

Dear Valued Milligan Client:

Introduction

As I am sure you are aware, Congress passed, and President Donald Trump signed the Tax Cuts and Jobs Act (TCJA) in 2017. The changes created by the bill are effective for 2018. Although much attention has been paid to tax cuts created by the new bill, the law was intended to be revenue neutral. Therefore, to recover the tax revenue that was lost to the reduced tax rates, the bill also eliminated some previously allowed tax deductions and closed some loopholes. The bill also created some opportunities for certain small businesses to reduce their effective tax rate further.

This new tax bill was drafted and pushed through congress at an unprecedented pace and did not undergo the normal legislative vetting process. As a result, there are many changes for which regulations are yet to be developed and corrections are anticipated. However, it is important to understand and plan for the changes in the tax code based on our best understanding of the regulations as they exist today.

The TCJA will affect every taxpayer. However, there are changes that may affect some of you in a disproportionate way. We address some of the most relevant changes in this letter. As additional concerns or issues are identified, and regulations are developed we will bring them to your attention.

In this letter we want to bring the following specific changes to your attention:

- Entertainment Expenses are no longer deductible
- Business meals must meet certain criteria to be deductible
- Transportation Fringe Benefits and Employer Provided Parking are no longer deductible by the employer.

I. Entertainment Expenses Are No Longer Deductible

After January 1, 2018, entertainment expenses are nondeductible. Prior to the enactment of the TCJA, entertainment expenses were 50% deductible as long as they were “directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion, associated with, the active conduct of a trade or business”. (See *Linked American Institute of Certified Public Accountants (AICPA) Article*: <https://www.thetaxadviser.com/newsletters/2018/jul/new-entertainment-expense-transportation-fringe-benefit-rules.html>).

II. Business Meals

Could a business meal with current or prospective clients be considered entertainment and therefore nondeductible under the TCJA? Certainly if the business meal is lavish or extravagant, but what about the typical business meal with current and/or prospective customers where multiple topics are discussed—is that typical business meal now considered entertainment and no longer deductible? The AICPA article cites IRS Publication 463, *Travel, Entertainment, Gift, and Car Expenses* and notes that Publication 463 “has not been modified since enactment of the [TCJA] legislation, makes the distinction between entertainment and non-entertainment meals meaningful, and provides insight into how the IRS views meals”. Citing Publication 463 the AICPA Article notes:

“A meal as a form of entertainment. Entertainment includes the cost of a meal you provide to a customer or client, whether the meal is a part of other entertainment or by itself. A meal expense includes the cost of food, beverages, taxes, and tips for the meal. To deduct an entertainment-related meal, you or your employee must be present when the food or beverages are provided.”

Based on this *Publication 463* argument, some commentators suggest that all business meals are now nondeductible. However, the TCJA conference committee report which describes both the House bill and the Senate amendments as still allowing a 50% deduction of the food and beverage expenses associated with operating their trade or business. Additionally, congressional committee staffers have informally indicated that it was not Congress's intent to limit deductions for business meals that are not lavish or extravagant beyond the 50% limit already in place. (*See Linked AICPA Article*).

III. Transportation Fringe Benefits—Employer Provided Parking

The article reviews the legislative history of transportation fringe benefits and employer provided parking. While the TCJA preserves the individual income tax exclusion to the employee for employer provided parking, it eliminated the employer's expense deduction for that same employer provided transportation fringe.¹ The employer must also determine the *disallowed cost* of providing qualified parking to employees. If the employer parking cost involve both employees' use and others' use, the employer will need to aggregate all cost the parking related cost and allocate the cost between both the disallowed employee cost and the deductible cost of providing parking to others.

In Closing

We here at Milligan and Company, LLC are available to support your understanding and application of these and other important changes in the tax code. Please reach out to us if you have questions regarding the subject matter of this letter or any other tax matter.

¹ Tax-exempt and governmental organizations are now required to recognize unrelated business income and pay unrelated business income tax on these employer provided parking benefits.