Delaware Tax Institute Tax Update

TCJA Impact on Individuals, Estates & Trusts

Presented by:

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Tax Cuts and Jobs Act (H.R. 1)

- Official title- “An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018”
- “AAPRPTZ5CRBFY18” too hard to say, so we use “TCJA”
- Will create a deficit of $1.456 trillion through 2027
- Most corporate provisions are permanent
- Most individual provisions sunset after 2025

TAX CUTS & JOBS ACT

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Individual, Estate and Trust Provisions

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Individual Tax Rates (2018 - 2025)

2017	2018 - 2025
10%	10%
15%	12%
25%	22%
28%	24%
33%	32%
35%	35%
39.6%	37%

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Tax Rates for Estates and Trusts (2018-2025)

2017	2018-2025
15%	10%
25%	24%
28%	35%
33%	37% (T. I. > $12,500)
39.6%	

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For Married Individuals Filing Joint Returns and Surviving Spouses

If taxable income is:	The tax is:
Not over $19,050	10% of the taxable income
Over $19,050 but not over $77,400	$1,905 plus 12% of the excess over $19,050
Over $77,400 but not over $165,000	$8,907 plus 22% of the excess over $77,400
Over $165,000 but not over $315,000	$28,179 plus 24% of the excess over $165,000
Over $315,000 but not over $400,000	$64,179 plus 32% of the excess over $315,000
Over $400,000 but not over $600,000	$91,379 plus 35% of the excess over $400,000
Over $600,000	$161,379 plus $37% of the excess over $600,000

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For Single Individuals (Other Than Heads of Households and Surviving Spouses)

If taxable income is:	The tax is:
Not over $9,525	10% of the taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$45,689.50 plus 35% of the excess over $200,000
Over $500,000	$150,689.50 plus 37% of the excess over $500,000

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For Heads of Households

If taxable income is:	The tax is:
Not over $13,600	10% of the taxable income
Over $13,600 but not over $51,800	$1,360 plus 12% of the excess over $13,600
Over $51,800 but not over $82,500	$5,944 plus 22% of the excess over $51,800
Over $82,500 but not over $157,500	$12,698 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$30,698 plus 32% of the excess over $157,000
Over $200,000 but not over $500,000	$44,298 plus 35% of the excess over $200,000
Over $500,000	$149,298 plus 37% of the excess over $500,000

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For Married Filing Separately

If taxable income is:	The tax is:
Not over $9,525	10% of the taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $300,000	$45,689.50 plus 35% of the excess over $200,000
Over $300,000	$80,689.50 plus 37% of the excess over $300,000

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For Estates and Trusts

If taxable income is:	The tax is:
Not over $2,550	10% of the taxable income
Over $2,550 but not over $9,150	$255 plus 24% of the excess over $2,550
Over $9,150 but not over $12,500	$1,839 plus 35% of the excess over $9,150
Over $12,500	$3,011.50 plus 37% of the excess over $12,500

Capital Gain and Qualified Dividend Tax Rates

- Retain 0%, 15% and 20% rates
- Retain pre-Act break points, but indexed for inflation
- Thus, for now, the 20% rate will kick-in prior to reaching the threshold for the top ordinary bracket.
  - 20% = $479,000 (MFJ)
  - 37% = $600,000 (MFJ)

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Standard Deduction Doubles (2018 - 2025)

MFJ : $24,000

Single: $12,000

HH: $18,000

- There was no change to the additional standard deduction for those taxpayers age 65 and/or blind ($1,250 each)
- More taxpayers are expected to use the standard deduction

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Personal Exemptions Suspended (2018 - 2025)

- TCJA suspends all personal and dependent exemptions
- Qualified disability trusts are still allowed a personal exemption for $4,150 in 2018 indexed for inflation

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Increased Child Tax Credit (2018 - 2025)

- Prior Law:
  - Credit up to $1,000 per qualifying child under age 17
  - Phased-out started when AGI > $75,000 ($110,000 for MFJ)
  - Refundable credit = 15% of earned income > $3,000
- New Law:
  - Credit increases to $2,000 per qualifying child under age 17
  - Phase-out begins when AGI > $200,000 ($400,000 for MFJ)
  - Refundable portion is limited to $1,400/child
  - Earned income threshold for the refundable portion is lowered to $2,500
  - SSN REQUIRED FOR ALL QUALIFYING CHILDREN
  - Non-child dependent can claim $500 non-refundable credit

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Kiddie Tax Modified (after 2017)

- Earned income taxed at rates for single individuals
- Net unearned income (ordinary and preferred) taxed at rates for estates and trusts.

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Medical Expense Deduction

- 2018- AGI threshold stays at 7½ % for all taxpayers for regular and AMT purposes
- 2019- 10% for both

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State and Local Tax Deduction (2018 - 2025)

- $10,000 ($5,000 for MFS) limit for state, local, sales and real estate tax
- Real estate and sales taxes related to trade or business or production of income are fully deductible
- See proposed regulations and IR 2018-172 dated August 23, 2018 which address reduction of charitable contributions by the amount of state tax credit provided, in response to state work arounds.

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Mortgage and Home Equity Loan Interest Deduction (2018 - 2025)

- All home equity loan interest is suspended
- Pre 12/16/17 acquisition indebtedness interest up to the prior $1 million limitation can still be deducted
- Post 12/15/17 acquisition indebtedness interest deduction is limited to $750,000 ($375,000 for MFS)
- Binding contract exception
- Refinancing the $1 million ($500,000 of MFS) of existing acquisition debt continues to be grandfathered as long as proceeds do not exceed the amount of refinanced debt.

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Mortgage and Home Equity Debt

	2017	2018 - 2025
Home Acquisition Debt	1,000,000	750,000
Home Equity Debt	100,000	None
Home Equity AMT Adj.	Yes	N/A

- Home Acquisition Debt is both of the following:
  - Secured by the taxpayers’ principal home or second home and
  - Incurred in acquiring, constructing, or substantially improving the home
- Home Equity Debt is both of the following:
  - Secured by the taxpayers’ principal home
  - Wasn’t home acquisition debt

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Charitable Contributions

- Section 170 (b) Limit increased from 50% to 60% for cash contributions (2018-2025)
- For contributions made after 2017, no charitable deduction is allowed for any payment in exchange for rights to purchase seating. (Prior law allowed 80%)

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Alimony Deduction/Inclusion

- Applicable:
  - Divorce or separation agreements executed after 2018
  - Agreements executed prior to 2018 and subsequently modified
- Alimony payments no longer deductible (Section 215 (a))
- Alimony receipt no longer taxable (Section 71(a) and 61(a)(8))

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Suspended Items (2018 - 2025)

- Miscellaneous Itemized Deductions that are subject to the 2% floor (Section 67(g))
- Overall limitation on Itemized Deductions (Section 68(f))
- Qualified bicycle commuting exclusion (Section 132(f)(8)) - reimbursement to be included in gross income
- Exclusion from income of qualified moving expenses, except for certain members of the military on active duty
- Moving expense deduction (except for certain members of the military)
- Personal Casualty & Theft Loss deduction, except for those incurred in a Federally-declared disaster. Rules do not apply where loss does not exceed gain

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Alternative Minimum Tax (2018 - 2025)

- TCJA increases the exemption amounts

	2017	2018 - 2025
MFJ & SS	$84,500	$109,400
Single/H.H.	$54,300	$70,300
MFS	$42,450	$54,700

- Increases the threshold at which the exemptions starts to phase-out

	2017	2018 - 2025
MFJ & S.S.	$160,900	$1,000,000
Single/H.H.	$120,700	$500,000

*No Change to computation for estates and trusts other than for inflation adjustments beginning after 2018

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Alternative Minimum Tax (2018 - 2025)

	2017 Reg	2017 AMT	2018 Reg	2018 AMT
Income	$300,000	$244,950	$300,000	$275,000
Taxes	(26,000)	26,000	(10,000)	10,000
Interest	(12,000)		(12,000)	
Charity	(3,000)		(3,000)	
Misc. Ded.	(10,000)	10,000		
Exemption	(4,050)	4,050		
AMT Exempt		(53,475)		(109,400)
Taxable Income	244,950	231,525	275,000	175,600
Income Tax	47,733	61,071	54,579	45,346

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Business Loss Limitation for Non-Corporate Taxpayers

A.K.A. "Excess Business Loss" (2018 - 2025)

- Loss limitation rule limits the business loss of a non-C corporate taxpayer to $500,000 each year (MFJ) or $250,000 (all others); and creates an excess business loss for amounts above those thresholds
- Excess business loss applies after the application of the passive loss rules (Section 469)
- Excess business loss for the year is carried over as an N.O.L. to the subsequent year (no limitation on number of years carried forward)
- For partnerships and S Corporations, the limitation is applied at the partner or shareholder level
- Excess farm loss limitation rules don't apply

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Recharacterization of ROTH Conversions

- Disallowed after 2017
- Perceived taxpayers were gaming the system

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Expanded Use of Section 529 Funds (after 2017)

For distributions after 2017, up to $10,000 per beneficiary can be used per tax year for tuition at an elementary or secondary public, private, or religious school.

PA Residents – Don't forget that you can deduct contributions!

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Student Loan Discharge (2018 - 2025)

Discharge due to death or total and permanent disability is excluded from gross income.

Gambling Loss Limitation Modified (2018 - 2025)

- **<u>ALL</u> deductions for expenses incurred in carrying out wagering activities, not just losses, are limited to gambling winnings.**
- **Transportation, M & E, admission fees were previously allowed if trade or business**

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Deduction for Living Expenses of Members of Congress (after 12/22/2017)

No deduction for living expenses when away from home. ($3,000 previously allowed.)

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Penalty for Failure to Maintain Adequate Health Insurance (the Individual Mandate) - Beginning in 2019

Penalty (tax) reduced to zero

Congressional budget estimates this will save $338 billion over 10 year period since fewer people will obtain subsidized coverage

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Estate and Gift Taxes (2018 - 2025)

- Doubles the base exemption to $10 million per person
- Indexed for inflation after 2011
- Retains portability rules
- 2018 amount will be $11,180,000
- TCJA silent on GST Tax exemption - but assumed to increase based on basic exclusion rules
- Rate remains at 40%

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Effect of Other Changes on Estates and Trusts

- State and local income tax deduction
- State and local real estate tax deduction
- 2% deductions
- Other deductions – Section 67(e)
  - Tax preparation
  - Attorney fees
  - Fiduciary fees
- Section 691(c) remains deductible (need clarification)

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Effect of Other Changes on Estates and Trusts - Cont.

- Excess deductions in year of termination flow through as a miscellaneous I/D subject to 2% floor. New law would eliminate it. Need to plan for year of termination. Can expenses be broken out by category?

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Qualified Beneficiaries of an ESBT (after 2017)

- Existing Law - ESBT - Electing Small Business Trust - may be a shareholder in an S Corporation
- New law now allows a nonresident alien individual to be a potential current beneficiary of an ESBT (in addition to resident individuals, estates, and certain charitable organizations)

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Charitable Contribution Deduction for an ESBT (after 2017)

Deduction for charitable contributions will be determined using rules applicable to individuals (not trusts)

- Percentage limitation
- Carry forward provisions

Self-Created Property Not Treated as a Capital Asset (Dispositions after 2017)

- The following are excluded as capital assets under section 1221(a)(3):
  - Patents
  - Inventions
  - Models or designs
  - Secret formulas or processes

- Which are held by the taxpayer who created the property, or by a taxpayer with a substituted or transferred basis from the taxpayer who created the property

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Carried Interest (after 2017)

- TCJA imposes a 3-year holding period in order for certain partnership interests received in connection with the performance of services to be taxed as LTCG
- Interests not meeting the 3-year holding period will be taxed as STCG

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ABLE Account Changes (2018 - 2025)

- After the overall limit on contributions is reached, ($15,000 in 2018), the designated beneficiary can contribute an additional amount up to the lesser of the Federal poverty-line for a one-person household or the individual's compensation for the year
- Designated beneficiary's contributions are now eligible for the saver's credit.

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“Net Disaster Loss” Relief (2018 – 2025)

- Applicable to any 2016 disaster area
- Net disaster loss added to standard deduction
- For AMT - still allowed in place of standard deduction
- Limited applicability

Raised Casualty Floor and Threshold for 2016 Disaster Loss

- \$100-per-casualty floor is increased to \$500
- 10% of AGI threshold does not apply

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Relief from 10% Early Withdrawal Penalty for Qualified 2016 Disaster Distributions

- Relief on up to $100,000 of qualified withdrawals from 1/1/2016 – 12/31/2017
- Principal place of abode must be in designated 2016 disaster area and sustained an economic loss by reason of events in 2016
- Income attributed to distribution can be included in income over 3 years
- The amount of a qualified 2016 disaster distribution can be recontributed to an eligible retirement plan within 3 years

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TCJA Impact on Businesses Including the Qualified Business Income Deduction – Section 199A

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Section 199A: Qualified Business Income (QBI) Deduction

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Qualified Business Income Deduction: Section 199A

Overview

- Applies to non-corporate taxpayers-
  - Individuals (including children subject to the Kiddie tax)
  - Estates
  - Non-granter trusts
- Applies to tax years beginning 2018 → 2025
- Applies to income from an S Corp., Schedule E real estate rentals, partnerships or sole proprietors
- Applies only to QBI effectively connected with conduct of a trade or business within the U.S.
- QBI includes items of income, gain, deduction and loss
- No distinction between passive and active income
- Effectively reduces top rate of 37% to 29.6%

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Section 199A Deduction

In the most simple form, deduction is equal to 20% of Qualified Business Income (QBI), limited to 20% of the excess of taxable income less capital gain and qualified dividend income

Qualified Business Income must be trade or business income under Section 162

Example #1: Married Taxpayers	Case 1	Case 2
QBI:	$100,000	$100,000
Capital Gain Income:	60,000	0
Deductions:	(40,000)	(40,000)
Taxable Income:	120,000	60,000
# 1- 20% of QBI:	20,000	20,000
#2 - Taxable Income Less Capital Gain:	60,000	60,000
20% of Taxable Income Less Capital Gain:	12,000	12,000
199A Deduction:	12,000	12,000

Section 199A Deduction (continued)

Section 1231 Gain or loss: Gain or loss on the sale or exchange of property used in a trade or business

How do they interact with the 199A deduction?

Sale of Land	Case 1	Case 2
Proceeds:	$100,000	$100,000
Cost Basis of Land:	(60,000)	(150,000)
Gain (Loss) on Sale:	40,000	(50,000)
Income (Loss) Included in QBI Calculation:	0	(50,000)

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Section 199A Deduction (continued)

Problems with Section 1231 Classification

Married Taxpayers	Ex. # 1	Ex #2 w/ 1231 Gain	Ex. 3 w/ 1231 Loss
QBI:	$100,000	$100,000	$100,000
Capital Gain:	60,000	60,000	60,000
1231 Gain (Loss):	0	200,000	(10,000)
Deductions:	(40,000)	(40,000)	(40,000)
Taxable Income:	120,000	320,000	110,000
# 1 - 20% of QBI	20,000	20,000	18,000 *
#2 -Taxable Income Less Capital Gains & 1231 Gains:	60,000	60,000	50,000
20% of Taxable Income Less Capital Gain Items	12,000	12,000	10,000
QBI Deduction	12,000	12,000	10,000

* (100,000 – 10,000) x 20%

Section 199A Deduction (continued)

Section 1245 Property: Property of a character subject to allowance of depreciation

How does it impact the QBI deduction?

Sale of Equipment	Case 1
Proceeds:	**$100,000**
Cost Basis of Equipment:	60,000
Depreciation Allowed:	(20,000)
Adjusted Basis in Equipment:	**40,000**
Gain on Sale:	**60,000**
Ordinary Gain – QBI Income:	**20,000**
Capital Gain – not QBI Income:	**40,000**

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Section 199A Deduction (continued)

- What about rental activity?
  - Does it rise to a level of a trade or business under Section 162?
- Some factors to consider from *Keefe*
  - Taxpayers effort to rent the property
  - Maintenance and repairs supplied by the taxpayer
  - Taxpayer's employment of labor to mange the property or provide services to tenant
  - The purchase of materials, payment of expenses, and collection of rent
- Also consider *Groetzinger* - Continuous, regular, substantial involvement with primary purpose of being engaged for profit
- Tax Court has been friendly to treating rentals as trade or businesses.
- A lot of cases have focused on whether it is a business asset or a capital asset for loss purposes. How will that translate to Section 162?

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Section 199A Deduction (continued)

Passive Activity Rules:

- Losses arising after January 1, 2018 and deducted in the future reduce QBI at the time of deduction
- 2017 Deductions are in separate bucket
- Current proposed regulations don't address ordering rules

Business Provisions

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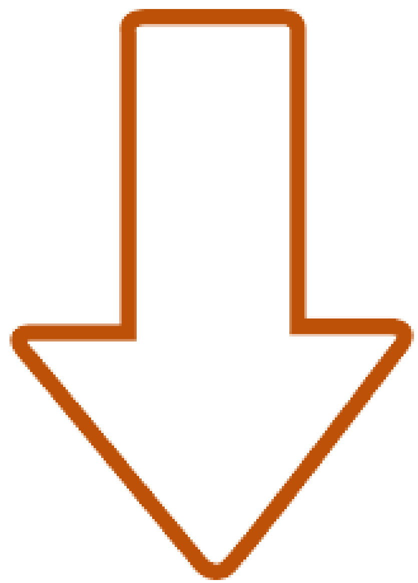
Domestic Production Activity Deduction (after 2017)

Repealed for tax years beginning after 2017

Corporate Tax Rates Reduced (after 2017)

- Prior rates: 15%, 25%, 34%, and 35% (Personal Service Corps. paid at the 35% rate)
- For tax years beginning in 2018: Flat 21% (including Personal Service Corps.)



Net Operating Loss Deduction (after 2017)

For NOLs arising after 2017

- 2-year carryback and special carryback provisions repealed
- 2-year carryback still available for farming trade/business
- NOL deduction is limited to 80% of taxable income
- NOL can be carried forward indefinitely
    - Except for property and casualty insurance companies - 2 years back and 20 years forward with 100% offset

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Limit on Deduction for Business Interest

- For tax years beginning after 2017
- Applies to all forms of business (see exceptions)
- Net interest expense is limited to 30% of the business's adjusted taxable income, plus interest income, plus floor plan financing
- Determined at the tax filer's level, except for pass-through entities, where the determination is made at the entity level.
- "Adjusted taxable income"- 2018 through 2021 - computed without regard to deductions for depreciation, amortization, or depletion.
- Disallowed interest deduction is carried forward as business interest paid in the succeeding year and can be carried forward indefinitely (certain restrictions for partnerships)

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Exemption and Exclusions From New Interest Limitation Rules

- Business that meet the $25 million gross receipts test (other than tax shelters) are exempt from the new interest limitation rules (prior 3-year average)
- Real property trade/business can elect out if they use ADS to depreciate applicable property
- Floor plan financing is exempt from the limitation rules

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Interest Limitation Rules Applicable to Partnerships

- Limitation is first determined at entity level and taken into account and allocated as part of non-separately stated taxable income or loss.
- Any excess interest expense is allocated to partners and reduces partner's basis in partnership. Can be carried forward to future years.
- To the extent partnership has "excess capacity" (interest income + 30% of business income in excess of interest expense), "excess capacity amount" is allocated to partners who can use as basis to deduct any carried forward excess interest expense (no further basis reduction).
- Upon disposition of partnership interest, basis is increased to the extent of unused excess interest expense previously allocated to the partner and previously reduced his/her basis.

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Like-kind Exchanges (transfers after 2017)

- For transfers made after 2017, Section 1031 will only apply to real property that is not held primarily for sale (will no longer apply to tangible personal property).
- Transition rule for pre-Act TPP if taxpayer has either disposed of the relinquished property or acquired the replacement property on or before 12/31/2017

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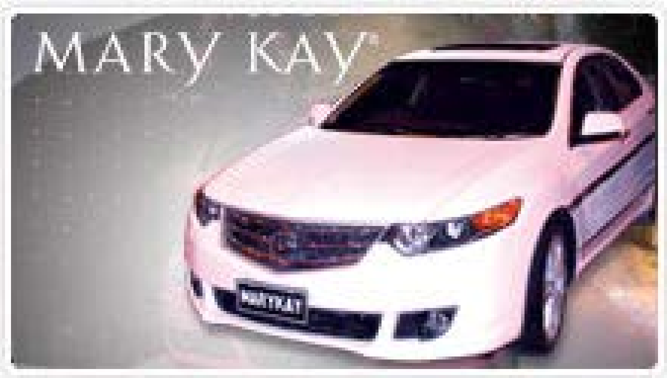
Employee Achievement Awards (after 2017)

Clarification that tangible personal property given to an employee in recognition of either length of service or safety achievement does not include cash, cash-equivalent, gift cards, gift coupons, gift certificates, vacations, meals, lodging, tickets for theater or sporting events, stocks, bonds, or similar other non-tangible property.



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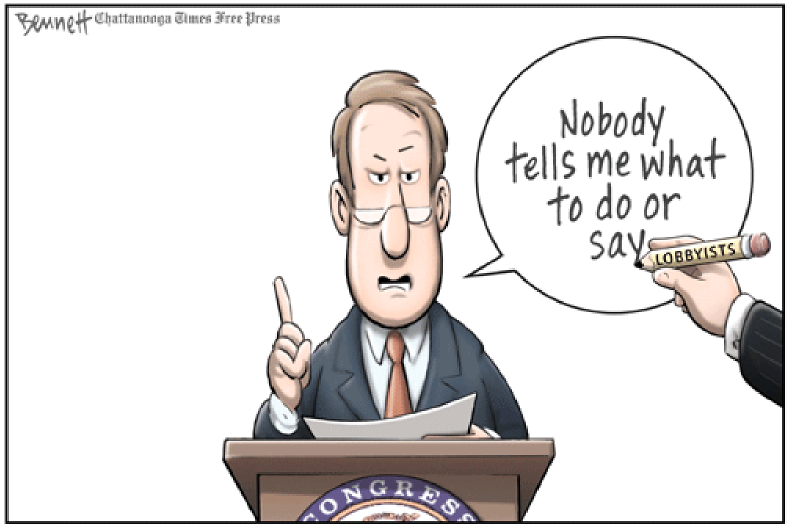
Deduction for Local Lobbying Expenses

After date of enactment (12/22/2017), deduction for lobbying expenses with respect to legislation before local government bodies is eliminated



Section 179 Expensing

- For property placed in service in tax years beginning after 2017
- $500,000 maximum annual amount increases to $1 million
- $2 million phase-out amount increases to $2.5 million
- The definition of Section 179 property is expanded to include certain depreciable TPP used predominantly to furnish lodging or in connection with furnishing lodging
- Also included - improvements to nonresidential real property after the date the property was first placed in service:
  - Roofs
  - HVAC property
  - Fire protection and alarm systems
  - Security systems

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Temporary 100% Bonus Depreciation

- For qualified property acquired and placed in service after September 27, 2017 and before January 1, 2023
- Increased bonus depreciation amount goes from 50% to 100% of adjusted basis of property
- Allowed for new OR used property
- Prior phase-down rules repealed, replaced by:
  - 80% for property placed in service in 2023
  - 60% for property placed in service in 2024
  - 40% for property placed in service in 2025
  - 20% for property placed in service in 2026
- Sunsets after 2026
- For first tax year ending after 9/27/2017, taxpayer can elect to claim 50% bonus first-year depreciation instead of 100%

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Bonus vs Section 179

With 100% Bonus Depreciation, why use Section 179?

- <u>179 Eligible</u>: special carveouts for roofs, HVAC systems, security systems and fire protection systems
- <u>UNICAP rules</u>: Bonus depreciation expense would be part of the UNICAP capitalization rules but Section 179 is specifically excluded
- <u>Flexibility</u> – see example on next slide

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Bonus vs Section 179 (continued)

Bonus or Section 179 when NOL is expiring:

Gross Income:	$2,000
Net Assets (all 5 year property):	2,000
Expiring NOL:	800

	Bonus	Section 179
Gross Income	$2,000	$2,000
Bonus Depreciation	(2,000)	0
Sec 179 / Regular Depreciation	0	(1,200)
NOL	0	(800)
Taxable Income	**0**	**0**
Expired NOL	$800	0

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Qualified Improvement Property

	Sec 179	Bonus	15 Year Property
2017			
Qualified Real Property (QRP)			
- Qualified Leasehold Improvements	Yes	Yes	Yes
- Qualified Restaurant Property	Yes	Yes	Yes
- Qualified Retail Property	Yes	Yes	Yes
Qualified Improvement Property	No	Yes(If QRP)	Yes (If QRP)
2018			
Qualified Improvement Property	Yes	Maybe?	Maybe?

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Qualified Improvement Property (continued)

- Definition: Any improvement to an interior portion of the building which is non-residential real property if the improvement was placed into service after the date the building was placed into service

- Does not include:
  - Enlargement of the building
  - Any elevator or escalator
  - Internal structural framework of building

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Luxury Auto Depreciation Limit

- For vehicles placed in service after 2017 in tax years ending after 2017
- If bonus depreciation is not claimed:

	2017	After 2017
1st year	$3,160	$10,000
2nd year	$5,100	$16,000
3rd year	$3,050	$9,600
4th year and after	$1,875	$5,760

- Indexed for inflation after 2018
- Additional bonus depreciation allowance remains at $8,000 (presumed without phase down as under Pre-Act rules). Auto purchases prior to 9/27/17 and in service after that date are subject to Pre-Act phasedown limits.

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Employer Deduction for M & E and Fringe Benefits Paid (Incurred or Paid After 2017)

- Deduction for entertainment is disallowed.
  - Thus, the cost of Eagles tickets is not deductible, but 50% of the hotdog is.
- 50% meals deduction is expanded to include meals provided through in-house cafeteria or otherwise on the employer's premise.
- After 2025 the deduction for employer provided meals for the convenience of the employer is disallowed.
- Deduction for employee transportation fringe benefit is disallowed (i.e. parking and mass transit), but the benefit to the employee is still tax-free.
- No deduction allowed for transportation expense paid for employee commuting, except for safety reasons.

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Write-off of R&D Expenses

- Paid or incurred in tax years beginning after 2021
- Old law - (1) expense, (2) capitalize + recover over less than 60 months, or (3) recover over 10 years.
- New law - capitalize and amortize over 5 years (15 years if conducted outside of the U.S.), beginning with the mid-point of the year in which the expense was paid or incurred. (for tax years after 2021)

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Partnership Technical Terminations

- Repealed for partnership tax years beginning after 2017.
- Avoids loss of tax attributes, partnership elections, close of partnership tax year and restart of depreciation recovery periods.

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Accounting Changes - Cash Method of Accounting

- Generally for C Corps and partnerships with C Corp as partner
- For tax years beginning after 2017
- Cash method of accounting can be used by all taxpayers (except tax shelters) that -
  - Satisfy the $25 million gross receipts test (indexed for inflation)
  - Regardless of whether the purchase, production or sale of merchandise is an income producing factor
  - Gross receipts test = annual average gross receipt over 3 prior years < $25 million
  - Use of this provision results in a change of accounting method (Section 481).
- Exceptions for qualified personal service corporations and taxpayers other than C Corporations is retained

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Accounting for Inventory

- Pre-Act: Certain small businesses that meet a gross receipts test with average gross receipts of not more that $1 million ($10 million for some industries), can use the cash method of accounting and account for inventories as non-incidental materials and supplies.
- TCJA: For tax years beginning after 2017, taxpayers that meet the $25 million gross receipts test can account for inventories as
  - Non-incidental materials and supplies or
  - Method that conforms to the taxpayer’s financial statement treatment of inventories
  - Use of provision results in a change of accounting method-Section 481

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Inventory Capitalization - Section 263A

- For tax years beginning after 2017
  - Producers or resellers that meet the $25 million gross receipts test are exempt from the UNICAP rules
  - Exemption does not apply if not based on gross receipts
  - Use of provision results in a change of accounting method-Section 481

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Treatment of S Corporation Converted to C Corp

- Limited applicability-only to “eligible terminated S Corps”-
  - was an S Corp the day prior to enactment (12/22/17),
  - revokes S election during 2-yr. period beginning on date of enactment, and
  - same shareholders before and after revocation.
- Any Section 481 (a) adjustment of an “eligible terminated S corp.” attributable to its S revocation (i.e., change from cash to accrual method), is taken into account ratably over a 6-year period, beginning with the year of change.

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Accounting for Long-Term Contracts

- For contracts entered into after 2017 in tax years ending after 2017
- Exception from use of LTC method is expanded to include:
  - Contracts expected to be completed within two years of commencement of contract AND
  - Taxpayer performing work is expected to meet the $25 million gross receipts test for the tax year in which the contract is entered into
- The above is in addition to the Pre-Act exception if Average 3-year gross receipts do not exceed $10 million

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Corporate Alternative Minimum Tax

- Repealed for tax years beginning after 2017
- 2018 - 2020: AMT credit is refundable and can offset the regular tax liability equal to 50% of the excess of the minimum tax credit for the year over the credit against the regular tax liability
- 2021 - 2022: 100% of excess

Dividends-Received Deduction Reduced (after 2017)

	2017	After 2017
If corporation owns at least 20%	80%	65%
Less than 20%	70%	50%

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Exclusions From Contribution to Capital

Effective for contributions made after the date of enactment (12/22/2017), subject to a pre-approved exception

- "Contribution" capital does not include:
  - any contribution in aid of construction or any other contribution as a customer or potential customer, or
  - any contribution by a government entity or civic group, other than as a shareholder
- The nonrecognition of income rules under Section 118 would not apply to the above contributions to the corporation

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Repeal of Rollover of Publicly Traded Securities Gain Into Specialized SBICs

Tax-free rollover provision of Section 1044 is repealed for sales after 2017

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Sale of Partnership Interest

For sales, exchanges and dispositions after 2017

- The transferee must withhold 10% of the amount realized on the sale or exchange of the partnership interest unless the transferor certifies they are not a nonresident alien individual or corporation (Section 1446 (f)).
- The definition of a substantial built in loss is modified (for basis adjustment purposes) to include that a substantial built in loss would also exist if the transferee would be allocated a net loss in excess of $250,000 upon a hypothetical disposition by the partnership of all of the partnership's asset's in a fully taxable transition for cash, equal to the asset's FMV, immediately after the transfer of the partnership interest. (Section 743 (b)).

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Questions

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