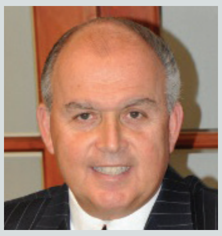
TABLE of EXPERTS

TAX REFORM

The *Albany Business Review* hosted six experts to discuss changes to tax laws and their impact on individuals and businesses. The discussion was moderated by Sierra Kehn of the *Albany Business Review*.

MEET THE PANELISTS



DANIEL A. CIAMPINO, CPA

Managing Director & Shareholder, Staff Ciampino & Company, P.C. | CPAs & Advisors

As managing director of Staff Ciampino & Co. P.C., Daniel A. Ciampino brings over 40 years of experience as a CPA to the firm and has been the leader of the firm since 2001. He holds a B.B.A. degree in accounting from Siena College. In addition to running the firm, Dan's primary focus is to provide business consulting services including forecasts and projections, bank financing, budget and cash flow analysis, internal control analysis, and a myriad of tax-related services that include planning, preparation, compliance and representation before regulatory agencies throughout the region. His areas of expertise are applied to many industries including construction, hotels, restaurants, automotive, wholesale, retail and professional practices. Dan has served on numerous Boards of Committees for charitable organizations and is a member of the American Institute of Certified Public Accountants, the New York State Society of Certified Public Accountants, and DFK International. He is an active member of the Siena College Alumni Association.

GRETCHEN GUENTHER-COLLINS

Partner, Teal, Becker & Chiaramonte CPAs

Gretchen focuses the majority of her time on individual and corporate taxation, including tax planning as well as tax compliance issues. Serving a vast array of industries, she spends a significant portion of her work researching and solving the tax needs of small businesses and individuals. She is licensed to practice accounting and law in New York State. Prior to rejoining the firm in 2017, she was an associate with the firm for seven years, and at the time of her departure was an audit manager. During her 10 year hiatus, she was a full-time accounting professor at the College of Saint Rose and climbed to the rank of interim dean of the Huether School of Business after serving as the accounting department chair for several years. Gretchen has a Bachelor of Science degree from the College of Saint Rose, a Master of Science degree from the College of Saint Rose and a Juris Doctorate from Albany Law School.

PATRICK DIGGIN, CPA

Partner, UHY LLP

Patrick Diggin, CPA, is a managing director of UHY's Saratoga Springs attest and tax practice. He serves entities across various industries in Saratoga Springs, the Albany Capital District, southern Adirondack region, and New York's Tech Valley. Pat concentrates on audit, accounting and tax compliance issues for businesses, not-for-profit organizations, school districts and individual clients. His tax compliance and planning experience relates to business (corporate, partnership, LLC) tax, individual tax, as well as state and local tax, with a concentration in family owned businesses. His extensive audit and attest experience includes serving a diverse client base in the manufacturing and construction industry as well as not-for-profit and governmental entities. Pat is a member of the American Institute of Certified Public Accountants, as well as the New York State Society of Certified Public Accountants. He is also a member of the Saratoga Springs Lions Club.

Does the Tax Cuts and Jobs Act reduce taxes for everyone?

Gretchen Guenther-Collins: The law does not reduce taxes for everyone. In general, you're taking from one bucket to give to another bucket. Based on the tax planning that we've done throughout the year, some taxpayers are owing more, some taxpayers are owing less. Not everyone is saving.

Which changes to the tax laws will have the biggest impact?

Scott Shimick: One of the most exciting new things is Qualified Opportunity Zone Funds. They allow taxpayers to roll over capital gains that they have. They have 180 days from the date of the capital gain event to decide to roll the gain over into a Qualified Opportunity Zone investment. Those Qualified Opportunity Zones are around the Capital Region, they're where you'd expect: Albany's South End and downtown, Schenectady's downtown area, Troy's downtown, up through North-Central Troy, and some of the more poor rural areas, like Schoharie County.

The taxpayers make the investment in the zone and roll over only their capital gain amount, deferring the capital gain. Then, after five years in the investment, they reduce that capital gain by 10 percent. After seven years in the investment, they reduce the gain by 15 percent. And after 10 years, any gain they have on the Qualified Opportunity Zone investment becomes a tax-free gain. They get a stepped-up basis on that investment amount.

Anthony Duffy: One of the most dramatic elements is a change to the Small Business regulations. In many areas of the regulation, a "small business" is now defined as a company with under $25 million average revenue. For a long time, the levels were defined as small being up to $5 million, or in some cases $10 million, with large being over $10 million. Now, $25 million is the benchmark for many "small businesses."

It dramatically affects their elections in areas such as using the cash basis of accounting to report income, accounting for inventory and associated inventory costs, long-term construction contract reporting and interest expense limitations. The potential changes here can be extremely significant, especially for any business with regular trade receivables.

Will the new law have a positive impact on small businesses? And how will the individual taxpayer be affected?

Dan Ciampino: One of the big things for the pass-through entities, especially anyone that is in a trade or business, is the Section 199A deduction. There are specific limits where possibly accountants, attorneys and other specified service trade or business will not qualify unless their taxable income is under $157,500, or $315,000 if filing a joint return. If you are under the taxable income threshold I just mentioned, you essentially qualify for the 20 percent business deduction. It is quite significant; however, it is also complicated. We are waiting for more clarity, but it has been a major benefit for small businesses, including pass-through entities.

From the individual side, it is going to be interesting. Everybody thinks, "I'm going to just take the standard deduction," and that's probably not going to happen. With the state decoupling and the new forms, you can itemize on the state even though you take the standard deduction on the federal.

Patrick Diggin: With the 20 percent-qualified business deduction, guidance is still coming out. And guidance will come out well after the tax season is over with. We're still trying to figure out who does and doesn't qualify for this, and I think the IRS is trying to figure that out as well.

How has the Tax Cuts and Jobs Act evolved in the year since Congress and President Trump passed the law?

Duffy: At first, we had to sift through hundreds of

Standing, left, Scott Shimick, Patrick Diggin, David Wojeski and Anthony Duffy. Seated, left, Daniel Ciampino and Gretchen Guenther-Collins.

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pages of the statute itself and begin to get a handle on all aspects of the new law. Then we received some clarifications during the year related to some items. Moreover, today, we are still waiting for continued guidance. The statute itself was hastily written or put together, just a few days before Christmas 2017. In their haste, they left many questions and areas open for interpretation. The scope and breadth of the changes are quite far-reaching.

Has the IRS issued all the new forms and guidance in the year since the TCJA passed? Has the level of difficulty increased for preparation of tax returns?

Diggin: All the forms have not been issued. We have had guidance issued throughout the year, and that will continue. We'll better understand the level of difficulty as we go through this tax season. We've all done a considerable amount of continuing education, not only for ourselves but for the staff as well. New York has had to respond as well, with new forms that react to the change in the federal law.

Dave Wojeski: We have a compressed tax season already, and with late legislation and the forms not being ready, the compression of the season gets even shorter. The forms probably won't be out until the middle of February.

Ciampino: Due to the lack of guidance and lateness of the forms, we probably will prepare more extensions, just to give us enough time to do the proper job that we have to do.

Have you found any similarities to past tax legislation relative to how you approach tax planning and preparation?

Duffy: Absolutely not. This tax reform, the TCJA, is comprehensive, to say the least. It hits all the traditional bases and affects a wide range of previous legislation. For example, the basic methods used to report business income have changed dramatically – significantly affecting small- and medium-sized companies.

Business depreciation has changed. C-Corporation rates are practically cut in half, down from 36 percent to 21 percent. At least for the next eight years, how income is reported and taxed for most flow-through businesses is significantly changed. And personal, itemized deductions have been completely revamped.

These points represent just the tip of the iceberg. It has forced us to reexamine how we plan and prepare, what we look at, and even how we approach the fundamental process. There is very little corollary to what we have done over the past 30 years. There are parts of this legislation that are very complicated or extremely convoluted.

What about flow-through income being considered partially tax-free? Is this for everybody, with no limits, for any type of business?

Duffy: This is one of the most complex and convoluted aspects of the legislation. There are several hurdles for each business to navigate. This element of the law applies for years through 2025, and then it goes away. This is called the 199A Deduction. It is potentially a 20 percent reduction in a business' taxable income.

However, some business types are excluded, except when personal income levels are less than stated thresholds. Just figuring this requirement out has been a challenge. Even if the business is qualified, the 199A deduction is still limited based on several thresholds, the most significant of which is company payroll. The 199A deductions are readily available to companies that meet determination thresholds including significant payroll, the number of jobs the company creates, and the dollar value of wages.

Has New York state implemented many of the tax changes under the TCJA?

Guenther-Collins: New York is an automatic conforming state until they force decoupling. The state just came out with the list of individual provisions that they are decoupling.

On the individual side, they decoupled from the itemized deductions completely. So, anybody who is asking, "Do I not need to give you my real estate taxes anymore?" That's not the case. All of the state real

MEET THE PANELISTS

ANTHONY G. DUFFY, CPA, ABV, CVA

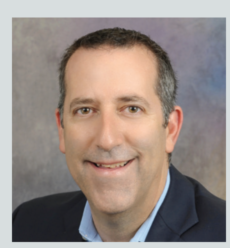
Managing Director, ValuQuest LLC, a division of The Bonadio Group

Tony is the managing director of ValuQuest LLC, a division of The Bonadio Group that provides valuation and litigation support services, along with associated consulting to businesses, individuals and their counsel. For many years, Tony was directly responsible for the audit, accounting, tax and business management services needs of over 200 closely held businesses and their owners. In his role as leader of ValuQuest, Tony has led over 900 business valuation projects, for all types of business transition, as well as litigation support engagements, including expert testimony. Tony is a graduate of Siena College. He is a member of the American Institute of Certified Public Accountants, New York Society of Certified Public Accountants, American Society of Appraisers, National Association of Certified Valuation Analysts, International Academy of Collaborative Professionals and Estate Planning Council of New York State. He is a member of the Board of Trustee Audit Committee at Siena College.

SCOTT D. SHIMICK

Partner, Whiteman, Osterman & Hanna LLP

Scott Shimick is a partner with Whiteman Osterman & Hanna and a member of the firm's federal and state taxation, and business, corporate and commercial practice groups. For the past 15 years, Scott has been advising businesses on various tax planning strategies and representing clients before the IRS and the New York Department of Taxation and Finance with respect to audits and litigation. Mr. Shimick's tax planning includes developing strategies for clients in mergers, acquisitions and business dispositions, as well as advising on Qualified Opportunity Zones. Scott is admitted to practice in New York and before the U.S. Tax Court and the U.S. District Court for the Northern and Western Districts of New York.



DAVID M. WOJESKI, CPA

Founder and Managing Partner, Wojeski & Co. CPAs P.C.

Dave Wojeski is the founder and managing partner of Wojeski & Co. CPAs P.C., a full-service, regional accounting firm located in the Capital District of New York state. The firm, which celebrated its 25th year in business in 2016 and employs over 30 staff, provides services including audit, tax, mergers and acquisitions, and other consulting services to a broad range of clients. Specialty areas include construction, technology, credit unions and nonprofits. Dave is also a founding partner in Greenbush Financial Group LLC, Valuation Resource Group LLC, and CFO Advisory Group. He has substantial experience in advising closely held companies on tax planning, corporate structure, and merger, acquisition and equity related strategies. Dave started his career working for a "Big 4" accounting firm and graduated summa cum laude with a B.S. degree from the State University of New York at Albany.

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estate taxes, the miscellaneous itemized deductions, all of those provisions, they are decoupled.

New York also did not follow the 199A deduction because it is after Adjusted Gross Income deduction, and so that doesn't come through for New York.

Have we seen anything like this before?

Duffy: The closest comparable legislation I can recall is during the Reagan administration, when we had dramatic shifts in targeted transaction. Flow-through entities gained popularity and tax shelters went out. "Passive activity" concepts evolved, as did class life depreciation. Investment Tax Credit faded away. It was a time when we, as an entire professional industry, had to re-learn some very fundamental tax concepts.

Do the tax law changes have a favorable impact if you're considering selling your business?

Wojeski: It looks like it. Any time there's more cash flow, which there should be after tax under the new legislation, it drives that type of activity. In addition, tax compliance has become so much more difficult for a smaller company, that a lot of people are just getting tired of compliance, especially dealing with sales tax and the ever-changing definition of state nexus. Sales tax and income tax are driving small companies to have a real difficult time with compliance and the resources it consumes. The economy's been decent too, which of course helps. And overall, any time there's change, it creates activity.

Shimick: The new C-corp rates are an actual opportunity for some that are succession planning from one generation to the next. It's a way, at a 21 percent federal rate, to protect that money. Instead of paying income at 37 percent, converting your entity to a C-corp and passing the stock along to the kids after you die, you can hold that money in the corporation and keep reinvesting it after paying tax at a 21 percent tax rate instead of at potentially higher personal income tax rates.

With the maximum corporate tax rate being reduced from 35 percent to 21 percent, will it make sense for S-corporations to convert to C-corps?

Ciampino: It depends. The 199A deduction is a big factor in this decision. The other thing you will have to look at is if you are willing to leave money inside the business (C-Corp) and let it grow. Most of the smaller companies are not willing to leave the money in.

Guenther-Collins: We have a client who did convert, but it was a couple of months of analysis and discussion and planning: "What do you want to do in 10 years? Is it going to make sense in 10 years? Estate-wise, what do you want to do?" We had to really look at those types of things.

The new tax law has been touted as a simplification in the tax code. Are there any areas of the tax law that missed the simplification mark?

Guenther-Collins: Yes. It was not nearly as simple as what it was touted as. Even the 199A was not simple. The 20 percent tax deduction for the small businesses was not simple, and the compliance on that is high for a small business that may not necessarily be able to completely afford the compliance cost.

The changes in the interest expense rules are not simple. Even though they touted the tax return as a postcard, it's more complicated. A person who's doing his or her own taxes is going to find that form to be more cumbersome than it was previously.

A good deal of some substantive regulations related to code §965 didn't really get issued until April 13. And half of the people that we had filed had already complied, but then the regulations came out and things that we thought were true were not. And then we had to deal with that and figure that out. Overall, there are many areas where it was not nearly as simple as it was touted as.

Shimick: Looking at it from a New York perspective, we were penalized by this tax legislation – New York, California, New Jersey – specifically targeted. If you're in Florida or Texas, it's absolutely much simpler if you file your tax returns, and it's a win-win on all accounts if you're in a low-tax state.

Take, for example, the State and Local Tax Deduction limitation. If you're in Florida and you have a $400,000 house, your taxes are $4,000 or $5,000 a year on a pretty nice house and you don't have any state income taxes. You're never going to reach that $10,000 limit. You don't have to file a state tax return, so there's not going to be any decoupling.

Have you seen impact on your clients because of the SALT deduction?

Wojeski: I don't think people will really see it until they file their current returns. I would say a large portion of the middle class is probably going to utilize the standard deduction because mortgage rates have been low for so long. The trade-off was obviously lower rates, and if you have a pass-through business, you're getting a benefit there as well.

For some people, it probably is not really going to have an impact because they weren't getting the benefit of the SALT deduction previously due to the prior Alternative Minimum Tax rules.

What are you telling your clients regarding 2019 fees for service and time constraints?

Ciampino: Most clients will not have 100 percent of their information as a result of delayed delivery of K-1s and 1099's. We are encouraging them to send their information in early. We will be preparing their returns on a first in, first out basis and will be making the decision to extend returns sooner than previous years.

Due to the new law changes, many new client questions will be required to be asked. This will add to the preparation time and as a result, an increase in the fees charged to the client.

We have told them that we feel that there is going to be increases in fees. We will adjust our minimum fees to create clarity and transparency so that it is not like we are "selling someone the windows" and then requiring them to also "put on new siding" at the same time. However, we realize we cannot be everything to everyone even though we want to be.

Diggin: I have some concern where the media is saying tax rates have gone down, so everybody's taxes will be going down. There's a concern on our end when our clients actually see their completed 2018 tax return, that, even though their total tax may have been reduced, they may actually owe this year when they didn't owe last year because their 2018 payroll withholdings were adjusted downward as well.

Will the changes in the residential mortgage interest deduction impact the real estate market and also hurt the taxpayer?

Wojeski: It's probably not hitting the majority of individuals, but people do buy second residences based on what they can afford after tax. As such, I've had a couple discussions with people looking for vacation homes.

Is it going to hit the market a lot? Probably not. I think it's more around the fact that the standard deduction has been raised. People who were buying first time homes were counting on saving from that mortgage deduction, which is going to be irrelevant now because they're probably not going to itemize.

Can you explain how the $10,000 cap on the deduction for state and local income taxes and real estate will affect taxpayers?

Diggin: The standard deduction was raised to $24,000 if you're married and filing a joint return. Individuals who are 65 or older or a blind individual, are eligible to increase their standard deduction by an extra $1,300 per person. Because we're in a high-tax state, unlike Florida or Texas or others, I would imagine most of our client base hits that $10,000 number fairly quickly.

Now, with the changes in the tax law, you're capped. Most people don't qualify for the medical deduction, so your potential for itemizing deductions are down to the amount of your charitable contributions and mortgage interest. A lot of our questions this planning season have been in the charitable contribution area: "If I make a charitable contribution of X, what does that do for me under the new tax law?"

And we'll see, as it relates to charities themselves, what that has meant to their asset base and donations.

Shimick: A lot of my clients are not-for-profit entities, and they don't really know what the impact's going to be. December is the big push for year-end donations, so it's going to be this month or next month when they finally compare the budgets and sit down with their boards and see that donations were down 20 percent or 30 percent.

Diggin: And it could be an impact that may take more than just a year to feel because some clients were making their 2018 and 2019 charitable contributions in 2018 in order to exceed the new standard deduction amount.

Wojeski: People don't feel right not sending that favorite charity a check regularly, especially churches. People who go to church don't want to stop putting the envelope in the basket. We've been looking at some donor advised funds to help people so that they can have the donor advised fund pay the charity on a regular basis. It's psychologically hard not to make an annual or more frequent donation for people who are used to it.

Diggin: Some older clients are taking required minimum distributions from their IRAs and using that money to make a direct contribution to their charity. That's one way of getting around the itemized deduction and still gaining a deduction or exclusion from income on your tax return.

What provisions of the new law have not gotten as much press but will have a significant positive or negative impact?

Wojeski: The Qualified Opportunities Program I mentioned earlier is a big one. There are still some holes in that program, but generally, I think that's a big win. There's also curiosity around alimony and what will happen with alimony settlements.

Shimick: They took effect as of New Year's Eve. If you enter into that agreement today, it's no longer deductible alimony.

Guenther-Collins: That's on the federal level. But New York is still requiring the income and the deduction. They decoupled from that, so our clients are going be, "Oh, I don't need to tell you that info." Actually, you do.

Wojeski: There's no recent history for looking at how to split that income. And it was basically a way to shift income from a higher-income spouse to a lower-income spouse, so the change in law probably makes sense. It comes down to how they're going to implement it to get divorces to settlement because you've always relied on a certain tax deduction happening.

Ciampino: I think one of the items that estate attorneys may be dealing with is the doubling effect of the estate tax limit. It is now $11,180,000 per spouse. You are talking $22,360,000 for a husband and wife in an estate. Therefore, I think this decreases the need for life insurance policies and life insurance trusts.

Any final thoughts on what is happening and what is to come?

Guenther-Collins: One thing that we didn't necessarily talk about is the change in the interest expense deduction. At first, because there were so many exceptions to it, we were thinking, "OK, this isn't going to affect as many businesses as we thought it would." But now that we're in planning, we are realizing that it is applicable to more businesses than what was the original thought when we first read the law.

Where you're limited on your interest deduction to 30 percent of basically an EBITDA calculation for right now, it changes to an EBIT calculation later. We're having some significant discussions with the clients that originally we thought were not going be involved, and now they are. I think that that's an area that is getting missed sometimes in planning, and it's affecting more people than we originally thought.

Shimick: I'm interested to see the impact it'll have on the Capital Region in two ways. We talked about the Qualified Opportunity Zones. Is that going to drive up property values and help property tax bases in cities like Albany, Schenectady, Troy, so that they can reduce their school taxes or increase the amount of money that's going to the schools within the city limits? Because that's where the zones really are.

On the flip side, is it going to hurt the suburban communities? There's always been a pressure to move to Florida and for people that change their residency, but this is just another layer on top of that. Maybe Florida or Texas or Arizona or whatever southern state they're spending their winters in becomes more attractive and they're thinking, "We've lost the deduction on our real property taxes on both houses now, so maybe we'll just sell the one up here.

Diggin: One area that didn't really get a lot of attention in the media, but one we're all obviously aware of, is the write-offs that businesses can garner from qualifying property. There's a Section 179 expense, for which the $510,000 limitation was raised to $1 million in 2018. Also, until 2022, bonus depreciation for qualifying assets is 100 percent. So, in essence, if you buy a piece of equipment or other qualifying asset, you may be able to write it off in the year in which it is placed in service. That's an acceleration of a benefit for small businesses. For the small, closely held businesses, a lot of equipment gets purchased and placed in service before December 31st to try to garner that deduction.

Ciampino: One of the areas I wanted to talk about was sole proprietors and partnerships that do not have payroll. When it comes to the Section 199A deduction, if you are under the taxable income threshold limits, payroll doesn't come into play. However, once you get into the phase out zone (excess of $157,500 or $315,000 if filing a join return), you start to phase out of this opportunity because there are a couple of limitations, one of which involve payroll.

If you do not have payroll, your guaranteed payments for partnerships do not count. Obviously, because a sole proprietor may not have payroll, it may be a smart move from a tax perspective to change them to an S-Corp and then, because the definition is W-2 wages, it does not exclude the shareholder (with W-2 wages) from taking the Section 199A deduction.

Once you are in the phase out zone or in excess of $207,500 or $415,000 (if filing a joint return), it will make sense to look at becoming an S-Corp with shareholder wages. This will allow the tax benefit of Section 199A to continu

"One of the most exciting new things is Qualified Opportunity Zone Funds. They allow taxpayers to roll over capital gains that they have. … Those Qualified Opportunity Zones are around the Capital Region, they're where you'd expect: Albany's South End and downtown, Schenectady's downtown area, Troy's downtown, up through North-Central Troy, and some of the more poor rural areas."

SCOTT D. SHIMICK, Partner, Whiteman, Osterman & Hanna LLP

TRANSCRIPT LIGHTLY EDITED FOR SPACE AND CLARITY.

Thank you to our participants

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