



Rabkin & Johnson Current Legal Forms with Tax Analysis, Pub. #00240, updated four times per year—The 2018 releases featured revisions to incorporate changes in the tax code from the 2017 tax act.

Chapter 1, “Partnerships”: The law relating to partnership audits has been dramatically changed. The long-standing rule that adjustments of partnership items are to be made at the partner level has been replaced, effective for tax years beginning after December 31, 2017, with the rule that the IRS will assess and collect any understatement of tax, interest and penalties at the partnership level. Changes were made throughout this chapter to reflect that change in audit procedures. It is now a “partnership representative” rather than a “tax matters partner” who represents the partnership in the audit.

Chapter 8, “Revocable Trusts”: Discussions in this chapter of estate and gift tax planning were updated with references to the temporary exemption increases for tax years 2018 through 2025 enacted as part of the Tax Cuts and Jobs Act of 2017. The chapter was also augmented with a discussion of specific state laws relating to surviving spouse election rights against assets placed into a funded revocable trust prior to death.

Chapter 14, “Stock Options and Other Incentive Plans”: The Supreme Court decision in *Digital Realty Trust v. Somers*, 138 S. Ct. 767 (2018), construing 15 USC §78u-6 and limiting Dodd-Frank’s anti-retaliation protections to whistleblowers who reported securities violations to the SEC. The Court thereby rejected the SEC’s interpretation extending protection to internal whistleblowers. In the securities fraud area, the Ninth Circuit defined “ultimate issue” in loss causation for claims under Section 10(b) of the Securities Act and Rule 10b-5 in *Mineworkers’ Pension Scheme v. First Solar, Inc.*, 881 F.3d 750 (9th Cir. 2018). In *Lorenzo v. SEC*, 872 F.3d 578 (D.C. Cir. 2017), the D.C. Circuit defined the interplay between Rule 10b-5(a), (b) and (c), holding that an individual may be found to violate Rule 10b-5(a) and (c) where he or she produces false statements to potential investors with scienter, even though not technically the “maker” of the statements.

Chapter 16, “Corporate Reorganizations and Liquidations”: A description was added to this chapter of a temporary pilot program instituted by the IRS in the fall of 2017 which expands the scope of private letter rulings that can be obtained on the issue of whether certain reorganization transactions qualify for tax-free treatment.

Chapter 20, “Real Estate Entities”: Under the 2017 tax act, a new 20% deduction may be claimed by a business owner for income, including REIT dividends, that flows through to the owner from a pass-through entity such as an S corporation or a limited liability company. This chapter was revised to identify that deduction as an additional benefit that can be realized by using a flow-through entity to own income-producing real estate.

Chapter 21, “Sales and Exchanges”: This chapter was updated to include discussions of the new residential mortgage and home equity loan interest deduction rules enacted as part of the 2017 tax act. That act also modified the depreciation deduction rules for qualified improvement property and the like-kind exchange rules, and those changes were made to the chapter.