Happy New Year to all Section members! It appears that 2018 will be a dynamic year for all of us beginning with the new federal tax law, “Tax Cuts and Jobs Act,” signed by the President into law on Dec. 22, 2017 that kicked in on Jan. 1, 2018 and the new Power of Attorney Act, N.C.G.S. Chapter 32C.

Our winter Section Council meeting was held via conference call due to “snowmageddon” on Jan. 17, 2018. Our Section authorized two additional scholarships for Continuing Legal Education (CLE) held in Feb. 2018 for the Basics of Will Drafting and Estate Administration classes. These scholarships are new and in addition to the scholarships that will be offered for our Annual Meeting held in July 2018. Be on the lookout for the scholarship information for the Annual Meeting to be held at Kiawah Island, July 26 through 28, 2018.

The Ad Hoc Committee continues to plan and coordinate all issues related to the Annual Meeting and CLE at Kiawah. Our sponsors are amazing and continue to surprise us annually with their dedication to the Annual Meeting. The committee’s goal is to increase the quality of the breakfast offerings. We are working with the NCBA CLE department to make this happen. We also are focused on keeping our tuition low and continuing to amaze our members with quality of the CLE and the other events.

The Legislative Committee members are furiously drafting legislation for the 2018 Short Individual Estate and Tax Planning After Tax Reform

By Thomas Cooper and Mark Horn

In what has been heralded by one side of the political aisle as an extraordinary opportunity to fix a broken tax system and criticized by the other as a hastened effort that only added to its complexity and the benefits provided to special interest groups, Congress passed what is informally known as The Tax Cuts and Jobs Act (the "Act") on Dec. 20, 2017, and the President officially made it the most impactful tax legislation reforming the Internal Revenue Code (the “Code” or "IRC") enacted in over 30 years on Dec. 22, 2017. As estate and tax planners, regardless of where any personal views fall as to the propriety and ultimate efficacy of the Act to achieve its intended purpose, the reality is that we now face the task of advising individual clients how best to handle their personal affairs in a tax-efficient manner going forward under the Act. This article attempts to identify significant items of note for individual taxpayers and provide some observations on the Act’s impact on estate and tax planning as we move ahead.

Preliminary Considerations

Before delving into the substance of the Act, however, it is important to note certain principles that advisors should keep in mind when evaluating its details and the effect it will have on taxpayers.

The Byrd Rule and Continuing Political Uncertainty

The end of 2017 witnessed a feverish back-and-forth between the House of Representatives and Senate, with bills introduced by both houses ushered through committees and votes on their respective floors at an unprecedented pace. In the end, the terms of the Senate bill largely prevailed because of the more stringent requirements imposed upon it by the so-called "Byrd Rule," which requires that legislation be revenue-neutral if it is not to be passed by a supermajority of 60 votes. This limitation was relaxed somewhat by a Senate budget resolution passed to allow for any tax reform to cost up to $1.5 trillion based on a “scoring” of its costs and “revenue raisers,” but even with that additional flexibility, Republicans in Congress still had to choose the portions of their tax reform agenda to prioritize at the expense of others.

The political rhetoric surrounding the Act promised tax breaks for both individuals and businesses alike, but in an effort to shore up sufficient room within these Senate budgetary constraints and allow the Act to be passed by the only politically feasible option of a simple majority, many of the individual tax breaks are made temporary—generally sunsetting back to their current forms after 2025—while most of the tax breaks afforded to businesses are made permanent, with a notable

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Session and 2019 Long Session. Further, the Legislative Committee has scrambled to review and provide comments on a proposal for a North Carolina version of the Uniform Collaborative Law Act (the "revised Uniform Act"), which has been proposed for presentation by the General Statutes Commission (GSC) to the General Assembly in the upcoming Short Session. The Legislative Committee was given a very short time for comment on the proposal by the NCBA but has been able to provide feedback. The proposal would apply the revised Uniform Act to all practice areas, which is an expansion of the traditional use of collaborative law in family law settings. The revised Uniform Act even allows states to limit application of the revised Uniform Act only to family law disputes. The Legislative Committee has made the GSC aware that the areas of probate law and fiduciary litigation are unlike many others, because in these matters, at least one party to any dispute always owes certain fiduciary duties to other parties. Additionally, certain disputes arising in these areas – namely, guardianships, caveat actions, and estate and trust proceedings involving minor children – invoke the legal rights of parties who are legally unable to appear, participate, or consent to the collaborative law process in any way. While it is clear that the collaborative law process is a voluntary procedure, it is unclear how and when the consent of a decedent, an incompetent person, a minor beneficiary, or a fiduciary is to be given. The Legislative Committee has grave concerns about the application of the collaborative law process to: guardianship proceedings, where the loss of legal rights is at stake; in rem proceedings, such as caveat matters; and proceedings involving the interests of a minor. In addition, the Legislative Committee has concerns regarding the parties to a collaborative law process and whether those parties without a direct interest in the dispute (such as a corporate or otherwise non-interested fiduciary) would be required. The Committee also questions the effect of the revised Uniform Act upon the information rights of estate and trust beneficiaries. This review and effort is being undertaken in cooperation with the Elder & Special Needs Law Section, which shares our concerns. Our committee will address the revised Uniform Act with Mr. John Sarratt, Chair of the Collaborative Law committee of the Dispute Resolution Section, a partner with Harris, Sarratt & Hodges, LLP, and a director on the Board of Directors and the president of the North Carolina Civil Collaborative Law Association, a North Carolina nonprofit corporation formed on Nov. 3, 2017. The Legislative Committee will also provide comments to the GSC on the Uniform Law Commission Guardianship Act.

The CLE Committee reports that the new North Carolina Uniform Power of Attorney Act CLE held on Nov. 3, 2017 was an outstanding success. Over 351 attorneys attended the live program, 176 attorneys attended the video replay and 485 on-demand units have been sold. I am pleased that so many of our members are educating themselves on the new law. There is still time to see the video replay of the live program or take several of the on-demand units. Education is the key to the success of the new Power of Attorney act.

On Feb. 8 and 9, 2018 there was a live program on the Basics of Will Drafting and Revocable Trusts and Basics of Estate Administration. The newly updated Estate Administration Manual was the program material for one day. There may be a joint CLE with the Tax Section in April, and the Advanced Estate Planning CLE will be May 18, 2018. Our Annual Meeting and CLE will be held at Kiawah Island Resort, July 26 through 28, 2018.

An edition of The Will and The Way will be published in spring of 2018. If you are interested in authoring an article, please contact our editor-in-chief, Lucy Siler (lsiler@jahlaw.com).

A new publication from the NCBA covers fiduciary litigation and is currently being written by members of the Fiduciary Litigation Committee. It is ninety percent complete. The Estate Administration Manual has been updated and published by dedicated members of our Section. Thank you to our Editors-in-Chief, Jessica Hardin and Anna Winger, and all of the chapter editors. A huge thank you to our committees and their members for these two resources which support our areas of practice.

On behalf of our Section, our Ethics Committee is drafting a response to the State Bar on FEO2, which addresses an attorney’s duties in advising an executor with regard to the handling of estate funds. The State Bar responded to our response in Dec. 2017 after FEO2 passed. The Will and The Way will feature an article in its next edition outlining the responsibilities of attorneys.

We are continuing to support the NCBA in its pro bono efforts. The current project being considered is an outreach to Rocky Mount, North Carolina.

Please contact me directly at LJohnson@ssjlaw.net if you want to volunteer for a committee in our Section. It is good for your soul and the Section. “Life’s most persistent and urgent question is, what are you doing for others?” — Martin Luther King, Jr.