

**HPG***looking beyond the bottom line.sm***Hughes Pittman & Gupton, LLP**

1500 Sunday Drive, Suite 300

Raleigh, North Carolina 27607

919.232.5900 919.232.5901 fax

www.hpg.com

2019 Year-End Tax Planning Letter
December 2019

Dear Clients and Friends:

With year-end approaching, we suggest possible year-end tax strategies for our clients. 2018 was the first year individuals and businesses filed tax returns reflecting major tax changes under the Tax Cuts and Jobs Act (“TCJA”). Now that we have 2018 under our belt, some of the year-end tax strategies for 2019 in light of the TCJA changes have become even clearer.

We are sending this letter not only to remind you of the time-honored, year-end tax planning techniques that survived the tax changes under TCJA, but also to stress the importance of new year-end planning strategies that TCJA provides.

Among other key changes for individuals, the TCJA reduced tax rates, suspended personal exemptions, increased the standard deduction, and revamped the rules for itemized deductions. Generally, the provisions affecting individuals went into effect in 2018, but are scheduled to “sunset” after 2025. This provides a limited window of opportunity in some cases.

The impact on businesses was just as significant. For starters, the TCJA imposed a flat 21% tax rate on corporations, doubled the maximum Section 179 “expensing” allowance, limited business interest deductions, and repealed write-offs for entertainment expenses. Unlike the changes for individuals, most of these provisions are permanent, but could be revised if Congress acts again.

The IRS continues releasing guidance on various important tax provisions (particularly on matters involving the tax changes under TCJA). However, as we complete this letter, we are still waiting for further IRS clarifications on several important provisions. We closely monitor these IRS releases on an ongoing basis. Please call HPG if you want an update on the latest IRS notifications, announcements, and guidance or if you need additional information concerning any item discussed in this letter.

We suggest you call HPG before implementing any tax planning technique discussed in this letter. You cannot properly evaluate a particular planning strategy without calculating your overall tax liability with and without that strategy. This letter contains ideas for federal income tax planning only. State income tax issues are not addressed.

Hughes Pittman & Gupton, LLP

2019 YEAR-END INCOME TAX PLANNING FOR INDIVIDUALS

TABLE OF CONTENTS

CHILD AND FAMILY TAX CREDITS HAVE BECOME EVEN MORE VALUABLE	1
CHILD TAX CREDIT.....	1
NEW \$500 FAMILY TAX CREDIT IS A WELCOMED TAX BREAK	1
BE PREPARED FOR THE 20% 199A DEDUCTION FOR CERTAIN QUALIFIED INCOME	2
OVERVIEW	2
TRADITIONAL YEAR-END TAX PLANNING TECHNIQUES	3
TAKING ADVANTAGE OF DEDUCTIONS	3
ABOVE-THE-LINE DEDUCTIONS CAN GENERATE MULTIPLE TAX BENEFITS.....	3
ITEMIZED DEDUCTIONS MORE RESTRICTED BUT STILL MAY BE VALUABLE	5
BACKGROUND	5
POSTPONING TAXABLE INCOME MAY SAVE TAXES	8
PLANNING FOR TAX RATES	8
DEFERRING SELF-EMPLOYMENT INCOME.....	8
USING INSTALLMENT SALES TO DEFER TAXABLE GAIN.....	8
POSTPONING CANCELLATION OF DEBT INCOME.....	9
TCJA OFFERS NEW GAIN DEFERRAL OPPORTUNITIES BY INVESTING IN QUALIFIED OPPORTUNITY FUNDS (“QOF”)	9
PLANNING FOR IRA DISTRIBUTIONS	9
INDIVIDUALS WHO INHERIT IRAS AND QUALIFIED RETIREMENT PLAN ACCOUNTS MAY DEFER INCOME BY DELAYING DISTRIBUTIONS	10
TAX PLANNING FOR INVESTMENT INCOME (INCLUDING CAPITAL GAINS AND THE 3.8% NIIT)	11

PLANNING WITH THE 3.8% NIIT.....	11
TRADITIONAL YEAR-END PLANNING WITH CAPITAL GAINS AND LOSSES	13
SELECTED MISCELLANEOUS YEAR-END PLANNING CONSIDERATIONS	14
THE 30% CREDIT FOR QUALIFIED ENERGY-EFFICIENT PROPERTY BEGINS DROPPING AFTER 2019.....	14
DON'T MISS USE-IT-OR-LOSE-IT DEADLINE FOR FLEX PLANS	14
CONSIDER CONTRIBUTING THE MAXIMUM AMOUNT TO YOUR TRADITIONAL IRA ...	15
CONSIDER INCREASING WITHHOLDING IF FACING AN ESTIMATED TAX UNDERPAYMENT PENALTY	15
TCJA INCREASED THE UNIFIED EXCLUSION AMOUNT AND GST EXEMPTION AMOUNT	16
THE PREMIUM TAX CREDIT UNDER THE AFFORDABLE CARE ACT (“ACA”).....	16
THE AMT WILL HIT FAR FEWER TAXPAYERS AFTER TCJA	17
CHANGES TO THE AMT HAVE CAUSED FAR FEWER INDIVIDUALS TO PAY AMT	17
FINAL COMMENTS	18

CHILD AND FAMILY TAX CREDITS HAVE BECOME EVEN MORE VALUABLE

Child Tax Credit. Starting in 2018 and through 2025, the Tax Cuts and Jobs Act (“TCJA”) doubled the previous \$1,000 Child Tax Credit for each Qualifying Child to \$2,000, while also significantly increasing the income level where the credit begins phasing out. Under TCJA, the \$2,000 Child Tax Credit begins phasing out as an individual’s modified adjusted gross income (“MAGI”) exceeds \$400,000 on a joint return, or exceeds \$200,000 for singles. For purposes of TCJA’s enhanced Child Tax Credit, the term “Qualifying Child” has the same definition as under prior law (i.e., a child who meets certain residency, age, relationship, and support tests). **Tax Tip!** Due to the doubling of the maximum Child Tax Credit (from \$1,000 to \$2,000) and the substantial increase in the income phase-out thresholds, far more taxpayers benefitted from the Child Tax Credit in 2018 than in the past. It has been reported that the number of individuals claiming the Child Tax Credit increased in 2018 by more than 60% from previous years. **Caution!** In order to claim the Child Tax Credit of up to \$2,000, TCJA requires that the Qualifying Child have a qualified Social Security Number before the return’s filing due date. The child’s Individual Taxpayer Identification Number or Adoption Taxpayer Identification Number will not satisfy this requirement.

- **TCJA Also Increased the Maximum Refundable Child Tax Credit.** In addition to increasing the maximum Child Tax Credit to \$2,000, TCJA allows up to \$1,400 (up from the previous \$1,000) of the Child Tax Credit to be refundable to the extent of 15% of the taxpayer’s earned income in excess of \$2,500 (down from \$3,000). Thus, for 2019, a taxpayer with only one Qualifying Child would need earned income of only \$11,833 to get the full \$1,400 refundable Child Tax Credit (i.e., [$\$11,833$ less $\$2,500 = \$9,333$] x 15% = \$1,400). Please note that a “refundable” credit generally means to the extent the credit exceeds the taxes you would otherwise owe with your individual income tax return without the credit; the IRS will send you a check for the excess. **Planning Alert!** If certain conditions are met, a divorced or separated parent that has custody of a Qualifying Child may complete Form 8332 and transfer the Child Tax Credit to the noncustodial parent. With the substantial increases in the amount of the Child Tax Credit and the refundable portion, transferring the Child Tax Credit to the noncustodial parent has become more costly to the custodial parent.

New \$500 Family Tax Credit Is a Welcomed Tax Break. TCJA created a new non-refundable Family Tax Credit of up to \$500 for each person the taxpayer could have claimed as a dependent under prior law but who does not qualify for the \$2,000 Child Tax Credit. This credit will generally be available for: 1) a Qualifying Child who does not qualify for the \$2,000 Child Tax Credit because the child is 17 or older, and 2) a Qualifying Relative. Generally, a “Qualifying Relative” is a person who is not a Qualifying Child but who meets certain residency, gross income, support, and relationship tests. This \$500 Family Tax Credit is added to any other Child Tax Credits, and the total credits begin phasing out once a taxpayer’s MAGI exceeds \$400,000 on a joint return or \$200,000 for singles. **Planning Alert!** From 2018 through 2025, TCJA reduced the personal and dependency exemptions to zero (and replaced them with a larger standard deduction discussed in more detail later in this letter). However, one of the requirements for being classified as a Qualifying Relative is that the individual cannot have Gross Income in excess of the Personal Exemption deduction amount (which is now zero). However, the IRS has announced that, solely for purposes of determining whether an individual meets the gross income requirement of a Qualifying Relative, the personal exemption deduction amount for 2019 will be deemed to be \$4,200. In other words, an individual who otherwise satisfies the requirements of a Qualifying Relative cannot have gross income in excess of \$4,200 for 2019.

BE PREPARED FOR THE 20% 199A DEDUCTION FOR CERTAIN QUALIFIED INCOME

Overview. One of the most significant and far-reaching provisions under TCJA that impacted 2018 tax returns for the first time is the new 20% Deduction under new Section 199A (“20% 199A Deduction”) with respect to Qualified Business Income, Qualified REIT Dividends, and Publicly Traded Partnership Income. The IRS has estimated that over 20 million taxpayers took this deduction on their 2018 tax returns. The 20% 199A deduction does not reduce your adjusted gross income (“AGI”) or impact your calculation of self-employment tax. Instead, the deduction simply reduces your Taxable Income (regardless of whether you itemized deductions or claim the standard deduction). In other words, the 20% 199A Deduction is allowed in addition to your itemized deductions or your standard deduction. **Caution!** The 20% 199A Deduction expires after 2025.

- **What Type of Income Qualifies for the 20% 199A Deduction?** Generally, the following types of income are eligible for the 20% 199A Deduction: Qualified REIT Dividends, Qualified Publicly Traded Partnership Income, and Qualified Business Income. The rules for determining the 20% 199A Deduction for Qualified REIT Dividends and Publicly Traded Partnership Income are relatively straightforward. However, the 20% 199A Deduction for Qualified Business Income (“QBI”) is by far having the biggest impact on the greatest number of individual taxpayers, and in certain situations, can be complicated and tricky. Consequently, the following discussion addresses the 20% 199A Deduction only as it relates to QBI.
- **Who Can Qualify for the 20% 199A Deduction for QBI?** Taxpayers who may qualify for the 20% 199A Deduction for QBI generally include taxpayers who report certain types of business income such as: Individual owners of S Corporations and partnerships; sole proprietors; trusts and estates; and certain beneficiaries of trusts and estates.
- **Planning Alert!** It is not feasible to provide a thorough discussion of the 20% 199A Deduction with respect to QBI in this letter. However, as many of you discovered with your 2018 returns, if you own an interest in a business as a sole proprietor, an S Corporation shareholder, or a partner in a partnership, you are a very good candidate for the 20% 199A Deduction. Moreover, although taxpayers at all income levels may qualify for the 20% 199A Deduction, it is easier to qualify for the 20% 199A Deduction for QBI for sole proprietors, S Corporation shareholders, or partners in a partnership if their 2019 Taxable Income (before the 20% 199A Deduction) is \$160,700 or below (\$321,400 or below if filing a joint return). Consequently, if you own an interest in one of the businesses listed above and you expect your taxable income (before the 20% 199A Deduction) to be over \$160,700 or \$321,400 if filing a joint return, you may have an additional tax incentive to defer taxable income and/or increase deductions to reduce your Taxable Income for 2019 to \$160,700 or less, or to \$321,400 or less if filing jointly. If you believe that you would benefit by lowering your 2019 Taxable Income (before the 20% 199A Deduction) to \$160,700 or \$321,400, you should consider taking certain actions before the end of 2019. In the following segment, we discuss traditional year-end planning techniques designed to reduce your anticipated 2019 Taxable Income by deferring income and/or accelerating deductions. **Planning Alert!** Regardless of your anticipated Taxable Income for 2019, if you want more information on this new 20% 199A Deduction, please call HPG and we will be glad to provide you with more details.

TRADITIONAL YEAR-END TAX PLANNING TECHNIQUES

TAKING ADVANTAGE OF DEDUCTIONS

Above-The-Line Deductions Can Generate Multiple Tax Benefits. Traditional year-end planning includes accelerating deductible expenses into the current tax year. So-called “above-the-line” deductions reduce both your AGI and your MAGI, while itemized deductions (i.e., below-the-line deductions) do not reduce either AGI or MAGI. Deductions that reduce your AGI (or MAGI) can generate multiple tax benefits by: 1) reducing your taxable income and allowing you to be taxed in a lower tax bracket; 2) potentially freeing up other deductions (and tax credits) that phase out as your AGI (or MAGI) increases (e.g., certain IRA contributions, certain education credits, adoption credit, child and family tax credits, etc.); 3) potentially reducing your MAGI below the income thresholds for the 3.8% Net Investment Income Tax (“3.8% NIIT”) (i.e., 3.8% NIIT only applies if MAGI exceeds \$250,000 if married filing jointly; \$200,000 if single); 4) possibly reducing your household income to a level that allows you to qualify for a refundable Premium Tax Credit for health insurance purchased on a government Exchange, or 5) as discussed previously, potentially reducing your taxable income to a level that could maximize your 20% 199A Deduction (i.e., individuals reporting QBI will generally find it much easier to qualify for the new 20% 199A Deduction with respect to that QBI if their 2019 taxable income does not exceed \$321,400 if filing a joint return or \$160,700 if single).

If you think that you could benefit from accelerating above-the-line deductions into 2019, consider the following:

- **Identifying Above-The-Line Deductions.** Above-the-line deductions include: deductions for IRA or Health Savings Account (“HSA”) contributions; health insurance premiums for self-employed individuals; Qualified Student Loan Interest; Qualifying Alimony Payments; and, business expenses for a self-employed individual. **Caution!** As discussed in more detail below, under TCJA, unreimbursed employee business expenses are not deductible at all for 2018 through 2025. However, even after TCJA, employee business expenses that are reimbursed under an employer’s accountable plan are excluded altogether from the employees’ taxable income. Moreover, TCJA made significant changes to the above-the-line deductions for moving expenses, and alimony payments, as follows:
- **Moving Expenses.** Before TCJA, the deduction for qualified business-related moving expenses was an above-the-line deduction and an employer’s reimbursement of an employee’s qualified moving expenses was a tax-free fringe benefit. For 2018 through 2025, TCJA generally suspends altogether the deduction for moving expenses and also suspends the income exclusion of employer-reimbursed moving expenses. **Planning Alert!** Generally, active members of the Armed Forces who move pursuant to a military order because of a permanent change of station may still deduct un-reimbursed qualified moving expenses as above-the-line deductions and may exclude the reimbursement of those moving expenses. For 2019, an armed forces member may use the standard rate of \$0.20 per mile to determine the deductible moving expense.
- **Alimony Payments.** Historically, an individual making qualified alimony payments was allowed an above-the-line deduction for the payments and the recipient of the payments was required to include the payments in income. Effective for divorce or separation instruments executed after 2018, TCJA repeals altogether the deduction for alimony payments, and these alimony payments will no longer be taxable to the payee.

Alimony paid under a divorce instrument executed before 2019 will generally be grandfathered under the pre-TCJA rules. **Planning Alert!** If you are currently paying or receiving alimony pursuant to a divorce or separation instrument that was executed before 2019, the tax treatment of the alimony payments does not change. That is, if your alimony payments were deductible before the enactment of TCJA, they will continue to be deductible (and includible in the payee's income). **Caution!** The 2019 Form 1040 requires individuals who receive taxable alimony to include the date of original divorce or separation agreement on Form 1040, Schedule 1, Part I, Line 2(b). Individuals deducting alimony must provide the same information on Form 1040, Schedule 1, Part II, Line 18(c).

- **Accelerating Above-The-Line Deductions.** As a cash method taxpayer, you can generally accelerate a 2020 deduction into 2019 by paying it in 2019. Payment typically occurs in 2019 if, before the end of 2019: 1) a check is delivered to the post office, 2) your electronic payment is debited to your account, or 3) an item is charged on a third-party credit card (e.g., Visa, MasterCard, Discover, and American Express). **Caution!** If you post-date the check to 2020 or if your check is rejected, no payment has been made in 2019 even if the check is delivered in 2019. **Planning Alert!** The IRS says that prepayments of expenses applicable to periods beyond 12 months after the payments are not deductible in 2019.
- **Deductions for Business Expenses Paid by Partners.** Generally, the IRS allows a partner in a partnership (or owner of an LLC) to take an above-the-line deduction for business expenses the owner pays on behalf of the partnership (or LLC) only if there is an agreement (preferably in writing) between the partner and the partnership providing that those expenses are to be paid by the partner, and that the expenses will not be reimbursed by the partnership. **Tax Tip!** If you are a partner or LLC owner paying unreimbursed business expenses on behalf of your partnership or LLC, to be safe, you should have a written agreement in place with the entity stipulating that those expenses are to be paid by you, and that the expenses will not be reimbursed by the partnership or LLC.
- **Interest Paid by Purchasers of Partnership Interests or S Corporation Stock.** If you have borrowed funds in order to purchase a partnership interest or S Corporation stock, the interest you pay on that loan will generally be deductible. If, and, to the extent the partnership or S Corporation operates a trade or business, you will generally be able to deduct the interest as an above-the-line deduction (which is generally reported on Schedule E of Form 1040). **Planning Alert!** If you are in this situation and your interest on the debt is in arrears, paying the accrued interest no later than December 31, 2019 will accelerate the interest deduction into 2019.
- **Be Careful with Employee Business Expenses After TCJA.** Starting in 2018 and through 2025, unreimbursed employee business expenses are not deductible at all. For example, you will not be able to deduct any of the following business expenses you incur as an employee if you are not properly reimbursed by your employer: automobile expenses (including auto mileage, vehicle depreciation); costs of travel, transportation, lodging, and meals related to the employee's work; union dues and expenses; work clothes and uniforms; otherwise qualifying employee's home office expenses; dues to a chamber of commerce for employment-related purposes; professional dues; work-related education expenses; job search expenses; licenses and regulatory fees; malpractice insurance premiums; subscriptions to professional journals and trade magazines related to the employee's work; and tools and supplies used in the employee's work.

Good News! An Employer's Qualified Reimbursement of an Employee's Business Expenses Remains Deductible by the Employer and Tax-Free to the Employee. Generally, employee business expenses that are reimbursed under an employer's qualified Accountable Reimbursement Arrangement continue to be deductible by the employer (subject to the 50% limit on business meals), and the reimbursements are not taxable to the employee. However, reimbursements under an arrangement that is not a qualified Accountable Reimbursement Arrangement generally must be treated as compensation and included in the employee's W-2, and the employee would get no offsetting deduction for the business expense. **Planning Alert!** Generally, in order for an employer to have a qualified Accountable Reimbursement Arrangement, 1) the employer must maintain a reimbursement arrangement that requires the employee to substantiate covered expenses, 2) the reimbursement arrangement must require the return of amounts paid to the employee that are in excess of the amounts substantiated, and 3) there must be a business connection between the reimbursement (or advance) and anticipated business expenses. Please call HPG if you need assistance. We can help you establish a qualifying Accountable Reimbursement Arrangement with your employer.

- **Be Careful If You Are Working for Your Own S Corporation.** If you operate your business as an S Corporation and you also work for your S Corporation as its employee, then it is particularly important that you have your S Corporation (i.e., your employer) reimburse all of your employee business expenses under an accountable plan. Under this arrangement, the reimbursement will be fully deductible by your S Corporation and the deduction from the reimbursement will pass through to you as the S Corporation shareholder, and your S Corporation/employer will be able to exclude the reimbursement from your W-2 wages.
- **Deducting Entertainment Expenses Much More Restricted.** Effective for amounts paid or incurred after 2017, TCJA generally repealed business deductions with respect to entertainment, amusement or recreation activities. **Planning Alert!** Initially, some questioned whether this new provision also eliminated the 50% deduction for business meals with customers or clients. Fortunately, the IRS announced that taxpayers can still generally deduct 50% of the cost a taxpayer incurs for meals with a business associate (i.e., a current or potential business customer, client, consultant, or similar business contact). In addition, the IRS stated that a taxpayer could deduct 50% of the cost of food and beverages provided during a nondeductible entertainment activity with a business associate provided the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. **Caution!** If an employer reimburses an employee's deductible business meal and beverage expense under an Accountable Reimbursement Arrangement, the employer could deduct 50% of the reimbursement. This same rule applies if you are employed by your own S Corporation. However, as discussed previously, an employee who is not reimbursed by the employer for the business meal would get no deduction because unreimbursed employee business expenses are no longer deductible under TCJA (from 2018 through 2025).

ITEMIZED DEDUCTIONS MORE RESTRICTED BUT STILL MAY BE VALUABLE

Background. Although itemized deductions (i.e., below-the-line deductions) do not reduce your AGI or MAGI, they still may provide valuable tax savings. However, starting in 2018 and through 2025, TCJA substantially increased the standard deduction." For 2019, the standard deduction is \$24,400 for a joint return; \$12,200 for single; and \$18,350 for head-of-household. Moreover, TCJA not only increased the amount of the standard deduction, it also repealed or placed new limits on several popular itemized deductions.

It has been reported that the number of individuals who itemized deductions (instead of taking the standard deduction) dropped in 2018 by approximately two-thirds as compared to prior years. **Good News!** Before TCJA, your aggregate itemized deductions began phasing out using a 3% phase-out rate once your AGI exceeded a certain amount. TCJA suspends this 3% phase-out rule through 2025. The following highlights the impact of TCJA on several of the most popular itemized deductions:

- **Charitable Contributions.** TCJA retained the charitable contribution deduction with the following changes: 1) from 2018 through 2025, the 50% AGI limitation under prior law for cash contributions to public charities and certain other organizations was increased to 60%, and 2) starting in 2018 (with no sunset date), a charitable contribution deduction is no longer allowed for contributions made to colleges and universities in exchange for the contributor's right to purchase tickets or seating at an athletic event (prior law allowed the taxpayer to deduct 80% as a charitable contribution). **Planning Alert!** If you think your itemized deductions this year could likely exceed your standard deduction of \$24,400 if filing jointly (\$12,200 if single) and you want to accelerate your charitable deduction into 2019, please note that a charitable contribution deduction is allowed for 2019 if the check is mailed on or before December 31, 2019, or the contribution is made by a credit card charge in 2019. However, if you merely give a note or a pledge to a charity, no deduction is allowed until you pay the note or pledge. In addition, if you are considering a significant 2019 contribution to a qualified charity (e.g., church, synagogue, or college), it will generally save you taxes if you contribute appreciated long-term capital gain property, rather than selling the property and contributing the cash proceeds to the charity. By contributing capital gain property held more than one year (e.g., appreciated stock, real estate, etc.), a deduction is generally allowed for the full value of the property, but no tax is due on the appreciation. If instead you intend to use loss stocks to fund a charitable contribution, you should sell the stock first and then contribute the cash proceeds. This will allow you to deduct the capital loss from the sale, while preserving your charitable contribution deduction.
- **Casualty Losses.** From 2018 through 2025, TCJA generally suspended the itemized deduction for personal casualty losses and theft losses. However, personal casualty losses attributable to a federally declared disaster continue to be deductible. **Planning Alert!** Even after TCJA, personal casualty losses generally continue to be deductible to the extent the taxpayer has personal casualty gains for the same year. In addition, TCJA did not change the existing rules for deducting casualty losses with respect to property held in a trade or business or for investment.
- **Medical Expense Deductions.** TCJA generally retained the existing rules for medical expense deductions. However, for 2018, for both regular tax purposes and Alternative Minimum Tax ("AMT") purposes, a taxpayer could deduct medical expenses to the extent they exceeded 7.5% of his or her AGI. **Planning Alert!** The 7.5% threshold reverted back to 10% for 2019 and after. **Planning Alert!** If you think your itemized deductions this year could likely exceed your standard deduction of \$24,400 if filing jointly (\$12,200 if single), but you do not expect your itemized deductions to exceed your standard deduction next year, you could save taxes in the long run by accelerating elective medical expenses (e.g., braces, new eye glasses, etc.) into 2019.
- **\$10,000 Cap on State and Local Taxes.** From 2018 through 2025, your aggregate itemized deduction for state and local real property taxes, state and local personal property taxes, and state and local income taxes (or sales taxes if elected) is limited to \$10,000 (\$5,000 for married filing separately). Foreign real property taxes are not deductible at all unless the taxes are paid in connection with a business or in an activity for the production of income.

Planning Alert! You are still allowed a full deduction (i.e., an above-the-line deduction) for state, local, and foreign property or sales taxes paid or incurred in carrying on your trade or business (e.g., your Schedule C, Schedule E, or Schedule F operations). **Tax Tip!** You are also allowed to fully deduct state and local property taxes (without a dollar cap) paid with respect to “an activity described in Section 212.” One of the activities described in Section 212 is “the management, conservation, or maintenance of property held for the production of income.” Consequently, you should be able to fully deduct property taxes paid on real estate if you can establish that you held the real estate for investment purposes (as opposed to holding it for personal purposes). Moreover, the regulations under Section 212 state: “Expenses paid or incurred in managing, conserving, or maintaining property held for investment may be deductible under Section 212 even though the property is not currently productive and there is no likelihood that the property will be sold at a profit or will otherwise be productive of income and even though the property is held merely to minimize a loss with respect thereto.” **Caution!** It is difficult to convince the IRS that real estate used as a vacation home is held for investment. The IRS generally contends that vacation homes and principal residences are personal-use property.

- **Limitations Under TCJA on Deduction for Interest Paid on Home Mortgage Acquisition Indebtedness.** Before TCJA, individuals were generally allowed an itemized deduction for home mortgage interest paid on up to \$1,000,000 (\$500,000 for married individuals filing separately) of Acquisition Indebtedness (i.e., funds borrowed to purchase, construct, or substantially improve your principal or second residence and secured by that residence). Subject to certain transition rules, TCJA reduced the dollar cap for Acquisition Indebtedness incurred after December 15, 2017, from \$1,000,000 to \$750,000 (\$375,000 for married filing separately) for 2018 through 2025. Generally, any Acquisition Indebtedness incurred on or before December 15, 2017, is “grandfathered” and will still carry the \$1,000,000 cap. Moreover, subject to limited exceptions, if you incurred Acquisition Indebtedness on or before December 15, 2017 (i.e., grandfathered Acquisition Indebtedness), the refinancing of that indebtedness after December 15, 2017, will still be entitled to the \$1,000,000 cap (to the extent of the outstanding balance of the original Acquisition Indebtedness on the date of the refinancing). **Caution!** The \$750,000 cap that generally applies to “Acquisition Indebtedness” incurred after December 15, 2017, is reduced by the outstanding balance of any grandfathered Acquisition Indebtedness. **Planning Alert!** If you think your itemized deductions this year could likely exceed your standard deduction, paying your January 2020 qualifying home mortgage payment before 2020 should shift the deduction on the interest portion of that payment into 2019.
- **Home Equity Indebtedness Suspended for 2018 Through 2025.** TCJA suspended the deduction for interest with respect to Home Equity Indebtedness (i.e., up to \$100,000 of funds borrowed that do not qualify for Acquisition Indebtedness but are secured by your principal or second residence). **Caution!** Unlike the interest deduction for Acquisition Indebtedness, TCJA did not grandfather any interest deduction for Home Equity Indebtedness that was outstanding before 2018. **Planning Alert!** A loan that has been labeled by your lender as a home equity loan, home equity line of credit, or second mortgage on a Qualified Residence may, in certain situations, actually be classified as Acquisition Indebtedness. This would be the case where the borrowed funds were used to substantially improve your Qualified Residence that secures the loan. For example, assuming you have not exceeded the dollar caps on Acquisition Indebtedness, you will still be able to deduct the interest on a second mortgage taken out as a home improvement loan so long as the improvement: 1) adds to the value of your home that secures the second mortgage, 2) prolongs your home’s useful life, or 3) adapts your home to new uses. **Caution!** These new rules can be tricky.

We suggest that you talk with us before you sign off on a new mortgage: to buy your main house, to buy a second home, to place a second mortgage on your existing home, or to refinance your existing home mortgage. We will be glad to review your situation and determine if there are ways to structure the loan or refinance that maximizes your interest deduction.

POSTPONING TAXABLE INCOME MAY SAVE TAXES

Generally, deferring taxable income from 2019 to 2020 may also reduce your income taxes, particularly if your effective income tax rate for 2020 will be lower than your effective income tax rate for 2019. Moreover, deferring income from 2019 to 2020 may provide you with the same possible tax benefits listed previously with respect to accelerating deductions into 2019 (i.e., freeing up other deductions and tax credits that phase out as your AGI or MAGI increases; reducing your MAGI below the income thresholds for the 3.8% NIIT; reducing your household income to a level that allows a refundable Premium Tax Credit; or, reducing your taxable income to a level that could maximize your 20% 199A Deduction). **Planning Alert!** If, after considering all factors, you believe deferring taxable income into 2020 will save you taxes, consider the following:

Planning for Tax Rates. The deferral of income could cause your 2019 taxable income to fall below the thresholds for the highest 37% tax bracket (i.e., \$612,350 for joint returns; \$510,300 if single). In addition, if you have income subject to the 3.8% NIIT and the income deferral reduces your 2019 MAGI below the thresholds for the 3.8% NIIT (i.e., \$250,000 for joint returns; \$200,000 if single), you may avoid this additional 3.8% NIIT on your investment income. **Planning Alert!** TCJA temporarily reduced the tax rates on virtually all levels of income, including reducing the highest income tax rate from 39.6% to 37%. These lower rates are not scheduled to expire until after 2025.

Deferring Self-Employment Income. If you are a self-employed individual using the cash method of accounting, consider delaying year-end billings to defer income until 2020. **Planning Alert!** If you have already received the check in 2019, deferring the deposit of the check does not defer the income. Also, you may not want to defer billing if you believe this will increase your risk of not getting paid.

Using Installment Sales to Defer Taxable Gain. If you plan to sell certain appreciated property in 2019, you might be able to defer the gain until later years by taking back a promissory note instead of cash. By taking a promissory note, you may qualify for the installment method, which allows you to pay tax on the gain only as you collect payments on the note. Qualifying for the installment method not only defers the time you must pay the tax on the gain, but could also defer all or a portion of the gain into later years when your expected tax rate is less than your 2019 tax rate. For example, spreading the gain over several years could reduce the seller's income tax in the year of sale (and possibly subsequent years) by reducing the tax rates on long-term capital gains below the current top effective rate of 23.8% (including the 3.8% NIIT). This could also prevent the seller's income from exceeding the thresholds for the 3.8% NIIT (discussed in more detail below). **Planning Alert!** Although the sale of real estate and closely held stock generally qualifies for installment sale treatment, some sales do not. For example, even if you are a cash-method taxpayer, you cannot use the installment method gain-deferral technique if: 1) you sell publicly traded stock or securities, 2) you sell real estate that is held primarily for sale to customers (as opposed to holding it for investment), or 3) you sell a partnership or LLC interest to the extent the partnership or LLC owns certain appreciated disqualifying property (e.g., property producing depreciation recapture, property held primarily for sale to customers, unrealized receivables). **Caution!** You may not want to take back a promissory note in lieu of cash if you believe this reduces your chances of getting paid.

Moreover, since TCJA's lower tax rates are currently scheduled to expire after 2025, you should pay careful attention to an installment sale arrangement that would defer gain beyond 2025 when your rates might be higher.

Postponing Cancellation of Debt Income. If you negotiate or arrange a reduction or cancellation of a debt you owe to others, unless you meet certain exceptions, you will generally have to report cancellation of debt ("COD") income. For example, you could have COD income where: your creditor, such as a credit card company, agrees to accept as full payment an amount which is less than the amount you owe; you own real estate subject to a mortgage and the lender forecloses on the property (or, you enter into a short sale of the mortgaged property); you own an interest in a partnership (or LLC) or S Corporation and the partnership or S Corporation has COD income. **Planning Alert!** If you are in the process of negotiating an agreement with your creditors that involves a debt reduction that would trigger COD income, consider postponing the action until after 2019 to defer any debt cancellation income into 2020.

TCJA Offers New Gain Deferral Opportunities by Investing in Qualified Opportunity Funds ("QOF"). **Caution!** The requirements for satisfying this new gain deferral provision are far too technical and detailed to address in detail in this letter. However, the following is a general description of how this new provision works:

- **General Tax Benefits of Investing a Capital Gain in a QOF.** Generally, new Section 1400Z as enacted under TCJA allows taxpayers to defer capital gains (long-term or short-term) to the extent the gains are reinvested in a QOF within 180 days of realizing the capital gain. In addition, if the investment in the QOF is held for at least five years, then 10% of the original deferred capital gain is essentially eliminated. If the QOF investment is held at least seven years, then 15% of the original deferred capital gain is eliminated. Moreover, for qualified investments in a QOF held for at least 10 years, the taxpayer may elect to exclude any gain that arose after the taxpayer initially purchased the QOF investment. **Observation!** All remaining deferred gain reflected in the investment in a QOF must be fully recognized on the earlier of 1) the date the taxpayer sells the QOF investment, or 2) December 31, 2026. Thus, the remaining deferred gain must be fully recognized no later than December 31, 2026, even if the taxpayer still holds the QOF investment on December 31, 2026. **Planning Alert!** Even in the best case scenario, 85% of the original deferred capital gain will be taxed no later than December 31, 2026, at whatever capital gains rates exist in 2026. For example, if the current effective maximum long-term capital gain rate of 23.8% (including the 3.8% NIIT) is increased between now and 2026, the increase in the capital gains rates could dilute the tax benefit of the tax deferral. In addition, if a short-term capital gain is invested in a QOF, any gain triggered on that investment in 2026 will be taxed at the ordinary income tax rates in 2026. **Planning Alert!** If you would like additional details regarding this new provision, please call us.

Planning for IRA Distributions. Generally, once you reach age 70½, you are required to begin taking Required Minimum Distributions ("RMDs") from your IRA or qualified retirement plan account. A 50% penalty applies to the excess of the RMD over the amount actually distributed. Moreover, if you are a beneficiary of an IRA of a deceased owner, you are generally required to begin taking RMDs regardless of your age under the inherited IRA rules. If you decide that you could reduce your overall taxes by deferring your IRA distributions, please consider the following:

- **IRA Owners Who Attain Age 70½ During 2019.** If you reach age 70½ at any time during 2019, you must begin distributions from a traditional IRA account no later than April 1, 2020.

In addition, if you wait until 2020 to take your first payment, you will still be required to take your second RMD no later than December 31, 2020, which will cause you to “bunch” two payments into 2020. This bunching of the first two annual payments into one tax year (2020) could cause you to pay higher overall taxes (e.g., bunching puts you in a higher tax bracket for 2020 than for 2019). However, in some situations, you might actually save overall aggregate taxes for 2019 and 2020 by bunching the 2019 and 2020 RMDs into 2020 (e.g., you expect 2020 tax rate on the bunched payments to be lower than your tax rate on the first payment, if made in 2019).

- **Individuals Making Charitable Contributions Who Are Age 70½ or Older.** If you have reached age 70½ and you are planning to make charitable contributions before the end of 2019, there is a special tax break that could apply to you. There is a popular rule that allows taxpayers who have reached age 70½ to have their IRA trustee transfer up to \$100,000 from their IRAs directly to a qualified charity, and exclude the IRA transfer from income. The IRA transfer to the charity also counts toward the IRA owner’s RMDs for the year. For those who wish to make charitable contributions, this tax break effectively allows a qualifying individual to exclude all or a portion of the individual’s otherwise taxable RMDs from taxable income. This, in turn, could cause your 2019 MAGI and/or taxable income to stay below the thresholds that qualify you for various tax benefits (previously listed) that are phased out as your MAGI or taxable income exceeds these thresholds. **Planning Alert!** In addition, since this tax break only applies to individuals who are at least 70½, this tax strategy could potentially reduce the portion of your social security payments that would otherwise be taxable, and could also reduce the amount of your Medicare Part B and Part D premiums for subsequent years, which generally increase as your MAGI increases.

- **Tax Tip!** After TCJA, this planning technique could be even more valuable because TCJA substantially increased the standard deduction for individuals. For 2019, the standard deduction is \$24,400 for married filing jointly (\$12,200 for singles). This is causing far fewer individuals to “itemize” their deductions. However, using this technique for a charitable contribution will provide an individual with this tax benefit in addition to the full benefit of the standard deduction.

- **Planning Alert!** To qualify, the check from your IRA must be made out directly to your designated charity. In addition, if the contribution is \$250 or more, you must get a timely, qualifying receipt from the charity for the charitable contribution. To take advantage of this exclusion for 2019, the trustee of your IRA must write the check to the charity by December 31, 2019. It may take the IRA custodian several days to complete all the necessary paperwork to write the check. Consequently, you should alert the trustee that you want the check written to the charity well before December 31, 2019.

Individuals Who Inherit IRAs and Qualified Retirement Plan Accounts May Defer Income by Delaying Distributions. If you are the beneficiary of an IRA or qualified plan account of someone who has died, you should consider the following options for deferring distributions (and thus postponing taxable income):

- **Planning for IRA Distributions After the Owner’s Death.** If you are the beneficiary of an IRA or qualified plan account of someone who has died in 2019, there are certain time-sensitive planning techniques you should consider without delay. For example, if the decedent named multiple individual beneficiaries or included an estate or charity as a beneficiary, we may be able to help you rearrange the IRA beneficiaries for maximum tax deferral.

The rules for rearranging IRA beneficiaries after the owner dies are tricky, and acting before certain deadlines pass is critical. If the owner died in 2019, the best tax results can generally be achieved by making any necessary changes no later than December 31, 2019. If you need our assistance, we should review your situation as soon as possible.

- **Rollovers by Surviving Spouses.** If your spouse passed away during 2019 and had named you beneficiary of an IRA or qualified plan account, there are certain things you should consider if you want to maximize tax deferral. For example, if your spouse was over age 70½, and you are over 59½, you should consider rolling the deceased spouse's qualified plan or IRA amount into an IRA in your name (as surviving spouse) on or before December 31, 2019. If you complete this rollover before 2020, then: 1) if you are under age 70½, you will not be required to take any RMDs until the tax year you reach age 70½, or 2) if you are at least 70½, your RMD for 2020 (and for future years) will be determined using the Uniform Lifetime Distribution Table which will result in a smaller annual required payout. Therefore, converting the account into your name (as surviving spouse) on or before December 31, 2019, could substantially reduce the amount of your RMD for 2019 (and later years) where the decedent was at least 70½. **Caution!** If you (as surviving spouse) are not yet 59½, leaving the IRA or qualified plan account in the name of your deceased spouse may be the best option if you think you will need to withdraw amounts from the retirement account before you reach age 59½. Otherwise, if your deceased spouse's account is transferred into your name and you take a distribution before reaching age 59½, the distribution could be subject to a 10% early distribution penalty.
- **Non-Spouse Beneficiaries of Decedent's Retirement Plan.** Many employer-sponsored retirement plans (e.g., 401(k) plans) require a deceased individual's retirement plan balance to be paid out to a beneficiary no later than 5 years after the individual dies. If you are a non-spouse beneficiary of a deceased individual's plan balance (where the plan requires distributions to the beneficiary under the five-year rule), you need to take certain time-sensitive steps if you want to take distributions and pay tax over your life expectancy instead of by the plan's five-year deadline. To receive distributions over your life expectancy, the IRS says the plan balance must be transferred (trustee-to-trustee) to an IRA titled in the name of both the deceased individual and you, as beneficiary. For example, let's assume Joyce Smith's father (Fred Smith) died in 2018. Joyce could direct the plan trustee to make a trustee-to-trustee transfer to an IRA titled "Joyce Smith as Beneficiary of Fred Smith, Deceased." **Planning Alert!** For this to work, the IRS also says this trustee-to-trustee transfer must be made before the end of the year following the year of the plan participant's death. So, if in this example, Joyce's father died in 2018, Joyce needs to make sure that this trustee-to-trustee transfer from her deceased father's retirement plan to the properly named IRA is made no later than the end of 2019. If the transfer occurs after 2019, the IRS says that Joyce would be required to take distributions under the five-year rule (instead of over her life expectancy). **Caution!** If you or a family member is in this situation, please call HPG as soon as possible if you need our assistance.

TAX PLANNING FOR INVESTMENT INCOME (INCLUDING CAPITAL GAINS AND THE 3.8% NIIT)

Planning with the 3.8% NIIT. The 3.8% NIIT applies to the Net Investment Income of higher-income individuals. This tax applies to individuals with MAGI exceeding the following thresholds: \$250,000 for married filing jointly; \$200,000 if single; and \$125,000 if married filing separately. The 3.8% NIIT is imposed upon the lesser of an individual's: 1) MAGI in excess of the threshold, or 2) net investment income.

Trusts and estates are also subject to the 3.8% NIIT on the lesser of: 1) the AGI of the trust or estate in excess of \$12,750 (for 2019), or 2) the undistributed net investment income of the trust or estate.

The 3.8% NIIT not only applies to traditional types of investment income (i.e., interest, dividends, annuities, royalties, and capital gains), but it also applies to business income that is taxed to a passive owner (as discussed in more detail below) unless the passive income is subject to Self-Employment (“S/E”) taxes. If you believe that the 3.8% NIIT may apply to you, consider the following planning techniques:

- **Shifting to Investments That Generate Income Exempt from the 3.8% NIIT.** Fortunately, the following types of income are not subject to the 3.8% NIIT: tax-exempt bond interest; gain on the sale of a principal residence otherwise excluded from income under the home-sale exclusion rules (i.e., up to \$250,000 on a single return, up to \$500,000 on a joint return); and distributions from qualified retirement plans (e.g., 401(k) plans, IRAs, Section 403(b) annuities, etc.). **Tax Tip!** Investments that generate tax-exempt income (e.g., tax-exempt municipal bonds) potentially provide higher-income individuals with a double benefit: 1) the interest will not be included in the individual’s MAGI, thus reducing the chance that the individual will exceed the income thresholds for the 3.8% NIIT, and 2) the tax-exempt interest itself is exempt from the 3.8% NIIT as well as from federal income taxes. **Planning Alert!** Although taxable distributions from qualified retirement plans (e.g., IRAs, 401(k) plans, etc.) are exempt from the 3.8% NIIT, the taxable distributions will increase your MAGI. Therefore, to the extent the taxable distributions cause your MAGI to exceed the thresholds for the 3.8% NIIT (e.g., \$250,000 for joint returns; \$200,000 for singles), the distributions could cause your other net investment income (e.g., dividends, interest, capital gains, rents, passive income) to be hit with the 3.8% NIIT.
- **Roth IRAs (Including Roth IRA Conversions).** Tax-free distributions from a Roth IRA are exempt from the 3.8% NIIT, and do not increase your MAGI (and, thus will not increase your exposure to the 3.8% NIIT). Therefore, these tax-favored features should be factored into any analysis of whether you should contribute to a Roth IRA. However, if you are considering converting a traditional IRA into a Roth, the income triggered in the year of conversion would increase your MAGI and, therefore, may increase your exposure to the 3.8% NIIT on your net investment income (e.g., dividends, interest, and capital gains). **Planning Alert!** If you want a Roth conversion to be effective for 2019, you must transfer the amount from the regular IRA to the Roth IRA no later than December 31, 2019 (you do not have until the due date of your 2019 tax return). **Caution!** Whether you should convert your traditional IRA to a Roth IRA can be an exceedingly complicated issue, and the 3.8% NIIT is just one of many factors that you should consider. Please call HPG if you need help in deciding whether to convert to a Roth IRA.
- **Roth Conversions Can No Longer Be Undone!** If you convert your traditional IRA to a Roth IRA on or after January 1, 2018, TCJA no longer allows you to later recharacterize that converted Roth IRA back to a traditional IRA. In other words, your conversion of an IRA to a Roth IRA can no longer be undone. Under prior law, you were generally allowed to recharacterize the previous conversion of a traditional IRA to a Roth IRA as late as October 15 of the following calendar year. This change eliminates the previous planning technique that allowed an individual to convert from a regular IRA to a Roth IRA and then later undo the conversion (by the following October 15) if the value of the converted Roth IRA dropped significantly after the conversion. Moreover, the IRS says that the prohibition applies to the conversion from a traditional, SEP, or SIMPLE IRA to a Roth IRA, as well as amounts rolled over into a Roth IRA from other retirement plans such as 401(k) or 403(b) plans.

- **Tax-Deferred Investments.** The 3.8% NIIT does not apply to earnings generated by a tax-deferred annuity (“TDA”) contract until the income is distributed. Thus, after first considering the economics, investing in a TDA in your higher-income years may allow you to defer the annuity income until later years when your MAGI is below the 3.8% NIIT thresholds.
- **Passive Income.** Net Investment Income for purposes of the 3.8% NIIT generally includes net income from a business activity if you are a passive owner (unless the income constitutes self-employment income that is subject to the 2.9% Medicare tax). You will generally be deemed a passive owner if you do not materially participate in the business as determined under the traditional passive activity loss rules. For example, under the passive activity loss rules, you may be a passive owner unless you spend more than 500 hours working in the business during the year or meet one of the other material participation tests. Furthermore, rental income is generally deemed to be “passive” income under the passive activity loss rules, regardless of how many hours you work in the rental activity. **Tax Tip!** In certain situations, real estate rentals may not be treated as passive income and could also be exempt from the 3.8% NIIT. For example, if you are a qualified real estate professional, or you lease property to a business in which you materially participate, the rental income may be exempt from the 3.8% NIIT. If you believe you may qualify for one of these rental real estate exemptions, or you otherwise believe you may have passive income from non-rental business activities, please contact HPG. We will gladly evaluate your situation to determine whether there are steps you could take before the end of 2019 to avoid passive income classification, and thus, reduce your exposure to the 3.8% NIIT.

Traditional Year-End Planning with Capital Gains and Losses. Generally, net capital gains (both short-term and long-term) are potentially subject to the 3.8% NIIT. This could result in an individual filing a joint return with taxable income for 2019 of \$488,850 or more (\$434,550 or more if single), paying tax on his or her net long-term capital gains at a 23.8% rate (i.e., the maximum capital gains tax rate of 20% plus the 3.8% NIIT). In addition, this individual’s net short-term capital gains could be taxed as high as 40.8% (i.e., 37% plus 3.8%). Consequently, traditional planning strategies involving the timing of your year-end sales of stocks, bonds, or other securities continue to be as important as ever. The following are time-tested, year-end tax planning ideas for sales of capital assets. **Planning Alert!** Always consider the economics of a sale or exchange first.

- **Planning with Zero Percent Tax Rate for Capital Gains and Dividends.** For individuals filing a joint return with 2019 Taxable Income of less than \$78,750 (less than \$39,375 if single), their long-term capital gains and qualified dividends are taxed at a zero percent rate. **Tax Tip!** Taxpayers who have historically been in higher tax brackets but now find themselves between jobs, recently retired, or expecting to report higher-than-normal business deductions in 2019 may temporarily have income low enough to take advantage of the zero percent rate for 2019. **Planning Alert!** If you are experiencing any of these situations, please call HPG as soon as possible and we will help you determine whether you can take advantage of this zero percent tax rate for long-term capital gains and qualified dividends. If you wait too late to contact us, you may run out of time before the end of this year to take the recommended steps to maximize your tax savings.
- **Lower-Income Retirees.** The zero percent rate for long-term capital gains and qualified dividends is particularly important to lower-income retirees who rely largely on investment portfolios that generate dividends and long-term capital gains. Furthermore, gifts of appreciated securities to lower-income individuals who then sell the securities could reduce the tax on all or part of the gain from as high as 23.8% to as low as zero percent. **Caution!** If the lower-income individual is subject to the so-called “kiddie tax,” this planning technique will generally not work.

- **Timing Your Capital Gains and Losses.** If the value of some of your investments is less than your cost, it may be a good time to harvest some capital losses. For example, if you have already recognized capital gains in 2019, you should consider selling securities prior to January 1, 2020, that would trigger a capital loss. These losses will be deductible on your 2019 return to the extent of your recognized capital gains, plus \$3,000. **Tax Tip!** These losses may have the added benefit of reducing your income to a level that will qualify you for other tax breaks, such as: 1) the \$2,500 American Opportunity Tax Credit, 2) the \$2,000 Child Tax Credit, 3) the Adoption Credit of \$14,080, or 4) causing your taxable income to drop below the \$321,400/\$160,700 thresholds for purposes of the 20% 199A Deduction (discussed in more detail previously). **Planning Alert!** If, within 30 days before or after the sale of loss securities, you acquire the same securities, the loss will not be allowed currently because of the wash sale rules (although the disallowed loss will increase the basis of the acquired stock). **Tax Tip!** If you are afraid of missing an upswing in the market during this 61-day period, consider buying shares of a different company in the same sector. Also, there is no wash sale rule for gains. Thus, if you decide to sell stock at a gain in order to take advantage of a zero capital gains rate, or to absorb capital losses, you may acquire the same securities within 30 days without impacting the recognition of the gain.
- **Planning with Capital Loss Carryforwards.** If you have substantial capital loss carryforwards coming into 2019, consider selling enough appreciated securities before the end of 2019 to decrease your net capital loss to \$3,000. Stocks that you think have reached their peak would be good candidates. All else being equal, you should sell the short-term gain (held 12 months or less) securities first. This will allow your net capital loss (in excess of \$3,000) to offset your short-term capital gain while preserving favorable long-term capital gain treatment for later years. **Planning Alert!** Your net short-term capital gains can be used to free up a deduction for any investment interest you have incurred (e.g., interest you have paid on your margin account). If you eliminate your short-term capital gains by recognizing your short-term capital losses, you may be restricting your ability to deduct your investment interest.

SELECTED MISCELLANEOUS YEAR-END PLANNING CONSIDERATIONS

The 30% Credit for Qualified Energy-Efficient Property Begins Dropping After 2019. The 30% tax credit for qualified solar electric property, solar water heating property, energy-efficient fuel cell property, small wind energy property, and geothermal heat pump property begins phasing out after 2019. The credit generally applies if you install the qualifying energy-efficient property in or on property located in the U.S. that you use as a residence. Except for the energy-efficient fuel cell property, the residence does not have to be your principal residence. So, installations (other than for energy-efficient fuel cell property) for a second residence or vacation home may qualify. The 30% credit also applies to the on-site installation costs. For example, if you are the initial purchaser of your newly constructed residence that contains a qualifying solar water heater or solar electric generating property, you should ask the builder to provide you with a reasonable allocation of the cost of the home attributable to the qualified solar-energy property (including labor costs for on-site preparation, assembly, and installation of the property). **Caution!** This 30% credit is: reduced to 26% for qualified property placed in service in 2020; reduced to 22% if placed in service in 2021; and, expires altogether for property placed in service after 2021. Consequently, to qualify for the full 30% credit, the qualifying energy-efficient property must actually be installed no later than December 31, 2019.

Don't Miss Use-It-Or-Lose-It Deadline for Flex Plans. If you participate in a cafeteria or flexible savings account plan ("flex plan"), you can generally elect to make a pre-tax salary reduction contribution to the flex plan.

You can then access that account to reimburse yourself tax-free for qualified expenditures (e.g., medical expenses, dependent care assistance, and adoption assistance). For most calendar-year flex plans, you must clean out your 2019 account by March 15, 2020, or forfeit any funds that aren't used for qualifying expenses.

Consider Contributing the Maximum Amount to Your Traditional IRA. As your income rises and your marginal tax rate increases, deductible IRA contributions generally become more valuable. Also, making your deductible contribution to the plan as early as possible generally increases your retirement benefits. As you evaluate how much you should contribute to your IRA, consider the following limitations. If you are married, even if your spouse has no earnings, you can generally deduct in the aggregate up to \$12,000 (\$14,000 if you are both at least age 50 by the end of the year) for contributions to your and your spouse's traditional IRAs. You and your spouse must have combined earned income at least equal to the total contributions. However, no more than \$6,000 (\$7,000 if at least age 50) may be contributed to either your IRA account or your spouse's IRA account for 2019. If you are an active participant in your employer's retirement plan during 2019, your IRA deduction is reduced ratably as your AGI increases from \$103,000 to \$123,000 on a joint return (\$64,000 to \$74,000 on a single return). However, if you file a joint return with your spouse and your spouse is an active participant in his or her employer's plan and you are not an active participant in a plan, your IRA deduction is reduced as the AGI on your joint return goes from \$193,000 to \$203,000. **Caution!** Every dollar you contribute to a deductible IRA reduces your allowable contribution to a nondeductible Roth IRA. The sum of your contributions for the year to your Roth IRA and to your traditional IRA may not exceed the \$6,000/\$7,000 limits discussed above. For 2019, your ability to contribute to a Roth IRA is phased out ratably as your AGI increases from \$193,000 to \$203,000 on a joint return or from \$122,000 to \$137,000 if you are single. **Planning Alert!** Unlike the rule for traditional IRA contributions, the amount you may contribute to a Roth IRA is reduced if your AGI falls within these phase-out ranges regardless of whether you or your spouse is a participant in another retirement plan. In addition, contributions to a Roth IRA are not deductible.

- **Workers at Least Age 70½.** If you are age 70½ or older, you cannot make a contribution to a traditional IRA for yourself. **Tax Tip!** If you are working, you're age 70½ or older, have a spouse under age 70½, and otherwise qualify, you can make a deductible IRA contribution to a separate traditional IRA for your spouse (not to exceed your compensation) even when the spouse has no earned income. Also, if you otherwise qualify, you can contribute to a nondeductible Roth IRA even after you reach age 70½ as long as you have sufficient earned income.

Consider Increasing Withholding If Facing an Estimated Tax Underpayment Penalty. Starting with the 2018 tax year, TCJA reduced the overall tax liability for a significant number of individual taxpayers. However, it has been reported that some individual taxpayers were upset because their tax refund for the 2018 tax year was less than expected. Of course, if you reduced your withholdings or estimated tax payments for 2018 to reflect your anticipated tax savings under TCJA, it is entirely possible (and in fact probable) that you paid less overall tax in 2018 due to the TCJA tax cuts, even though your refund was smaller than in previous years. However, it is important that you continue to monitor your withholdings and estimated tax payments before the end of 2019 in order to avoid a potential tax underpayment penalty. **Planning Alert!** If you have failed to pay sufficient estimated taxes during 2019, potentially causing an estimated tax underpayment penalty, increasing your withholdings before the end of 2019 may solve the problem. Any income tax withholding (including withholdings at the end of 2019 from a year-end bonus or an IRA distribution) is generally deemed paid in quarterly installments by each quarter's estimated tax payment due date (i.e., April 15, 2019; June 17, 2019; September 16, 2019; and January 15, 2020).

Therefore, amounts withheld on or before December 31, 2019 may reduce or eliminate your penalty for underpaying estimated taxes. **Tax Tip!** If you are a higher-income individual with investment income that will trigger the 3.8% NIIT for 2019, the additional 3.8% NIIT could subject you to the underpayment penalty if you haven't adjusted your estimated tax payments or withholdings to cover the 3.8% NIIT and you do not otherwise meet one of the exceptions to the penalty (i.e., paying in 110% of last year's tax). Increasing your withholdings on or before December 31, 2019 could eliminate the penalty.

- **Planning Alert!** If you take an IRA distribution and have taxes withheld from the distribution to avoid an underestimate penalty, you must roll the distribution (unreduced by the withheld taxes) into an IRA within 60 days of the distribution to avoid paying taxes (and possibly a 10% penalty) on the IRA distribution. You are allowed to take a distribution from an IRA and roll it over into a new IRA, only one time every 12 months (beginning with the date you received the distribution). **Caution!** If you used this withholding technique last year by having taxes withheld from an IRA distribution in 2018, be very careful that you do not violate the one-rollover-per-year rule if you plan to use this technique again this year. Please call HPG before you initiate an IRA distribution in order to increase your tax withholdings.

TCJA Increased the Unified Exclusion Amount and GST Exemption Amount. Effective for individuals dying and generation-skipping transfers after 2017 and before 2026, TCJA almost doubled the Basic Unified Exclusion Amount for gift and estate tax purposes and the generation-skipping exemption amount, and indexed it for inflation. For 2019, the Basic Unified Exclusion Amount is \$11,400,000. TCJA did not change the provision allowing a deceased spouse's estate to elect to transfer the deceased spouse's unused Exclusion Amount (i.e., the portability election) to the surviving spouse. **Tax Tip!** Since the increased unified exclusion amount for gifts and the increased exemption for generation-skipping transfers are only available for gifts and generation-skipping transfers through 2025, individuals should examine their estate and gift tax plans in light of this temporary opportunity to make additional tax-free transfers.

The Premium Tax Credit Under the Affordable Care Act ("ACA"). Starting in 2019, TCJA essentially eliminated the penalty for individuals who fail to purchase qualified health coverage by reducing the Shared Responsibility Tax ("SR Tax") to zero. However, TCJA did not repeal the refundable Premium Tax Credit ("PTC") under ACA for eligible low-and-middle income individuals who purchase health insurance through a state or federal Exchange. The PTC is generally paid in advance directly to the insurer ("Advance Payments").

- **Who Qualifies for the PTC?** An individual who bought health insurance on a government Exchange generally qualifies for the PTC for 2019 only if the individual's Household Income for 2019 is at least 100% and not more than 400% of the applicable Federal Poverty Line ("FPL") for the individual's family size. For example, a family of four could qualify for at least some PTC with 2019 Household Income of up to \$100,400.
- **Certain Individuals May Be Required to Pay Back Some or All of Their Advance Payments.** Any individual who received Advance Payments for 2019 is required to file a 2019 income tax return to reconcile: 1) the amount of the actual PTC (based on the individual's actual 2019 Household Income) with 2) the Advance Payments of the PTC (which were determined by the Exchange based on the individual's projected 2019 Household Income). If an individual's Advance Payments for 2019 exceed the actual PTC, the excess must be paid back on the 2019 tax return as an additional tax liability.

Caution! Recent Tax Court (“Court”) cases have held that this excess must be paid back as an additional tax liability even where the taxpayers made a good faith effort to comply with requirements for Advance Payments of the PTC, or even where the Exchange allegedly made a mistake.

- **Possible Cap on the Amount That Must Be Paid Back.** The amount of the 2019 excess payment that must be repaid as an additional tax liability is capped if the individual’s actual 2019 Household Income is less than 400% of the FPL for the individual’s family size. For example, for 2019, as long as an individual’s actual household income is less than 400% of the FPL, the maximum amount that must be repaid will not exceed \$1,325 for a single individual and \$2,650 for others. **Planning Alert!** In some cases, an individual whose actual 2019 Household Income is projected to be 400% or more of the FPL may be able to trigger these dollar caps by reducing his or her actual 2019 Household Income below 400% of the FPL. For example, an individual might make a contribution to an IRA (if eligible to do so) in order to reduce his or her 2019 Household Income to less than 400% of the 2019 FPL for the individual’s family size. Taking this step would cap the amount of the individual’s excess payments required to be paid back as an additional tax liability to \$1,325 for single individuals and \$2,650 for others. **Tax Tip!** If you think that you may have to pay back some or all of your 2019 excess payments, please call HPG as soon as possible so we can determine whether you can take steps before the end of 2019 to minimize the amount of the pay back.

- **Keep an Eye out for IRS Form 1095-A.** Any individual who purchased health insurance for 2019 through the Exchange should receive Form 1095-A (“Health Insurance Marketplace Statement”) by January 31, 2020. Information on the Health Insurance Marketplace Statement will be used to complete Form 8962, which reconciles an individual’s Advanced Payments of the PTC with the actual PTC, as discussed above. If you, your spouse, or a dependent purchased health insurance through the Marketplace during 2019, please bring us a copy of the Health Insurance Marketplace Statement along with your other tax information when we prepare your 2019 tax return.

THE AMT WILL HIT FAR FEWER TAXPAYERS AFTER TCJA

Changes to the AMT Have Caused Far Fewer Individuals to Pay AMT. Although TCJA retained the AMT for individual taxpayers, starting in 2018 and through 2025, it also granted new relief by significantly: 1) increasing the AMT exemption amounts, and 2) increasing the amount of alternative minimum taxable income where the AMT exemption amount begins to phase out. Moreover, TCJA reduced or eliminated for regular tax purposes several common AMT adjustments, such as: reducing the personal exemption amount to zero; capping the deduction for State and Local Taxes (“SALT”) at \$10,000; suspending the deduction for miscellaneous itemized deductions, and suspending the deduction for interest paid on home equity indebtedness. **Planning Alert!** Due to these and other changes under TCJA, it was initially estimated that the number of individuals subject to AMT would drop from approximately five million down to a level closer to 200,000. More recent reports from the IRS indicate that drop in individual taxpayers paying AMT on their 2018 returns was even more significant than originally predicted. **Caution!** TCJA does retain certain adjustments that could potentially trigger AMT. For example, AMT adjustments and preference items that survived TCJA include: the standard deduction; the SALT deduction (to the extent allowed for regular tax purposes); income from exercise of incentive stock options; interest on private activity bonds; and certain accelerated depreciation adjustments.

FINAL COMMENTS

Please contact us if you are interested in a tax topic that we did not discuss. Tax law is constantly changing due to new legislation, cases, regulations, and IRS rulings. HPG closely monitors these changes. In addition, please call us before implementing any planning ideas discussed in this letter, or if you need additional information. **Note!** The information contained in this material should not be relied upon without an independent, professional analysis of how any of the items discussed may apply to a specific situation.

Disclaimer. Any tax advice contained in the body of this material was not intended or written to be used, and cannot be used, by the recipient for the purpose of promoting, marketing, or recommending to another party any transaction or matter addressed herein. The preceding information is intended as a general discussion of the subject addressed and is not intended as a formal tax opinion. The recipient should not rely on any information contained herein without performing his or her own research verifying the conclusions reached. The conclusions reached should not be relied upon without an independent, professional analysis of the facts and law applicable to the situation.