GASSMAN CROTTY & DENICOLO P.A.
ATTORNEYS AT LAW

THE THURSDAY REPORT

Issue # 253 Thursday, October 18, 2018

Re: The Thursday Report Abides

In This Issue:

Quote of the week

Yeah well, that's just, ya know, like, your opinion, man.

– Jeff "The Dude" Lebowski

The Big Lebowski is a 1998 crime comedy film by Joel and Ethan Coen. One of the Coens' most treasured films, it stars Jeff Bridges as Jeffrey "The Dude" Lebowski and his very laid-back philosophy.

The film is one of the Coen brothers' better-known works, largely due to its unconventional plot and memorable characters. Joel Coen has stated that the film was intended to present an episodic story of characters trying to unravel a mystery, as well as having a hopelessly complex plot that's ultimately unimportant.

While it did not perform well at the box office, The Big Lebowski has become a very quotable cult classic.

Homeowners Have Far Fewer, if any, Tax Benefits After the 2017 Tax Act

By: Martin Shenkman and Alan Gassman

***Martin M. Shenkman, CPA, MBA, PFS, AEP, JD** is an attorney in private practice in Fort Lee, New Jersey and New York City who concentrates on estate and closely held business planning, tax planning, and estate administration.*

The 2017 Tax Act made a host of changes that apply to homeowners, with the primary impact being the loss of formerly available deductions for most of us. This changes the basic equation for many people as to whether to buy a home, and how much home we should own, how much to borrow, and even whether we are better off owning a home rented to someone else while leasing the home that we live in. With respect to home tax benefits, much is different.

There are several general changes to the law that indirectly impact home ownership, such as the doubling of the standard deduction (and elimination of many itemized deductions), which is causing most taxpayers to not have any benefit from specific deductions for taxes, interest and other items on their personal income tax returns. The recent tax law changes may also cause any significant downturn in housing prices to be more profound, and thus worse, for homeowners.

The rules and applicable impact of this is discussed below.

Mortgage Interest: New, post-Act home mortgages are only going to be deductible for interest on up to $750,000 worth of debt. Prior law permitted deduction of interest on up to $1 million of home mortgages. Mortgages that existed prior to the Act are grandfathered, but if you take out a new mortgage the lower limit may impact many affluent homeowners.

Property Tax: The property tax deduction is greatly restricted. The acronym that is used is ""SALT," State And Local Tax. State and local tax deductions have been capped, meaning a maximum deduction, at only $10,000 per person or married couple, and this will not be inflation indexed. This will impact people who have more than $10,000 in combined personal state income tax, real estate and sales taxes, and reduces the amount of itemized deductions that the taxpayer would have had towards exceeding the new high standard deduction, thus further restricting the number of taxpayers who can itemize deductions, which is discussed below. Some wealthy property owners may set up special trusts and place income producing items into the trusts with real estate to allow for deducting $10,000 per trust per year for property taxes.

Itemized Deductions: As indicated above, taxpayers can only deduct certain "itemizable" deductions if the sum thereof exceeds the "standard deduction" which is $12,000 for a single person, and $24,000 for a married couple filing their income tax return jointly. The itemized deductions include charitable donations, interest expense, real estate subject to the above caps, state and local income taxes also as limited above, and medical expenses exceeding a specified percentage of the taxpayer's adjusted gross income ("AGI"). Some taxpayers will "bunch" deductions by making charitable donations and paying discretionary medical expenses, and to the extent feasible real estate taxes, every few years in order to exceed the standard deduction amount every other year. For example, you might push 2018 deductions off to 2019, and in 2019 accelerate 2020 deductions by prepaying them if permissible.

In other words, even if you had $10,000 in property tax and $10,000 in mortgage interest deductions, and $2,000 in charitable deductions in a married filing jointly situation, assuming no other deductions, you are still going to have the standard deduction which is $24,000 in 2018 for most married homeowners. You get no incremental income tax benefit from all these expenses (including those for your home) as would have been the case under prior law, but you might delay your charitable and real estate tax payments until 2019 and then pay $20,000 in real estate taxes, $10,000 in interest and $4,000 in charity to endeavor to qualify for a $34,000 deduction instead of $24,000 in that year.

<u>Casualty Loss</u>: Casualty loss deductions have been greatly restricted or almost eliminated, unless it is in a disaster zone declared by the federal government. You may want to consider reducing any deductibles on your homeowner casualty policy and increasing the maximum coverage to take into account that there may not be any tax benefits to help you in the event of a fire, flood or other situation.

<u>Moving Expenses</u>: Moving expenses are no longer deductible with a limited exception for military personnel when certain requirements are met.

<u>Economics May Offset Tax Benefit Losses</u>: Overall, these are all significant negative tax ramifications for home ownership. But with the low present October 2018 unemployment rates and a growing economy, increasing home values and a hot stock market, many Americans may nonetheless be bullish on home ownership, but this may change quickly when the next recession may happen, and at that time more people will rent instead of owning because of the tax situation. This may more often be a lifestyle decision than a tax decision, but the average taxpayer will be able to afford less home than before because of the tax savings elimination.

<u>Vacation Homes</u>: Vacation homes are also negatively affected by all this as well. There is certainly a greater cost out-of-pocket to having a vacation home.

<u>Home Office Deductions</u>: More homeowners will consider making sure that they qualify for the office deduction, which requires that the requirements of Code Section 280A are met. There is certainly a greater incentive to have your home-based business to allow a pro-rata portion of what might be otherwise non-deductible tax, interest and other expenses become deductible. If 20% of your home is used for your business, then 20% percent of your property taxes and other things may also be deductible. That is another trend that may change because of all this.

<u>Conclusion</u>: It may be time to re-evaluate your situation to see what your "after tax" cost of home ownership is, and what you might do to improve your situation. This may mean renting instead of buying, because your landlord can afford to give you low rent because of the tax deductions he or she is receiving, converting your personal home to a rental, moving your business or part thereof into the home, and possibly downsizing. You rely on any tax deductions from your home. Make sure that you understand the economics of it before you make a decision. Please remember that while the "median home" in your area may have grown by 3.5% a year on average, these statistics do not take into account that your home gets older every year and therefore may lose part of its value, and that your home will need a new roof, new air conditioning and other items that are not counted in statistical average appreciation figures. While many Americans think that their homes have been their best investments, buy and hold diversified stock and mutual fund investments have more than doubled the rate of return over the past 60 years, and stocks and mutual funds do not need new roofs, or incur real estate taxes.

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Understanding the Attribution Rules Under the 50% or More Common Ownership Provision in the New Section 199A Proposed Regulations

By Chris Denicolo and Brandon Ketron

Prior issues of the Thursday Report have described the new Section 199A Proposed Regulations ("Proposed Regulations") that were released by the IRS in August. The Proposed Regulations provide rules for the aggregation of trades or businesses where separate entities are combined into one "Specified Service Trade or Business" if (a) any trade or business provides 80% or more of its property or services to an entity that is considered as a "Specified Service Trade or Business," and (b) there is 50% or more common ownership between the separate trade or business and the Specified Service Trade or Business. If the Non-Specified Service Trade or Business provides less than 80% of its products or services to a Specified Service Trade or Business that is under common ownership, then only the income attributable to services provided to commonly controlled entities will be aggregated and considered Specified Service Trade or Business income.

This means that the Non-Specified Service Trade or Business providing property or services solely to a Specified Service Trade or Business would be treated as a extension of the Specified Service Trade or Business, which could lead to the Section 199A deduction being unavailable for taxpayers that have taxable income in excess of the thresholds described below.

By further example, if 50% of the income of a Non-Specified Service Trade or Business is attributable to services provided to a commonly controlled Specified Service Trade or Business, and the remaining 50% of its income is attributable to services provided to unrelated entities, then only 50% of the income will be treated as a extension of the Specified Service Trade or Business. The remaining 50% income will be considered Non-Specified Service Trade or Business income, and thus eligible for the Section 199A deduction assuming that the Wage and Qualified Property limitations that apply to taxpayers with taxable income in excess of the thresholds described below are met.

A "Specified Service Trade or Business" is a pass-through entity that operates a trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is a reputation or skill of one or more of its employees or owners.

The owners of any trade or business that is classified as a Specified Service Trade or Business are not entitled to the Section 199A deduction with respect to pass-through income from such Specified Service Trade or Business if their income from all sources exceeds certain income thresholds. For 2018, these thresholds begin at $157,500 for single taxpayers, trusts, estates and married taxpayers filing separately, and $315,000 for married taxpayers filing jointly.

The Proposed Regulations state that, for purposes of the 50% or more common ownership test, any direct or indirect ownership calculated under the attribution rules described under Section 267(b) or Section 707(b) of the Internal Revenue Code will apply. The attribution rules under Section 267(b) and Section 707(b) are somewhat complicated and require that the language of the statute be reviewed for each situation.

Section 267(b) provides that any one or more of the following relationships are considered to be the same owner for the purposes of these attribution rules:

(1) Members of a family (i.e., a spouse, lineal descendants, ancestors and siblings);

(2) An individual and a corporation more than 50% in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(3) Two corporations which are members of the same controlled group;

(4) A grantor and a fiduciary of any trust;

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) A fiduciary of a trust and a beneficiary of such trust;

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(8) A fiduciary of a trust and a corporation more than 50%in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(9) A person and an organization to which Section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual;

(10) A corporation and a partnership if the same persons own --

(A) more than 50% in value of the outstanding stock of the corporation, and

(B) more than 50% of the capital interest, or the profits interest, in the partnership;

(11) An S corporation and another S corporation if the same persons own more than 50% in value of the outstanding stock of each corporation;

(12) An S corporation and a C corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation; or

(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

For example, if Jack is the grantor of a trust, and the 100% owner of a Specified Service Trade or Business, and the trust that he establishes owns a Non-Specified Service Trade or Business which provides 80% or more of its services to the Specified Service Trade or Business, then the attribution rules consider the Specified Service Trade or Business and the Non-Specified Service Trade or Business as being under common ownership. Accordingly, the Non-Specified Service Trade or Business will be considered as an extension of the Specified Service Trade or Business, and the Section 199A deduction will not apply if Jack has income in excess of the income limitations.

As another example, if the Non-Specified Service Trade or Business in the example above is owned by a corporation of which Jack's spouse and children are the only shareholders, and Jack owns 100% of the Specified Service Trade or Business, then the two entities will be considered as having common ownership and will be aggregated into the Specified Service Trade or Business for the purposes of the Section 199A deduction. However, if the Non-Specified Service Trade or Business entity is owned one-third each by Jack and two of his friends, Bob and Bill, then the two entities are not treated as being related under the Section 267(b) attribution rules, and will not be considered as one Specified Service Trade or Business for purposes of the Section 199A deduction.

Section 707(b) contains attribution rules relating to partnerships, and this Section provides that the following relationships are considered to be the same owner for purposes of the above 50% or more common ownership rule:

(A) a partnership and a person owning, directly or indirectly, more than 50% of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than 50% of the capital interests or profits interests.

For example, if Jack owns 50% of a partnership which is a Non-Specified Service Trade or Business, and which performs more than 80% of its services to a Specified Service Trade or Business that is owned 100% by Jack, then the two entities are considered to be related for the purposes of the Section 199A aggregation rules. Conversely, the two entities will not be considered as one Specified Service Trade or Business if the partnership is instead owned 40% by Jack and 60% by his friends, Bob and Bill.

The above attribution rules limit opportunities to take advantage of the Section 199A deduction for Specified Service Trade or Businesses. Careful reading of these attribution rules is necessary to ensure that the deduction will not be lost if a Non-Specified Service Trade or Business is performing services or providing goods to a Specified Service Trade or Business. It remains to be seen whether the Proposed Regulations will be finalized. However, the above attribution rules in the Proposed Regulations do not give taxpayers comfort, as the ability to segregate functions of a trade or business into separate trades or businesses may not achieve the desired objectives if the Proposed Regulations are finalized.

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199A and 1202 Handbook

The Section 199A (and 1202) Handbook, With In-Depth Technical Analysis: an advisor's guide to saving taxes on business and investment income under the 2017 Tax Cuts and Jobs Act.

Also included is Alan's 3 hour webinar detailing the book. Here, we will explain the book page-by-page so that readers can refer to the webinar and scroll thorough the video for the page number one is looking for.

Key topics covered during this webinar include:

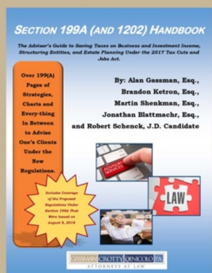
1. C-CORP vs. Flow Through Entities.
2. Players and Moved for the Chessboard of Pass Through Entity Planning.
3. Flow Through Entity Taxation Opportunities.
4. Having Employees vs. Independent Contractors.

Purchase the 199A and 1202 Handbook at https://leimbergservices.com/wdev/agbooks.cfm

Please Contact us at 727-442-1200 with any questions

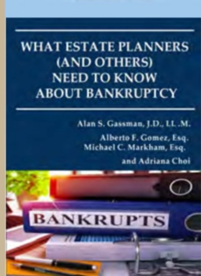
To purchase, please click HERE.

New Tax Laws



Alan Gassman

Don't Miss These Other Great Titles



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Projected Cost of Living Adjustments for 2019 – Anticipated Increases to the Estate Tax Exemption Amount, Standard Deduction Amount, and Other Important Tax Numbers

By Chris Denicolo

The August 2018 Consumer Price Index numbers were recently released, which shines some light on the projected inflation-adjusted figures that apply under the tax law. While the IRS has not yet released a Revenue Procedure to confirm the inflation adjustments that will apply in 2019, the August 2018 Consumer Price Index numbers provide a preview of what to expect for the 2019 numbers.

Specifically, the federal estate tax exclusion amount is projected to increase to $11,400,000 per person. The gift tax annual exclusion for gifts made to non-resident spouses is expected to increase to $155,000, up from $152,000. However, the gift tax annual exclusion amount is projected to remain at $15,000 per person for 2019.

Further, the highest income tax brackets (the 37% tax rate bracket) are expected to begin at the following levels for the various types of taxpayers:

Single = $510,301 (up from $500,001 for 2018)
Married Filing Jointly and Surviving Spouses = $612,351 (up from $600,001 for 2018)
Married Filing Separately = $306,176 (up from $300,001 for 2018)
Heads of Household = $510,301 (up from $500,001 for 2018)
Trusts and Estates = $ 12,751 (up from $12,501 for 2018)

The standard deduction amounts for 2019 are expected to increase as follows:

Single = $12,200 (up from $12,000 for 2018)
Married Filing Jointly and Surviving Spouses = $24,400 (up from $24,000 for 2018)
Married Filing Separately = $12,200 (up from $12,000 for 2018)
Head of Household = $18,350 (up from $18,000 for 2018)

Under the Tax Cuts and Jobs Act of 2017, the Section 199A deduction, (otherwise known as the Qualified Business Income deduction, which has been discussed in several issues of the Thursday

Report), can afford sole proprietors and owners of pass-through businesses a deduction of up to 20% of certain qualified business income. However, for certain trades or businesses that are classified as a "Specified Service Trade or Business" the deduction is not available if the taxpayer seeking the deduction has income from all sources in excess of certain thresholds. Additionally, the Section 199A deduction might be limited in circumstances where the income is derived from a Non-Specified Service Trade or Business, the income therefrom exceeds certain thresholds, and the Non-Specified Service Trade or Business fails to meet tests relating to the amount of wages paid by the business or the basis of specific property owned by the business.

The income thresholds described in the preceding paragraph are projected to increase as follows:

Married Filing Jointly:
Beginning Threshold = $321,450 (up from $315,000 for 2018)
Phase-out = $421,450 (up from $415,000 for 2018)
Married Filing Separately:
Beginning Threshold = $160,725 (up from $157,500 for 2018)
Phase-out = $210,725 (up from $207,500 for 2018)
All Other Taxpayers (including single taxpayers and trusts and estates):
Beginning Threshold = $160,700 (up from $157,500 for 2018)
Phase-out = $210,700 (up from $207,500 for 2018)

The Alternative Minimum Tax exemption also is projected to increase in 2019 as follows:

Single = $71,700 (up from $70,300 for 2018)
Married Filing Jointly and Surviving Spouse = $111,700 (up from $109,400 for 2018)
Married Filing Separately = $55,850 (up from $54,700 for 2018)
Trusts and Estates = $25,000 (up from $24,600 for 2018)

Contribution limits for retirement savings accounts (such as traditional IRAs and Roth IRAs) are projected to increase to $6,000 for individuals under the age of 50 (up from $5,500 for 2018), and to $7,000 for catch up contribution amount for individuals age 50 or more (up from $6,500 for 2018).

As stated above, the above projections will not be finalized until the IRS releases a Revenue Procedure to confirm the numbers that will apply for 2019, which is expected to occur within the next month or so. Nevertheless, the above projections can give clients and their advisors a good idea as to the expected inflation adjustments, which can help with 2018 year-end planning.

Stay tuned to the Thursday Report for confirmation when we release the applicable IRS Revenue Procedure and any deviations from the above.

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Forbes Corner with Alan Gassman

How Long Does The IRS Have To Pursue Tax Fraud?

The Internal Revenue Service has the ultimate Trump card when tax fraud is involved.

The alleged misconduct of the Trump family described in the recent *New York Times* article causes taxpayers and advisors to have concerns with respect to when statutes of limitations run on the IRS's ability to reassess taxes and add interest and penalties when aggressive tax avoidance has occurred.

For the vast majority of tax returns, the statute of limitations runs three years after the return is filed, assuming that there is no “substantial understatement of income,” which is generally 25% of the taxable income reported on the return.

To view the full article, click [HERE]

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Richard Connolly’s World

Insurance advisor Richard Connolly of Ward & Connolly in Columbus, Ohio often shares pertinent articles found in well-known publications such as *The Wall Street Journal*, *Barron's*, and *The New York Times*. Each issue we feature some of Richard's recommendations with links to the articles.

The attached article from Forbes reports:

Why Giving Your Child A Mortgage May Be Better Than Giving Them A House

*….**providing a loan to help a child purchase a new house is a much smarter option than giving them a new house as a gift.** It offers a child the ability to afford a home that would otherwise be beyond their reach. They would be responsible for paying back the loan, but on terms that fit within their budget. From the parents’ perspective, the loan becomes part of their asset allocation and is **protected from potential legal action.***

*In today’s market, where purchasing a first home can be a challenge for many, **providing a home loan between a parent and a child can be a win-win** option for everyone involved.*

To view the full article, click [HERE]

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Humor

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Upcoming Seminars and Webinars

Proceedings from the 44th Annual Notre Dame Tax & Estate Planning Institute

Webinar Presentation

Couldn't attend the 44th Annual Notre Dame Tax and Estate Planning Institute? LISI has the next best thing to being there!

On Tuesday, October 23rd, join program director Jerry Hesch and Notre Dame Institute presenters Alan Gassman, Ed Morrow and Marty Shenkman and for their exclusive LISI webinar where they will provide you with a snapshot overview of all the proceedings from this amazing conference.

As in the past, this year's Institute provided topics focused on income tax planning, planning with non-grantor trusts, addressing new Section 199A, the new Proposed Regulations for 199A and 643(f), elimination or deferral of state income taxes, and much more. With dual sessions, individuals attending the Institute could choose topics relevant to their clients. Here's a quick look at what Jerry, Alan, Ed and Marty will cover:

- Explaining and Planning Through the 199A Minefield
- Using Estate Planning Techniques for Your Client's Income Tax Planning
- Using Non-Grantor Trusts for Estate and Income Tax Planning
- Current Developments of Importance to Estate Planners
- Estate Planning for the Modern Family: Special Considerations and Drafting Tips
- Life Insurance Product Selection, Design and Funding
- Preparing the 706: Traps, Mistakes and Omissions
- Estate and Business Planning for Farm and Ranch Clients: Unique Issues and Traps to Avoid
- Ten Things Every Estate Planner Needs to Know About Subchapter J
- Managing Tax Basis Today for Tomorrow
- Donor Advised Funds, Community Foundations, Private Foundations and 501(c)(4) Charities
- Estate Planning Income Tax, Financial and Personal Objectives
- Ethical and Practical Obstacles in Retaining Important Clients

Prof. Jerome Hesch

Alan Gassman

Edwin Morrow III

Martin Shenkman

To Register for this Presentation, Please Click **HERE** or go to LeimbergServices.com

Tuesday, October 23rd, 2018, 12:30 P.M.—2:00 P.M. EST

There are no professional advancement credits (CPE, CLE, etc.) offered for viewing this webinar.

Calendar of Events

EVENT	DATE/TIME	LOCATION	DESCRIPTION	REGISTRATION
Federal Tax Institute of New England Seminar	October 17-18, 2018	TBA	Asset Protection Techniques for Businesses and Individuals (With No Need for Offshore Trusts)	Contact: Agassman@gassmanpa.com
Leimberg Services Webinar	October 23, 2018, 12:30 PM – 2:00 PM	Gotowebinar.com	Proceedings from the 44th Annual Notre Dame Tax Institute	Click HERE
Las Vegas Life Insurance Conference	October 25, 2018	Las Vegas, Nevada	Dynamic Planning techniques for Cautious Advisors Note-this is a private event	Contact: Agassman@gassmanpa.com
FICPA 2018 University of South Florida Accounting Conference	October 25 - 26, 2018	Barrymore Hotel Tampa Riverwalk	Nuts and Bolts and Creative Planning with Sections 199A and 1202	Contact: Agassman@gassmanpa.com
AAA-CPA Conference	November 5, 2018	Miami, FL	Topics to be Announced	Contact: Agassman@gassmanpa.com
Network Lunch for Venice Chamber of Commerce	November 5, 2018, 12:00 PM – 1:00 PM	Venice, FL	Brandon Ketron will be presenting: *Creative Planning Under Section 199A*	Contact: Agassman@gassmanpa.com
MER Primary Care Conference	November 8-11, 2018	JW Marriott Los Cabos Beach Resort & Spa	1. Lawsuits 101 2. Ten Biggest Mistakes That Physicians Make in Their Investment and Business Planning 3. Essential Creditor Protection & Retirement Planning Considerations. 4. 50 Ways to Leave Your Overhead & Increase Personal	Contact: Agassman@gassmanpa.com

			Productivity.	
Leimberg Information Services Webinar	November 16, 2018	Gotowebinar.com	Dynamic Planning Strategies for the Well Informed Advisor	Contact: Agassman@gassmanpa.com
Mote Vascular Foundation Symposium	November 30 – December 2, 2018	The Westin-Sarasota, 1175 N. Gulfstream Ave, Sarasota, FL 34236	Estate, Medical Practice, Retirement, Tax, Insurance and Buy/Sell Planning – The Earlier You Start, the Sooner You Will Be Secure	Contact: Agassman@gassmanpa.com
Johns Hopkins All Children's Foundation 2019 Estate, Tax, Legal and Financial Planning Seminar	February 7, 2019	TBD	Alan will be serving as moderator and speaking	Contact: Agassman@gassmanpa.com
9th Annual Pinellas County Medical Association Continuing Medical Education Cruise	March 14-18, 2019	Port of Tampa	Biggest Mistakes Physicians Make in Medical Practice	FOR INFORMATION AND RESERVATIONS CONTACT JEN BOLL 727-526-1571 / 1-800-422-0711
45th Annual Notre Dame Tax Institute	October 26-27, 2019	South Bend, Indiana	TBD	Contact: Agassman@gassmanpa.com

Newly announced events in RED

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