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AMT Reduction Strategies After Tax Reform: Identifying AMT Risks and Planning to Avoid AMT

THURSDAY, JANUARY 10, 2019, 1:00-2:50 pm Eastern

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AMT Reduction Strategies After Tax Reform: Identifying AMT Risks and Planning to Avoid AMT

THURSDAY, JANUARY 10, 2019

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**Identifying AMT Risks
and Planning To Avoid
AMT**

**TCJA Changes to the
AMT Regime, Credits
and Carryforward
Calculations, and
Reporting on Forms
6251 and 8801**

Presented By

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January 10, 2019

Timothy Speiss, Partner-in-Charge National Personal Wealth Advisors Group



Tim is the Partner-in-Charge of the firm's National Personal Wealth Advisors Group, and Co-Chair of the firm's Asia Practice Group, the New York Tax Practice, and Tax Legislation Monitoring Group. He has served two terms on the firm's Executive Committee. He was a co-founder of the firm's the community service group, EisnerAmperCares. Tim has more than 30 years of experience, including service at a Big Four accounting firm, in providing comprehensive tax planning and related investment, compensation, and financial planning services to senior executives and board members of Fortune 100 publicly held companies, Forbes 400 families, and privately held businesses and owners, including celebrities and owners of professional sports teams.

Tim is a registered Investment Advisor Representative (IAR) with successful completion of the Series 65 exam, cited as the Uniform Investment Adviser Law Examination as administered by FINRA, the Financial Industry Regulatory Authority. The exam covers laws, regulations, ethics and topics such as estate and trust planning, retirement planning, portfolio management and investment plan design and strategies, and fiduciary responsibilities. He is also Personal Financial Specialist (PFS), as credentialed by the American Institute of Certified Public Accountants (AICPA) of which he is member. Tim is a licensed Certified Public Accountant in New York, and is also a member of the New York, New Jersey and Pennsylvania CPA State Societies. He is also a member of the Huzhou China Institute of Certified Public Accountants. Tim is a frequent speaker, author, media commentator, and university lecturer on topics of tax and financial and investment planning, executive compensation, charitable giving, and additional matters.

SPECIALTIES

- Individual Taxation & Planning
- Compensation-Related Tax Planning
- Estate & Trust Taxation & Planning
- Philanthropy & Charitable Giving
- Investment Advisory Services
- International Wealth Advisory Services

CREDENTIALS/EDUCATION

- Certified Public Accountant (CPA)
- Personal Financial Specialist (PFS)
- Widener University: BS, Business; MS, Taxation

AFFILIATIONS

- United States Foreign Policy Association
- Widener University School of Business: Advisory Board
- Timothy Speiss Endowed Fund For the Promotion of United Nations Responsible Global Business Principles at Widener University
- Co-Founder Harlem Academy and Member of the Audit Committee; Past Trustee member of the Finance & Development Committees
- Abingdon Theatre Company, Past Board Chair (Manhattan)
- Alliance for Lupus Research: Corporate Development Committee
- Bishop McDevitt High School: President's Advisory Board Chair



Evan Waxman, Director Personal Wealth Advisors Group



Evan Waxman is a Director in EisnerAmper LLP's Private Business Services Group. Evan has over 20 years of experience advising clients in the areas of business taxation, individual and trust income tax and estate tax compliance. Clients include corporations and partnerships, family offices and ultra-high net worth individuals, including U.S. and foreign professional athletes, entertainers, fashion models, corporate and media executives, entrepreneurs and investors; as well as their agents and advisors. Evan's expertise also includes advising closely held entities such as S corporations, partnerships, limited liability companies and private foundations.

Evan co-chairs the firm's Athletes and Entertainment Practice. As a recognized expert, he has advised professional athletes on tax matters relating to defining and maintaining or changing a tax home and tax domicile in order to resolve the identification of where an athlete resides for state income tax purposes. Evan also advises on state income sourcing and apportioning specific to duty days, in connection with contract negotiations relating to performance and signing bonuses.

In addition to tax compliance and advisory services, Evan has extensive experience with tax controversy matters, representing clients before the IRS, California Franchise Tax Board and the New York State Department of Taxation and Finance. Examinations include negotiating settlements, counseling clients with installment agreements and offers in compromise, and state and local tax issues related to residency and domicile. Evan is a frequent author on topics of tax and financial planning, appearing in the Journal of Multistate Taxation and Incentives, and has been quoted by various media outlets. He is involved with several philanthropic organizations and serves on the advisory board of a scholarship fund.

SPECIALTIES

- Private Business Services
- Professional Services
- Individual Taxation & Planning
- Estate & Trust Taxation & Planning
- Philanthropy & Charitable Giving
- Family Office Services
- International Wealth Advisory Services
- Athletes Entertainers & Fashion Models

CREDENTIALS/EDUCATION

- Certified Public Accountant (CPA)
- Personal Financial Specialist (PFS)
- Hofstra University: BA, Accounting; MS, Taxation

AFFILIATIONS

- American Institute of Certified Public Accountants
- New York State Society of Certified Public Accountants



AMT Reduction Strategies After Tax Reform: Risks And Planning to Avoid AMT

1. Introductions and Opening Observations
2. Overview of Course Agenda
3. Discussion of Agenda Topics; and Detailed Observations In Separate Outline; AMT Case Study; Examples of Special AMT Circumstances and Planning
4. Closing Comments



Course Agenda

A. AMT Reduction Strategies After Tax Reform

1. Structure of AMT and Identifying AMTI Triggers
2. Impact of Tax Reform on AMT
3. Tax Preferences, Adjustments, and Exemptions to Calculate AMTI
4. The 2018 Standard Deduction and Itemized Deductions
5. Completing Form 6251 (Case Study For 5. and 6.)
 - i. Calculating AMT Credit Carryforwards
 - ii. Reporting Credit Carryforward on Form 8801
6. Tax Planning Strategies to Reduce Overall Tax Cost Impact of AMT
 - i. Income Timing Plans Such as Multi-Year Cash Outs of ISOs
 - ii. Whether to Prepay Certain Tax Bills Not Deductible for AMT
 - iii. Possible Acceleration of Income Into an AMT Year



Course Agenda

B. Additional AMT-Related Topics: Benefits

- 1. How Tax Reform's Elimination of Certain Deductions and Personal Exemption Amounts Narrowed the Reach of Taxpayers Subject to AMT**
- 2. AMT Triggers and Planning Steps (Including Timing Decisions)**
- 3. Current AMT Rates, Exemptions, Adjustments, and Preferences for Individual Taxpayers**
- 4. Determining The Proper Treatment of Capital Gains, NOLs, AMT Carryover and Other Aspects**



Course Presentation:

A. AMT Reduction Strategies After Tax Reform: See Outline

1. Structure of AMT and Identifying AMTI Triggers

- A Brief History of the Alternative Minimum Tax (AMT)
- 2017 Tax Reform: Significant Changes, Reforms, Credits, Rates

2. Impact of Tax Reform on AMT

- Simplification
- Reduction of Distortions in the Tax Code
- Approximately 28.5 Million Taxpayers Will be Advantaged With the Standard Deduction, Compared to Itemizing Deductions
- Limitations on Certain Itemized Deductions – Mortgage Interest, State and Local Taxes Paid
- Annual Impact on Federal Revenues and Post 2025 Impact. If Permanent, \$115 Billion Revenue Reduction (Before Adjustments For Inflation, Economic Growth, Population Income, Other Factors)



Course Presentation:

A. AMT Reduction Strategies After Tax Reform: See Outline

3. Tax Preferences, Adjustments, Exemptions to Calculate AMTI

- AGI is the Base of the Individual Tax
- Post AGI, Reductions For Exclusions and Deductions; Credits
- Prior to the TCJA, the Tax Code Included Provisions to Reduce Households' Income: The Standard Deduction, Child Tax Credit, Personal Exemption
- Reduced Cost of Tax Compliance and the U.S. Economy
 - A Significant Motivation For the TCJA
 - The Tax Foundation, Office of Information and Regulatory Affairs, the Bureau of National Statistics Estimates
 - \$100 Billion, and 2.6 Billion Hours



Course Presentation:

A. AMT Reduction Strategies After Tax Reform: See Outline

4. The 2018 Standard Deduction and Itemized Deductions

- **Prior to the TCJA: The Standard Deduction, Child Tax Credit, Personal Exemption**
 - **Standard Deduction: \$12,000 and \$24,000 in 2018 (Previously \$6,500 and \$13,000)**
 - **Personal Exemption Eliminated, Replaced by a Standard Deduction**
 - **Expanded Child Care Credit**



Course Presentation:

A. AMT Reduction Strategies After Tax Reform: See Outline

4. The 2018 Standard Deduction and Itemized Deductions, *Continued*

- The Joint Committee on Taxation (JCT) Estimates Itemized Filers Will Decrease to 18 Million in 2018 (46.5 Million in 2017)
 - 88% of 2018 Filers Will Use the Standard Deduction
 - The Number of Filings Reflecting Itemized Deductions Will Decrease by 75%, for Those With Income Between \$20,000 and \$30,000
 - For Filers with Income Over \$100,000 63% Will Not Itemize in 2018. For Those with Income Over \$500,000 Non-Itemizers Will be 50%



Course Presentation:

A. AMT Reduction Strategies After Tax Reform – Case Studies

5. Completing Form 6251 (Case Study For 5. and 6.)
 - i. Calculating AMT Credit Carryforwards
 - ii. Reporting Credit Carryforward on Form 8801

6. Tax Planning Strategies to Reduce Overall Tax Cost Impact of AMT
 - i. Income Timing Plans Such as Multi-Year Cash Outs of ISOs
 - Equity Compensation: Regular Tax and AMT - Example
 - ii. Whether to Prepay Certain Tax Bills Not Deductible for AMT
 - iii. Possible Acceleration of Income Into an AMT Year



Regular Tax Not AMT: Actual Case Study - Hypo Ventures LLC

Restricted Stock Units (RSUs): 2018 Grant & Vesting of RSUs

				I	II	Assume Cash Paid To Fund Tax	III
				C X D	C X E	(Or Shares Withheld) to Fund Tax	Alternative - Sell Shares to Pay Tax F Minus G
A	B	C	D	E	F	G	H
<u>Grant Date</u>	<u>Vest Date</u>	<u>Number of RSUs</u>	<u>Value at Grant</u>	<u>Value At Vesting Date</u>	<u>Vested Taxable Income</u>	<u>FIT Due & Paid</u>	<u>Shares Remaining Pre State/Local/Other</u>
1/2/2018	3/2/2018	2,500	\$ 9.13	\$ 11.87	\$ 29,673	\$ 9,495	\$ 20,177
1/2/2018	3/2/2019	2,500	\$ 9.13	\$ 12.78	\$ 31,955	\$ 10,226	\$ 21,729
1/2/2018	3/2/2020	2,500	\$ 9.13	\$ 13.70	\$ 34,238	\$ 10,956	\$ 23,282
Totals		7,500			\$ 95,865	\$ 30,677	\$ 65,188
\$ 110,245	2021 Value						
\$ 126,781	2022 Value						
\$ 146,000	2023 Value						

* Taxable For Regular Income Tax purposes (W-2, Withholding Tax, No AMT)

Note: The 2017 top marginal income tax rate of 39.6% applied to taxpayers with taxable income of \$418,400 and higher for single filers and \$470,700 and higher for married couples filing jointly.



Regular Tax Not AMT: Actual Case Study - Hypo Ventures LLC

The 2018 top income tax rate of 37% - taxpayers with taxable income of \$500,000 and \$600,000 for married couples filing jointly.

In 2018, the 28% AMT (Alternative Minimum Tax): income over \$191,500 for married taxpayers; \$95,750 for single individuals).

* 2018 Regular	Individual Taxable	Joint Taxable	2018 Tax at Vest	2019 Tax at Vest	2020 Tax at Vest
<u>Individual Rates</u>	<u>Income</u>	<u>Income</u>	<u>Column G - Tax</u>	<u>Column G - Tax</u>	<u>Column G - Tax</u>
24%	\$82,501 - \$157,500	\$165,000- \$315,000			
32%	\$157,501 - \$200,000	\$315,501 - \$400,000	\$ 9,495	\$ 10,226	\$ 10,956
35%	\$200,001 - \$500,000	\$400,001 - \$600,000			
37%	Over \$500,000	Over \$600,000			

** The 2017 Individual Federal Tax Legislation is in Place for Five Years - 2022 (certain provisions to 2023). The Corporate Provisions are Permanent



Regular Tax Not AMT: Actual Case Study - Hypo Ventures LLC

IRC Sec 83(b) Election

		2018 Tax at Sec 83(b) Election	
		Column D - Tax	
C.	IRC Sec. 83(b) Election <i>Filing</i> , Due Within 30 Days of Grant; Tax Measured at Grant, Taxed in the Year of Grant; 7,500 Shares at \$9.13	\$ 68,475	(A)
	2018 Federal Tax Due Related to IRC Sec 83(b) Election - Paid From Separate Funds - 32%	\$ 21,912	(B)
D.	5 years after the date of grant (2023), the 7,500 Shares Are Worth \$146,000	\$ 146,000	(C)
	Less Value of the Shares At The Time of the 83(b) Election (Tax Basis/Cost of Shares)	\$ (68,475)	(A)
	Post Sec 83(b) Election Appreciation (Current Value \$146,000 less Grant Date Value \$68,475 (7,500 options X \$9.13)	\$ 77,525	(D)
E.	Sale of Shares - 2023 - The Then Current Value	\$ 146,000	(C)
	Less Cost Basis - Value at the Time of the Sec 83(b) Election (Income Taxed - See (A))	\$ (68,475)	
	Gain	\$ 77,525	(D)
	Less Tax Due on Sale - Gain - 2023 (20% + 3.8%) - Tax on (D)	- \$ 18,451	(E)
	Less Due on Sec 83(b) Election - (B) - 32%	- \$ 21,912	
	Net Proceeds	\$ 149,461	(C)-(B)- (E)
F.	Net Proceeds in 2023 (Sale) Without Sec 83(b)	\$ 146,000	
	Basis At Vesting - Taxable Income	\$ -	
	Net Proceeds Net of Basis	\$ 146,000	
	Less Tax Due on Sale - Gain - 2023 (20% + 3.8%)	\$ (34,748)	
	Net Proceeds	\$ 111,252	



AMT Not Regular Tax: Actual Case Study - Hypo Ventures LLC

2018 Exercise of Incentive Stock Options (ISOs)

B. Grant, Exercise and Taxation

- The 2018 top regular income tax rate of 37% applies to taxpayers with taxable income over \$500,000 for single filers and \$600,000 for married couples.
- In 2018, the 28% AMT rate applies to excess AMTI of \$191,500 for all married taxpayers (\$95,750 for unmarried individuals).
- The below table cites tax rates for taxable income at the 24% rate and above. The 22%, 12%, and 10% rates apply to income below the 24% rate

2018 Regular		Individual Taxable		Joint Taxable
<u>Individual Rates</u>		<u>Income</u>		<u>Income</u>
24%		\$82,501 - \$157,500		\$165,000- \$315,000
32%		\$157,501 - \$200,000		\$315,501 - \$400,000
35%		\$200,001 - \$500,000		\$400,001 - \$600,000
37%		Over \$500,000		Over \$600,000



AMT Not Regular Tax: Actual Case Study - Hypo Ventures LLC

2018 Exercise of Incentive Stock Options (ISOs)

A. Example of Incentive Stock Options Grant, Exercise and Taxation

				I C X D			II C X F	III G - E *
A Grant Date	B Exercise Date	C Number of ISOs	D ISO Exercise Price	E Total Exercise Price	C Number of ISOs	F Stock/Share Value	G Total Stock/Share Value	H Taxable Income AMT Form 6251
3/2/2015	5/12/18	3,960	\$ 9.13	\$ 36,155	3,960	\$ 33.45	\$ 132,462	\$ 96,307
3/2/2015	5/17/18	304	\$ 9.13	\$ 2,776	304	\$ 31.50	\$ 9,576	\$ 6,800
3/2/2015	5/21/18	457	\$ 9.13	\$ 4,172	457	\$ 34.30	\$ 5,675	\$ 11,503
Total Alternative Minimum Taxable Income (AMT) - ISO EXERCISE INCOME NOT TAXABLE FOR REGULAR TAX *								\$ 114,610

**Not Taxable For Regular Income Tax purposes (Not Taxable Income Reported on Form 1040, Page 1)*



Additional Considerations and Opportunities

- Equity Grant Acceleration Provisions – “Triggers”
- IRC Section 409A – Reasonable Valuation Method
- Percent of Value Equity Grant Represent
- Founder Shares - Rights Different From Other Equity Interests in a Company
- IRC Section 1202 – Qualified Small Business Stock and Gain Exclusion – 10 Times The Taxpayer’s Basis in the Stock
- IRC Sec 1244 – Small Business Stock
- Additional Matters



AMT Reduction Strategies After Tax Reform: Risks And Planning to Avoid AMT

Closing Comments.

Thank You.



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