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Highlights of Pertinent Tax Code Changes for Tax Year 2019

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New Laws:

With the expansive nature of and sweeping changes introduced by the Tax Cut and Jobs Act of 2017 (TCJA), it was fair to hope that no additional code changes would be introduced until at least all prospective provisions of the act had become effective. But then came SECURE, legislation enacted on December 20, 2019, for the purpose of Setting Every Community Up for Retirement Enhancement. Nestled within a federal appropriations bill, the act's tax-related sections primarily make changes to the administration of retirement accounts. As such, the act's legislative acronym is hardly the silliest created by Congress. By contrast, here are a few examples of congressional wit and folly (listed in alphabetical not non-sensical order):

- BREATHE: Bringing Reductions to Energy's Airborne Toxic Health Effects Act
- FRESHER: Focused Reduction of Effluence and Stormwater runoff through Hydrofracking Environmental Regulation Act
- PARTS: Promoting Automotive Repair, Trade, and Sales Act or Protecting Access to Rural Therapy Services Act
- PEGASUS: Prevention of Escapement of Genetically Altered Salmon in the United States Act
- PHOENIX: Protecting Honest, Everyday Americans from Senseless and Needless Taxes Act
- REINS: Regulations from the Executive in Need of Scrutiny Act
- USA PATRIOT: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

The P's have it, wouldn't you agree? Unless you're giving out an award for the most unpronounceable acronym: LCSBWFTRA (Loophole Closure and Small Business and Working Families Tax Relief Act) – California's latest attempt to partially conform TCJA.

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Due Dates:

The IRS has announced that it will begin processing paper and e-filed returns on **Monday, January 27th**. Here's a list of due dates (http://mhaven.net/Calendar.php)for 2019 tax returns:

Form	**Due Date (2020)** *fiscal year filers have alternate filing dates	**Extended Due Date (2020)** *fiscal year filers have alternate filing dates
1040 (Individual Return)	April 15	October 15
1065 (Partnership Return)	March 16	September 15 [CA: October 15]
1120-S (S-Corp. Return)	March 16	September 15
1120 (Corporate Return)	April 15	October 15
1041 (Fiduciary Return)	April 15	September 30 [CA: October 15]
990 (Non-profit Organization)	May 15	November 16

Foreign Account Reporting: Taxpayers who had authority over foreign financial accounts with a combined value in excess of $10,000 at *any* time during 2019 must e-file FinCEN 114 (http://bsaefiling.fincen.treas.gov/main.html)by **April 15th, 2020**; taxpayers who need additional time to file receive an *automatic* 6-month extension. Individual taxpayers, as well as corporations and partnerships, may also be required to file Form 8938 and attach it to their income tax return if the aggregate value of foreign financial assets exceeds $50K. California conforms to FATCA reporting requirements. Failure to attach the federal Form 8938 to the state return will result in a $10,000 state penalty in addition to any applicable federal penalties.

Information Returns: Copies of W-2s issued to employees and 1099s issued to independent contractors must be submitted with the accompanying Forms W-3 and 1096 by **January 31st, 2020.** Most other 1099s may be filed with the IRS on paper by **February 28th** or submitted electronically by **March 31st**. Starting with TY'20, payers reporting non-employee compensation will be required to use the new Form 1099-NEC.

Local Business Tax: Most cities require that businesses be registered; the attendant tax may sometimes be waived *if* registration forms are timely filed (**March 2nd, 2020** for Los Angeles). Independent contractors (workers paid via 1099 rather than W-2) are deemed to be "in business" for licensing purposes. Links to licensing departments in Los Angeles, Culver City, West Hollywood and Santa Monica, information for small business owners and much more can be found on a specialty page (http://mhaven.net/Business.php)of my website dedicated to business matters. Some localities may require AirBnB and other short- term rental hosts to submit Business Property Statements for the purpose of assessing an annual tax on the value of personal property and fixtures used in the business.

- California now presumes that most workers are employees unless the hiring entity can satisfy each of the following three criteria under the A-B-C Test: A) The employer may not control or direct the worker's performance; B) The worker performs work outside the usual course of the employer's business; *and* C) The worker must be customarily engaged in an independently established trade or business that is of the same nature as the work performed for the employer.

The new absolute standard eliminates the flexibility of the old *Borello* (1989) standard that weighted multiple factors with regard to how the work was performed. While labor unions herald the *Dynamex (2018)* decision on the basis that millions of California workers newly classified as employees may now be eligible to organize, many hiring entities fear that the rules will require a major revamping of lucrative business models. Uber and Lyft – specifically targeted by Assembly Bill 5 (effective 1/1/2020) – have threatened to champion a ballot initiative in an upcoming election.

Certain worker groups [e.g., insurance and securities brokers, doctors, lawyers, architects, engineers, accountants] have been granted legislative exemptions from the A-B-C Test (but not previously enacted guidelines); as have bona fide business entities that qualify under a narrow business-to-business exception if they can satisfy twelve criteria that include providing services directly to a contracting business (not its customers), the contractor maintains a separate business location and registers for a business license, amongst other factors. In general, however, most workers in a wide range of professions must now be classified as employees; thereby becoming eligible for wage protections and employee benefits but unable to claim deductions for unreimbursed business expenses on their *federal* returns.

TAXPAYER BEWARE: Based on a recent opinion letter issued by the US Dept. of Labor, gig workers may continue to be classified as independent contractors for *federal* tax purposes based on the 20-factor common law test long in effect. As a result, some California workers may be required to file as independent contractors on the federal return using Schedule C to include income reported to them on Form 1099-MISC *and* as employees on the state return to include income reported on Form W-2. When preparing the worker's state income tax return, Schedule CA will have to be used to back out the federal Schedule C income, as well as any deductions claimed for self- employed health insurance premiums and allowable business expenses (which may instead be claimed as unreimbursed employee expenses on the state return). Employers in these circumstances are not required to pay FUTA but must contribute to the state unemployment fund, as well as withhold state income taxes and SDI. These "hybrid" employees will be covered by workers' compensation, mandatory sick pay, and applicable minimum wage laws but will not qualify for health and retirement benefits.

Free Application for Federal Student Aid (FAFSA): The online application is available on the Dept. of Education (https://studentaid.ed.gov/sa/fafsa) website. Applicants must submit 2018 tax return information for the 2020/21 academic year. Smart-phone users may download the myStudentAid (https://studentaid.ed.gov/sa/about/announcements/fafsa-mobile-options)mobile app to complete the FAFSA application.

TAXPAYER BEWARE: Speaking of dates, tax, and law enforcement authorities suggest that you do not abbreviate dates in the long-accustomed manner of "1/1/20" and instead advise that the year be written out in full as "1/1/2020" since the truncated version could easily be pre- or post-dated by scammers.

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New Forms: The "postcard 1040" introduced in the prior tax season was hardly a resounding success. While 79 lines of the old federal return were condensed to only 23 lines on two half-pages, six (!) supplemental schedules were required to be filed to accommodate the information that had been eliminated on the shortened form. Congress quickly came to the rescue and ordered the IRS to develop a simpler Form 1040-SR, designed for seniors with only Social Security, pension and investment income. Then, on its own initiative, the IRS revamped Form 1040, adding lines to the front and back of the form and reducing the six added schedules to only three. Capital gains can now be carried directly from Schedule D to the first page, IRA distributions have been separated from pension and annuity income, and the signature line has returned to the second page. For all intents and purposes, Forms 1040 and 1040-SR appear almost identical, although the printed text on the senior form is larger.

TAXPAYER BEWARE: The IRS has added a compliance question to Schedule 1 of Form 1040 that asks taxpayers if they received, sold, sent, exchanged or otherwise acquired virtual currency during the year. Failure to report cryptocurrency transactions may result in civil as well as criminal penalties. As per IRS Notice 2014-21, virtual currencies will be treated as property (not currency), which may result in income recognition if received in lieu of wages (subject to payroll tax) or coins are mined (potentially subject to self-employment tax), as well as gain recognition when coins are sold or exchanged (possibly subject to back-up withholdings). It is not yet clear whether crypto coins will be deemed by state regulatory authorities to be *tangible* personal property subject to sales taxation. Similarly, the US Treasury has not issued definitive guidance whether it will treat virtual currencies as reportable assets under foreign bank accounting and FATCA rules.

- California now requires taxpayers wishing to claim the Head of Household (HoH) status to attach Form 3532 to the state return to allow the FTB to determine the taxpayer's eligibility for the preferential tax filing status. Failure to submit the form will result in the automatic issuance of a Notice of Tax Return Change denying the

HoH status and assessing additional tax. The taxpayer may contact the tax authority by phone or letter to dispute the change.

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TCJA Changes now in Effect: With one filing season already under our belts since the enactment of the "big" code change, many provisions are familiar while some only became effective in 2019.

Deductions: The inflation-adjusted Standard Deductions are now $12,200 (Single) and $24,400K (MFJ). Taxpayers who wish to itemize may still claim deductions for medical expenses, state income and property taxes, mortgage interest, and charitable contributions subject to the guidelines listed below:

State & Local Taxes: The federal deduction for the aggregate of all state and local income taxes and property taxes is limited to $10,000 on individual and fiduciary returns, although state and local taxes paid while carrying on a trade or business or rental activity remain fully deductible. The "SALT Limitation" spurred state legislators to seek creative workarounds on behalf of constituents. Most, if not all such inventive proposals – such as the creation of state charitable funds allowing donors to claim a state tax credit in lieu of a federal tax deduction for state income and property taxes paid – were thwarted by newly enacted IRS regulations.

Californians, amongst others, have been particularly hard hit with state marginal tax brackets as high as 12.3% and property taxes based on a percentage of skyrocketing real estate prices.

Rev. Rul. 2019-11 mandates that the taxability of prior-year state tax refunds received in the current tax year will be based on the tax benefit rule rather than allocated proportionally amongst the income and property taxes claimed on the prior-year return. As a result, taxpayers who could not deduct the full amounts of state income and property tax paid on the 2018 federal return due to the SALT limitation but nevertheless received a state tax refund, may not be required to include the full amount of the refund received as taxable income on the 2019 return. Instead, the taxpayer will be required to determine how much of the tax over-payment yielded a tax savings when claimed on the earlier return.

- California prohibits deductions for state income and sales taxes but allows a deduction for real and personal property taxes in excess of $10K.

Sales Tax: Based on the Supreme Court decision in *Wayfair, Inc. v South Dakota*, California began imposing sales and use tax on retailers who have an "economic nexus" with the state in early 2019. Thus, retailers who had sales of at least $100K or made more than 200 transactions during the prior year will be required to register with the California Department of Tax and Fee Administration and remit sales and use taxes, even if the retailer has no physical presence within the state. See State Nexus Chart (http://mhaven.net/Docs/Sales%20Tax%20Nexus%20Chart.pdf)to determine which states have adopted a filing threshold or developed simplified filing procedures.

Mortgage Interest: The federal deduction is limited to interest accrued on a maximum of $750K acquisition debt related to a 1st or 2nd home purchased after December 15, 2017; whereas the California deduction still allows for an interest deduction on indebtedness up to $1 million. TCJA has repealed the federal deduction for interest on all home equity debt; California still allows an interest deduction on HELOCs up to $100K.

Interest Tracing: TCJA changed the rules regarding the deductibility of mortgage and personal interest. For loans used to buy, build or substantially improve a taxpayer's main or second home – known as acquisition debt – and newly obtained or refinanced after January 1, 2019, the interest deduction is limited to indebtedness totaling no more than $750K; interest on indebtedness exceeding that limitation is not deductible. (The limitation remains at $1 million for grandfathered loans in existence prior to 2018.) Additionally, interest on home equity debt and lines of credit (HELOC) has been disallowed unless the loan proceeds are used to improve the personal residence which secures the debt. A new checkbox on Schedule A requires taxpayers to indicate if they did not use the entire mortgage loan to buy, build or improve the home and alerts the IRS that equity debt exists. Interest on HELOCs that is not qualified residence interest may nevertheless be deductible elsewhere on the return if the loan proceeds are used for business-related expenditures. Prior to 2018, interest tracing rules applied only to HELOC debt in excess of $100K; now the rules apply to the HELOC in its entirety. Taxpayers should review old records as soon as possible to establish how much if any part of the equity loan is allocable to acquisition debt in preparation of an eventual audit.

Charitable Contributions: Taxpayers who itemize may claim deductions for documented contributions to qualified donee organizations up to an Adjusted Gross Income (AGI) limitation of 60%; excess contributions may be carried- forward and deducted on future returns for up to 5 years.

PLANNING TIP: Taxpayers may wish to consider donating appreciated assets rather than cash. The taxpayer will generally receive a tax deduction for the full fair market value and be relieved of the tax on the capital gain. If the taxpayer contributes assets or cash to a donor-advised fund, a deduction may be claimed in the year the assets are transferred to the fund even if those assets are only later distributed to recipient charitable organizations.

PLANNING TIP: Seniors over the age of 72 may elect to make a *direct* IRA-to-charity transfer, thereby PLANNING to avoid the inclusion of their Required Minimum Distribution (RMD) in taxable income, minimizing the taxability of Social Security benefits and potentially avoiding Medicare Surtaxes. QCDs may be particularly attractive to those taxpayers who no longer itemize due to the higher Standard Deduction under TCJA.

Casualties: Losses due to fire, flood or other natural disasters are no longer federally deductible unless incurred in a presidentially declared disaster zone. Taxpayers must provide the FEMA (https://www.fema.gov/disasters/year)incident number on Form 4684. Eligible California disasters in 2019 include Winter Storms (February and March), as well as Earthquakes (July).

- California continues to allow a deduction for losses if either the President or Governor declares the disaster.

Miscellaneous Itemized Deductions: All deductions subject to the 2% AGI limitation have been eliminated under TCJA, while miscellaneous deductions not subject to the AGI floor remain fully deductible, including such items as casualty and theft losses from income-producing property, federal estate tax paid on income-inrespect-of-decedent and gambling losses.

Hobby Losses: Prior to TCJA, expenses associated with not-for-profit activities could be claimed as Miscellaneous Itemized Deductions to the extent of hobby income. With the elimination of all deductions subject to the 2% AGI limitation on the federal return, gross hobby income becomes fully taxable.

Estates & Gifts: Excess deductions allocated to the beneficiaries of a terminated trust or estate were previously deductible as miscellaneous deductions subject to the 2% limitation and were, therefore, seemingly disallowed under TCJA. But IRS Notice 2018-61 clarifies that costs of trust and estate administration are not subject to the 2% limitation and remain deductible. Administrative costs are those expenses that would not have been incurred if assets had not been held in the estate or trust; these can include fiduciary, as well as investment advisory and tax preparation fees.

- Tax preparation fees incurred by an individual are not deductible.

The inflation-adjusted lifetime exemption for estate and gift taxation in 2020 is $11.58 million. The annual gift tax exclusion remains at $15,000; the unified tax rate remains at 40%.

PLANNING TIP: Wealthy taxpayers may reduce their taxable estates by making lifetime gifts up to the applicable threshold amounts but are protected from potential recapture by anti-clawback provisions when the exemption reverts back to $5 million in 2026.

Qualified Business Income: To better align the tax rates of sole proprietorships and pass-through business entities with the new corporate flat tax, taxpayers may now deduct up to 20% of their domestic net qualified business income (QBI) from taxable income [= AGI – Standard or Itemized Deductions]. The deduction may not be claimed above-the-line to reduce AGI, nor may it be used to reduce the self- employment tax. QBI includes trade or business income from self-employment, S-Corps, Partnerships, LLCs, and trusts but does not include wages, reasonable compensation paid by S-Corps, guaranteed payments to partners, investment income or income from publicly traded partnerships.

- The IRS has stated that "the ownership and rental of real property doesn't, as a matter of law, constitute a trade or business, and the issue is ultimately one of fact in which the scope of the taxpayer's activities in connection with the property must be so extensive as to give rise to the stature of a trade or business." Under a safe harbor provided by IRS Notice 2019-07, a rental enterprise may qualify as a "trade or business" for the purposes of IRC §199A if all of the following criteria can be met: 1) the enterprise maintains separate books and records; 2) the taxpayer performs at least 250 hours of rental service per year; and 3) contemporaneous records are kept to substantiate the hours, dates and types of services performed. Qualified services do not include financial activities, procuring property, studying operational reports, managing capital improvements or traveling to/from the property. Services may be performed by owners, employees or independent contractors (*if* hourly records are maintained by each of these individuals).

The §199A deduction is subject to various phase-out rules depending on whether the income is derived from a specified service business (e.g., healthcare providers, accountants, investment advisors, attorneys, and other consultants) or another source. Specified service businesses may lose a portion of the allowable deduction if taxable income falls within the approximate ranges of $160K – 210K (Single) or $321K – 421K (MFJ) and lose the deduction altogether if taxable income exceeds the upper-most thresholds. In contrast, non-specified businesses may still benefit from the deduction if the thresholds are exceeded, but the allowable deduction for these high-income earners will be limited by a complex computation based on wage income paid to employees and the unadjusted basis of the depreciable property held by the business. The IRS has developed new Forms 8995 and 8995-A to compute the allowable §199A deduction. While nightmarishly complex, potential tax savings for taxpayers in the top income bracket eligible for the full deduction could serve to reduce the effective tax rate from 37 to 29.6%.

Affordable Care Act (ACA): Gone! (Sort of.) The *federal* Shared Responsibility Penalty assessed on taxpayers who fail to maintain minimum essential healthcare coverage has been repealed beginning in 2019 [although it is nevertheless advisable to purchase health insurance]. BUT… with the start of 2020, California has adopted a *state* mandate and will impose penalties comparable to those formerly levied by the IRS. Failure to verify coverage may cost you the greater of $695/adult ($347.50/child) or 2.5% of your yearly household income, limited to a family maximum of $2,085. The FTB offers an online estimator (https://www.ftb.ca.gov/file/personal/filing-situations/healthcare/estimator/)to calculate the applicable penalty. Information about coverages, exemptions and financial assistance are available through Covered California. (https://www.coveredca.com/)

- 2019 was a penalty-free year with neither federal nor state mandates enforced, but watch out in 2020!

SECURE Act Extensions: Unable or unwilling to leave well enough alone, Congress incorporated numerous tax code changes into its year-end appropriations bill. While many of these provisions re-instate previously expired rules in the nick of time for the upcoming tax season, *some* extensions were made retroactive to TY'18; thereby requiring taxpayers to file amended returns to avail themselves of the tax benefits newly granted.

- Tax refund claims may be filed up to three years from the date of filing the original return or two years from the date the tax was paid, whichever is later. Thus, for 2018 returns that were timely filed on or before April 15th, 2019, amended returns must be filed on or before April 15th, 2022.

New Rule	Effective Date	California Conformity
Qualified Mortgage Debt Exclusion – discharge of up to $2 million of certain qualified principal residence indebtedness is excluded from gross income.	TY19 & TY20 TY18 retroactive	NO.

Private Mortgage Insurance Premiums – can be treated as deductible qualified residence interest.	TY19 & TY20 TY18 retroactive	NO.
Qualified Tuition Deduction – allows an above-the-line deduction of up to $4K for qualified education expenses.	TY19 & TY20 TY18 retroactive	NO.
Medical Expense Deduction – the aggregate of all medical expenses need only exceed 7.5% (not 10%) of AGI.	TY19 & TY20	YES.
Kiddie Tax – children with unearned income will not be taxed at tax rates applicable to trust and estates, but will (as before) be taxed at their parents' marginal tax bracket.	TY20, but may *elect* to apply rule to TY18 & TY19	YES.

Retirement Plans: Individuals over age 70½ may contribute to Traditional IRAs (if otherwise eligible) but must reduce the $100K limitation on Qualified Charitable Contributions (QCD) by the amount contributed to the IRA. Age for Required Minimum Distributions (RMD) is raised to 72 (for taxpayers who turn 70½ after 12/31/19). [See SENIOR BONUS below.]Non-spousal beneficiaries of inherited IRAs must schedule RMD withdrawals over a 10-year period and can no longer stretch distributions over their lifetimes. [See PLANNING TIP below.]	TY20 TY20 TY20	NO – IRA contributions would be non-deductible. YES. YES.

SENIOR BONUS: The change allowing taxpayers to postpone withdrawal of their RMDs to age 72 favors those who were born in the first half of 1950 since they may defer receipt of taxable income for up to two years. Taxpayers born in the latter half of 1950, on the other hand, can only postpone taking RMDs by one year.

PLANNING TIP: The law eliminating STRETCH IRAs makes it crucial to review beneficiary designations, particularly if a trust is named as the beneficiary of a retirement account. Under previous see-through rules, the trust could stretch distributions from an IRA over the lifetime of the oldest trust beneficiary. With new rules mandating a 10-year distribution requirement, negative consequences may ensue. Where trust language allows for RMDs to be voluntarily disbursed from an inherited IRA to the trust each year and then passed on to the trust beneficiaries, the trust may now to be limited to a one- time withdrawal only in the 10th year after the death of the IRA owner; causing the IRA distribution to be taxed as a lump-sum.

Tax Stats: Now that one full filing season since enactment of TCJA has passed, it is not surprising to note that the number of taxpayers who itemized deductions dropped from 30% in 2017 to only 10% in 2018 and that taxpayers subject to the Alternative Minimum Tax (AMT) dropped from more than 4 million to only 78,000. (AMT collections dropped from nearly $22 billion to less than $1 billion.) Corporate tax cuts and the introduction of the 21% flat tax raised inflation-adjusted wages by only 1.2% and yielded an average bonus of only $28/worker.

The effective tax rate for high-income earners (with earnings over $1 million) dropped from 30 to 29% but dropped more significantly for middle-income taxpayers ($75 – 100K) from 10.2 to 8.7% and for low-income earners (under $50K) from 3 to only 1.2%. The effective rate is the average rate actually assessed on the whole of a taxpayer's gross income; as opposed to the marginal rate which is applied only to a taxpayer's last earned dollar at the highest applicable rate in the tax tables. To belong to the wealthiest 1% of Americans required an AGI of $515K; to be in the top 0.1% required $2.4M, and the top 0.001% (a total of only 1,400 taxpayers) required $63.4M. By contrast, to be a part of the top 50% of all taxpayers required an AGI of just under $42K.

Due primarily to budgetary cuts and forced staffing reductions, examinations of individual tax returns dropped to 0.45% (down from 0.59% in the prior year); although audits of high-income earners ($5 – 10 million) remained at 4.21%. Despite the seemingly low audit rate, taxpayers are reminded that the success of our tax system depends upon voluntary compliance. Failure to file honest and accurate returns can lead to significant penalties and even jail time, if caught.

About the Author:

Monica Haven, E.A., J.D., LL.M. is a nationally recognized speaker who eagerly embraces every opportunity to share her experience and expertise even as she maintains her California-based tax practice which serves clients throughout the nation and abroad.

For additional information, published articles and loads of useful tax materials, please head for Monica's website at www.mhaven.net (http://www.mhaven.net) where you'll find:

- The complete version (http://mhaven.net/2019_Pertinent%20Code%20Changes.html) of "Pertinent Code Changes for TY'19";
- Specialty pages dedicated to such topics as Estate & Gift Tax (http://mhaven.net/Estate.php), Small Business (http://mhaven.net/Business.php), all things Foreign (http://mhaven.net/Foreign.php), and even Frauds & Scams (http://mhaven.net/Fraud.php);
- A Blog (http://mhaven.net/News.php), FAQs (http://mhaven.net/FAQ.php), and a collection of Useful Links (http://mhaven.net/Useful%20Links.php);
- Monica's Publications (http://mhaven.net/Publications.php) on a wide range of topics;
- The Peer2Peer (http://mhaven.net/Peer2Peer.php) page designed to make things a bit easier for fellow practitioners; and
- A How to… (http://mhaven.net/Help.php) page to which you may refer your clients when they ask how to reach the IRS, order tax forms, pay online, check on refunds, amongst many other common queries.

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