forensic accountants with high-earning clients crazy, because there's uncertainty about the best way to structure settlement agreements."

Time to look back

Even when businesses and tax advisers don't face changes from the 2017 law, "You should always be preparing for the year ahead," advised Paula Ferreira, a partner at the accounting, tax and consulting firm **Mazars** who focuses on tax and other issues. "Even if you've completed this year's return, business owners and others should be speaking with their accountant to understand what's going on and identify the maximum number of deductions and other favorable actions you can take. One strategy, especially if you need to buy equipment for your company, is to consider taking Section 179 bonus depreciation," which may allow a business to reduce its taxable income by writing off, or depreciating, qualified equipment in a rapid manner."

Now's a good time to look ahead by looking back, according to John Evans, partner-in-charge of the New Jersey office of the accounting and advisory firm **Marks Paneth**. "Consider your tax posture as soon as possible," he said. "Start preparing for the 2019 tax year by examining what happened in 2018. This will help you and your adviser to think about ways to plan to maximize opportunities like the qualified business income deduction," under which certain sole proprietors and other non-corporate taxpayers may exclude up to 20 percent of their business income from taxation.

"Every year, people say 'I'll do my tax planning early on,' but then things get in the way and they wait, often till it's too late," he added. "They need to consider everything from setting up a retirement plan, to accounting properly for meals and entertainment,



Bagell

Carl Bagell, managing partner-Southern New Jersey at the accounting and advisory firm Friedman LLP, and tax partner-in-charge of the firm's Marlton Office: It was hit and miss. Some people benefitted, and others didn't. Basically, the more you earned the better you did, particularly because of the way the AMT [Alternative Minimum Tax] was curtailed under the TCJA, so fewer people will be subject to it. One of my clients earned about $400,000 in 2017 and paid about $100,000 in federal taxes. In 2018, he earned more, about $450,000, but his federal tax liability dropped to about $90,000. On the other hand, many well-off New Jersey clients were initially upset about the new SALT limitations. But a lot of them weren't able to take the deduction anyway, because they had been subject to AMT rules. In any case, the Qualified Business Income deduction [which enables certain non-corporate taxpayers to exclude up to 20 percent of their business income from taxation] cushioned the shock for many people. These and other changes make it even more important for small-business owners to stay in touch with their CPA and do some projections.

Jeffrey Cohen, a partner and tax services leader at the accounting and consulting firm Grassi: For the most part, my small-business clients are still ahead, mainly because of the qualified business income deduction. Some people have said they'd like to live in a place that doesn't have state income taxes, but a lot of them aren't willing to give up the cultural and other advantages that the New Jersey-New York region offers. By the way, if you're going to try to claim residency in a state like Florida, be sure you can prove your domicile. New York and New Jersey, in particular, are aggressively going after cell-phone-tower and other records to be sure that people who say they spend more than 50 percent of their time in Florida are really doing that.

Ferreira

Paula Ferreira, a partner at the accounting, tax and consulting firm Mazars: Many New Jersey and New York clients felt the pain of the SALT limitation, especially if they were W-2 employees who own multiple homes. I did field more calls from clients who said they were thinking of leaving New Jersey. But they, along with many business owners, benefited from the changes to the AMT; and small business owners in particular did benefit from the Section 199A Qualified Business Income deduction. Also, the TCJA expanded the number of small business taxpayers

which has become more complicated. For example, the TCJA generally eliminated the deduction for any expenses related to entertainment, but businesses can generally still deduct 50 percent of the cost of business meals. So if you take a client to a baseball game, the cost of the tickets may not be deductible, but a portion of the hot dog lunches you bought may still be written off. So you have to keep careful records."

Jeffrey Cohen, a partner and tax services leader at the accounting and consulting firm **Grassi & Co.**, wants business owners to know about a "safe harbor" for 2019: "If you make estimated tax payments equal to at least 90 percent of your 2019 liability, or 110 percent of your 2018 liability, you can generally avoid an underpayment penalty," he said. "Also, some companies do not generate profits evenly throughout the year" — a ski shop, for example, receives most of its income during the winter months. "If they remit four equal estimated installments, they run the risk of overpaying in one or more quarters and underpaying in others, which will likely result in penalties. Instead, they may wish to file — or speak with their adviser about filing — paperwork, in a timely manner, that can enable them to remit estimated taxes on an annualized income installment method, more closely matching estimated tax payments to their revenue flow."

who are eligible to use the cash method of accounting, instead of the accrual method. That could be a win, but they need to go over their individual situation with their tax adviser before changing their accounting method.

Evans

John Evans, partner-in-charge of the New Jersey office of the accounting and advisory firm Marks Paneth: Some benefitted big time, some didn't. Accounting and law firm partners generally missed out on the qualified business income deduction because of certain limitations on professional services firms. People griped about the SALT deduction limitation, but many of them were AMT filers and couldn't deduct state and local taxes anyway in previous years. One open TCJA issue is an apparent oversight that excluded the category of improvement property investment from being eligible for 100 percent "bonus" depreciation. We're still waiting to hear about a fix for that.