THE UNCERTAINTY OF THE TAX CUTS AND JOBS ACT: WHAT DO AGRICULTURAL PRODUCERS NEED TO KEEP IN MIND?

Riley Kock†

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I. INTRODUCTION

Congress has made substantial changes to income tax laws in the 2017 Tax Cuts and Jobs Act (TCJA). Many believe these changes could have a substantial effect on all taxpayers, especially upon the nation's agricultural producers.[1] Though many changes have been made, many of the ramifications of these changes may not be fully understood until firm guidance is issued by the Internal Revenue Service (IRS) in the Treasury Regulations.[2] There is also a sense of unease when confronted with the uncertainty surrounding state income tax laws conforming to

† Riley Kock is a 2017 graduate of Wartburg College with a Bachelor of Arts in Political Science and a 2020 graduate of Drake University Law School, graduating with a Juris Doctorate and a certificate in Business Law. He is a former Note Editor for the *Journal*.
He would like to give a special thank you to his girlfriend, Megan, for all of her support, as well as his dogs Koda and Waylon.

1. *See generally*, KRISTINE TIDGREN, IOWA STATE UNIV., EVALUATING THE IMPACT OF THE TAX CUTS AND JOBS ACT ON AGRICULTURAL PRODUCERS 3 (2018); JAMES M. WILLIAMSON & SIRAJ G. BAWA, ESTIMATED EFFECTS OF THE TAX CUTS AND JOBS ACT ON FARMS AND FARM HOUSEHOLDS 1 (2018).

2. *See generally* TIDGREN, *supra* note 1, at 13.

the new federal income tax system.[3] At an already stressful time for taxpayers, tax season will be much more stressful because there will be a sense of uncertainty from agricultural producers and tax professionals alike.

A brief overview of the many changes is required before conclusions can be reached on what provisions could impact an agricultural producer's tax burden. In this note there will be several sections relating to changes the TCJA made to federal income tax law. Each section will relate to a specific amended provision and may also reference other provisions.

II. INDIVIDUAL INCOME TAX BRACKETS

The TCJA made substantial alterations to individual income tax brackets. These changes are important because many agricultural producers are organized as partnerships, sole proprietorships, or S corporations.[4] These are types of "pass-through" entities, which means the income from the business is "passed through" to the owners and taxed as the owner's individual income.[5] Individual income tax brackets apply to all income received by these businesses. Nearly all of the tax brackets have been decreased.[6] For example, previously, the lowest bracket in the married filing jointly table was up to $36,900, but was taxed at 15%.[7] The lowest bracket in the new married filing jointly table is only up to $19,050, but it is taxed at 10%.[8] Therefore under the new tax table, for the first $19,050 of income, a taxpayer will pay $1,905—whereas under the old tax table, the same taxpayer would have paid $2,857.50 for the first $19,050 of income. The charts below lay out the tax rates for married, single, and head of household taxpayers for the 2019 tax year.

3. *See generally id*.
4. *Id.* at 3.
5. Aaron Krupkin & Adam Looney, *9 facts about pass-through businesses*, BROOKINGS (May 15, 2017), https://perma.cc/BD5K-AKCV.
6. *See* 26 U.S.C. § 1(j) (2018).
7. § 1(a).
8. § 1(j)(2)(A).

MARRIED FILING JOINTLY AND SURVIVING SPOUSE[9]	
Not over $19,050	10% of taxable income
Over $19,050 but not over $77,400	$1,905, plus 12% of the excess over $19,050
Over $77,400 but not over $165,000	$8,907, plus 22% of the excess over $77,400
Over $165,000 but not over $315,000	$28,179, plus 24% of the excess over $165,000
Over $315,000 but not over $400,000	$64,179, plus 32% of the excess over $315,000
Over $400,000 but not over $600,000	$91,379, plus 35% of the excess over $400,000
Over $600,000	$161,379 plus 37% of the excess over $600,000

HEADS OF HOUSEHOLDS[10]	
Not over $13,600	10% of taxable income
Over $13,600 but not over $51,800	$1,360, plus 12% of the excess over $13,600
Over $51,800 but not over $82,500	$5,944, plus 22% of the excess over $51,800
Over $82,500 but not over $157,500	$12,698, plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$30,698, plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$44,298, plus 35% of the excess over $200,000
Over $500,000	$149,298, plus 37% of the excess over $500,000

9. *Id.*
10. § 1(j)(2)(B).

Unmarried Individuals Other than Surviving Spouses and Head of Households[11]	
Not over $9,525	10% of taxable income
Over $9,525 but not over $38,700	$952.50, plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50, plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50, plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50, plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$45,689.50, plus 35% of the excess over $200,000
Over $500,000	$150,689.50, plus 37% of the excess over $500,000

Married Individuals Filing Separate Returns[12]	
Not over $9,525	10% of taxable income
Over $9,525 but not over $38,700	$952.50, plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50, plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50, plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50, plus 32% of the excess over $157,500
Over $200,000 but not over $300,000	$45,689.50, plus 35% of the excess over $200,000
Over $300,000	$80,689.50, plus 37% of the excess over $300,000

11. § 1(j)(2)(C).
12. § 1(j)(2)(D).

III. SECTION 199A: QUALIFIED BUSINESS INCOME

In the TCJA, one of the major changes was the addition of Section 199A. Section 199A "applies to sole proprietorships, partnerships, trusts, and S corporations."[13] The Section 199A deduction precludes individuals involved in activities that do not rise to the level of trade or business, shareholders of C corporations, or employees from taking this deduction.[14] C Corporations, instead, saw a reduction in the tax rate from as high as 35% to a flat rate of 21%.[15] Section 199A was created by the IRS to level the playing field after C corporations received a major tax cut.[16] Section 199A was also created to account for the removal of Section 199 from the tax code.[17] Many are unsure how the new Section 199A deduction will compare to the old Section 199 deduction, but the effects should certainly become clearer as agricultural producers begin to file their 2018 taxes early next year.

Section 199A, as stated above, does not apply to individuals involved in activities that do not rise to the level of trade or business.[18] Therefore, only individuals involved in a trade or business are allowed to use this provision and deductions for an individual's personal expenses are excluded.[19] Section 162 of the United States Tax Code allows for trade or business exemptions.[20] Section 162 begins, "[t]here shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . . ." [21] Legal scholars have broken this opening sentence into six separate elements.[22] In order to fully understand this deduction, it is important to examine each of these elements individually.

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13. KRISTINE TIDGREN ET AL., IOWA STATE UNIV., AGRICULTURAL TAX ISSUES 55 (2018); Kelly Phillips Erb, *IRS Issues Proposed Regulations On Section 199A Deduction For Solos & Pass-through Businesses*, FORBES (Aug. 8, 2018), https://perma.cc/E7GX-CG5J; *See* 26 U.S.C. § 199A (2018).

14. SAMUEL A. DONALDSON & DONALD B. TOBIN, FEDERAL INCOME TAX 268 (3d ed. 2018).

15. David C. Kim, *New Section 199A Qualified Business Income Deduction for Farmers*, GISLASON & HUNTER LLP (June 27, 2018), https://perma.cc/4NZG-GYWZ.

16. Paul Neiffer, *Section 199A "Fix" – Winners and Losers*, AG WEB (Mar. 22, 2018), https://perma.cc/Q37S-H9JJ.

17. Tony Dreibus, *199A Tax Code Fix Is No Fix, Farmers Say*, SUCCESSFUL FARMING (Mar. 14, 2018), https://perma.cc/U7KD-4MLJ.

18. DONALDSON & TOBIN, *supra* note 14.

19. *Id.* at 248.

20. 26 U.S.C. § 162 (2018).

21. § 162(a).

22. DONALDSON & TOBIN, *supra* note 14, at 221.

The first element in Section 162 states expenses must be "ordinary."[23] For an expense to be ordinary, the courts have considered whether the expense is "unique . . . in the life of the group, the community, of which he is a part."[24] If the expense is unique in the life of the group, it is not ordinary.[25] If the expense is not unique when compared to expenses "in the life of the group, the community, of which he is a part" then the expense will be considered ordinary.[26]

The second element considered is whether the expense is "necessary."[27] The courts have found expenses to be necessary if the taxpayer considers them to be necessary.[28] The Court equated necessary as meaning "they were appropriate and helpful."[29] Courts will be slow to override a taxpayer's judgment of expenses as being necessary in the course of a trade or business.[30]

Section 162, as its third element, requires the expenditure be an expense as opposed to a capital expenditure.[31] "[A]n expense is any cost paid or incurred to produce a benefit with a useful life of one year or less, while a capital expenditure is a cost paid or incurred to produce a benefit with a useful life of more than one year."[32] If an expense is considered to have a benefit with a useful life lasting more than one year, not all hope is lost.

The Section 162 deduction may be unavailable for capital expenditures, however, the cost can still be capitalized and depreciated.[33] Section 263(a)(1) of the United States Tax Code disallows deductions for capital expenditures.[34] Section 263 applies to four types of expenditure.[35] The four types are as follows:

- New buildings;
- Permanent improvements intended to increase value;

23. *Id.*; *see also* § 162(a).
24. Welch v. Helvering, 290 U.S. 111, 114 (1933).
25. *See generally id*.
26. *Id.*
27. DONALDSON & TOBIN, *supra* note 14, at 221.
28. *Welch*, 290 U.S. at 113.
29. *Id.*
30. *Id.*
31. 26 U.S.C. § 162(a) (2018); DONALDSON & TOBIN, *supra* note 14, at 240.
32. DONALDSON & TOBIN, *supra* note 14, at 240.
33. *Id*. at 190.
34. 26 U.S.C. § 263(a)(1) (2018).
35. § 263(a); DONALDSON & TOBIN, *supra* note 14, at 191.

- Restoration costs; and
- Expenditures that will give rise to exhaustion deductions.[36]

The fourth element of Section 162 requires the expense be "paid or incurred during the taxable year."[37] The fourth element is important to distinguish between two separate forms of accounting.[38]

The fifth element of Section 162 requires the expense be incurred in "carrying on" a trade or business.[39] The carrying on element distinguishes that an individual cannot be entering into a new trade or business.[40] Courts have decided numerous cases involving whether an individual's expenses were paid or incurred in the carrying on of a trade or business.[41] In *Sharon v. Commissioner*, the court found an IRS attorney's expenses for taking the California Bar Exam were not in the carrying on of a trade or business.[42] The court observed, "[I]t is not enough to find the petitioner was already engaged in some business—we must ascertain the particular business in which he was previously engaged and whether the education qualified him to engage in a different business."[43] Following the court's ruling, the trade or business must be nearly identical to the trade or business in which it is already engaged.[44] "Where a taxpayer is seeking employment in a new trade or business activity, the § 162(a) deduction is appropriately denied because the taxpayer is not yet carrying on that business."[45]

Lastly, Section 162 requires all of the preceding elements to have been in connection with "a trade or business activity."[46] Unfortunately, the term trade or business is not defined in the United States Tax Code.[47] The courts have analyzed many cases pondering whether an individual's activities rise to the level of a trade

36. DONALDSON & TOBIN, *supra* note 14, at 191.
37. *Id.* at 221; *see* 26 U.S.C. § 162(a) (2018).
38. DONALDSON & TOBIN, *supra* note 14, at 240-41.
39. *Id.* at 221; § 162(a).
40. DONALDSON & TOBIN, *supra* note 14, at 241.
41. *See* Estate of Rockefeller v. Comm'r, 762 F.2d 264 (2d. Cir. 1985); Sharon v. Comm'r, 66 T.C. 515, 522 (1976); Glenn v. Comm'r, 62 T.C. 270, 273 (1974).
42. *See generally Sharon*, 66 T.C. 515.
43. *Id.* at 529.
44. *See generally id.*
45. DONALDSON & TOBIN, *supra* note 14, at 247.
46. *Id.* at 221; *see* 26 U.S.C. § 162(a) (2018).
47. DONALDSON & TOBIN, *supra* note 14, at 247.

or business.[48] In *Commissioner v. Groetzinger*, the Court found a taxpayer to have been in the trade or business of gambling.[49] The Court reasoned:

> If a taxpayer . . . devotes his full-time activity to gambling, and it is his intended livelihood source, it would seem that basic concepts of fairness (if there be much of that in the income tax law) demand that his activity be regarded as a trade or business just as any other readily accepted activity, such as being a retail store proprietor or, to come closer categorically, as being a casino operator or as being an active trader on the exchanges.[50]

Though it may come as a surprise, the Court found gambling to be a trade or business under the statue.[51] Courts have used policy limitations to restrict activities which can be considered a trade or business activity.[52] In *Vitale v. Commissioner*, the court disallowed the trade or business deduction for a former United States Department of the Treasury employee.[53] The retired Treasury worker decided to write a fictional novel in which the main characters made a trip across the United States to patronize a legal brothel in Nevada.[54] To ensure the events in his novel were accurate, the retired Treasury employee patronized "numerous" legal brothels in Nevada.[55] The former employee subsequently began treating his writing activities as a trade or business.[56] In evaluating whether the former Treasury employee's writing activities were a trade or business under Section 162, the court examined, "We are satisfied that petitioner's writing activity was conducted with continuity and regularity . . . Nevertheless, in order for an activity to be considered a trade or business within the meaning of Section 162, a taxpayer must conduct the activity with the requisite profit motive or intent."[57] The court found all expenses involved in the writing to be deductible, aside from the visits at the brothels.[58] In describing their reasoning for the disallowance of the visits to the brothels, the

48. *E.g.*, Comm'r v. Groetzinger, 480 U.S. 23 (1987); Comm'r v. Tellier, 383 U.S. 687 (1966); Flint v. Stone Tracy Co., 220 U.S. 107 (1911); Vitale v. Comm'r, 77 T.C.M. (CCH) 1869 (1999).

49. *See generally Groetzinger*, 480 U.S. at 23.

50. *Id.* at 33.

51. *Id.* at 35.

52. DONALDSON & TOBIN, *supra* note 14, at 257.

53. *Vitale*, 77 T.C.M. (CCH) at 1870.

54. *Id.*

55. *Id.*

56. *Id.* at 1872.

57. *Id.* (emphasis omitted).

58. *Id.* at 1877.

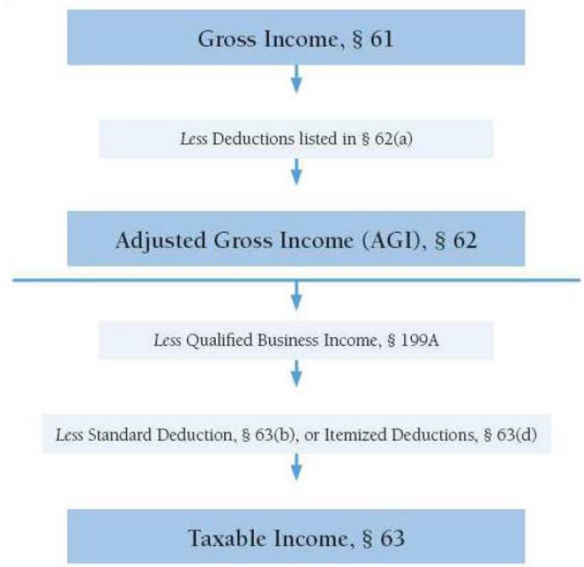
court explained, "We find that the expenditures incurred by petitioner to visit prostitutes are so personal in nature as to preclude their deductibility."[59]

Once the agricultural producer is aware of income from a trade or business, they can begin to calculate what deduction they might receive. Qualified Business Income (QBI) is arguably the most complex provision of the TCJA.[60] Originally, Section 199A allowed "farmers who are members of cooperative[s] to take a deduction equal to 20% of gross sales, limited to 100% of their taxable income overall, when selling to their coop."[61] This would have been a major break for agricultural producers who were members of a cooperative—however, for non-members, it could have been a major setback. Non-members would have been restricted to taking a 20% deduction of their QBI.[62] Due to the possibility of some agricultural producers receiving tax-free income, a provision altering the calculation technique was included in the Consolidated Appropriations Act, which you will see in the following section.[63]

The QBI deduction reduces taxable income,[64] meaning it is a "below the line" deduction, but the taxpayer is not required to file an itemized deduction.[65] Agricultural producers are allowed to utilize the standard deduction changes the TCJA created. For Section 199A, QBI is "the net amount of qualified items of income, gain, deduction, and loss with respect to any qualified trade or business of the taxpayer."[66] The first step in applying the QBI deduction requires agricultural producers to calculate their Adjusted Gross Income (AGI). AGI is calculated by subtracting the deductions listed in Section 62 of the United States Tax Code from one's gross income.[67] Once the taxpayer calculates their AGI, the taxpayer will then decide whether they want to take the standard or itemized deduction. Once the taxpayer chooses either the standard or itemized deduction, they have now calculated their taxable income. The illustration below helps to explain this concept.

59. *Id.*
60. *See* TIDGREN, *supra* note 1, at 4-5.
61. Dreibus, *supra* note 17.
62. *Id.*
63. TIDGREN, *supra* note 1, at 5; *see* Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, § 101, 132 Stat. 1151, 1151.
64. TIDGREN, *supra* note 1, at 4.
65. *Id.* at 5.
66. 26 U.S.C. § 199A(c)(1) (2018).
67. 26 U.S.C. § 62(a) (2018).

THE TAX LADDER[68]



The TCJA placed a wage limitation on the QBI deduction.[69] The wage limitation is phased in, beginning at $157,500 for single taxpayers and $315,000 for those married and filing jointly.[70] Once the wage limitation is triggered by hitting the threshold, the phase-in value applies to the next $50,000 of income for singles and $100,000 for those married and filing jointly.[71] If a taxpayer is below the threshold income value, the simplest way to figure their QBI deduction is to take 20% of their QBI for each business that is eligible.[72]

The phase-out range makes the process more complex for taxpayers. If a taxpayer is within the phase-out range of the QBI deduction, there are three things they need to know: First, whether the taxpayer's business is a Specified Service Trade or Business (SSTB).[73] Second, what amount of W-2 wages were paid by the

68. DONALDSON & TOBIN, *supra* note 14, at 35.
69. TIDGREN, *supra* note 1, at 5.
70. *Id.*
71. *Id.*
72. Erb, *supra* note 13.
73. *Id.*

business or businesses.[74] Third, the unadjusted basis of certain property used in the trade or business immediately after its acquisition.[75]

A taxpayer's business is considered to be a SSTB if they provide "services in the fields of health, law, consulting, athletics, financial services, brokerage services, or 'any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners.'"[76] Another way to explain this is noting that a business is only a SSTB when a person's "skill and reputation is such that it makes them famous and marketable."[77]

If a taxpayer's business is a SSTB, and their income exceeds the phase-out range, the deduction becomes unavailable for the taxpayer.[78] As a result, the taxpayer's income is taxed at the person's individual tax rate.[79] For a taxpayer whose business is not a SSTB, the deduction is never disallowed but is subject to W-2 wage limitation and the unadjusted basis of property used by the trade or business limitation.[80]

As previously stated, a taxpayer's QBI deduction may be limited according to the amount of W-2 wages they pay.[81] These W-2 wages need to be properly allocable to QBI in order to be used to figure the deduction.[82] There have been three different methods announced by the IRS calculating the W-2 wages a business pays.[83] The three methods are: Unmodified Box Method, Modified Box 1 Method, and Tracking Wages Method.

A. Unmodified Box Method

The Unmodified Box Method requires a taxpayer to take the lesser of all entries in box one of all W-2s filed by the taxpayer for his or her employees or the total amount of all entries in box five listed in all W-2s filed by the taxpayer for his or her employees.[84]

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74. *Id.*
75. *Id.*
76. *Id.*
77. Miryam Wisnicki & Marsha W. Fisher, *Highlights of the Section 199A Proposed Regulations*, BLUM SHAPIRO (Oct. 25, 2018), https://perma.cc/2QG5-BX7M.
78. Erb, *supra* note 13.
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*

B. Modified Box 1 Method

The Modified Box 1 Method requires a taxpayer to take the total of all W-2s filed for employees, subtract all amounts included in box one that are not wages for federal withholding purposes, and add the amount reported in box twelve for all employees coded as D, E, F, G, and S.[85] The box twelve codes have different meanings. Codes D, E, F, and G are all elective deferrals with the following meanings: Code D can occur "under a section 401(k) cash or deferred arrangement plan (including a SIMPLE 401(k) arrangement)."[86] Code E can occur "under a section 403(b) salary reduction agreement."[87] Elective deferrals "under a section 408(k)(6) salary reduction [Simplified Employee Pension]" are code F.[88] Code G includes "[e]lective deferrals and employer contributions (including nonelective deferrals) to a section 457(b) deferred compensation plan."[89] An S code is an "[e]mployee salary reduction contributions under a section 408(p) SIMPLE plan."[90]

C. Tracking Wages Method

The Tracking Wages Method requires the taxpayer to use all wages paid on a W-2 form, which are subject to federal tax withholding, and adding the amount reported in box twelve for all employees coded as D, E, F, G, and S.[91]

While figuring the W-2 wages for a taxpayer, it is important to remember if a taxpayer has more than one business, Section 199A allows them to be aggregated for QBI purposes.[92] The taxpayer can aggregate these if all of the requirements are met. The first requirement is "[t]he same person, or group of persons, must directly or indirectly own a majority interest in each of the distinct trades or business, for a majority of the taxable year."[93] The second requirement is that none of the trades or businesses can be a SSTB.[94] There are some *de minimis* rules for businesses that

85. *Id.*

86. DEP'T OF THE TREASURY, INTERNAL REVENUE SERV., 2019 GENERAL INSTRUCTION FOR FORMS W-2 AND W-3 at 29 (2019), https://perma.cc/T6JZ-TG2R.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* (emphasis in original)

91. Erb, *supra* note 13.

92. Wisnicki & Fisher, *supra* note 77.

93. Don Susswein et al., *A closer look at the new pass-through deduction proposed regulations*, RSM (Aug. 10, 2018), https://perma.cc/LS2V-4F7H.

94. *Id.*

may be labeled as a SSTB but realistically are not.[95] The final requirement is that each of the trades or businesses meets two of the following three criteria:

1. The trades or businesses provide products and/or services that either are the same or are customarily provided together.

2. The trades or businesses share facilities or share significant centralized business elements (accounting, legal, purchasing, HR, IT, manufacturing, etc.).

3. The businesses are operated in coordination with or reliant upon other businesses in the aggregated group.[96]

Though a taxpayer may aggregate their businesses for QBI purposes, the taxpayer cannot use all the business W-2 wages combined to make the calculation.[97] They need to be calculated separately and added together after they are all calculated.[98]

The last important piece of information a taxpayer needs to keep in mind if they are over the threshold limit, $157,500 for those filing singly or $315,000 for those filing jointly, is the unadjusted basis of certain property used in the trade or business immediately after its acquisition.[99] This is important because it will be used in one of the two options for calculating the limitation on the Section 199A QBI deduction.[100]

Since the taxpayer now knows their business is a SSTB, what their W-2 wages paid are, and what their unadjusted basis of certain property used in the trade or business immediately after its acquisition is—the taxpayer can see what their deduction will be under Section 199A. There are two options for calculating the QBI deduction at this point.[101] The first is for a taxpayer to take 20% of their QBI plus 20% of their qualified real estate investment trust dividends and qualified publicly traded partnership income.[102] The second is to take 20% of the taxpayer's taxable income and subtracting the net capital gains.[103] The lesser of these two will be the taxpayer's QBI deduction, aside from the limitations.[104]

95. *Id.*
96. *Id.*
97. Erb, *supra* note 13.
98. *Id.*
99. *Id.*
100. *See generally id.*
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.*

IV. SECTION 179 DEDUCTION

Another important change for the nation's agricultural producers is the increase in the Section 179 write-off deductions.[105] The Section 179 deduction allows small businesses to deduct the full purchase price of certain qualifying equipment.[106] Because most farm equipment fits within this deduction as business equipment, farmers will benefit from Section 179.[107] The Section 179 deduction can be very beneficial to the nation's small trades and businesses, including the nation's agricultural producers.[108]

The Section 179 deduction allows a business to write-off the entire cost of qualifying equipment, that is up to $1,000,000.[109] Businesses enjoy the Section 179 deduction because, without it, the business would need to depreciate the new equipment over several years.[110] Now with the Section 179 deduction, the businesses can take all of the depreciation in the year of the purchase.[111]

However, there are limitations to the Section 179 deduction.[112] The business is only allowed to deduct the full value of a new equipment purchase up to $2,500,000 for any tax year.[113] After the business has met the $2,500,000 threshold, the deduction is reduced dollar for dollar through $3,500,000.[114] For example, if a business spends $3,000,000 on new equipment in 2018, they can only take a $500,000 Section 179 deduction for that year.[115] The deduction limitation is one reason Section 179 is more beneficial to small businesses than large businesses.[116]

105. Julie Spiegel, *How The New Tax Cuts And Jobs Act Affects Your Tax Planning*, SUCCESSFUL FARMING (Dec. 7, 2018), https://perma.cc/7A7M-L7ZR.

106. *Section 179 Deduction*, SECTION179.ORG, https://perma.cc/G2BF-ZVNS (archived Sept. 21, 2019); *see generally* 26 U.S.C. § 179 (2018).

107. *See Section 179 Deduction*, *supra* note 106.

108. *See id.*; *see generally* § 179.

109. *Section 179 Deduction*, *supra* note 106; *see generally* § 179.

110. *Section 179 Deduction*, *supra* note 106; *see generally* § 179.

111. *Section 179 Deduction*, *supra* note 106; *see generally* § 179.

112. *Section 179 Deduction*, *supra* note 106; *see generally* § 179.

113. *Section 179 Deduction*, *supra* note 106; *see generally* § 179.

114. *Section 179 Deduction*, *supra* note 106; *see generally* § 179.

115. *See Section 179 Deduction, supra* note 106; *see generally* § 179.

116. *Section 179 Deduction*, *supra* note 106; *see generally* § 179.

V. STANDARD DEDUCTION

The standard deduction is found in Section 63(c) of the United States Tax Code.[117] The TCJA nearly doubled the standard deduction.[118] For single taxpayers and taxpayers who are married but file separately, the TCJA increased the standard deduction from $6,500 to $12,000.[119] For taxpayers filing joint returns, the TCJA increased the standard deduction from $13,000 to $24,000.[120] Finally, for taxpayers filing as the head of household, the standard deduction was increased from $9,550 to $18,000.[121] As a result, the standard deduction a more attractive option for taxpayers.

One of the most common reasons taxpayers use the standard deduction is because it is easier than the itemized deduction.[122] This may be attributed to the necessity to substantiate the itemized deductions with records, receipts, or similar documentation.[123] In contrast, the standard deduction involves no questions asked by the IRS because anyone may take this deduction, regardless of what the taxpayer spent.[124]

As with many of the provisions altered by the TCJA, the standard deduction increase sunsets in 2026.[125] The increased rates are only available for use through 2025, at which time it will revert to the old standard deduction if Congress does not create a new law or vote to leave the TCJA in effect.[126]

VI. MISCELLANEOUS ITEMIZED DEDUCTIONS

The TCJA has suspended all miscellaneous itemized deductions through the year 2025.[127] The suspension of miscellaneous itemized deductions is supposed to increase the federal revenue by a small amount due to the miscellaneous itemized deductions already being subject to the 2% haircut.[128] The 2% haircut only allows

117. 26 U.S.C. § 63 (2018); DONALDSON & TOBIN, *supra* note 14, at 33-34.

118. Julia Kagan, *Standard Deduction*, INVESTOPEDIA (May 5, 2019), https://perma.cc/KS3X-2KSS.

119. TIDGREN, *supra* note 1.

120. *Id.*

121. § 63; DONALDSON & TOBIN, *supra* note 14, at 33-34.

122. Tina Orem, *Itemized Deductions*, NERDWALLET (Sept. 6, 2019), https://perma.cc/Y8SU-XTM3.

123. *Id.*

124. *Id.*

125. TIDGREN, *supra* note 1.

126. *Id.*

127. *Id.* at 4; DONALDSON & TOBIN, *supra* note 14, at 36.

128. DONALDSON & TOBIN, *supra* note 14, at 37.

a taxpayer to deduct miscellaneous itemized deductions that exceeded 2% of a taxpayer's AGI.[129] The policy behind taxpayers being limited to taking miscellaneous itemized deductions that exceed 2% of their AGI is somewhat uncertain, but some believe it may be a way for the IRS to cut back on the amount of resources it spends on monitoring these deductions.[130] What is certain about miscellaneous itemized deductions is that taxpayers will not have to worry about them until 2025 or later due to the sunset provision in the code.[131]

VII. ESTATE TAXES

For an agricultural producer, attempting to establish a concrete estate plan can be one of the most important planning decisions they make. The TCJA could inject uncertainty into this area of law. The TCJA increased the exclusion for estate taxes from $5,490,000 to $11,180,000.[132] Though this may be favorable for estates, the provisions sunset in 2026.[133] The risk of this provision is if someone were to rely on this provision for tax planning purposes, but not pass away before 2026, the estate plan may no longer be viable due to the change in the estate tax provision. Estates could pay more taxes than if a more long-term approach was chosen. The issue becomes more important when the need to pay the estate tax will pay a 40% share of the entire estate.[134] Currently only applying to trusts and estates over $11,180,000, the minimum amount paid would be $4,472,000. The realization makes it important for taxpayers creating a will or trust to consult an attorney. Though the area may be uncertain at the moment, Section 199A of the United States Tax Code does apply to estates.[135] The downside is Section 199A also sunsets in 2026.[136]

In addition to the increased threshold for estate taxes, the TCJA also reduced the tax rates for estate income taxes, while increasing the brackets.[137] The old tax brackets for estates are as follows:

129. *Id.* at 36.

130. *Id.* at 37.

131. *Id.*

132. David Frisch, Forbes Fin. Council, *How The Tax Cuts And Jobs Act Of 2017 Affects Estate Taxes*, FORBES (June 27, 2018), https://perma.cc/8C5F-X2D9.

133. TIDGREN, *supra* note 1, at 4.

134. *Federal Estate Taxes*, ECON. RES. SERV., https://perma.cc/9GK7-PQNB (archived Sept. 21, 2019).

135. William A. Bailey, *Mechanics of the new Sec. 199A deduction for qualified business income*, J. ACCOUNTANCY (May 1, 2018), https://perma.cc/NM28-X4JP.

136. TIDGREN, *supra* note 1, at 9; *see also* Bailey, *supra* note 135.

137. *See* TIDGREN, *supra* note 1, at 9; *see also* Bailey, *supra* note 135.

ESTATES AND TRUSTS[138]	
Not over $1,500	15% of taxable income
Over $1,500 but not over $3,500	$225, plus 28% of the excess over $1,500
Over $3,500 but not over $5,500	$785, plus 31% of the excess over $3,500
Over $5,500 but not over $7,500	$1,405, plus 36% of the excess over $5,500
Over $7,500	$2,125, plus 39.6% of the excess over $7,500

The new tax bracket for estate taxes, as modified by the TCJA, is structured as follows:

TCJA ESTATES AND TRUSTS[139]	
Not over $2,550	10% of taxable income
Over $2,550 but not over $9,150	$255, plus 24% of the excess over $2,550
Over $9,150 but not over $12,500	$1,839, plus 35% of the excess over $9,150
Over $12,500	$3,011.50, plus 37% of the excess over $12,500

As you can see, the new tax bracket has removed one of the brackets entirely.[140] Removing the bracket creates a greater increase from each tax bracket to the bracket that follows.[141] The bracket now jumps from 10% to 24%, whereas the old bracket jumped from 15% to 28%.[142] Under the old bracket, if an estate made $10,000 it would pay $3,115. Under the new bracket, if that same estate made $10,000 it would only pay $2,136.50. Under the new bracket, the estate would save $978.50 in income tax under the TCJA. Essentially, more money will

138. 26 U.S.C. § 1(e) (2018).
139. § 1(j)(2)(E).
140. *Id.*
141. § 1(e), (j)(2)(E).
142. *Id.*

be taxed at the lower rate before being moved into a higher tax bracket, resulting in lower tax bills for most taxpayers.

Due to the uncertainty surrounding the TCJA, estate planning professionals have begun to consult their clients about these changes. One of the most important reasons for these consultations is for the attorney to discuss a change in the past estate plan they had setup with their client. Depending on the client's age and health history, these can be major factors in this decision. For example, if the client is younger and in good health, the client may decide to wait until 2025 to see the effect the new provisions will cause if the TCJA provisions expire. To the contrary, if the client is older and not in good health, the client may decide to restructure his or her estate plan due to the greater likelihood they may pass away before 2025. Restructuring of the client's estate plan would allow them to take advantage of the TCJA regulations and if they do survive past the 2025 deadline and the law changes, they will be able to restructure their estate plan again to align it with the new tax laws. The ultimate decision to restructure an estate plan is for the client, but it is important for an estate planning professional to be available to give guidance and advice to the client. For this reason, it is important for estate planning professionals to remain up to date with the ever-changing estate tax provisions, so they know how to best advise clients.

VIII. TRUST TAXES

Trusts are also an important tool for agricultural producers to transfer assets to the next generation of producers or partners.[143] Trusts can be used for reasons from income splitting all the way to reducing capital gains upon death.[144] Trusts can also be helpful for keeping farmland in the family even if there is no family member to farm the land.[145] Trusts are taxed on the income created by the trust and not distributed to beneficiaries.[146] When the income is distributed, the beneficiary pays the tax on the income.[147] The estate is not required to pay tax on this money, but this amount is still included in the calculation to see if the estate reaches the threshold for the estate tax. With the rise of the estate tax threshold from $5,490,000 to $11,180,000 under the TCJA, this should be less of an issue than it

143. *See generally* PHILIP J. RENAUD, USE OF TRUSTS IN FARM ESTATE PLANNING (July 2003), https://perma.cc/JJW4-F4LS.

144. *See generally id.*

145. *Farm Transitions: Conservation Financing*, LAND STEWARDSHIP PROJECT, https://perma.cc/6PPU-5R4N (archived Sept. 21, 2019).

146. GARY A. HACHFELD ET AL., ESTATE PLANNING PRINCIPLES 12 (May 2014), https://perma.cc/YX99-R68C.

147. *Id.*

was before the TCJA was enacted due to the doubling of the threshold.[148] However, estate planning professionals should still consult their clients about the estate tax threshold change.

The income tax brackets for trusts are the same brackets as they are for estates.[149] The same tax cuts that were found in the illustration for estates result from trusts. Also, trusts are allowed to utilize the Section 199A QBI deduction.[150] Much like trades, businesses, and estates, trusts need to plan carefully for the end of the TCJA in 2026.[151] A decision made by a trust now based on the TCJA may become a poor decision if it is repealed in the future.

IX. Conclusion

Few agricultural producers have had to assess the structure of their business with uncertainty in the past, which allowed them to make decisions with little hesitations and doubt as to the structure of future tax needs. With the TCJA making a radical change to the structure of some taxes, the uncertainty will be felt by agricultural producers around the nation. Some structures for taxpayers in the past are no longer a good idea. Some of the options that have become more attractive to taxpayers under the TCJA may no longer be as attractive in the next ten years. The ability for taxpayers to plan and have a strong understanding of what challenges they may face in the near future has decreased. With the TCJA, many agricultural producers are making life-altering decisions from somewhere in the dark.

148. Frisch, *supra* note 132; *see generally Federal Estate Taxes*, *supra* note 134.

149. 26 U.S.C. § 1(j)(2)(E) (2018).

150. *Trust and Estate Income Tax Considerations After the Tax Cuts and Jobs Act of 2017*, CBIZ (June 12, 2018), https://perma.cc/82JB-AEEG.

151. *Id.*