

# Amended Returns

TEI-SJSU High Tech Tax Institute  
November 5, 2019

## Introduction: Purposes of This Session

Explore how TCJA has impacted federal and state amended return process, in terms of changes to technical rules, timing implications, and practical constraints

Focus on:

- Accounting Methods and Elections
- Resource Constraints
- Foreign Audit Implications
- State Tax Implications

# Tax Cuts and Jobs Act

## GILTI

Proposed vs final regs – already filed

Aggregate vs. entity approach

Level of ownership

Form 8082

## 199A

RPE that has many lower tier RPE's

Inconsistent reporting -

# Tax Cuts and Jobs Act

## 163(j) - Business interest expense limitation

Definition of “business”

Reporting for carryforward purposes – from flow through entities

Form 8990 – lack of integrity with the rest of the forms

After form 8990 – then where?

## 461(l) – Business loss limitation

“Business” vs passive

NOL conversion

Any at risk?

# Tax Cuts and Jobs Act

Net Operating Losses

962 “elections”

Shareholder Basis Schedules

Obtaining requisite information

Foreign

# Busy Season: The Agony & the Ecstasy



# Accounting Methods and Elections

# Considerations involving TCJA

Amending the tax return reflects the item in the original year

Change in method of accounting treats the item as a prospective change in the year in which the accounting method change is made via a Sec. 481(a) adjustment, i.e., you don't go back to the year of the item

Amended return versus change in method of accounting can be critical where different tax rates or regimes are in effect

- Corporate tax rate

- Sec. 965 deemed repatriation tax versus GILTI income

- NOL carryback potential versus NOL carryforward

- 163(j) limitations

9

# Change in Accounting Method

In general, it is NOT possible to change an accounting method on an amended tax return.

What is a change in accounting method?

- A change in overall plan of accounting for gross income or deductions

- (See Treas. Reg. § 1.446-1(e)(2)(ii)(a))

- A material item used in such overall plan is treated differently from the way it was treated in a prior period

- “Item” - not defined in the statute or regulations

- “Material” - defined as any item that involves the proper time for inclusion of income or the taking of a deduction.

In most instances, a method of accounting is not established for an item without consistent treatment.

- Rev. Rul. 90-38 provides the 1-year/2-year rule for adoption of an accounting method

A taxpayer is required to secure the consent of the Commissioner before changing a method of accounting (Sec. 446(e))

# Change in Accounting Method

What is NOT a change in accounting method?

Some corrections and adjustments are not considered changes in an accounting method  
(Treas. Reg. § 1.446-1(e)(2)(ii)(b))

Correction of mathematical or posting errors

Changes in underlying facts

Adjustments to income or expense items not involving the proper time for inclusion of the item of income or the taking of a deduction

Changes in character of income

Changes to reserve for bad debts

11

# Making Elections

Many elections must be made on an originally filed tax return

Some elections may be available on an amended return

Requesting 9100 Relief for Late Elections (Treas. Reg. § 301.9100-1 through 3))

6-month automatic extension on an amended tax return

Oriented to taxpayers who file early and fail to file an extension the original tax return due date

Taxpayers with an extension could file a superceding return before the extended due date which will be considered an original return.

12-month automatic extension for certain regulatory elections listed under Treas. Reg. § 301.9100-2(a)

Private letter ruling request for regulatory elections, user fee \$10,900

Taxpayer acted reasonably and in good faith

Granting relief will not prejudice the government's interests

Generally only available while the statute of limitations is open

12

# Common Situations involving TCJA

## Bonus depreciation under Sec. 168(k)

Rev. Proc. 2019-33 allows revocation or making of elections under Sec. 168(k) to opt out of bonus by class of property or to claim 50% bonus for property placed in service from Sept. 28-Dec. 31, 2017

Amended tax return could be filed BEFORE the return is filed for the next tax year after the election year, OR Form 3115 could be filed for the first, second, or third year

Doesn't apply for changes arising from new final and proposed regulations that are able to be relied upon retroactively

If reliance upon proposed regulations was a proper method for assets placed in service Sept. 28-Dec. 31, 2017, then can an amended return be filed for 2017 to take additional depreciation.

IRS officials have indicated they are considering offering additional relief

Component election for 2017 and 2018

Floor plan financing – election out

Relied on proposed regulations to determine that 100% bonus didn't apply (e.g., binding contract date, self-constructed property)

# Impact of TCJA

---

## Foreign Audit Implications



Section 905(c): “The Secretary may prescribe adjustments to the pools of post-1986 foreign income taxes and the pools of post-1986 undistributed earnings under sections 902 and 960 in lieu of the redetermination under the preceding sentence.”

1.905-3T general rule: Notification and redetermination required for Section 901 taxes; for Section 902 taxes, adjust tax pools and E&P pools upward/downward upon “foreign tax redetermination”

Exceptions:

- Hyperinflationary currencies
- Deemed paid foreign tax adjustment of 10% or more
- Distributions of PTI which reduce foreign tax

Frequency of redetermination vs pooling?

Notification rules:

“The taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.”

1.905-4T (now expired) builds out complex series of rules; generally, taxpayer required to notify IRS of the foreign tax redetermination by filing an amended return, Form 1118 (Foreign Tax Credit — Corporations) or Form 1116 (Foreign Tax Credit), and an accompanying statement for the taxable year with respect to which a redetermination of United States tax liability is required

## Overview of Post-TCJA Regime

No pooling regime; all adjustments “relate back” to year to which foreign tax relates

Practical implications:

Amended return for each year for which an audit settles; may result in numerous amended returns for a given year

State tax returns as well as federal

Uptick in amended returns yet?

Timing of associated E&P adjustment?

“Contested tax doctrine”?

Pending guidance?

From a practical perspective, where may lines be drawn for de minimis adjustments? Offset during audit process vs formal amended return?

Section 6511(d)(3): “If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a),

---

## State Tax Implications

21

## State and Local Taxes

TCJA and State conformity

CA – Business loss limitation – 2019 partial conformity

Wayfair

2% deductions – which states?

22