Agenda

- Individual Updates
- Business Updates
- Refreshers
  - Loss Limitations
  - Business Interest Limitations
  - Section 199A Deduction
  - Partnership Representative Opt-Out
- Issues to Consider Going Forward
# Individual Tax Updates

- 2019 individual tax rates

<table>
<thead>
<tr>
<th>Rate</th>
<th>Married Filing Joint</th>
<th>Single</th>
<th>Head of Household</th>
<th>Married Filing Separate</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>Up to $19,400</td>
<td>Up to $9,700</td>
<td>Up to $13,850</td>
<td>Up to $9,700</td>
</tr>
<tr>
<td>12%</td>
<td>$19,400-$78,950</td>
<td>$9,700-$39,475</td>
<td>$13,850-$52,850</td>
<td>$9,700-$39,475</td>
</tr>
<tr>
<td>22%</td>
<td>$78,950-$168,400</td>
<td>$39,475-$84,200</td>
<td>$52,850-$84,200</td>
<td>$39,475-$84,200</td>
</tr>
<tr>
<td>24%</td>
<td>$168,400-$321,450</td>
<td>$84,200-$160,725</td>
<td>$84,200-$160,700</td>
<td>$84,200-$160,725</td>
</tr>
<tr>
<td>32%</td>
<td>$321,450-$408,200</td>
<td>$160,725-$204,100</td>
<td>$160,700-$204,100</td>
<td>$160,725-$204,100</td>
</tr>
<tr>
<td>35%</td>
<td>$408,200-$612,350</td>
<td>$204,100-$510,300</td>
<td>$204,100-$510,300</td>
<td>$204,100-$306,175</td>
</tr>
<tr>
<td>37%</td>
<td>$612,350 and up</td>
<td>$510,300 and up</td>
<td>$510,300 and up</td>
<td>$306,175 and up</td>
</tr>
</tbody>
</table>
Individual Tax Updates

- 2019 estate and trust tax rates
  - Also the kiddie tax rates
    - Kiddie tax applies at unearned income above $2,200 received by a child under 19 or 24 if a full-time student
    - Parents can elect to include the income on their return if it’s over $1,100 and under $11,000

<table>
<thead>
<tr>
<th>Rate</th>
<th>Income Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>Up to $2,600</td>
</tr>
<tr>
<td>24%</td>
<td>$2,600-9,300</td>
</tr>
<tr>
<td>35%</td>
<td>$9,300-12,750</td>
</tr>
<tr>
<td>37%</td>
<td>$12,750 and up</td>
</tr>
</tbody>
</table>
Individual Tax Updates

- 2019 capital gains tax rates
  - Applies only to long-term capital gains
  - Ordinary tax rates for capital assets held less than a year

<table>
<thead>
<tr>
<th>Ordinary Taxable Income</th>
<th>0% Rate</th>
<th>15% Rate</th>
<th>20% Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>Up to $39,375</td>
<td>$39,376-434,550</td>
<td>Over $434,550</td>
</tr>
<tr>
<td>Married Filing Joint</td>
<td>Up to $78,750</td>
<td>$78,751-488,850</td>
<td>Over $488,850</td>
</tr>
<tr>
<td>Head of Household</td>
<td>Up to $52,750</td>
<td>$52,751-461,700</td>
<td>Over $461,700</td>
</tr>
</tbody>
</table>
Individual Tax Updates

- Standard deduction increases
  - $24,400 for married filing joint, $18,350 for head of household, and $12,200 for single and married filing separate

- Threshold for deducting unreimbursed medical expenses increased to 10% of adjusted gross income, up from 7.5%

- AMT exemption and threshold increases
  - Exemption - $111,700 for married filing joint, $71,700 for single and $55,850 for married filing separate
  - Threshold for exemption phaseout - $1,020,600 for married filing joint and $510,300 for single

- Estate and gift exemption increases
  - $11.4 million in 2019
  - Reminder - set to phase out 1/1/2026
Individual Tax Updates

- Alimony payments for a divorce or separation agreement executed after December 31, 2018 are no longer deductible by the payor or included in the income of the payee
  - Pre-existing agreements follow pre-TCJA rules
- Mileage rate changes

<table>
<thead>
<tr>
<th>Reason</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business</td>
<td>58 cents</td>
</tr>
<tr>
<td>Medical and moving</td>
<td>20 cents</td>
</tr>
<tr>
<td>Charity</td>
<td>14 cents</td>
</tr>
</tbody>
</table>
Individual Tax Updates

- Health Savings Account contribution limits
  - $7,000 for family, $3,500 for single
  - Extra $1,000 for 55+

- Retirement plan contribution limits
  - 401K - $19,000 with $6,000 catch up for 50+
  - IRA - $6,000 with $1,000 catch up for 50+
  - SEP IRA and solo 401K (self-employed) - $56,000 subject to limitations
  - SIMPLE - $13,000 with $3,000 catch up
  - Defined Benefit Plan (self-employed) - $225,000
Individual Tax Updates

- Addition of Form 1040-SR for taxpayers aged 65 and older
- Similar to Form 1040-EZ but less income type restrictions
Individual Tax Updates

- Tax form changes
  - 3 schedules from 6 schedules in 2018
    - Schedule 1 - Additional income and adjustments to gross income (mostly unchanged)
    - Schedule 2 - Additional taxes (combines Schedules 2 and 4)
    - Schedule 3 - Additional credits and payments (combines Schedules 3 and 5)

- Individual mandate eliminated in 2019
  - Penalty to applicable large employers that fail to offer minimum essential health coverage still in effect
  - Some states still have a penalty - MA, NJ, VT, DC
Business Tax Updates

- Small taxpayer designation increased to average annual gross receipts of $26 million

- Health Reimbursement Arrangements (HRAs)
  - Account-based health plans that allow employers to reimburse employees tax-free for medical expenses up to a fixed dollar amount per year
    - Unused amounts roll over
    - Employer owns and funds the arrangement
  - 2 new types starting January 1, 2020
    - Individual Coverage HRAs - integrated with individual health insurance coverage (no group health plan)
    - Excepted Benefit HRAs - not integral to a health plan or considered a health plan itself, must be offered along with an enrollment option in a non-excepted group health plan (enrollment in group or individual health plan not required to participate)
  - Employers typically must add these features before 1/1/2020 for coverage
Business Tax Updates

- Qualified improvement property is 39-year property per the TCJA
  - Ineligible for 100% bonus depreciation
  - Many thought a technical correction would come to fix this to 15-year property, as intended, but none has been finalized
  - Section 179 still available if other qualifications are met
- Section 179 expense limit increases
  - Total 179 expense to $1,020,000
  - Placed in service threshold starts at $2,550,000
- Bonus depreciation is available for certain step-up transactions
  - Final regulations from 2019 allow for bonus depreciation of step-ups from acquisitions of existing partnership interests to the extent the step-up is allocable to qualified assets
Business Tax Updates

- **Employer Credit for Family and Medical Leave - final year in 2019**
  - Credit between 12.5% and 25% of wages paid to qualifying employees on family or medical leave
  - Written policy required providing at least 2 weeks of leave with at least 50% of normal wages paid during leave

- **Research & Development Tax Credit**
  - Small business start-ups may claim up to $250,000 of the credit against FICA payroll liabilities
  - Simplified credit is more common - relies upon 3 prior years’ research expenses and average gross receipts
Refresher - Individual Loss Limitations

- Pre-TCJA, active losses could offset all income without limitation
- TCJA limits the ability to offset active business losses against nonbusiness income
  - Business loss deductions are limited to business income plus $255,000 if single and $510,000 if married filing joint
  - Excess losses carried forward as NOL (limited to 80% of taxable income) and not utilized on disposition
- At-risk and passive activity limits are applied before calculating excess business loss
Refresher - Individual Loss Limitations

Form 461

Limitation on Business Losses

Part I

Total Income/Loss Items

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Identification Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Enter amount from Form 1040, line 1</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Enter amount from Schedule 1 (Form 1040), line 12</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Enter amount from Schedule 1 (Form 1040), line 13</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>Enter amount from Schedule 1 (Form 1040), line 14</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>Enter amount from Schedule 1 (Form 1040), line 17</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>Enter amount from Schedule 1 (Form 1040), line 18</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>Enter amount from Schedule 1 (Form 1040), line 19</td>
<td>7</td>
</tr>
<tr>
<td>8</td>
<td>Enter income, gain, or losses from a trade or business not reported on lines 1 through 7</td>
<td>8</td>
</tr>
<tr>
<td>9</td>
<td>Combine lines 1 through 8</td>
<td>9</td>
</tr>
</tbody>
</table>

Part II

Adjustment for Amounts Not Attributable to Trade or Business

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Identification Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Enter any income or gain reported on lines 1 through 8 that is not attributable to a trade or business</td>
<td>10</td>
</tr>
<tr>
<td>11</td>
<td>Enter any losses or deductions reported on lines 1 through 8 that are not attributable to a trade or business</td>
<td>11</td>
</tr>
<tr>
<td>12</td>
<td>Subtract line 11 from line 10</td>
<td>12</td>
</tr>
</tbody>
</table>

Part III

Limitation on Losses

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Identification Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>If line 12 is a negative number, enter it here as a positive number, or if line 12 is a positive number, enter it here as a negative number</td>
<td>13</td>
</tr>
<tr>
<td>14</td>
<td>Add lines 9 and 13</td>
<td>14</td>
</tr>
<tr>
<td>15</td>
<td>Enter $250,000 (or $500,000 if married filing jointly)</td>
<td>15</td>
</tr>
<tr>
<td>16</td>
<td>Add lines 14 and 15. If less than zero, enter the amount from line 16 as a positive number on Schedule 1 (Form 1040), line 21</td>
<td>16</td>
</tr>
</tbody>
</table>

For Paperwork Reduction Act Notice, see the separate instructions.
Refresher - Business Interest Limitations

- Section 163(j) limits the net business interest deduction for a taxpayer to the sum of:
  - Business interest income
  - Floor plan financing interest (auto dealerships)
  - And 30% of adjusted taxable income

- Small businesses (average gross receipts over previous 3 years is $26M or less) are exempt from limitation
  - Does not apply to tax shelters (broader definition for this purpose)
  - Aggregation and attribution rules apply
Refresher - Business Interest Limitations

- Disallowed interest is carried forward indefinitely
  - Partnerships - limitation applied at the partnership level, but disallowed amount is at partner level
    - Basis is effected in the year of the interest expense even if not deducted
      - If the partner sells their interest, remaining carryforward is added back to basis
    - Excess business interest carryforward is deducted by partners in succeeding years when excess taxable or interest income is allocated to the partner
  - S Corporations - limitation and disallowed amount are at the S corporation level
    - Carryforwards allocated to shareholders once the S corp has excess taxable or interest income
Refresher - Business Interest Limitations

- Real estate and farm businesses may elect out of the interest limitations
  - Irrevocable election
  - Must use Alternative Depreciation System (ADS) for real property going forward
    - Nonresidential real property life goes to 40 from 39
    - Residential real property life goes to 30 from 27.5
    - Qualified improvement property would go to 20 from 15 (if the correction is made) or to 40 from 39 if not
    - ADS life is the life applicable to the year placed in service
  - Electing farm businesses to depreciation any asset over a 10-year life using ADS
  - Assets no longer eligible for bonus depreciation
  - Potential issue if an entity with carryforward interest later elects out - no IRS guidance as of now
Refresher - 199A Deduction

- Rental real estate safe harbor rules finalized in fall 2019 for a real estate enterprise
  - Separate books and records (each property)
  - 250 hours of rental services performed during the year
    - Can be performed by employees or contractors
    - Excludes financial/investment management and hours spent traveling to and from real estate
  - Taxpayer maintains records to supports hours, dates, services performed, etc. (does not apply until 2020)
- Exclusions from safe harbor:
  - Real estate used as a residence by the taxpayer during the year (vacation home)
  - Real estate rented under a triple net lease
  - Properties rented to a business conducted by the taxpayer or in an entity under common control (self-rental still might automatically qualify under special self-rental rule, but can’t be combined for real estate enterprise purposes)
  - Rental activity that is considered a specialized services trade or business (SSTB)
Refresher - 199A Deduction

- Self-rental rules
  - Real estate automatically treated as a trade or business for QBI purposes
  - The entity that rents the building cannot be a C corporation
- SSTB rules
  - Income derived from renting to an SSTB is treated as income from an SSTB and may be subject to those limitation rules
Refresher - Partnership Representative Opt-Out

- New partnership audit rules effective for tax years beginning on or after 1/1/18
  - Assesses and collects taxes resulting from a partnership audit at the partnership level rather than partner level
    - Tax will be calculated at the highest marginal rate for individuals or corporations
  - Each partnership must have a taxpayer representative (replaces former tax matters partner) to handle partnership audits - does not have to be a partner

- Electing out:
  - Small partnerships - less than 100 partners, no partners that are trusts, single-member LLCs or partnerships. Made annually on the tax return
  - Push-out election - partnership can elect out within 45 days of receipt of notice of the audit adjustment, prepare and send amended K-1s instead
Refresher - Partnership Representative Opt-Out

Considerations:

- Partnership or LLC agreements should be modified to indicate rules around selecting, serving as and removal of partnership representatives.
- New partners could have the financial burden of an audit assessment arising from before they were partners.
- If intending to use push-out election, partnership and LLC agreement modification should also be considered for clarity to any current or future partnership representatives.
Issues to Consider - Virtual Currency

- Prior to 2019, IRS guidance on virtual currency was limited - only that it would be treated as property, causing transactions to generally be taxable.
- Revenue Ruling 2019-24 provides more guidance and frequently asked questions:
  - Discusses ordinary nature of gain, determining FMV, calculation of basis and gain/loss.
- The IRS estimates that only a few hundred taxpayers have reported virtual currency transactions.
  - Based on collected information, letters to be sent out to around 10,000 other taxpayers believed to have engaged with it:
    - Described as “soft letters” intended to encourage voluntary compliance.
    - A big area of focus for the IRS now and likely to continue in coming years.
- A question has been added to Schedule 1 of the draft 2019 1040 asking about virtual currency transactions.
Issues to Consider - Legalization of Marijuana

- 33 states and Washington DC have legalized at least some uses of marijuana
  - DE, PA, NJ and MD all made medicinal marijuana legal
  - A DE bill is currently in the works to legalize for recreational use
    - Calls for a government-run industry, 15% sales tax and licensing fees
    - Does not allow for citizens to grow their own marijuana for personal use
- Legal sales exceeded $10 billion in 2018
  - Expected to increase to $30 billion by 2030
- Internal Revenue Code prohibits deductions associated with controlled substances from gross income
  - Results in huge tax implications for people legally carrying on business in the states that they reside
Issues to Consider - Legalization of Marijuana

- Banks are unlikely to work with cannabis companies, leaving those in the industry in vulnerable cash positions
  - Several states and the IRS have been forced to build “cash rooms” to receive taxes paid in cash by growers, retailers, etc.
- The Marijuana Opportunity Reinvestment and Expungement Act was approved by the House Judiciary Committee last month
  - Would expunge convictions and authorize a 5% sales tax on marijuana
  - Very little chance of becoming law in a Republican-controlled Senate but thought to be drumming up momentum for the Secure and Fair Enforcement Banking Act
    - Would allow banks to do business with legal cannabis companies
    - Passed the House vote in September
Issues to Consider - Dakota vs. Wayfair

- The 2018 ruling overturned the physical presence nexus test followed for decades for sales and use tax collection by states
  - Broader authority to require online retailers to collect and remit sales tax
- Most states have issued guidance for enforcing nexus statutes prospectively, but some have considered retroactive collection of taxes
  - California, South Carolina and Louisiana seeking back taxes
  - Almost all states will need to issue new guidance on their pre-Wayfair nexus rules
- Congress has yet to act on legislation to reduce complexity of compliance
- A potentially huge burden on smaller online retailers expected to comply
Issues to Consider - 2020 Election

- Notable proposals:
  - A wealth tax to support government programs and address income inequality
  - Raising the top tax rate to over 50%
  - Taxing investments annually rather than when sold
  - Ordinary income rates for capital gain income
  - Eliminate the income cap on Social Security taxes
  - Eliminate accelerated depreciation for large businesses
  - Eliminate basis step-up for estates
  - Creation of a carbon tax and dividend system
  - Creation of a financial transaction tax
QUESTIONS???