TOP 10

(Family Law) Things You Need to Know About the Tax Cuts and Jobs Act

By: Avigayil Pearlman, Esq.

10 A prenuptial agreement (probably) does not count as a "divorce or separation instrument."

9 Child Tax Credit has replaced the "dependent exemption."

- A child must be under age 17 (16 and younger) at the end of the year to qualify.
- Still requires IRS Form 8332 to transfer to non-custodial parent (do NOT submit a copy of your MSA to the IRS).

8 Custodial parent is defined as the parent with whom the child is (supposed to) spend the greatest number of nights in that particular year.

If there is any controversy at all regarding this, clients should keep a contemporaneous calendar.

- For those that don't separate on January 1st, it is the parent with whom the child has spent the majority of their overnights for the rest of the year.

7 The Child tax credit is up to $2,000, but the maximum refundable portion is only $1,400.

- The child tax credit begins to phase out at a modified adjusted gross income (MAGI) of $200,000 for those filing single, or $400,000 for those filing jointly or as head of household.

6 Qualified Residence Interest deduction is changing: for loans obtained after 12/15/2017, only interest on the first $750,000 of a purchase money mortgage is tax deductible.

- No HELOC interest credits for loans obtained after 12/15/17 except for *bona fide* improvements to the home.
- There are nuances here, so consult an expert.

5 The Qualified Residence Interest is allowed on principle residence and one other (including a vacation home), HOWEVER...

if a party moves out of the family home, but continues to pay the mortgage on it, they may still deduct the interest so long as their children continue to live in that home.

4 **Legal fees, even those expended in an effort to produce income or in connection with tax issues related to divorce, are no longer tax deductible (even for 2018).**

Other “standard deductions” that are disappearing in 2018 include: unreimbursed business expenses, brokerage fees, tax preparation fees, state and local taxes, etc.

3 **For MSA’s signed and contested JOAD’s entered after Dec. 31, 2018, alimony will be tax deductible to the recipient only.**

2 **The change in alimony deductibility is NOT subject to the TCJA sundown provision in 2025.**

1 **Post-Dec. 31, 2018 modifications made to existing alimony orders are only subject to the new TCJA alimony tax provisions IF...**

Expressly elected in the modification – the new tax law will *not* automatically apply to modifications of pre-2019 alimony.
Make sure you thoroughly review all proposed modifications!

**Don’t try this at home kids – if you’re not sure,
call your local friendly CPA, CFP, CDFA or tax lawyer.**