

MLI #9 Itemized Deductions Reported on Schedule A (Form 1040)

SUMMARY

For the first time since the National Taxpayer Advocate's Annual Report to Congress in 2002, itemized deductions reported on Schedule A of IRS Form 1040 are among the ten Most Litigated Issues.

We identified 23 cases involving itemized deductions that were litigated in federal courts between June 1, 2017, and May 31, 2018.¹ The courts affirmed the IRS position in 16 of these cases, or about 70 percent, while taxpayers fully prevailed in four cases, or about 17 percent of the cases. The remaining three cases, or about 13 percent, resulted in split decisions.

TAXPAYER RIGHT(S) IMPACTED²

- *The Right to Be Informed*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

PRESENT LAW

Individual taxpayers can deduct from taxable income a standard deduction, based on filing status, or may instead elect to itemize deductions.³ Itemized deductions are specified “personal” and “other” expenses allowed as deductions from Adjusted Gross Income (AGI) arriving at taxable income.⁴ Eligible taxpayers may claim itemized deductions by filing a Schedule A (Form 1040), *Itemized Deductions*, with their tax returns. Common personal expenses include: interest payments, such as mortgage interest and points on principal and secondary residences,⁵ state and local income or sales taxes, property taxes,⁶ medical and dental expenses exceeding a certain threshold of the AGI,⁷ charitable contributions,⁸ and

1 We excluded cases involving unreimbursed employee expenses and charitable deductions as they are discussed elsewhere in the National Taxpayer Advocate's Annual Report to Congress. See National Taxpayer Advocate 1998-2017 Annual Reports to Congress. Unreimbursed employee expenses are discussed in detail in Most Litigated Issue: *Trade or Business Expenses Under IRC § 162 and Related Sections*, *supra*. Cases involving charitable deductions are discussed in detail in Most Litigated Issue: *Charitable Contribution Deductions Under IRC § 170*, *supra*.

2 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

3 IRC § 63. Married taxpayers must generally both elect the standard deduction or itemize deductions, regardless of whether they file joint or separate returns.

4 See IRC § 62 for the calculation of adjusted gross income (AGI).

5 IRC § 163.

6 IRC § 164.

7 Under the Tax Cuts and Jobs Act (TCJA), any taxpayer may deduct unreimbursed medical expenses that exceed 7.5 percent of their AGI in tax years 2017 and 2018. Pub. L. No. 115-97, § 11027, 131 Stat. 2054, 2077 (2017); IRC § 213(f).

8 IRC § 170. Charitable contributions are discussed in a separate Most Litigated Issue: *Charitable Contribution Deductions Under IRC § 170*, *supra*.

casualty and theft losses.⁹ Other deductible expenses include certain payments related to the production or collection of income, such as property management expenses,¹⁰ investment interest expenses,¹¹ and gambling losses.¹² For tax years prior to 2018, itemized deductions also included miscellaneous deductions, such as tax advice and preparation fees, appraisal fees for purposes of charitable contributions or casualty losses, job search and moving expenses, subscriptions to professional journals, home office expenses, union or professional dues, and unreimbursed work-related travel expenses or employee expenses reimbursed under a nonaccountable plan.¹³

For tax years before 2018, taxpayers with AGI over a certain threshold amount are limited as to the total itemized deductions they can claim.¹⁴ For taxpayers with AGI over the threshold, allowable itemized deductions are reduced by three percent of AGI above the applicable threshold to a maximum reduction of 80 percent of the total allowable deductions for the tax year. These limitations apply to charitable donations, the home mortgage interest deduction, state and local tax deductions, and miscellaneous itemized deductions, but do not apply to medical expenses, investment interest expenses, gambling losses, and certain theft and casualty losses.¹⁵

9 IRC §§ 165(e) and 165(h).

10 IRC § 212.

11 IRC § 163(d).

12 IRC § 165(d).

13 Miscellaneous itemized deductions refers to deductions other than: (1) the deduction under IRC § 163 (relating to interest); (2) the deduction under IRC § 164 (relating to taxes); (3) the deduction under IRC § 165(a) for casualty or theft losses described in paragraph (2) or (3) of IRC § 165(c) or for losses described in IRC § 165(d); (4) the deductions under IRC § 170 (relating to charitable, etc., contributions and gifts) and IRC § 642(c) (relating to the deduction for amounts paid or permanently set aside for a charitable purpose); (5) the deduction under IRC § 213 (relating to medical, dental, etc., expenses); (6) any deduction allowable for impairment-related work expenses; (7) the deduction under IRC § 691(c) (relating to the deduction for estate tax in case of income in respect of the decedent); (8) any deduction allowable in connection with personal property used in a short sale; (9) the deduction under IRC § 1341 (relating to computation of tax where taxpayer restores a substantial amount held under claim of right); (10) the deduction under IRC § 72(b)(3) (relating to the deduction where annuity payments cease before investment recovered); (11) the deduction under IRC § 171 (relating to the deduction for amortizable bond premium); and (12) the deduction under IRC § 216 (relating to deductions in connection with cooperative housing corporations). See IRC § 67(b).

14 The TCJA suspended the overall limit on itemized deductions based on AGI for tax years 2018 through 2025. Prior to the TCJA, taxpayers' ability to claim itemized deductions was limited if their AGI exceeded certain thresholds based on filing status. For example, for Tax Year 2017, the threshold is \$313,800 for married taxpayers filing jointly or a qualifying widow(er) (\$261,500 for a taxpayer filing single). See Pub. L. No. 115-97, § 11046, 131 Stat. 2054, 2088 (2017); Rev. Proc. 2016-55, 2016-45 I.R.B. 707.

15 IRC § 68(c).

Changes Made Under the Tax Reform Legislation¹⁶

The Tax Cuts and Jobs Act (TCJA) eliminated or restricted many itemized deductions beginning in 2018, and increased the standard deduction. Overall, 61 percent fewer taxpayers are expected to claim itemized deductions in 2018.¹⁷ The TCJA made the following changes to itemized deductions:¹⁸

1. *Standard deduction*

For tax years 2018–2025, the TCJA roughly doubles the standard deduction amounts to \$12,000 for single individuals, \$18,000 for heads of household, and \$24,000 for joint filers.¹⁹ These amounts are adjusted for inflation.²⁰

2. *Medical expense deduction*

Under prior law, taxpayers whose unreimbursed medical expenses exceeded ten percent of their AGI could deduct that excess. For tax years 2013–2016, a taxpayer could deduct the excess over 7.5 percent of AGI if the taxpayer or his or her spouse had attained age 65 before the close of the taxable year. Under the TCJA, any taxpayer may deduct unreimbursed medical expenses that exceed 7.5 percent of his or her AGI in tax years 2017 and 2018.²¹ This change was made retroactive to January 1, 2017.²²

3. *State and local taxes*

The TCJA limits the aggregate amount of the itemized deduction taxpayers can claim for state and local income, sales, real estate, or personal property taxes to \$10,000 per year (\$5,000 in the case of a married individual filing a separate return) for tax years 2018–2025.²³ Prior to the TCJA law, there was no limitation on the amount of state and local taxes a taxpayer could take as an itemized deduction.

4. *Mortgage and home equity interest deduction*

For mortgages entered into after December 15, 2017, the TCJA generally allows a taxpayer to deduct interest only up to \$750,000 on mortgage debt used to buy, build, or improve a principal home (\$375,000 in the case of married taxpayers filing separate returns) for tax years 2018 through 2025.²⁴ However, the limit remains at \$1 million (\$500,000 in the case of married taxpayers filing separate tax returns) for mortgage debt incurred on or before December 15, 2017.

16 Pub. L. No. 115-97, 131 Stat. 2054 (2017). TAS has created a website, available in both English and Spanish, to educate individual taxpayers about items that were changed and not changed as a result of TCJA. For a detailed list of these changes, see TAS, *Tax Changes by Topic*, <https://taxchanges.us/> (last visited Sept. 9, 2018).

17 The Joint Committee on Taxation staff estimates the number of taxpayers who itemize will tumble from about 46.5 million in 2017 to about 18 million in 2018. J. Comm. on Tax'n, *Tables Related to the Federal Tax System as in Effect 2017 through 2026* (JCX-32-18) (Apr. 23, 2018).

18 Pub. L. No. 115-97, 131 Stat. 2054 (2017).

19 *Id.*

20 The TCJA employed a new Consumer Price Index. Specifically, the new index differs from the previous Consumer Price Index by attempting to account for the ability of individuals to alter their consumption patterns in response to relative price changes. See Pub. L. No. 115-97, § 11002, 131 Stat. 2054, 2059 (2017).

21 Pub. L. No. 115-97, § 11027, 131 Stat. 2054, 2077 (2017); IRC § 213(f).

22 *Id.*

23 Pub. L. No. 115-97, § 11042, 131 Stat. 2054, 2085 (2017); IRC § 164.

24 *Id.*; IRC § 163(h)(3).

The TCJA also eliminates the deduction for interest on home equity debt for tax years 2018-2025. However, home equity debt interest might still be deductible if the funds are used for a purpose where interest otherwise may be deductible, such as for home improvement, investment, or business purposes.²⁵

5. *Casualty and theft loss deductions*

The TCJA provides that, for tax years 2018-2025, taxpayers may not deduct any personal casualty or theft losses not compensated by insurance or otherwise, unless the casualty loss is attributable to a federally declared disaster.²⁶ The loss must still exceed \$100 per casualty and the total net loss must exceed ten percent of the taxpayer's AGI.²⁷

6. *Miscellaneous itemized deductions*

For tax years 2018-2025, the deduction for miscellaneous expenses subject to the two percent of AGI floor, such as certain professional fees, investment expenses, and unreimbursed employee business expenses, has been suspended under the TCJA.²⁸

7. *Charitable contribution deductions*²⁹

For tax years 2018-2025, the limit on the deduction for cash donations to public charities is increased from 50 to 60 percent of AGI.³⁰ However, charitable deductions for payments made in exchange for college athletic event seating rights are eliminated.³¹

ANALYSIS OF LITIGATED CASES

For the first time since the National Taxpayer Advocate's Annual Report to Congress in 2002, itemized deductions reported on Schedule A of IRS Form 1040 were among the ten Most Litigated Issues. This year, we analyzed 23 cases between June 1, 2017, to May 31, 2018, in which itemized deductions were in dispute. All but five of these cases were either litigated in the United States Tax Court or in a United States Court of Appeals on appeal of a Tax Court decision. A detailed list appears in Table 9 in Appendix 3.

Of the 15 cases in which taxpayers appeared *pro se* (without counsel), the IRS prevailed in nine. The taxpayer prevailed in three cases, while the other three cases resulted in a split decision. Taxpayers represented by counsel fared worse; of the eight cases in which taxpayers had representation, taxpayers prevailed in only one case and were denied relief in seven cases. Most of this year's 23 cases involved taxpayers claiming deductions for casualty and theft losses,³² tax preparation fees or expenses associated

25 Pub. L. No. 115-97, § 11043, 131 Stat. 2054, 2086 (2017). See also IR 2018-32, *Interest on Home Equity Loans Often Still Deductible Under New Law*, (Feb. 21, 2018), <https://www.irs.gov/newsroom/interest-on-home-equity-loans-often-still-deductible-under-new-law> (last visited Nov. 26, 2018).

26 Pub. L. No. 115-97, § 11044, 131 Stat. 2054, 2087 (2017); IRC § 165(h).

27 IRC § 165(c)(3) & (h).

28 Pub. L. No. 115-97, § 11045, 131 Stat. 2054, 2088 (2017).

29 See also Most Litigated Issue: *Charitable Contribution Deductions Under IRC § 170*, *supra*.

30 Pub. L. No. 115-97, § 11023, 131 Stat. 2054, 2074 (2017).

31 *Id.*

32 IRC § 165.

with the production of income,³³ and medical care.³⁴ The Figure 3.9.1 categorizes the main issues raised by taxpayers in the 23 cases we identified:

FIGURE 3.9.1, Itemized Deduction Issues³⁵

| Itemized Deduction | Number of Cases | Percentage of Cases |
|--|-----------------|---------------------|
| Casualty/Theft Loss | 7 | 30 |
| Miscellaneous Subject to 2% Limit (i.e., Tax Preparation Fees or Production of Income) | 6 | 26 |
| Medical and Dental Expenses | 3 | 13 |
| Interest | 3 | 13 |
| Miscellaneous Not Subject to the 2% Limit (i.e., Gambling) | 3 | 13 |
| Property Taxes | 3 | 13 |

A common factor in many cases was the court's finding, in nine (39 percent) of the cases, that taxpayers failed to substantiate the itemized deductions claimed.³⁶

Although the cases originated because of varied circumstances, the overwhelming majority began as examination cases.³⁷ Of the 23 cases we reviewed this year, seven began as field exam cases;³⁸ six began as correspondence exam cases;³⁹ and five began as office exam cases.⁴⁰

Medical or Dental Expense Deduction

A taxpayer may deduct the cost of medical care for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the human body.⁴¹ Medical expenses are only deductible to the extent they exceed a statutorily determined percentage of the

33 Treas. Reg. § 1.67-1T; IRC § 212.

34 IRC § 213.

35 The aggregate percentages may not equal 100 percent because of rounding. Additionally, several cases we identified had more than one of the issues listed in Figure 3.9.1.

36 See, e.g., *Fiedziuszko v. Comm'r*, T.C. Memo. 2018-75 (Court disallowed medical and dental expense deduction under IRC § 213 because taxpayers failed to substantiate expenses paid for physician-ordered treatment).

37 TAS analysis of litigated cases indicated that 18 originated as a result of the Small Business Self-Employed Division examination, six – as a result of correspondence examination, five – as a result of an office audit, and seven – as a result of field examination. From the remaining cases, two resulted from an Automated Under Reporter (AUR) program assessment, one – from Automated Substitute for Return (ASFR) under IRC § 6020(b), one case resulted from a contested liability in a Collection Due Process proceeding, and the last case originated from a taxpayer refund claim suit filed in the U.S. Court of Federal Claims. TAS data pull from AIMS, Sept. 2, 2018. The AUR Program verifies a discrepancy between the taxpayer's tax return and an information return, or between a tax return and information otherwise in the IRS's possession. See IRM 4.19.3 (Aug. 31, 2018); Rev. Prov. 2005-32, 2005-23 I.R.B. 1206. The ASFR program allows the IRS to assess tax by obtaining delinquent returns or creating assessments based on reported income. See IRM 5.18.1 (Dec. 31, 2017); IRC § 6020(b). See also *Pryde v. U.S.*, 120 A.F.T.R.2d (RIA) 6843 (Fed. Cl. 2017); *Dykstra v. Comm'r*, T.C. Memo. 2017-156.

38 See also Most Serious Problem: *Field Examination: The IRS's Field Examination Program Burdens Taxpayers and Yields High No-Change Rates, Which Waste IRS Resources and May Discourage Voluntary Compliance*, *supra*.

39 See also Most Serious Problem: *The IRS's Correspondence Examination Procedures Burden Taxpayers and are Not Effective in Educating the Taxpayer and Promoting Future Voluntary Compliance*, *supra*.

40 See also Most Serious Problem: *Office Examination: The IRS Does Not Know Whether Its Office Examination Program Increases Voluntary Compliance or Educates the Audited Taxpayers About How to Comply in the Future*, *supra*.

41 IRC § 213(d)(1).

taxpayer's AGI. For example, a taxpayer who elects to itemize deductions for tax years 2017 and 2018 may deduct medical expenses to the extent his or her medical expenses exceed 7.5 percent of the AGI, regardless of age. For tax years after 2018, the floor will return to ten percent. Medical expenses are also only deductible if they are for the taxpayer, the taxpayer's spouse, or the taxpayer's dependent.

In *Morrissey v. United States*, a homosexual male taxpayer claimed a medical expense deduction for costs associated with the *in vitro* fertilization process.⁴² Although the taxpayer conceded that he was medically fertile, he argued the costs were necessary because it is not physiologically possible for two men to reproduce. Most of the taxpayer's expenses were incurred to identify, compensate, and provide medical care for the women who served as an egg donor and gestational surrogate. The court disallowed the medical expense deduction, reasoning that the expenses related to the egg donor and gestational surrogate were not incurred for the purpose of affecting any function of the taxpayer's own body, and the egg donor and gestational surrogate were not the taxpayer's spouse or the taxpayer's dependent.⁴³ In coming to its conclusion, the United States Court of Appeals for the Eleventh Circuit relied on existing Tax Court precedent that has consistently rejected efforts by male taxpayers to deduct *in vitro* fertilization-related expenses paid to cover the medical care of unrelated female egg donors and gestational surrogates.⁴⁴

Casualty and Theft Loss Deduction

A taxpayer whose personal property is lost or damaged due to fire, storm, shipwreck, or other casualty, or from theft, may be entitled to an itemized deduction for the amount of the loss that is not reimbursed by insurance or otherwise.⁴⁵ The taxpayer may claim a casualty or theft loss deduction only if the loss amount exceeds \$100 and the amount of the net loss exceeds ten percent of the taxpayer's adjusted gross income.⁴⁶

In *Kohn v. Commissioner*, married taxpayers claimed a casualty loss for alleged damage to their docks during a flood.⁴⁷ From April through October 1993, St. Charles County, the area where the taxpayers' docks were located, became a federally declared disaster area under the Disaster Relief and Emergency Assistance Act.⁴⁸ The taxpayers purchased the docks in February 1993, before the flood, and sold the docks in October 1993 for \$2,600 less than the purchase price. In calculating the amount of the casualty loss deduction, the Tax Court employed the fair market value calculation approach; the fair market value of the property immediately before the casualty less the fair market value of the property immediately after the casualty.⁴⁹ Because the resulting \$2,600 was less than ten percent of the taxpayers' adjusted gross income, the court disallowed the casualty loss deduction.

42 *Morrissey v. United States*, 871 F.3d 1260 (11th Cir. 2017).

43 *Id.* at 1267-1268.

44 See, e.g., *Magdalin v. Comm'r*, T.C. Memo. 2008-293, *aff'd*, 2009 WL 5557509 (1st Cir. 2009).

45 IRC §§ 165(a), 165(c)(3).

46 IRC § 165(h).

47 *Kohn v. Comm'r*, T.C. Memo. 2017-159.

48 Taxpayers elected to claim the casualty deduction for the year preceding the year of the flood. Under IRC § 165(i), any losses attributable to a federally declared disaster may be considered for the taxable year immediately preceding the taxable year in which the disaster occurred.

49 The amount of the deduction is the lesser of: (i) the fair market value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty; or (ii) the amount of the property's adjusted basis. Treas. Reg. § 1.165-7(b). See also *Helvering v. Owens*, 305 U.S. 468 (1939).

A deduction can include a loss based on theft that was not compensated for by insurance or otherwise.⁵⁰ A theft for purposes of the deduction includes any criminal appropriation of another's property to the use of the taker, including larceny, embezzlement, and robbery. The taxpayer bears the burden of proving both the occurrence of a theft and the amount of the loss.

In re Nora involved a homeowner who failed to make payments on her mortgage.⁵¹ The mortgage company was successful in obtaining a judgment against the taxpayer, and the residence was sold at foreclosure.⁵² The taxpayer was evicted sometime between August and November 2011, although the actual date of eviction could not be established. When the taxpayer arrived at her residence in November, she discovered the locks had been changed and her personal property had been removed and placed in storage. The taxpayer testified she made no attempts to retrieve the property, which included boxes of records, held in storage by the Sheriff's Department or at the storage company. In her 2012 tax return, the taxpayer claimed a casualty loss by theft, a Ponzi Scheme loss, and casualty loss of client files pursuant to IRC § 165.⁵³ However, she provided no documentary evidence to support deductions for the estimated 20 boxes of client records that had been destroyed or removed from her residence.

The Court found that the taxpayer failed to provide credible evidence to establish what was destroyed and its value in order to meet her burden to rebut the presumption of validity of the proof of claim.⁵⁴ Moreover, the court noted that the destroyed records were connected with her trade or business and the deduction for loss of property that arises from a casualty or theft applies only to property not connected with a trade or business.⁵⁵ Furthermore, the court noted that when property is taken under a lawful authorization, a taxpayer is not entitled to a theft loss deduction.⁵⁶ The United States Tax Court has specifically found that the value of personal property that is lost or damaged during a lawful eviction after foreclosure cannot be the basis of a casualty or loss-theft deduction.⁵⁷ Finally, the court noted that her claim for the theft of the business records as a business loss under IRC § 165(c)(1) was meritless.⁵⁸

Substantiation of Itemized Deductions

Taxpayers are required to substantiate expenses underlying each claimed deduction by maintaining records sufficient to establish the amount of the deduction and to enable the Commissioner to determine the correct tax liability.⁵⁹ Taxpayers were unable to substantiate their claimed itemized deduction in nine of the 23 cases we identified, or 39 percent of the cases.

In *Knowles v. Commissioner*, the Tax Court sustained the IRS's disallowance of a taxpayer's claimed deduction for real property taxes paid.⁶⁰ Although the taxpayer produced printouts from a county

50 IRC § 165(c)(3).

51 *In re Nora*, 581 B.R. 870 (D. Minn. 2018), *appeal dismissed*, 2018 WI 4520881 (D. Minn. 2018), *appeal docketed*, No. 18-3095 (8th Cir. Oct. 1, 2018).

52 *Id.*

53 The taxpayer is an attorney, who had stored client records in her basement. *Id.* at 873.

54 *Id.* at 879-80.

55 *Id.* at 880. See also IRC §165(c)3).

56 *Id.* at 880-81.

57 *Washington v. Commissioner*, T.C. Memo. 1990-386, *aff'd*, 930 F.2d 919 (6th Cir. 1991) (finding that when taxpayers were evicted pursuant to a court order there was no theft because the mortgage holder "proceeded under a lawful authorization or a least the color of legal authority,' and had no criminal intent").

58 *In re Nora* at 882.

59 IRC § 6001; *Higbee v. Comm'r*, 116 T.C. 438 (2001).

60 *Knowles v. Comm'r*, T.C. Memo. 2017-152.

website showing property taxes due, she provided no evidence that she paid those taxes. In general, a taxpayer can substantiate itemized deductions with documentary evidence such as receipts, cancelled checks, bills, or account statements.⁶¹

Substantiation is also important for the gambling loss deduction. A taxpayer who is not in the trade or business of gambling can deduct gambling losses as an itemized deduction, but only to the extent of gambling winnings.⁶²

In *Boneparte v. Commissioner*, the Tax Court found that a taxpayer was not in the trade or business of gambling.⁶³ The court cited the following factors in its analysis: the taxpayer did not keep any records other than the win/loss statements provided by casinos, which generally provided only the aggregate amount won or lost during the year; he gambled only in his spare time while holding a full-time job; he had a history of gambling losses and did not earn even sporadic profits; and his gambling involved elements of personal pleasure and recreation. The Tax Court then used the taxpayer's casino win/loss statements to reconstruct his taxable gambling income. Since his gain was \$18,000, the taxpayer was allowed an itemized deduction of \$18,000.

Certain deductions are subject to stricter substantiation requirements. For example, a taxpayer claiming the medical expense deduction must be able to produce the name and address of each person to whom expenses for medical care were paid and the date of each payment.⁶⁴ The IRS may also request a statement or itemized invoice from the payee showing what kind of treatment was provided and to whom.⁶⁵

In *Fiedziuszko v. Commissioner*, the Tax Court held that married taxpayers failed to substantiate the cost of their physician-ordered weight loss program.⁶⁶ At trial, Mr. Fiedziuszko prepared a statement with a list of dates and amounts they paid for the weight-loss program. The taxpayers also provided to the IRS a printout from the website of their healthcare provider, Palo Alto Medical Foundation, containing information about its weight-loss services. The Tax Court held that the Fiedziuszkos did not adequately substantiate their medical expenses because they failed to provide an itemized statement from the payee, Palo Alto Medical Foundation, with corroborating documentation of the claimed medical payments as required under the medical expense deduction regulations.⁶⁷

61 See *Cohan v. Comm'r*, 39 F.2d 540 (2d Cir. 1930); Treas. Reg. § 1.274-5T(b). See also IRS, Burden of Proof, <https://www.irs.gov/businesses/small-businesses-self-employed/burden-of-proof> (last visited Sept. 9, 2018) (describing the requirement to substantiate certain elements of expenses in order to shift the burden of proof according to IRC § 7491); see also IRS Publication 583, *Starting a Business and Keeping Records* (January 2015), for detailed recordkeeping guidance for taxpayers.

62 IRC § 165(d).

63 *Boneparte v. Comm'r*, T.C. Memo. 2017-193, *appeal docketed*, No. 18-2264 (3d Cir. June 8, 2018).

64 Treas. Reg. § 1.213-1(h).

65 *Id.*

66 *Fiedziuszko v. Comm'r*, T.C. Memo. 2018-75. The IRS considers obesity a disease for purposes of the medical expense deduction. See also Rev. Rul. 2002-19.

67 See Treas. Reg. § 1.213-1(h).

CONCLUSION

The IRS Statistics of Income data show that 29.6 percent of individual return filers chose to itemize their deductions in tax year 2015.⁶⁸ We anticipate this number will decrease beginning in tax year 2018 because recent tax law changes increased the standard deduction and placed limitations on or entirely repealed many itemized deductions.

In the nine cases we reviewed this year in which taxpayers were unable to provide the necessary documentation to support their deductions, the courts identified the lack of documentation and preparation as the reason they ruled against the taxpayers.

The IRS should continue improving its means of communicating with and educating taxpayers about deductibility issues, including recordkeeping requirements. Proactive education and outreach will also promote taxpayers' *rights to be informed* and *to challenge the IRS's position and be heard*. By doing so, the IRS will encourage taxpayers to comply with their tax obligations and minimize the risk of litigation.

68 IRS, *SOI Tax Stats—Individual Income Tax Returns Publication 1304*, “Table 1.2: All Returns: Adjusted Gross Income, Exemptions, Deductions, and Tax Items” (June 21, 2018), <https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-publication-1304-complete-report>.