



TTI's State Regulatory Affairs Team has created a new series of Quick Reference Charts addressing state-IRC conformity post-TCJA. You can find this series of charts in the [Tax Research Center](#) and on the [TaxQuest QRC](#) Community Board. Both systems require you to sign in with your H&R Block SSO. The series currently includes:

- #1 – State-IRC Conformity - Dates and Recent Legislation
- #2 – State-IRC Conformity – Personal Exemptions
- #3A – State-IRC Conformity – State Standard Deductions
- #3B – State-IRC Conformity – State Itemized Deductions
- #4 – State-IRC Conformity – Casualty and Theft Losses
- #5 – State-IRC Conformity – Employee Business Expenses
- #6 – State-IRC Conformity – §199A, Qualified Business Income Deduction

TAX NEWS

New Guidance on Deductibility of Certain Charitable Contributions Made by Businesses—Rev. Proc. 2019-12 provides a “safe harbor” whereby a business that contributes to a state-sponsored charity in return for a state or local business tax credit may treat the contribution as an ordinary and necessary business expense to the extent of the credit. The contribution must be made by a trade or business operating separately from its owners to a qualified organization pursuant to a state or local tax credit program. The revenue procedure has separate safe harbors for C corporations and passthrough entities. [Page 2](#)

Tesla Reaches Plug-In Electric Vehicle Limitation; Phaseout Starts In 2019—Tesla's sales of qualified plug-in electric drive motor vehicles reached the 200,000-mark in the third quarter of 2018. Under the phaseout rules of §30D taxpayers who purchase and place a vehicle in service during the first two quarters of 2019 will be eligible for a 50% (\$3,750) credit. For the last two quarters the credit is \$1,875. Starting in 2020, Tesla's vehicles will no longer be eligible for the credit. [Page 3](#)

Maximum Value of Employer-Provided Vehicles for 2018—The IRS released Notice 2019-08 giving the maximum value of employer-provided vehicles first made available in 2018 for personal use by employees. These values are used to determine amounts includable in taxable income for employees' personal use of the vehicles. Note that release of the 2018 information was delayed because of TCJA's changes to depreciation rules and the inflation-adjustment formula. Values for 2019 will be published later this year. [Page 4](#)

QUESTION OF THE WEEK

A client and her husband filed separate 2017 returns. Then the husband passed away without paying his outstanding tax bill. Since they filed separately, does the client have any obligation to pay her late husband's taxes? [Page 4](#)

ORIGINAL INSIGHTS

The Gift of Knowledge: Tax implications of giving through 529 plans (qualified tuition plans)—Funding a child's qualified tuition plan for holidays and birthdays can have tax effects. [Full insight](#). View all insights at www.thetaxinstitute.com/insights/.

NEW GUIDANCE ON DEDUCTIBILITY OF CERTAIN CHARITABLE CONTRIBUTIONS MADE BY BUSINESSES

The IRS has released [Rev. Proc. 2019-12](#) providing guidance on the deductibility of charitable contributions made by business entities to state-sponsored charitable organizations in return for state or local business tax credits.

Background

Last August, the IRS issued proposed regulations regarding the deductibility of contributions made by *individuals* to state-sponsored charities. Under the proposal, the IRS concluded that an individual taxpayer who receives a state tax credit for such a contribution is receiving a “quid pro quo” and must reduce his or her federal charitable deduction by the amount of the state tax benefit. For instance, a taxpayer who receives a 70% state tax credit for making a \$1,000 contribution may deduct only \$300 as a charitable contribution at the federal level. See TAX in the News September 12, 2018, for a complete discussion of the proposal.

After the proposed regulations were released, stakeholders questioned how the proposal affects the ability of *business* entities to deduct contributions to state-sponsored charities. The IRS responded that the proposal does not affect the availability to a business of an ordinary and necessary business deduction under §162(a). Following continued questions on this issue, the IRS and Treasury Department have now issued more detailed guidance.

Rev. Proc. 2019-12

Specifically, taxpayers have questioned whether payments made by a business to a state charity in return for a state income, property, or other business tax credit would bear a direct relationship to the business, such that the contribution would be considered an ordinary and necessary business expense. In general, to the extent the business receives, or expects to receive a state or local credit in return for the payment, it is reasonable to conclude that there is a direct benefit to the business in the form of a reduction in the state or local taxes the business would otherwise have to pay.

Rev. Proc. 2019-12 provides separate safe harbors for C corporations and passthrough entities. In either case, the contribution must be made by an entity operating as a trade or business to a §170(c) charitable organization pursuant to a state or local tax credit program.

C corporation safe harbor

If a C corporation makes a contribution to a qualified §170(c) organization and receives or expects to receive a tax credit against the corporation’s state or local tax, the corporation may treat the payment as meeting the requirements of an ordinary and necessary §162(a) business expense to the extent of the credit received or expected to be received.

In the examples provided, a C corporation makes a \$1,000 contribution to a state-sponsored organization and received a dollar-for-dollar credit against the corporation’s state income tax liability. The corporation may treat the entire contribution as an ordinary and necessary business expense.

In a variation on the example, another C corporation makes a \$1,000 contribution and receives an \$800 credit against the corporation’s local real property tax. The corporation may treat \$800 of the contribution as meeting the safe harbor under Rev. Proc. 2019-12. The treatment of the remaining \$200 will depend on the facts and circumstances of the payment.

Specified passthrough entity safe harbor

For this purpose, a specified passthrough entity must meet all of the following criteria:

1. The entity is a business entity other than a C corporation and for all federal income tax purposes is separate from its owners.
2. The entity operates a trade or business.

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3. The entity is subject to state or local tax imposed directly on the entity.
4. In return for a payment to a §170(c) organization, the entity receives or expects to receive a state or local tax credit that the entity applies to offset a state or local tax *other than* a state or local income tax.

If these criteria are met, the specified passthrough entity may treat the payment as meeting the requirements of an ordinary and necessary §162(a) business expense to the extent of the credit received or expected to be received.

In the first example provided, an LLC classified as a partnership makes a \$1,000 contribution to a qualified organization in return for a dollar-for-dollar credit against the partnership's state excise tax liability. Under applicable state law, the excise tax is imposed at the partnership's, rather than the individual owners' level. Accordingly, the partnership may treat the entire \$1,000 payment as an ordinary and necessary business expense.

In the second example, an S corporation with two owners makes a \$1,000 contribution to a qualified organization in return for an 80% (\$800) credit against the S corporation's local real property tax. Under applicable state law, the property tax is imposed at the S corporation's, rather than the owners' level. The S corporation may treat \$800 as an ordinary and necessary business expense.

Whether or not the remaining \$200 is deductible depends on facts and circumstances not having to do with the guidance in the revenue procedure. Also, unlike the C corporation example, the passthrough entity safe harbor would not apply to an expected credit against income tax.

Note, ordinarily passthrough entities report charitable contributions as separately stated items on Schedule K, to be deducted on individual owners' returns. If the entity is making a deductible contribution that is treated as an ordinary and necessary business expense under this safe harbor, presumably, it would be reported as an "other deduction" on page 1 of Form 1065 or Form 1120-S with an explanation of the deduction attached to the return.

Effective date

The guidance in Rev. Proc. 2019-12 applies to payments made on or after January 1, 2018 by a C corporation or specified pass-through entity. The safe harbor does not apply to sole proprietorships or single-member LLCs that do not elect corporate status.

TESLA REACHES PLUG-IN ELECTRIC VEHICLE LIMITATION; PHASEOUT STARTS IN 2019

Taxpayers who purchase a [qualified plug-in electric drive motor vehicle](#) are eligible for a nonrefundable credit up to \$7,500. The credit is claimed on [Form 8936 \(draft 10/5/18\)](#) *Qualified Plug-In Electric Drive Motor Vehicle Credit*.

The §30D credit phases out for a manufacturer's vehicles over a one-year period beginning with the second calendar quarter following the quarter in which 200,000 vehicles made by a manufacturer have been sold for use in the U.S. Vehicles acquired in the first two quarters of the phase-out period are eligible for 50% of the credit. The credit drops to 25% for vehicles purchased in the last two quarters. After that, the vehicle is not eligible for the credit.

According to IRS news release [IR-2018-252](#) and [Notice 2018-96](#), Tesla, Inc. reported that cumulative sales of qualified vehicles reached the 200,000 vehicle limit during the calendar quarter ending September 30, 2018. Therefore, the phase-out period for Tesla is January 1, 2019 through December 31, 2019.

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Taxpayers who purchase and place a qualifying vehicle in service by December 31, 2018 are eligible for the full \$7,500 credit. For the period January 1, 2019 through June 30, 2019 the credit is \$3,750. For the period July 1, 2019 through December 31, 2019 the credit is \$1,875.

Tesla's vehicles will not be eligible for the credit starting January 1, 2020. Go to the [Index to Manufacturers](#) for a full listing of Tesla's and other manufacturer's qualified vehicles.

MAXIMUM VALUE OF EMPLOYER-PROVIDED VEHICLES FOR 2018

The fair market value of an employee's *personal* use of an employer-provided vehicle must be included in the employee's wages as a taxable fringe benefit. If certain requirements are met, the employer can use special valuation rules to determine the FMV of the personal use, such as the vehicle cents-per-mile rule or the fleet-average value rule. However, these special rules cannot be used for a vehicle that, on the first day the vehicle is made available to the employee, has a FMV higher than the applicable maximum value, which is adjusted annually for inflation.

The IRS has announced the maximum value of employer-provided vehicles first made available for personal use by employees in 2018 in [Notice 2019-08](#). Values for 2019 will be published later on this year.

Cents-per-mile valuation rule

Under the cents-per-mile valuation rule, the FMV of the vehicle use is determined by multiplying the number of personal use miles by the standard mileage rate (for 2018, 54.5¢ per mile). The cents-per-mile valuation rule may be used to determine the taxable fringe benefit only if the FMV of the vehicle on the first date it is made available to the employee does not exceed a specified dollar limit (for 2018, \$50,000 for a passenger automobile, truck, or van).

Fleet-average valuation rule

Under the fleet-average valuation rule, an employer with a fleet of 20 or more vehicles (consisting of any combination of passenger automobiles, trucks, or vans) may determine the annual lease value of each vehicle in the fleet as if its FMV were equal to the *average* of the FMVs of all the vehicles in the fleet. The fleet-average valuation rule may only be used to determine the lease value if the FMV of the vehicle on the first date it is made available to the employee does not exceed a specified dollar limit (for 2018, \$50,000 for a passenger automobile, truck, or van).

QUESTION OF THE WEEK

Q. Married clients filed separate 2017 returns in 2018. The husband owed about \$1,000 but passed away without ever paying it. Does his wife, or anyone else, have any obligation to pay this bill?

A. Because the couple filed MFS, there isn't a joint and several tax liability that would exist with a jointly filed tax return. However, the personal representative of an estate is responsible for handling debts owed by the decedent, including IRS debts, before distributing any assets. For example, if the taxpayer had a bank account or stocks in his name, the personal representative may need to use these assets to satisfy the IRS liability before they are transferred to his wife or any other heirs.

If his wife/widow *is* the one handling his estate, however small, she does have that obligation. In addition, the personal representative would need to determine whether a final income tax return for the decedent should be filed for 2018, either because the decedent meets the filing requirements or in order to claim a refund for the decedent. See [Pub. 559](#), *Survivors, Executors, and Administrators* for more information about handling tax matters on behalf of a decedent.