Current Federal Tax Developments

Kaplan Professional Education

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Section: 1
IRS to Recompute 2018 Inflation Adjusted Numbers Due to TCJA Requirement to Use Chained CPI

Citation: TCJA Changes to IRC Section 1(f)(3), 12/22/17, Comments at District of Columbia Bar Community of Taxation Event, 1/25/18

The Tax Cuts and Jobs Act modified IRC §1(f)(3) to use the chained consumer price index (C-CPI-U) rather than the standard consumer price index (CPI-U) for most inflation adjustments for tax years beginning after December 31, 2017.

Wikipedia offers the following summary explanation of the "chained CPI":

> *The United States Chained Consumer Price Index (C-CPI-U), also known as chain-weighted CPI or chain-linked CPI is a time series measure of price levels of consumer goods and services created by the Bureau of Labor Statistics as an alternative Consumer Price Index. It is based on the idea that in an inflationary environment, consumers will choose less-expensive substitutes. This reduces the rate of cost of living increases through the reduction of the quality of consumed goods. The "fixed weight" CPI also takes such substitutions into account, but does so through a periodic adjustment of the "basket of goods" that it represents, rather than through a continuous estimation of the declining quality of goods consumed.*[1]

The effective of this provision posed a problem that many observers recognized—the IRS had already released inflation adjusted numbers for 2018 computed under the standard CPI (CPI-U rather than C-CPI-U). The numbers for most tax related figures were released in Revenue Procedure 2017-58 on October 19, 2017, with retirement plan numbers released in Notice 2017-64.

In an article published in the January 29, 2018 edition of *Tax Notes*, Harlan Weller, an actuary in the Treasury Office of Benefits Tax Counsel, is cited as confirming that the IRS will be recalculating the inflation adjusted numbers for all 46 separate IRC sections that are now required to be computed using the C-CPI-U rather than CPI-U index.[2]

While some of the provisions affected are not applicable in 2018 due to the changes found in TCJA (such as the amount of the exemption for dependents), may others remain in effect for 2018. Some of the affected provisions that will impact 2018 taxes include:

- Adoption credit dollar amounts
- Phase-outs for the lifetime learning credit
- Various items related to the earned income credit
- Maximum repayment of amounts related to the premium tax credit

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[1] https://en.wikipedia.org/wiki/United_States_Chained_Consumer_Price_Index, January 27, 2018

[2] Stephanie Cummings, "Inflation Figures Being Recalculated, Treasury Official Confirms", *Tax Notes*, January 29, 2018, 2018 TNT 19-9, https://www.taxnotes.com/tax-notes-today/tax-system-administration/inflation-figures-being-recalculated-treasury-official-confirms/2018/01/29/26tt9, January 27, 2018

- Above the line deduction for educators
- Annual limit on health FSA deferrals to cafeteria plans
- Medical deduction limits on long-term care premiums
- IRA deductible contribution limits
- Roth IRA AGI based dollar amount limits
- Foreign earned income exclusion amount
- Applicable exclusion amount for estate and gift taxes
- Maximum amount of present interest gifts that are not subject to gift tax
- Penalty for an individual failing to maintain health insurance.
- The amounts of a large number of penalties recently made subject to inflation adjustment

Since the C-CPI-U generally results in a lower amount of reported inflation, any numbers that end up being adjusted will most likely be at a lower level than was originally reported to apply for 2018.

Mr. Weller didn't provide any specific time frame when these revised numbers would be available, but noted that advisers need to watch for them to come at some point in the future.

For the moment advisers just need to be aware that the inflation adjusted amounts that were published during 2017 to apply to 2018 should be treated solely as an approximation of what the 2018 numbers will be, as well as recognize that if a number changes it likely will go down.

Section: 199A
Government Indicates Priorities for TCJA Guidance

Citation: Comments by Clifford Warren and Bryan Rimmke, New York State Bar Association Tax Section Annual Meeting, 1/23/18

The IRS has begun setting out priorities for guidance on provisions in the Tax Cuts and Jobs Act Guidance per a story posted today by Tax Analysts on *Tax Notes Today*[3]. The story was reporting on comments by Clifford Warren, special counsel to the IRS associate chief counsel (passthroughs and special industries) and Bryan Rimmke, attorney-adviser, Treasury Office of Tax Policy, given to the New York State Bar Association Tax Section annual meeting on January 23.

The IRS is moving first to deal with the guidance needed on the deemed repatriation provisions of the Tax Cuts and Jobs Act, having already released some guidance in this area. As well, emergency guidance was issued in the form of Notice 2018-8, giving temporary relief for publicly traded partnerships from the special withholding rules imposed on buyers of certain partnership interests for interests purchased from foreign partners found in newly enacted IRC §§864(c)(8) and 1446(f).

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[3] Emily Foster, "Tax Bill Triage Not Complete But Guidance Priorities Emerging," *Tax Notes Today*, January 24, 2018, 2018 TNT 16-2

The government representatives stated IRS is prioritizing guidance in two specific areas:

- Section 199A Qualified Business Income Deduction
- Section 163(j) Limits on the Deduction of Certain Business Interest.

A secondary priority is guidance on the provisions related to expanded bonus depreciation under IRC §168(k).

A much lower priority is guidance on the carried interest provisions of IRC §1061, noting that this provision affects far fewer taxpayers than the three provisions mentioned earlier.

Mr. Rimmke noted that a major area the IRS will be looking at in Section 199A will relate to how much of services that might appear to "specified services" will taint an otherwise qualified trade or business.

The government representatives also noted the guidance project for the business interest limitation planned to look the complexity of dealing with the interest limits determined at the partnership level.

Section: 501
New Form 1024-A to Be Used by Organizations Wishing a Determination Letter for §501(c)(4) Status

Citation: Rev. Proc. 2018-10, 1/24/18

Revised guidance for organizations applying for a determination letter to recognize qualification for §501(c)(4) status has been issued by the IRS in Rev. Proc. 2018-10.. The new guidance requires the request be made by filing Form 1024-A, *Application for Recognition of Exemption Under Section 501(c)(4)*. This new form is to be used instead of Form 1024 for such organizations to optionally file for such a determination letter.

The organizations, while they must notify the IRS of their existence and their assertion that they qualify for §501(c)(4) status within 60 days of formation under other procedures, are not required to go through the determination letter process. Nevertheless, such an organization may wish to obtain the certainty that comes with the letter and therefore will file this form, though the application will also require submission of a user fee for the IRS to process the request.

This procedure modifies Rev. Proc. 2018-5 to contain the following information regarding submitting this form:

> ***(7) Form 1024-A application.*** *An organization seeking a determination letter from the Service recognizing exemption under § 501(c)(4) must submit a completed Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code, along with Form 8718. In the case of an organization that provides credit counseling services and seeks recognition of exemption under § 501(c)(4), see § 501(q).*
>
> *Section 501(c)(4) organizations may choose to seek a determination letter recognizing exemption under § 501(c)(4) by filing Form 1024-A, but are not required to do so except in certain cases (see, for example, § 6033(j)(2) regarding failures to file annual information returns or annual electronic notifications required under § 6033(a) or (i)).*

The ruling also modifies Rev. Proc. 2018-5 by giving the following information on who is authorized to sign the request:

> ***(3) Individual or representative authorized to sign Form 1024-A.*** *In the case of a request for a determination letter made by filing Form 1024-A, an officer, a director, a trustee who is authorized to sign, or a representative authorized by a power of attorney (see section 4.05 of this revenue procedure), must sign the application.*

Finally, the new guidance modifies Rev. Proc. 2018-5 regarding who should sign the form as follows:

> ***(1) Penalty of perjury statement requirements for requests for determination letters made on Form 1023, 1023-EZ, 1024, 1024-A, or 8940.*** *The signature of an individual described in section 4.04(1), (2), or (3) of this revenue procedure meets the penalty of perjury statement signature requirements for requests on Form 1023, 1023-EZ, 1024, 1024-A, or 8940, as applicable.…*
>
> *This declaration must be signed and dated by the taxpayer, not the taxpayer's representative authorized by a power of attorney. The signature of an individual described in section 4.04(1) is the signature of the taxpayer for purposes of the penalty of perjury statement. The signature of an authorized representative described in section 4.04(2), (3), or (4) will not meet the penalty of perjury statement requirements (except as otherwise provided in Appendix B). See the instructions to the relevant form for additional detail. Neither a stamped signature nor a faxed signature is permitted.*

At the time the IRS issued this Rev. Proc. Form 1024-A and its related instructions still existed only in draft form. Presumably the IRS will be releasing the final version of this form very shortly, since the new procedure claims an effective date of January 16, 2018, eight days before it was issued.

For the moment the drafts are available via the following links (these links may "break" once the IRS issues the final forms):

- Form 1024-A Draft
- Draft Instructions to Form 1024-A

Section: 6651
Tax Return Left Under Doormat for Wife to Sign Never Filed, Failure to File Penalties Apply

Citation: Plato v. Commissioner, TC Memo 2018-7, 1/24/18

Couples often have trouble communicating when they are undergoing a divorce. But in the case of *Plato v. Commissioner*, TC Memo 2018-7, the method Mr. Plato used to handle the necessary interaction with his soon to be ex-wife was particularly unique—and ineffective.

The Tax Court opinion describes how Mr. Plato handled the preparation of a joint 2007 return, in particular getting his wife's signature on the Form 1040 and then having her mail the return on to the IRS:

> *In the matter of petitioner's divorce action community property assets, including a stock brokerage account and a section 401K retirement account, were liquidated subject to a stipulation order in December 2007. Petitioner prepared and signed a Form 1040, U.S. Individual Income Tax Return,*

> *for 2007 reporting the filing status of married filing jointly and a tax liability of $46,073 (joint return).4 On April 15, 2008, he left the joint return and a check for $46,073 "under the mat at the front door" of his wife's residence for her to sign and mail to the IRS.*

He also asked his wife to file for an extension of time to file the return (we are not told how he managed to communicate that request).

Unfortunately for Mr. Plato, the IRS never actually received the return in question, the check was never negotiated and the IRS also had no record of an extension request being received. The Court noted that there was no evidence that the return was signed or mailed, or an extension requested, so presumably Mr. Plato either still didn't want to talk to his ex-wife or she wouldn't testify that any of these events occurred.

Eventually the IRS prepared a substitute for return, causing Mr. Plato to submit a new Form 1040, with a married filing separate status for 2007. The IRS accepted the tax calculation made by Mr. Plato on that return, but also looked to be paid a failure to file penalty for the year in question. Mr. Plato objected to the penalty.

The taxpayer argued that he had reasonable cause for failing to timely file a return. As the opinion provides:

> *Petitioner argues that he had reasonable cause and did not willfully neglect his filing obligation for 2007 because he signed the joint return on April 15, 2008, and then left it and a check for the liability reported on that return "under the mat" of his wife's residence. Petitioner argues that his actions in attempting to file the joint return coupled with his history of compliance in filing tax returns amount to reasonable cause for his failure to file a tax return for 2007.*

The Tax Court rejected this defense for two reasons. First, pointing to the U.S. Supreme Court ruling in the case of *Boyle v. Commissioner*, 469 U.S. 241 (1985), the Court noted that a taxpayer cannot rely on an agent (in this case his wife) to file a return. It is the taxpayer's responsibility to assure the return was filed.

Second, the Court found that his rather unique method of filing that return fell far short of taking reasonable steps to assure the return was filed. As the opinion notes:

> *Petitioner left the joint return and a check for $46,073 under the doormat of his wife's residence. Petitioner did not request an extension of time to file the joint return, but he asked his wife to request an extension of time to file. Indeed, petitioner took no further action to comply with his requirement to file a tax return until respondent issued him a notice of deficiency. Additionally, the Court has held that failure to obtain a spouse's signature on a married filing jointly return when the couple is separated does not always constitute reasonable cause for failure to timely file a tax return. See Sutherland v. Commissioner, T.C. Memo. 1991-619.*