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Four Tax Trends to Keep an Eye On in 2019

With the first year of the new federal income tax scheme under the 2017 Tax Cuts and Jobs Act (TCJA) in the books, individuals, organizations, politicians and tax professionals are still sorting out the implications of the law and its impact on tax planning.

As we peer into our 2019 tax crystal ball, we see four trends tax lawyers should keep their eyes on—two of which are directly related to the TCJA.

STATE AND LOCAL GOVERNMENTS CONTINUE TO GRAPPLE WITH THE SALT DEDUCTION CAP

With the TCJA's capping of the state and local tax deduction at $10,000, states with large numbers of higher-income residents are looking for creative solutions to circumvent the deduction's new cap and keep those higher-income residents from leaving the state in favor of states with lower taxes.

So far, there has not been a solution that can withstand legal, political or logical scrutiny. Notably, the United States Department of Treasury issued draft guidance in August 2018 that would disallow any efforts to create a workaround by recharacterizing state and local tax payments as charitable contributions. Other creative solutions—such as reclassifying pass-through tax liability as a tax not subject to the cap—appear to add more complications than they are worth to an already complicated area of the law.

If the Treasury Department finalizes its guidance, we could see an end to these creative efforts sooner rather than later. But in the absence of this final guidance, expect to see states continue their creative efforts to deal with the new SALT deduction cap.

ALIMONY: STILL AN IMPORTANT PIECE OF THE DIVORCE PUZZLE?

One of the most impactful changes the TCJA made to the federal income tax scheme concerns the tax treatment of alimony. For all divorce or separation agreements executed after December 31, 2018, payers of alimony payments required by such agreements can no longer deduct those payments from their taxable income. At the same time, such alimony payments are no longer taxable to the recipients.

There was plenty of news coverage about the tension between potential payers of alimony wanting to sign divorce or separation agreements ahead of the December 31, 2018, deadline while potential payees wanted to wait until January 1, 2019, to do so. Now that the deadline has passed, tax professionals and family law attorneys will be watching to see if the frequency and amounts of alimony change as a result of the TCJA.

If they do, resources that otherwise would have gone to alimony may be shifted elsewhere in a divorce or separation agreement. This shift may in and of itself create new tax issues.

MARIJUANA: LEGAL AND OH-SO-TAXABLE

As of the start of 2019, nine states (Alaska, California, Colorado, Maine Massachusetts, Michigan, Nevada, Oregon and Washington) have legalized recreational marijuana use.

Although states could simply allow marijuana products to fall under their default sales tax, most states view marijuana as unique enough to warrant a separate sales tax scheme. In addition, many states that have legalized recreational marijuana use have put into place excise taxes on manufactured marijuana products.

In states with legalized marijuana, sales tax rates for marijuana range from a low of 10 percent in Maine and Nevada to a high of 37 percent in Washington. As for excise taxes, Alaska's excise tax is $50 per ounce, while other states such as Colorado and Nevada stick to a percentage-based excise tax of 15 percent.

As more states legalize recreational marijuana use, there will be more questions about the appropriate way to tax the manufacture and sale of marijuana products.

SALES TAX ON ONLINE PURCHASES

In June 2018, the United States Supreme Court ruled in *South Dakota v. Wayfair Inc.*, that a state could require an out-of-state seller without a physical presence in the state to collect and remit sales taxes on goods the seller ships to consumers in that state. In doing so, the Supreme Court upended 26 years' worth of settled law.

With its *Wayfair* decision, the Supreme Court has given states an opportunity to obtain tax revenue through e-commerce purchases made by citizens. However, states must do so in a way that complies with the *Wayfair* decision, such as not imposing significant burdens on remote sellers.

As of January 2019, 34 states tax online purchases made by their citizens from out-of-state sellers. In the wake of *Wayfair*, these states and others that are not yet taxing such purchases will need to ensure that their sales tax laws or administrative regulations comply with *Wayfair*. As a result, we may see some states temporarily postpone taxing such purchases until they have ensured their laws or regulations comply with *Wayfair*.

ANYTHING ELSE IN THE CRYSTAL BALL?

There are other potential developments in tax law that might steal the spotlight from these four trends in 2019.

For example, legalized sports betting is a potential source of tax revenue for states. Vapor products such as e-cigarettes are ripe for a unique sales tax scheme by states. And some states might follow the federal government's lead and reduce their corporate tax rates because corporate taxes are not as prominent a revenue source for states as they once were.

Whatever happens in tax law in 2019, rest assured it will impact the way certain individuals and organizations act. These impacts—and the reactions to such impacts—are likely to shape the tax law trends we can expect to see in 2020.

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