

Tax Reform May Make Payment of Nonbusiness Tax Advice Fees Non-Deductible

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For many individuals, it will be advantageous to pay bills for nonbusiness tax preparation and tax advice before the end of 2017. Both the House and Senate versions of the Tax Cuts and Jobs Act tax bill would eliminate the itemized deduction for nonbusiness tax preparation expenses. Both would be effective for tax years beginning after December 31, 2017. The House elimination of the deduction (Section 1307 of the House bill) would be permanent, while the Senate version (Section 11045 of the Senate amendment) would be temporary, with deductions permitted again for tax years beginning on or after January 1, 2026. *Individual cash-basis taxpayers and their advisors should be aware that the deduction is taken in the year the expense is paid, and thus paying fees for nonbusiness tax advice and tax preparation before the end of 2017 may be the only way for taxpayers to receive a deduction for these expenses.*

I. Regular Tax

Under current law, individuals may deduct expenses related to tax determination in the year in which the expenses are paid. Examples of qualified expenses include the cost of tax preparation software, tax publications, and electronic filing, as well as fees paid to accountants and lawyers for tax advice and return preparation. The deduction for these expenses is an itemized deduction subject to the “2% floor.” An individual taxpayer may claim this itemized deduction for tax preparation expenses and other miscellaneous expenses to the extent that the expenses in total exceed 2% of the taxpayer’s adjusted gross income. Internal Revenue Code §§ 67, 212.

II. Alternative Minimum Tax

However, under current law, these deductions are preference items that are disallowed deductions if the taxpayer is subject to the alternative minimum tax. Consequently, if a taxpayer would be subject to the alternative minimum tax in 2017, the only advantage to accelerating these payments would be a deduction against the 3.8% net investment income tax.

With reconciliation of the House Bill and the Senate Amendment underway in conference committee, it remains unclear how the committee will resolve differences between the two bills and which provisions will be included in a final tax reform bill. Despite the uncertainty surrounding these differences, since the impact of the two provisions is similar in this instance, it seems likely that the deduction will be eliminated, at least for some tax years.

III. Conclusion

Individual taxpayers should, therefore, pay heed to these potential changes when contemplating year-end tax planning. Individual taxpayers should consider paying all outstanding bills relating to nonbusiness tax determination, preparation, and advice before the end of the year. Because the deduction is taken in the year the

expense is paid rather than in the year incurred, paying tax advice bills before the end of 2017 may be the only way for taxpayers to receive a deduction for these expenses and a reduced tax bill.

Attorneys in [Caplin & Drysdale's](#) Tax Practice have been closely following the fast-paced tax reform legislation in order to determine the effect of reform on its clients and help them effectively plan for the future. For more information on this Alert, please visit this [link](#) to contact a member of Caplin & Drysdale's tax team.



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