

Happy New Year!

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BARRETT EASTERDAY

CUNNINGHAM & ESELGROTH LLP

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HIGHLIGHTS OF THE 2017 TAX CUTS AND JOBS ACT

As our 2017 holiday newsletter went to print, there was much discussion and massive speculation about the then-proposed tax cut legislation. Shortly thereafter, just before the end of 2017, the Tax Cuts and Jobs Act was passed. The result was sweeping change to many tax provisions. Most became effective with the 2018 tax year. The act is far too extensive to fully describe it here. Some of the highlights include:

C Corporations:

- The top corporate tax rate was permanently reduced from 35% to 21%. All of the graduated rates of corporate tax, including the 15% bracket were eliminated and replaced with the flat rate of 21%.
- The alternative minimum tax was repealed for C corporations.
- Deduction of business interest is limited to the sum of business interest income, 30% of adjusted taxable income (but not less than zero) and floor plan financing interest. Business interest deduction limits apply to other business besides C corporations.

Individuals and Families:

- The standard deduction is generally doubled from prior law. As a result, fewer taxpayers are expected to itemize deductions.
- Personal exemptions are eliminated.
- New tax rates apply that are generally somewhat lower than prior law. Seven rate brackets range from 10% to 37%. The old 15% bracket was generally reduced to 12%. The top rate is imposed on taxable income over \$600,000 for joint filers.
- Capital gain tax rates remain 0%, 15% and 20%, but the incomes for those rates have changed somewhat and no longer line up with the regular income tax brackets.
- The Child Tax Credit increased to \$2,000 per qualified child with up to \$1,400 refundable.
- A partial nonrefundable credit of \$500 is available for other dependents who don't qualify for the Child Tax Credit.
- The alternative minimum tax was not eliminated for individuals but the exemptions were increased.
- For a divorce or separation executed after December 31, 2018, alimony may no longer be deducted by the payor and will not be taxable to the recipient.
- Mortgage interest deductions will be limited for personal residences and second homes to \$750,000 of indebtedness used to acquire or improve a qualified residence.
- The deduction for state and local taxes is limited to \$10,000 for joint filers.
- Charitable contributions can be deducted as an itemized deduction for up to 60% (increased from 50%) of income.
- Miscellaneous itemized deductions will no longer be deductible.
- The Affordable Care Act penalty for not having health insurance is eliminated after 2018.
- Due diligence requirements for tax preparers have increased and are particularly applicable with respect to earned income credit, child tax credit, education credits, and head of household filing status.
- The exemption amounts for federal estate tax and gift tax have been increased from \$5 million to \$10 million per person (\$11,180,000 after inflation adjustment).
- Most of these provisions are not permanent and will end before January 1, 2026.

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Business (proprietorships, S corporations, partnerships):

- Bonus depreciation is increased to 100% for property acquired after Sept. 27, 2017. Bonus depreciation is reduced 20% each year beginning in 2023 with 20% bonus depreciation for 2026. Bonus depreciation will apply to used property as long as the property had not been previously used by the taxpayer.
- New farm equipment will be depreciated over 5 years rather than 7 years.
- Farm assets depreciated over 3, 5, 7, or 10 years may now use the 200% declining balance method rather than the 150% method previously used. The 150% rate still applies to 15- and 20-year property.
- The amount of eligible property that may be expensed under §179 is increased to \$1 million. The phase-out threshold is increased to \$2.5 million. Use of §179 on certain vehicles is still subject to limitations.
- The domestic production activities deduction is repealed.
- The deduction for net operating loss (NOL) is limited to 80% of taxable income (computed without the NOL). The two-year carryback is repealed (except farming losses may be carried back two years). Carryforward of new NOLs is now unlimited.
- The excess business loss of a non-corporate taxpayer is disallowed. An excess business loss is the excess of aggregate business deductions over aggregate business income plus \$250,000 (\$500,000 for joint filers). The disallowed loss may be carried forward.
- Like-kind exchange treatment is no longer available for personal property such as machinery and equipment. It is only available for exchanges of real property.
- Pass-through businesses and proprietorships may now be eligible for a qualified business income deduction of up to 20% of the lesser of a qualified business income or taxable income. The deduction is phased out for certain specified types of businesses (including accountants, attorneys, athletes, and so forth) at incomes over \$315,000 for joint filers or \$157,500 for single and separate filers. For other businesses over the phase-out limits, additional factors apply in calculating the deduction (wages paid and the basis of certain business assets). The qualified business deduction will be significant for many small business owners and farmers.
- Again, most of these provisions are not permanent and will end before January 1, 2026.

The new rules are complex. This article describes only a portion of the changes made by the new tax law. The descriptions include only a broad overview. Additional rules, conditions and limitations may apply.

For more information, contact Jeff Easterday or Emma Mirles-Jones.

NEW BASIS REPORTING REQUIREMENTS

Basis reporting now required for 2018 partners and S Corporation shareholder returns.

A new requirement for 2018 will require many, if not most, partners (including members of entities taxed as partnerships) and S Corporation shareholders to attach basis worksheets to their tax returns. The tax authorities are concerned that shareholders and partners/members are claiming a deduction for losses in excess of basis. The IRS has changed the tax forms and instructions, which now ask if a basis computation is required.

The basis statements must be attached to the return if any of the following applies to the partner or shareholder:

- Reported a loss from Schedule K-1
- Disposed of S Corporation stock or interest in the Partnership
- Received a distribution
- Received a loan repayment from the S Corporation

This will likely apply to many partners and shareholders, because most will at least receive a distribution. If basis has not been calculated (and documented) each year, it may be necessary to go back to the beginning and reconstruct the basis for 2018, and to thereafter keep track each year. If basis is not accurately determined and documented, the IRS may take the position that the basis is zero.



WHAT ARE GRANDPARENTS' CUSTODIAL RIGHTS?

We recently have had a handful of inquiries regarding grandparent rights with regard to custody of grandchildren. Generally speaking, parents have a fundamental right to dictate the custody, care, and control of their children. However, under certain circumstances the State will allow other individuals to intervene with these fundamental rights.

Parental rights and responsibilities are bestowed by law. At the time of the child's birth, if the biological parents were married to each other, then each parent has an equal right to custody, care, and control. This is the general rule for heterosexual married parents typically called "shared parenting." This rule also applies to any children who were legally adopted during the marriage.

If the biological parents were not married at the time of the child's birth, the unmarried mother is automatically "the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian," as provided in § 3109.042 of the Ohio Revised Code. The father typically has no legal rights unless he takes some affirmative steps to establish paternity and an allocation of parental rights.

An unmarried father will be treated as an equal parent once he: (a) establishes paternity by one of the prescribed methods and (b) applies to a court seeking an allocation of parental rights. Complaints for Allocation of Parental Rights typically address how custodial rights will be divided up, if they are not shared equally; provide for some sort of visitation schedule; and usually address if a child support order will be made. These rights are not a bundled set. Visitation rights are separate from child support obligations, even if they are in the same document.

If one of the parents dies or becomes incapacitated, the State will presume the other parent has assumed full right of custody, care, and control of the child. This is easy when an unmarried father has taken formal action to establish his paternity of the child and has an established relationship with the child. The challenging cases are when the parents are unmarried and the father has never taken steps to legally establish his parental rights and maintain some sort of contact with the child. This is when grandparents and family members attempt to fill the void.

In the event a parent becomes incapacitated, incarcerated, or unfit to maintain custody, care, and control of a child, the State may permit other people to intervene. When a child is living with a grandparent, a parent may create a power of attorney granting a grandparent certain rights and responsibilities with regard to care, physical custody, and control of the child. This document typically allows a grandparent to enroll the child in school, consent to school-related activities, and consent to medical treatment for the child. In most instances, both parents with equal parental rights must consent in writing. Notice of this power of attorney must be given to the non-residential parent who has a court order allocating certain parental rights. A power of attorney is not the same as an order for legal custody. A power of attorney is limited in nature and can be revoked by the parents at any time.

When a parent dies, the grandparents from the deceased person's side of the family may petition the court for a visitation order. If granted, this will allow the child to maintain contact with the dead parent's side of the family.

Given the natural parents' fundamental rights, the requirements for allowing a non-parent to have custody are more strict and serious. The courts may allow a non-parent to intervene if the non-parent is able to prove that both parents are unfit (or deceased) and it is in the child's best interest. Demonstrating the parents are unfit usually entails showing abandonment, contractual relinquishment of custody, total inability to provide care or support, or that the parent is otherwise unsuitable. Common instances include when parents are incarcerated for an extended period of time, addicted to drugs or alcohol, mentally unstable and unable or unwilling to stabilize with medication and treatment, or are unable to be found. Given the Constitutional Rights at stake and the specific factual nature of these requirements, these cases often end up in full-blown trials, with the taking of depositions and sworn testimony in open court.

One of the most contentious conflicts occurs when a grandparent or family member disagrees with a natural parent's method of parenting, choice of companionship, religious practices, or educational or medical decisions. The Courts will not allow interference with the parent's fundamental rights in these instances, unless those lifestyle choices rise to the level where the child is being abused, neglected, or a dependent ward of the state.

A different set of laws may apply when there is a credible allegation that the child is abused, neglected, or a dependent ward of the State. If a Child Protective Services Agency (Children Services) gets involved, the agency may bring a court proceeding in Juvenile Court that supersedes any private paternity or custody action. In these instances, grandparents can make themselves available to Children Services for screening as a prospective kinship provider. Children Services has an obligation to search for family and community members with bonds to the child who can qualify as kinship providers.

Once someone is approved as a kinship provider, Children Services may seek to support the kinship provider as a prospective legal custodian in cases where the biological parents cannot be reunified safely with a child in a reasonable timeframe. If the Juvenile Court agrees, the court may grant an order for full legal custody to the kinship provider, but the parents retain some residual rights, such as the right to seek a visitation order and an obligation to pay child support. Keeping the child with biological family, or a teacher, coach, or other community member with whom the child has bonded, is much preferred and healthier for the child than for Children Services to seek a termination of the fundamental parental rights and place the child up for adoption with strangers.

Use caution. Anyone intentionally making a non-credible allegation of abuse could be charged in criminal court with falsification or interference with custody.

For more information, contact Emma Mirles-Jones.

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CUNNINGHAM & ESELGROTH LLP

7259 Sawmill Road
Dublin, Ohio 43016

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Happy 2019!

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UPCOMING SPEAKING ENGAGEMENTS

- Amanda Stacy Hartman will again be teaching an Agricultural Law class at Ohio Northern University's Claude W. Pettit College of Law spring semester.
- David Barrett will be speaking on grain contract issues on Monday, January 14th in Lansing, Michigan at the 86th Annual Michigan Agri-Business Association Winter Conference & Trade Show.
- David Barrett will be speaking on director roles and responsibilities on Monday, January 21st in Fargo, North Dakota at the North Dakota Grain Dealers Association's annual convention.
- Russell Cunningham will be speaking at the Farmland Succession Workshop on Thursday, February 7th from 9 a.m. to noon at the Pickaway County Library Koch Meeting Room, 1160 N. Court St., Circleville, Ohio. Mike Estadt, OSU Extension Educator, and Richard K. Shirer, of Shirer Benefit Services, also are on the program. Pre-register by Friday, February 1st by calling 740-474-7534.