ROUNDUP OF RECENT TAX DEVELOPMENTS

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Agenda

- Final Section 199A Regulations
- Rental Real Estate as a Trade or Business
- Bonus Depreciation Guidance
- Other TCJA Guidance
- Federal and Michigan Tax Developments
- Estate & Gift Tax

Section 199A Final Regulations

Section 199A - Refresher

- 20% deduction for QBI from sole proprietorships, S corporations, partnerships, and LLCs taxed as partnerships
- available to both itemizers and nonitemizers, is claimed by individuals on their personal tax returns as a reduction to taxable income
- May be taken by individuals and by some estates and trusts
- Not available for wage income or for business income earned through a C corporation

Section 199A - Refresher

- **For taxpayers whose taxable income exceeds a statutorily-defined amount (i.e., a threshold amount), Code Sec. 199A may limit the taxpayer's Code Sec. 199A deduction based on the following**:

  (1) the type of trade or business engaged in by the taxpayer;

  (2) the amount of W-2 wages paid with respect to the trade or business (W-2 wages); and/or

  (3) the unadjusted basis immediately after acquisition (UBIA) of qualified property held for use in the trade or business.

- **The threshold amounts are subject to phase-in rules based upon taxable income above the threshold amount.**

Trade or Business Definition

- Reg. Sec. 1.199A-1(b)(14) defines "trade or business" as a trade or business under Code Sec. 162 (i.e., a Section 162 trade or business) other than the trade or business of performing services as an employee.
- The determination of whether an activity is a trade or business is made at the entity level.

Trade or Business Definition

- If a relevant passthrough entity (RPE) is engaged in a trade or business, items of income, gain, loss, or deduction from such trade or business retain their character as they pass from the entity to the taxpayer - even if the taxpayer is not personally engaged in the trade or business of the entity.
- Conversely, if an RPE is not engaged in a trade or business, income, gain, loss, or deduction allocated to a taxpayer from such entity will not qualify for the Code Sec. 199A deduction even if the taxpayer or an intervening entity is otherwise engaged in a trade or business.

Trade or Business Definition

- The final regulations define an RPE as a partnership or an S corporation that is owned, directly or indirectly, by at least one individual, estate, or trust.
- Other passthrough entities, including common trust funds and religious or apostolic organizations described in Code Sec. 501(d), are also treated as RPEs if the entity files a Form 1065, U.S. Return of Partnership Income, and is owned, directly or indirectly, by at least one individual, estate, or trust.
- A trust or estate is treated as an RPE to the extent it passes through QBI, W-2 wages, UBIA of qualified property, qualified REIT dividends, or qualified publicly traded partnership (PTP) income.

Trade or Business Definition

- Solely for purposes of Code Sec. 199A, the rental or licensing of tangible or intangible property to a related trade or business is treated as a trade or business if the rental or licensing activity and the other trade or business are commonly controlled. This rule also allows taxpayers to aggregate their trades or businesses with the leasing or licensing of the associated rental or intangible property if all of the applicable requirements are met.
- The IRS clarified that this rule does not apply to situations in which the rental or licensing is to a commonly controlled C corporation; it is limited to situations in which the related party is an individual or an RPE.

Rental Real Estate Activities as a Trade or Business

- The preamble to the final regulations warns taxpayers to "consider the appropriateness of treating a rental activity as a trade or business for purposes of section 199A where the taxpayer does not comply with the information return filing requirements under section 6041."
- In the final regulations, the IRS rejected suggestions that, if a taxpayer's rental activity met the material participation tests in Reg. Sec. 1.469-5T, which determines whether a rental activity is a passive activity or not, the activity would also be considered a trade or business activity for purposes of Code Sec. 199A.

Rental Real Estate Activities as a Trade or Business

In determining whether a rental real estate activity is a Code Sec. 162 trade or business, the IRS noted that the relevant factors might include, but are not limited to the following:

(1) the type of rented property (commercial real property versus residential property);

(2) the number of properties rented;

(3) the owner's or the owner's agents day-to-day involvement;

(4) the types and significance of any ancillary services provided under the lease; and

(5) the terms of the lease (for example, a net lease versus a traditional lease and a short-term lease versus a long-term lease).

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

- Notice 2019-7 contains a proposed revenue procedure which provides a safe harbor under which a rental real estate enterprise will be treated as a trade or business solely for purposes of Code Sec. 199A and the related regulations if certain conditions are satisfied.
- For this purpose, a rental real estate enterprise is defined as an interest in real property held for the production of rents and may consist of an interest in multiple properties.

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

- The individual or RPE relying on the safe harbor must hold the interest directly or through a disregarded entity (such as a single-member LLC).
- Taxpayers must either treat each property held for the production of rents as a separate enterprise or treat all similar properties held for the production of rents (with the exception of certain rental real estate arrangements that are excluded from the safe harbor provisions, as discussed below) as a single enterprise.
- Commercial and residential real estate may not be part of the same enterprise. Taxpayers may not vary this treatment from year-to-year unless there has been a significant change in facts and circumstances.

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

- Thus, where a partnership holds both commercial and residential real estate, its activities will fail to satisfy the safe harbor conditions.
- As an alternative, one of the activities could be separated out of the partnership and into another partnership where an independent determination is made as to whether the enterprise qualifies for the safe harbor.
- However, even if an enterprise fails to satisfy the conditions spelled out in Notice 2019-7, it may still be treated as a trade or business for purposes of Code Sec. 199A if the enterprise otherwise meets the definition of a trade or business in Reg. Sec. 1.199A-1(b)(14).

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

- **Under the safe harbor and solely for the purposes of Code Sec. 199A, a rental real estate enterprise will be treated as a trade or business if the following requirements are satisfied during the tax year with respect to the rental real estate enterprise**:

  (1) Separate books and records are maintained to reflect income and expenses for each rental real estate enterprise.

  (2) For tax years beginning prior to January 1, 2023, 250 or more hours of rental services are performed per year with respect to the rental enterprise. For tax years beginning after December 31, 2022, in any three of the five consecutive tax years that end with the tax year (or in each year for an enterprise held for less than five years), 250 or more hours of rental services are performed per year with respect to the rental real estate enterprise.

  (3) The taxpayer maintains contemporaneous records, including time reports, logs, or similar documents, regarding the following: (i) hours of all services performed; (ii) description of all services performed; (iii) dates on which such services were performed; and (iv) who performed the services. Such records are to be made available for inspection at the request of the IRS. The contemporaneous records requirement will not apply to tax years beginning before January 1, 2019.

- **While not entirely clear, most likely the 250-hour test must be met at the entity level for RPEs.**

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

For purposes of the safe harbor, rental services include:

(1) advertising to rent or lease the real estate;

(2) negotiating and executing leases;

(3) verifying information contained in prospective tenant applications;

(4) collection of rent;

(5) daily operation, maintenance, and repair of the property;

(6) management of the real estate;

(7) purchase of materials; and

(8) supervision of employees and independent contractors.

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

- Rental services may be performed by owners or by employees, agents, and/or independent contractors of the owners.
- The term "rental services" does not include financial or investment management activities, such as arranging financing; procuring property; studying and reviewing financial statements or reports on operations; planning, managing, or constructing long-term capital improvements; or hours spent traveling to and from the real estate.

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

- Real estate used by the taxpayer (including an owner or beneficiary of an RPE relying on this safe harbor) as a residence for any part of the year under Code Sec. 280A is not eligible for the safe harbor.
- If a taxpayer owns a rental building and lives in one of the units of that building, a question arises as to whether the taxpayer's personal use taints the entire building or whether it's appropriate to carve out the personal residence and apply the safe harbor to the rest of the building. If that is not appropriate and the taxpayer is not entitled to use the safe harbor, there is nothing precluding a taxpayer from otherwise establishing that the rental real estate enterprise is a trade or business for purposes of Code Sec. 199A.

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

- Notice 2019-7 also provides that real estate rented or leased under a triple net lease is not eligible for this safe harbor.
- For purposes of the safe harbor, a triple net lease includes a lease agreement that requires the tenant or lessee to pay taxes, fees, and insurance, and to be responsible for maintenance activities for a property in addition to rent and utilities.
- This includes a lease agreement that requires the tenant or lessee to pay a portion of the taxes, fees, and insurance, and to be responsible for maintenance activities allocable to the portion of the property rented by the tenant.
- Most large commercial properties have triple net lease arrangements, meaning such enterprises are not eligible for the safe harbor.

Safe Harbor for Rental Real Estate Enterprise to Be Treated as a Trade or Business

- A taxpayer or RPE must include a statement, attached to the return on which it claims the Code Sec. 199A deduction or passes through Code Sec. 199A information, that the requirements in the proposed revenue procedure have been satisfied.
- The statement must be signed by the taxpayer, or an authorized representative of an eligible taxpayer or RPE, which states: "Under penalties of perjury, I (we) declare that I (we) have examined the statement, and, to the best of my (our) knowledge and belief, the statement contains all the relevant facts relating to the revenue procedure, and such facts are true, correct, and complete."
- The individual or individuals who sign must have personal knowledge of the facts and circumstances related to the statement.

Multiple Trades or Businesses Within an Entity

- The IRS rejected practitioners' requests for guidance on safe harbors or factors to determine how to delineate separate Code Sec. 162 trades or businesses within an entity and when an entity's combined activities should be considered a single Code Sec. 162 trade or business.
- However, the IRS did note that Reg. Sec. 1.446-1(d)(2) provides that no trade or business will be considered separate and distinct unless a complete separate set of books and records is kept for such trade or business.

W-2 Wage and UBIA Limitations

- **If a taxpayer's taxable income exceeds a statutorily-defined threshold amount, Code Sec. 199A(b)(2) limits the amount of the taxpayer's Code Sec. 199A deduction for each qualified trade or business to the lesser of**:

  (1) 20 percent of the taxpayer's QBI with respect to the qualified trade or business, or

  (2) the greater of (i) 50 percent of the W-2 wages with respect to the qualified trade or business, or (ii) the sum of 25 percent of the W-2 wages with respect to the qualified trade or business plus 2.5 percent of the unadjusted basis immediately after acquisition (UBIA) of all qualified property.

- **The threshold amount, for any tax year beginning in 2019, is phased in for taxpayers filing joint returns with taxable incomes from $321,400 to $421,400, for married taxpayers filing separately with taxable incomes from $160,725 to $210,725, and for single and head-of-household taxpayers with taxable incomes from $160,700 to $210,700**.

W-2 Wage and UBIA Limitations

- The definition of W-2 wages in the final regulations includes amounts paid to officers of an S corporation and common-law employees of an individual or RPE.
- Amounts paid as W-2 wages to an S corporation shareholder cannot be included in the recipient's QBI.
- However, these amounts are included as W-2 wages for purposes of the W-2 wage limitation to the extent that the requirements of Reg. Sec. 1.199A-2 are otherwise satisfied.

W-2 Wage and UBIA Limitations

- The IRS noted that the Code does not address how the W-2 wages and UBIA of qualified property limitations should be applied when taxpayers have both positive and negative QBI from different businesses.
- The final regulations clarify that in such cases the negative QBI should offset positive QBI prior to applying the wage and capital limitations.

Alternatives Methods for Calculating W-2 Wages

- Rev. Proc. 2019-11 provides three methods for calculating W-2 wages, as defined in Code Sec. 199A(b)(4) and Reg. Sec. 1.199A-2, for purposes of Code Sec. 199A(b) and the regulations thereunder.
- The first method (the unmodified Box method) allows for a simplified calculation while the second and third methods (the modified Box 1 method and the tracking wages method) provide greater accuracy.

Reporting Rules

- The proposed regulations provided that an RPE must determine and separately report QBI, W-2 wages, UBIA of qualified property, and whether the trade or business is an SSTB for each of the RPE's trades or businesses.
- The final regulations allow an RPE to aggregate its trades or businesses provided the rules of Reg. Sec. 1.199A-4 are satisfied.
- An RPE that chooses to aggregate can report combined QBI, W-2 wages, and UBIA of qualified property for the aggregated trade or business.
- This aggregation must be maintained and reported by all direct and indirect owners of the RPE, including upper-tier RPEs.

Trade or Business of Performing Services as an Employee

- According to the IRS, many practitioners expressed support for the rule in the proposed regulations that an individual who was previously treated as an employee and is subsequently treated as other than an employee while performing substantially the same services to the same person, or a related person, will be presumed to be in the trade or business of performing services as an employee for purposes of Code Sec. 199A. However, the IRS said, many others requested clarification of the rule.
- While the IRS said it believes that the presumption is necessary to prevent misclassifications, it agreed that some clarification of the presumption was necessary.
- In accordance with the commenters' suggestions, the final regulations provide a three-year look back rule for purposes of the presumption.

Specified Services Trades or Businesses

- There is an exception from the definition of a qualified trade or business for specified service trades or businesses (SSTBs) as defined in Sec. 199A(d)(2).
- SSTBs include trades or businesses involving the performance of services in the fields of health, law, accounting, actuarial services, performing arts, consulting, athletics, financial services, brokerage services, or any other trade or business that relies on the reputation or skill of one or more of its employees.
- SSTBs also include trades or businesses involving the performance of investing and investment management services, trading, or dealing in securities, partnership interests, or commodities.
- The exception does not apply to the fields of engineering or architecture.

Specified Services Trades or Businesses

- Taxpayers with taxable incomes below a threshold amount (in 2019, $321,400 for taxpayers filing joint returns, $160,725 for married taxpayers filing separately, and $160,700 for single and head-of-household returns) with trades or businesses that are SSTBs are not subject to this exception.
- In 2019, the exception is phased in for taxpayers filing joint returns with taxable incomes from $321,400 to $421,400, for married taxpayers filing separately with taxable incomes from $160,725 to $210,725, and for single and head-of-household taxpayers with taxable incomes from $160,700 to $210,700.
- Taxpayers with taxable incomes above the upper threshold amount are subject to the exception in full.

Specified Services Trades or Businesses

- Many practitioners requested that the final regulations provide guidance on whether specific trades or businesses constitute SSTBs.
- The IRS declined to issue such guidance because the determination of whether a particular trade or business is an SSTB is factually dependent.
- However, the IRS noted that the designation of a trade or business as an SSTB applies to owners of the trade or business, regardless of whether the owner is passive or participated in any specified service activity.
- In response to a practitioner suggestion that the final regulations include a franchising example to clarify that a franchisor will not be considered to be an SSTB based solely on the selling of a franchise in a listed field of service, the final regulations include such an example.

Specified Services Trades or Businesses
Accounting

- The IRS rejected multiple suggestions seeking to limit the types of activities, such as bookkeeping and tax return preparation, that would be considered accounting services.
- The IRS noted that the provision of services in the field of accounting is not limited to services requiring state licensure. It is based on a common understanding of accounting, which includes tax return and bookkeeping services.
- Whether a real estate settlement agent is engaged in the performance of services in the field of accounting depends on the facts and circumstances including the specific services offered and performed by the trade or business.

Specified Services Trades or Businesses
De Minimis Rule

- The proposed regulations provided that for a trade or business with gross receipts of $25 million or less for the tax year, a trade or business is not an SSTB if less than 10 percent of the gross receipts of the trade or business are attributable to a specified service field.
- The percentage is reduced to 5 percent in the case of trades or businesses with gross receipts in excess of $25 million.
- After considering all of the comments, the IRS chose to retain the 5-percent threshold in the final regulations as it is a de minimis threshold that is generally consistent with prior regulations under the Code in similar circumstances and thus such a standard should be familiar to affected entities.

Specified Services Trades or Businesses
Services or Property Provided to an SSTB by a Trade or Business with Common Ownership

- In the proposed regulations, the IRS provided special rules for service or property provided to an SSTB by a trade or business with common ownership.
- A trade or business that provides more than 80 percent of its property or services to an SSTB is treated as an SSTB if there is 50 percent or more common ownership of the trades or businesses.
- In cases in which a trade or business provides less than 80 percent of its property or services to a commonly owned SSTB, the portion of the trade or business providing property to the commonly owned SSTB is treated as part of the SSTB with respect to the related parties.

Specified Services Trades or Businesses
Services or Property Provided to an SSTB by a Trade or Business with Common Ownership

- Some practitioners suggested that the rule automatically treating a trade or business that provides more than 80 percent of its goods or services to a commonly owned SSTB as an SSTB is unnecessary, as there are no abuse concerns regarding the portions of goods or services provided to a third party.
- The IRS agreed and removed the 80 percent rule in the final regulations. Accordingly, the final regulations provide that if a trade or business provides property or services to an SSTB and there is 50 percent or more common ownership of the trade or business, the portion of the trade or business providing property or services to the 50 percent or more commonly-owned SSTB will be treated as a separate SSTB with respect to related parties.

Bonus Depreciation Regulations

TCJA Changes to Bonus Depreciation and Section 179 Expense

- For assets acquired after September 27, 2017, and before January 1, 2023, Section 168(k) bonus depreciation of 100% is allowed. The percentage of bonus depreciation is scheduled to be reduced in 2023 and later years. Property qualified for the bonus depreciation includes qualified film, television, and live theatrical productions. Additionally, used property is now eligible for bonus depreciation.
- Section 179 expensing is increased to $1 million for tax years 2018 to 2022. The allowed deduction is reduced when acquisitions of section 179 property exceed $2.5 million for the tax year. These dollar amounts are indexed for inflation after 2018. Property eligible as section 179 property includes property used to furnish lodging and qualified real property improvements including roofs, heating, ventilation, air-conditioning, fire, and security systems.

TCJA Changes to Bonus Depreciation

- **In later years, bonus depreciation is scheduled to be reduced as follows:**
  - 80% for property placed in service in 2023,
  - 60% for property placed in service in 2024,
  - 40% for property placed in service in 2025, and
  - 20% for property placed in service in 2026.
- **For certain property with longer production periods, the preceding reductions are delayed by one year. For example, 80% bonus depreciation will apply to long-production-period property placed in service in 2024.**

TCJA Changes to Bonus Depreciation

- In some cases a business may not be eligible for bonus depreciation beginning in 2018. Examples include real estate businesses that elect to deduct 100% of their business interest and dealerships with floor-plan financing if they have average annual gross receipts of more than $25 million for the three previous tax years.
- It was widely known by tax preparers that Congress made a drafting error in the Tax Cuts & Jobs Act, leaving qualified improvement property ineligible for bonus depreciation. Qualified improvement property is defined as improvements made to the interior portion of a building that is not residential. Accordingly, preparers took bonus depreciation and hoped that Congress would provide new legislation to resolve the matter.
- The final regulation provide that, absent a technical correction by Congress, qualified improvement property placed in service after 2017 is not eligible for bonus depreciation. As a result, taking bonus depreciation on qualified improvement property following the issuance of final regulation will require preparers to include additional disclosures in the tax return, since such a position would be contrary to final regulations issued. IRS form 8275R may protect against related penalties and must be included with the tax return.

Bonus Depreciation Regulations Effective Dates

- Taxpayers must apply the final regulations to taxable years ending on or after Sept. 24, 2019.
- Taxpayers early implementing the final or 2019 proposed regulations cannot selectively apply the rules.

- **Other TCJA Guidance**

SALT Deduction Cap Regulations Finalized, Safe Harbor Proposed

- The final regulations retain the rule under the proposed regulations requiring taxpayers to reduce their deduction for a charitable contribution by the amount of the SALT credit received where the credit constitutes a quid pro quo.
- The de minimis exception was also kept, whereby the taxpayer's charitable contribution deduction is not reduced when the sum of the SALT credits received or expected to be received by a taxpayer does not exceed 15 percent of the taxpayer's charitable contributions.
- However, the final regulations treat SALT deductions differently than SALT credits. Taxpayers are generally not required to reduce their charitable contribution deductions for the receipt of a SALT deduction—unless the taxpayer receives or expects to receive a SALT deduction in excess of the taxpayer's payment or fair market value of property transferred.
- Additionally, the final regulations extend the rules and limits provided for charitable contributions made under Section 170 to charitable contributions made by trusts or decedents' estates under Section 642(c).

SALT Deduction Cap Regulations Finalized, Safe Harbor Proposed

- At the same time as it issued the final regulations, the IRS published Notice 2019-12 in which it provided a safe harbor under Sec. 164 for taxpayers who itemize their deductions and make a payment to or for the use of an entity under Section 170.
- The portion of an individual's charitable contribution payment that is or will be disallowed under the final regulation limits may be treated as a SALT payment for the purposes of Section 164, so long as the itemizing taxpayer has a state tax liability of less than $10,000.
- Taxpayers may rely on the provisions in the notice until proposed regulations are issued.

Other Federal Tax Developments

Taxpayer First Act of 2019

- **Internet Platform for Form 1099 filings (including Forms 1099-MISC and 1099-R).**

  No later than January 1, 2023, the IRS shall make available an internet website or other electronic media with a user interface and functionality to allow persons to (1) prepare and file Forms 1099, (2) prepare Forms 1099 for distribution to recipients other than the IRS, and (3) maintain a record of completed, filed, and distributed Forms 1099. This should include pension plan payment reporting on Form 1099-R.

Taxpayer First Act of 2019

- Electronic Filing of Returns. In general, the Act lowers the threshold for mandatory electronic/magnetic media filing of tax and information returns with the IRS for persons that file from 250 returns, to 100 returns for calendar year 2021, and to only 10 returns for calendar years after 2021.
- Electronic Signatures. Not later than 6 months after enactment, the IRS shall publish guidance to establish uniform standards and procedures for accepting a taxpayer's signature appearing on an electronic form with respect to any request for disclosure of a taxpayer's return or return information to a practitioner (under Code section 6103(c)) or any power of attorney (Form 2848) granted by a taxpayer to a practitioner.

Taxpayer First Act of 2019

- Mandatory E-Filing of Exempt Organizations (Forms 990). Generally effective for taxable years beginning after July 1, 2019, any organization that is required to file a return under Code section 6033 (Form 990) or section 511 (UBIT – Form 990-T) must file the form with the IRS electronically. The Forms 990 shall be made available to the public as soon as practicable in a machine readable format. There is also potential transition relief for those eligible for Form 990-EZ filings and 990-T filers for up to 2 years.
- Increased Failure To File Penalty. The minimum threshold for failure to file a tax return under Code section 6651 is amended to replace the $205 dollar threshold with $330 (indexed for inflation from 2019). This is effective for returns required to be filed after December 31, 2019.

Taxpayer First Act of 2019

Other provisions include:

(1) establishing the IRS Independent Office of Appeals to resolve certain federal tax controversies without litigation;

(2) requiring the IRS to develop a comprehensive customer service strategy;

(3) modifying tax enforcement procedures that address issues such as the seizure of property, issuing a summons, joint liability, referral for private debt collection, and contacting third parties;

(4) establishing requirements for responding to Taxpayer Advocate Directives;

(5) establishing requirements for cybersecurity and identity protection;

(6) development of information technology management; and

(7) other miscellaneous provisions, including updated procedures for whistle-blowers.

Michigan Tax Developments

Michigan Allows Audit Closing Agreements

- The Michigan Department of Treasury now offers an alternative to full field audits during some cash-basis audits and may offer to close some audits without an extensive, time-consuming full field audit.
- Department auditors will project the taxpayer's tax liability by comparing normative industry data to the taxpayer's preliminary audit data. Whether the Department decides to offer a closing agreement depends on a variety of factors including the quality of the taxpayer's books and records and the size of its variance from normative data.
- If the taxpayer accepts the offer, it waives its appeal rights and the audit is closed without full field testing.
- If the taxpayer declines the offer, Department auditors will complete the full field audit and the taxpayer will retain all appeal rights.

Estate & Gift Tax

Kaestner

- In a unanimous decision, the U. S. Supreme Court upheld the North Carolina Supreme Court's decision that in-state residency of the trust's beneficiary did not provide the necessary minimum contacts under the federal due process clause for the state to tax the trust.

Making Large Gifts Now Won't Harm Estates After 2025

- The IRS has announced (IR-2018-229) that proposed regulations implementing changes made by the TCJA to the basic exclusion amount (BEA) used in computing federal gift and estate taxes won't hurt individuals planning to make large gifts between 2018 and 2025.
- The TCJA temporarily increased the BEA from $5 million to $10 million for tax years 2018 through 2025, with both dollar amounts adjusted for inflation.
- To address concerns that an estate tax could apply to gifts exempt from gift tax by the increased BEA, the proposed regs provide a special rule that allows the estate to compute its estate tax credit using the higher of the BEA applicable to gifts made during life or the BEA applicable on the date of death.

TCJA Impact on Estate and Trust Miscellaneous Deductions

- The TCJA suspended the deduction for miscellaneous itemized deductions for individuals until 2025. The issue for estates and trusts is that the fiduciary tax laws follow individual tax law, unless explicitly exempted. Since the Act did not provide any explicit exemptions, the deductibility of many of the fiduciary deductions was uncertain.
- The IRS's Notice 2018-61 clarifies that an estate or trust may continue to deduct expenses incurred in the administration of an estate or trust, which would not otherwise be incurred if the property were not held in such estate or trust.

The End