2017 TAX REFORM:
"Tax Cuts and Jobs Act"

On December 22, 2017, President Trump signed into law H.R. 1, the "Tax Cuts and Jobs Act," a sweeping tax reform law that promises to entirely change the tax landscape. This summary is meant to provide a general understanding of highlights of the new law and is not meant to be a fully comprehensive study of the law. In addition to the sections covered within this release, the law also includes changes applicable to foreign corporations, exempt organizations and other provisions. Please consult your SSB tax advisor for detailed information on the changes applicable to your personal or business situation.

New Income Tax Rates and Brackets
Under pre-Act law, individuals were subject to six tax rates: 10%, 15%, 25%, 28%, 33%, 35% and 39.6%.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, seven tax rates apply for individuals: 10%, 12%, 22%, 24%, 32%, 35% and 37%. The Act also provides four tax rates for estates and trusts: 10%, 24%, 35% and 37%.

The specific application of these rates, and the income brackets at which they apply, is shown below:

Rate	Single	Married, Filing Jointly	Head of Household	Married, Filing Separately	Estates and Trusts
10%	$0	$0	$0	$0	$0
12%	$9,525	$19,050	$13,600	$9,525	n/a
22%	$38,700	$77,400	$51,800	$38,700	n/a
24%	$82,500	$165,000	$82,500	$82,500	$2,550
32%	$157,500	$315,000	$157,500	$157,500	n/a
35%	$200,000	$400,000	$200,000	$200,000	$9,150
37%	$500,000	$600,000	$500,000	$300,000	$12,500

Standard Deduction Increased
Taxpayers are allowed to reduce their adjusted gross income (AGI) by the standard deduction or the sum of itemized deductions to determine their taxable income.

Under pre-Act law, for 2018, the standard deduction amounts, indexed to inflation, were to be $6,500 for single individuals and married individuals filing separately, $9,550 for heads of household and $13,000 for married individuals filing jointly (including surviving spouses). Additional standard deductions may be claimed by taxpayers who are elderly or blind.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the standard deduction is increased to $24,000 for married individuals filing a joint return, $18,000 for head-of-household filers and $12,000 for all other taxpayers, adjusted for inflation in tax years beginning after 2018. No changes are made to the current-law additional standard deduction for the elderly and blind.

Personal Exemptions Suspended
Under pre-Act law, taxpayers determined their taxable income by subtracting from their adjusted gross income any personal exemption deductions. Personal exemptions generally were allowed for the taxpayer, the taxpayer's spouse and any dependents. The amount deductible for each personal exemption was scheduled to be $4,150 for 2018, subject to a phase-out for higher earners.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the deduction for personal exemptions is effectively suspended by reducing the exemption amount to zero.

New Measure of Inflation Provided
Tax bracket amounts, standard deduction amounts, personal exemptions and various other tax figures are annually adjusted to reflect inflation.

Under pre-Act law, the measure of inflation was CPI-U (Consumer Price Index for all urban customers).

New law. For tax years beginning after December 31, 2017 (December 31, 2018 for figures that are newly provided under the Act for 2018 and, thus, won't be reset until after that year, e.g., the tax brackets set out above), dollar amounts that were previously indexed using CPI-U will instead be indexed using chained CPI-U (C-CPI-U). This change, unlike many provisions in the Act, is permanent.

In general, chained CPI-U grows at a slower pace than CPI-U because it takes into account a consumer's ability to substitute between goods in response to changes in relative prices. Proponents for the use of chained CPI-U say that CPI-U overstates increases in the cost of living because it doesn't take into account the fact that consumers generally adjust their buying patterns when prices go up, rather than simply buying an item at a higher price.

Kiddie Tax Modified
Under pre-Act law, under the "kiddie tax" provisions, the net unearned income of a child was taxed at the parents' tax rates if the parents' tax rates were higher than the tax rates of the child. The remainder of a child's taxable income (i.e., earned income, plus unearned income up to $2,100 (for 2018), less the child's standard deduction) was taxed at the child's rate. The kiddie tax applied to a child if: (1) the child had not reached the age of 19 by the close of the tax year, or the child was a full-time student under the age of 24, and either of the child's parents was alive at such time; (2) the child's unearned income exceeded $2,100 (for 2018); and (3) the child did not file a joint return.

New law. For tax years beginning after December 31, 2017, the taxable income of a child attributable to earned income is taxed under the rates for single individuals, and taxable income of a child attributable to net unearned income is taxed according to the brackets applicable to trusts and estates. This rule applies to the child's ordinary income and his or her income taxed at preferential rates.

Capital Gains Provisions Conformed
The adjusted net capital gain of a noncorporate taxpayer (e.g., an individual) is taxed at maximum rates of 0%, 15% or 20%.

Under pre-Act law, the 0% capital gain rate applied to adjusted net capital gain that otherwise would be taxed at a regular tax rate below the 25% rate (i.e., at the 10% or 15% ordinary income tax rates); the 15% capital gain rate applied to adjusted net capital gain in excess of the amount taxed at the 0% rate, that otherwise would be taxed at a regular tax rate below the 39.6% (i.e., at the 25%, 28%, 33% or 35% ordinary income tax rates); and the 20% capital gain rate applied to adjusted net capital gain that exceeded the amounts taxed at the 0% and 15% rates.

New law. The Act generally retains present-law maximum rates on net capital gains and qualified dividends. It retains the breakpoints that exist under pre-Act law, but indexes them for inflation using C-CPI-U in tax years after December 31, 2017. For 2018, the 15% breakpoint is $77,200 for joint returns and surviving spouses (half this amount for married taxpayers filing separately), $51,700 for heads of household, $2,600 for estates and trusts and $38,600 for other unmarried individuals. The 20% breakpoint is $479,000 for joint returns and surviving spouses (half this amount for married taxpayers filing separately), $452,400 for heads of household, $12,700 for estates and trusts and $425,800 for other unmarried individuals.

New Limitations on "Excess Business Loss"
In general, the passive loss rules under Code Sec. 469 limit deductions and credits from passive trade or business activities. The passive loss rules apply to individuals, estates and trusts and closely held corporations. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income and are carried forward and treated as deductions and credits from passive activities in the next year.

Under pre-Act law, Code Sec. 469 provided a limitation on excess farm losses that applies to taxpayers other than C corporations. If a taxpayer other than a C corporation received an applicable subsidy for the tax year, the amount of the "excess farm loss" was not allowed for the tax year and was carried forward and treated as a deduction attributable to farming businesses in the next tax year.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the Act provides that the excess farm loss limitation doesn't apply and, instead, a noncorporate taxpayer's "excess business loss" is disallowed. Under the new rule, excess business losses are not allowed for the tax year but are instead carried forward and treated as part of the taxpayer's net operating loss (NOL) carryforward in subsequent tax years. This limitation applies after the application of the passive loss rules described above. An excess business loss for the tax year is the excess of aggregate deductions of the taxpayer attributable to the taxpayer's trades and businesses, over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount for a tax year is $500,000 for married individuals filing jointly and $250,000 for other individuals, with both amounts indexed for inflation. In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. Each partner's or S corporation shareholder's share of items of income, gain, deduction or loss of the partnership or S corporation is taken into account in applying the above limitation for the tax year of the partner or S corporation shareholder.

Deduction for Personal Casualty and Theft Losses Suspended
Under pre-Act law, individual taxpayers were generally allowed to claim an itemized deduction for uncompensated personal casualty losses, including those arising from fire, storm, shipwreck or other casualty or from theft.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the personal casualty and theft loss deduction is suspended, except for personal casualty losses incurred in a federally-declared disaster. However, where a taxpayer has personal casualty gains, the loss suspension doesn't apply to the extent that such loss doesn't exceed the gain.

2016 "Net Disaster Loss" Relief Available to Non-Itemizers and Taxpayers Subject to AMT
In general, no personal casualty loss can be claimed by a taxpayer who claims the standard deduction. Such losses can only be claimed as itemized deductions. The standard deduction isn't allowed for purposes of the alternative minimum tax (AMT). Thus, a taxpayer who has taken the standard deduction for regular tax purposes must add back the amount of the deduction in computing alternative minimum taxable income (AMTI) and may not claim itemized deductions for AMT purposes.

New law. If an individual has a net disaster loss for tax years beginning in 2016 and 2017, the $100 limitation applicable to each casualty related to the disaster is increased to $500 and the 10% AGI limitation is waived. For this purpose, a net disaster loss is the qualified disaster related personal casualty losses over any personal casualty gains. The losses must be incurred in a federally declared disaster area. For an individual who does not itemize deductions, his or her standard deduction is increased by the amount of the casualty loss.

Gambling Loss Limitation Modified
In general, taxpayers can claim a deduction for wagering losses to the extent of wagering winnings. However, under pre-Act law, other deductions connected to wagering (e.g., transportation, admission fees) could be claimed regardless of wagering winnings.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the limitation on wagering losses under Code Sec. 165(d) is modified to provide that all deductions for expenses incurred in carrying out wagering transactions, and not just gambling losses, are limited to the extent of gambling winnings.

Child Tax Credit Increased
Under pre-Act law, a taxpayer could claim a child tax credit of up to $1,000 per qualifying child under the age of 17. The aggregate amount of the credit that could be claimed phased out by $50 for each $1,000 of AGI over $75,000 for single filers, $110,000 for married filers and $55,000 for married individuals filing separately. To the extent that the credit exceeded a taxpayer's liability, a taxpayer was eligible for a refundable credit (i.e., the additional child tax credit) equal to 15% of earned income in excess of $3,000 (the "earned income threshold"). A taxpayer claiming the credit had to include a valid taxpayer identification number (TIN) for each qualifying child on his/her return. In most cases, the TIN is the child's Social Security number (SSN), although individual taxpayer identification numbers (ITINs) were also accepted.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the child tax credit is increased to $2,000 for qualifying children, and other changes are made to phase-outs and refund ability during this same period, as outlined below.

Phase-out. The income levels at which the credit phases out are increased to $400,000 for married taxpayers filing jointly ($200,000 for all other taxpayers) (not indexed for inflation).

Dependents. In addition, a $500 nonrefundable credit is provided for certain dependents who are not qualifying children.

Refundability. The amount of the credit that is refundable is increased to $1,400 per qualifying child, and this amount is indexed for inflation, up to the $2,000 base credit amount. The earned income threshold for the refundable portion of the credit is decreased from $3,000 to $2,500.

SSN required. No credit will be allowed to a taxpayer with respect to any qualifying child unless the taxpayer provides the child's SSN.

NOTE: For purposes of the partial credit, a qualifying dependent who isn't a qualifying child presumably includes a child over age of 16 (the age limit applicable to a qualifying child for purposes of the CTC). Thus, the partial credit might apply to a child under 19, a full-time student under age 24 or a disabled child of any age. The partial credit may also apply to other qualifying (nonchild) relatives if all requirements are met.

State and Local Tax Deduction Limited
Under pre-Act law, taxpayers could deduct from their taxable income as an itemized deduction several types of taxes paid at the state and local level, including real and personal property taxes, income taxes and/or sales taxes.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the deduction for taxes paid or accrued by an individual during the tax year that are not directly connected with a trade or business, or with property held for the production of income, is limited. For years 2018 through 2025, an individual may claim an itemized deduction on Schedule A of up to $10,000 ($5,000 for married taxpayers filing a separate return) for: (1) state and local real property taxes; (2) state and local personal property taxes; and (3) state and local income taxes, as well as state and local sales taxes deducted in lieu of state and local income taxes. Foreign real property taxes may not be deducted.

Prepayment provision. For tax years beginning after December 31, 2016, in the case of an amount paid in a tax year beginning before January 1, 2018, with respect to a state or local income tax imposed for a tax year beginning after December 31, 2017, the payment will be treated as paid on the last day of the tax year for which such tax is so imposed for purposes of applying the above limits. In other words, a taxpayer who, in 2017, pays an income tax that is imposed for a tax year after 2017, can't claim an itemized deduction in 2017 for that prepaid income tax.

Mortgage and Home Equity Indebtedness Interest Deduction Limited
Under pre-Act law, the taxpayer could deduct as an itemized deduction qualified residence interest, which included interest paid on a mortgage secured by a principal residence or a second residence. The underlying mortgage loans could represent acquisition indebtedness of up to $1 million ($500,000 in the case of a married individual filing a separate return), plus home equity indebtedness of up to $100,000.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the deduction for interest on home equity indebtedness is suspended, and the deduction for mortgage interest is limited to underlying indebtedness of up to $750,000 ($375,000 for married taxpayers filing separately). For tax years after December 31, 2025, the prior $1 million/$500,000 limitations are restored, and a taxpayer may treat up to these amounts as acquisition indebtedness regardless of when the indebtedness was incurred. The suspension for home equity indebtedness also ends for tax years beginning after December 31, 2025.

Treatment of indebtedness incurred on or before December 15, 2017. The new lower limit doesn't apply to any acquisition indebtedness incurred before December 15, 2017.

"Binding contract" exception. A taxpayer who has entered into a binding written contract before December 15, 2017, to close on the purchase of a principal residence before January 1, 2018, and who purchases such residence before April 1, 2018, shall be considered to incur acquisition indebtedness prior to December 15, 2017.

Refinancing. The $1 million/$500,000 limitations continue to apply to taxpayers who refinance existing qualified residence indebtedness that was incurred before December 15, 2017, so long as the indebtedness resulting from the refinancing doesn't exceed the amount of the refinanced indebtedness.

Medical Expense Deduction Threshold Temporarily Reduced
A deduction is allowed for the expenses paid during the tax year for the medical care of the taxpayer, the taxpayer's spouse, and the taxpayer's dependents to the extent the expenses exceed a threshold amount. To be deductible, the expenses may not be reimbursed by insurance or otherwise. If the medical expenses are reimbursed, then they must be reduced by the reimbursement before the threshold is applied. Under pre-Act law, the threshold was generally 10% of AGI.

New law. For tax years beginning after December 31, 2016 and ending before January 1, 2019, the threshold on medical expense deduction is reduced to 7.5% for all taxpayers. In addition, the rule limiting the medical expense deduction for AMT purposes to 10% of AGI doesn't apply to tax years beginning after December 31, 2016 and ending before January 1, 2019.

Charitable Contribution Deduction Limitation Increased
The deduction for an individual's charitable contribution is limited to prescribed percentages of the taxpayer's "contribution base."

Under pre-Act law, the applicable percentages were 50%, 30% or 20% and depended on the type of organization to which the contribution was made, whether the contribution was made "to" or merely "for the use of" the donee organization and whether the contribution consisted of capital gain property. The 50% limitation applied to public charities and certain private foundations. No charitable deduction is allowed for contributions of $250 or more unless the donor substantiates the contribution by a contemporaneous written acknowledgment (CWA) from the donee organization. The IRS is authorized to issue regulations that exempt donors from this substantiation requirement if the donee organization files a return that contains the same required information; however, IRS has decided not to issue such donee reporting regulations.

New law. For contributions made in tax years beginning after December 31, 2017 and before January 1, 2026, the 50% limitation for cash contributions to public charities and certain private foundations is increased to 60%. Contributions exceeding the 60% limitation are generally allowed to be carried forward and deducted for up to 5 years, subject to the later year's ceiling. And, for contributions made in tax years beginning after December 31, 2016, the donee reporting exemption from the CWA requirement is repealed.

No Deduction for Amounts Paid for College Athletic Seating Rights
Under pre-Act law, special rules applied to certain payments to institutions of higher education in exchange for which the payor receives the right to purchase tickets or seating at an athletic event. The payor could treat 80% of a payment as a charitable contribution where: (1) the amount was paid to or for the benefit of an institution of higher education (i.e., generally, a school with a regular faculty and curriculum and meeting certain other requirements); and (2) such amount would be allowable as a charitable deduction but for the fact that the taxpayer receives (directly or indirectly) as a result of the payment the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

New law. For contributions made in tax years beginning after December 31, 2017, no charitable deduction is allowed for any payment to an institution of higher education in exchange for which the payor receives the right to purchase tickets or seating at an athletic event.

Alimony Deduction by Payor/Inclusion by Payee Suspended
Under pre-Act law, alimony and separate maintenance payments were deductible by the payor spouse and includible in income by the recipient spouse.

New law. For any divorce or separation agreement executed after December 31, 2018, or executed before that date but modified after it (if the modification expressly provides that the new amendments apply), alimony and separate maintenance payments are not deductible by the payor spouse and are not included in the income of the payee spouse. Rather, income used for alimony is taxed at the rates applicable to the payor spouse.

Miscellaneous Itemized Deductions Suspended
Under pre-Act law, taxpayers were allowed to deduct certain miscellaneous itemized deductions to the extent they exceeded, in the aggregate, 2% of the taxpayer's adjusted gross income. These expenses include unreimbursed employee business expenses, uniforms, job hunting expenses, investment advisory fees, tax preparation fees and certain legal fees.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the deduction for miscellaneous itemized deductions that are subject to the 2% floor is suspended.

Overall Limitation on Itemized Deductions Suspended
Under pre-Act law, higher income taxpayers who itemized their deductions were subject to a limitation on these deductions. For taxpayers who exceed the threshold, the otherwise allowable amount of itemized deductions was reduced by 3% of the amount of the taxpayers' adjusted gross income exceeding the threshold (phase out). The total reduction couldn't be greater than 80% of all itemized deductions, and certain itemized deductions were exempt from the Pease limitation.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the phase out on itemized deductions is suspended.

Exclusion for Moving Expense Reimbursements Suspended
Under pre-Act law, an employee could exclude qualified moving expense reimbursements from his or her gross income and from his or her wages for employment tax purposes. These were any amount received (directly or indirectly) from an employer as payment for (or reimbursement of) expenses which would be deductible as moving expenses if directly paid or incurred by the employee.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the exclusion for qualified moving expense reimbursements is suspended, except for members of the Armed Forces on active duty (and their spouses and dependents) who move pursuant to a military order and incident to a permanent change of station.

Moving Expenses Deduction Suspended
Under pre-Act law, taxpayers could claim a deduction for moving expenses incurred in connection with starting a new job if the new workplace was at least 50 miles farther from a taxpayer's former residence than the former place of work.

New law. For tax years beginning after December 31, 2017 and before January 1, 2026, the deduction for moving expenses is suspended, except for members of the Armed Forces on active duty who move pursuant to a military order and incident to a permanent change of station.

Repeal of Obamacare Individual Mandate
Under pre-Act law, the Affordable Care Act (also called the ACA or Obamacare) required that individuals, who were not covered by a health plan that provided at least minimum essential coverage, pay a "shared responsibility payment" (also referred to as a penalty) with their federal tax return. Unless an exception applied, the tax was imposed for any month that an individual did not have minimum essential coverage.

New law. For months beginning after December 31, 2018, the amount of the individual shared responsibility payment is reduced to zero. This repeal is permanent. According to the Congressional Budget Office (CBO), reducing the penalty to zero would raise approximately $338 billion over the 10-year budgetary window period because, when no longer penalized for not doing so, fewer people would obtain subsidized coverage. The Act leaves intact the 3.8% net investment income tax and the 0.9% additional Medicare tax, both enacted by Obamacare.

Personal AMT Retained with Higher Exemption Amounts
The alternative minimum tax (AMT) is a tax system separate from the regular tax that is intended to prevent a taxpayer with substantial income from avoiding tax liability by using various exclusions, deductions and credits. Under it, AMT rates are applied to AMT income determined after the taxpayer "gives back" an assortment of tax benefits. If the tax determined under these calculations exceeds the regular tax, the larger amount is owed. In computing the AMT, only alternative minimum taxable income (AMTI) above an AMT exemption amount is taken into account. The AMT exemption amount is set by statute and adjusted annually for inflation, and the exemption amounts are phased out at higher income levels.

Filing Status	**AMT Exemption Amount**	**AMT Phase-out Income Level**
2018 AMT Thresholds and Exemptions by Filing Status AFTER GOP/TRUMP TAX REFORM		
Single	$70,300	$500,000
Joint Returns or Surviving Spouses	$109,400	$1,000,000
2017 AMT Thresholds and Exemptions by Filing Status		
Single	$54,300	$120,700
Joint Returns or Surviving Spouses	$84,500	$160,900

Expanded Use of 529 Account Funds
Under pre-Act law, funds in a Code Sec. 529 college savings account could only be used for qualified higher education expenses. If funds were withdrawn from the account for other purposes, each withdrawal was treated as containing a pro-rata portion of earnings and principal. The earnings portion of a nonqualified withdrawal was taxable as ordinary income and subject to a 10% additional tax unless an exception applied. "Qualified higher education expenses" included tuition, fees, books, supplies and required equipment, as well as reasonable room and board if the student was enrolled at least half-time. Eligible schools included colleges, universities, vocational schools or other postsecondary schools eligible to participate in a student aid program of the Department of Education. This included nearly all accredited public, nonprofit and proprietary (for-profit) postsecondary institutions.

New law. For distributions after December 31, 2017, "qualified higher education expenses" include tuition at an elementary or secondary public, private or religious school, up to a $10,000 limit per beneficiary, per tax year.

New Deferral Election for Qualified Equity Grants
An employee must generally recognize income for the tax year in which the employee's right to the stock is transferable or isn't subject to a substantial risk of forfeiture. The amount includible in income is the excess of the stock's fair market value at the time of substantial vesting over the amount, if any, paid by the employee for the stock.

New law. Generally effective with respect to stock attributable to options exercised or restricted stock units (RSUs) settled after December 31, 2017 (subject to a transition rule; see below), a qualified employee can elect to defer, for income tax purposes, recognition of the amount of income attributable to qualified stock transferred to the employee by the employer. The election applies only for income tax purposes; the application of FICA and FUTA is not affected. The election must be made no later than 30 days after the first time the employee's right to the stock is substantially vested or is transferable, whichever occurs earlier.

If the election is made, the income has to be included in the employee's income for the tax year that includes the earliest of:

1. The first date the qualified stock becomes transferable, including, solely for this purpose, transferable to the employer;
2. The date the employee first becomes an "excluded employee" (i.e., an individual: (a) who is one-percent owner of the corporation at any time during the 10 preceding calendar years; (b) who is, or has been at any prior time, the chief executive officer or chief financial officer of the corporation or an individual acting in either capacity; (c) who is a family member of an individual described in (a) or (b); or (d) who has been one of the four highest compensated officers of the corporation for any of the 10 preceding tax years;
3. The first date on which any stock of the employer becomes readily tradable on an established securities market;
4. The date five years after the first date the employee's right to the stock becomes substantially vested; or
5. The date on which the employee revokes his or her election.

Repeal of the Rule Allowing Recharacterization of IRA Contributions
Under pre-Act law, if an individual makes a contribution to an IRA (traditional or Roth) for a tax year, the individual is allowed to recharacterize the contribution as a contribution to the other type of IRA (traditional or Roth) by making a trustee-to-trustee transfer to the other type of IRA before the due date for the individual's income tax return for that year. In the case of a recharacterization, the contribution will be treated as having been made to the transferee IRA (and not the original, transferor IRA) as of the date of the original contribution. Both regular contributions and conversion contributions to a Roth IRA can be recharacterized as having been made to a traditional IRA.

New law. For tax years beginning after December 31, 2017, the rule that allows a contribution to one type of IRA to be recharacterized as a contribution to the other type of IRA does not apply to a conversion contribution to a Roth IRA. Thus, recharacterization cannot be used to unwind a Roth conversion.

For example, an individual may still make a contribution for a year to a Roth IRA and, before the due date for the individual's income tax return for the year, recharacterize it as a contribution to a traditional IRA. In addition, an individual may still make a contribution to a traditional IRA and convert the traditional IRA to a Roth IRA, but the individual is precluded from later unwinding the conversion through a recharacterization.

Extended Rollover Period for Rollover of Plan Loan Offset Amounts
If an employee stops making payments on a retirement plan loan before the loan is repaid, a deemed distribution of the outstanding loan balance generally occurs. Such a distribution is generally taxed as though an actual distribution occurred, including being subject to a 10% early distribution tax, if applicable. A deemed distribution isn't eligible for rollover to another eligible retirement plan.

Under pre-Act law, a plan may also provide that, in certain circumstances (for example, if an employee terminates employment), an employee's obligation to repay a loan is accelerated and, if the loan is not repaid, the loan is cancelled and the amount in the employee's account balance is offset by the amount of the unpaid loan balance, referred to as a loan offset. A loan offset is treated as an actual distribution from the plan equal to the unpaid loan balance (rather than a deemed distribution), and (unlike a deemed distribution) the amount of the distribution is eligible for tax-free rollover to another eligible retirement plan within 60 days. However, the plan is not required to offer a direct rollover with respect to a plan loan offset amount that is an eligible rollover distribution, and the plan loan offset amount is generally not subject to 20% income tax withholding.

New law. For plan loan offset amounts which are treated as distributed in tax years beginning after December 31, 2017, the Act provides that the period during which a qualified plan loan offset amount may be contributed to an eligible retirement plan as a rollover contribution would be extended from 60 days after the date of the offset to the due date (including extensions) for filing the federal income tax return for the tax year in which the plan loan offset occurs—that is, the tax year in which the amount is treated as distributed from the plan. A qualified plan loan offset amount is a plan loan offset amount that is treated as distributed from a qualified retirement plan, a Code Sec. 403(b) plan or a governmental Code Sec. 457(b) plan solely by reason of the termination of the plan or the failure to meet the repayment terms of the loan because of the employee's separation from service, whether due to layoff, cessation of business, termination of employment or otherwise. A loan offset amount under the Act (as before) is the amount by which an employee's account balance under the plan is reduced to repay a loan from the plan.

Relief from Early Withdrawal Tax for "Qualified 2016 Disaster Distributions"
A distribution from a qualified retirement plan, a tax-sheltered annuity plan, an eligible deferred compensation plan of a state or local government employer or an individual retirement arrangement (IRA) generally is included in income for the year distributed. In addition, unless an exception applies, distribution from a qualified retirement plan, a section 403(b) plan or an IRA received before age 59½ is subject to a 10% additional tax (the "early withdrawal tax") on the amount includible in income. In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The 60-day requirement can be waived by IRS in certain situations.

New law. The Act provides an exception to the retirement plan 10% early withdrawal tax for up to $100,000 of "qualified 2016 disaster distributions." These distributions are defined as distributions from an eligible retirement plan made (a) on or after January 1, 2016 and before January 1, 2018, to an individual whose principal place of abode at any time during calendar year 2016 was located in a 2016 disaster area and who has sustained an economic loss by reason of the events that gave rise to the Presidential disaster declaration. An "eligible retirement plan" means a qualified retirement plan, a section 403(b) plan or an IRA.

Income attributable to a qualified 2016 disaster distribution can be included in income ratably over three years and the amount of a qualified 2016 disaster distribution can be recontributed to an eligible retirement plan within three years.

Estate and Gift Tax Retained with Increased Exemption Amount
A gift tax is imposed on certain lifetime transfers, and an estate tax is imposed on certain transfers at death.

Under pre-Act law, the first $5 million (as adjusted for inflation in years after 2011) of transferred property was exempt from estate and gift tax. For estates of decedents dying and gifts made in 2018, this "basic exclusion amount" would have been $5.6 million ($11.2 million for a married couple).

New law. For estates of decedents dying and gifts made after December 31, 2017 and before January 1, 2026, the Act doubles the base estate and gift tax exemption amount from $5 million to $10 million. The $10 million amount is indexed for inflation occurring after 2011 and will be approximately $11.2 million in 2018 ($22.4 million per married couple). The language in the Act does not mention generation-skipping transfers but, because the generation-skipping transfer tax exemption amount is based on the basic exclusion amount, generation-skipping transfers will also see an increased exclusion amount.

Corporate Tax Rates Reduced
Under pre-Act law, corporations are subject to graduated tax rates of 15% (for taxable income of $0—$50,000), 25% (for taxable income of $50,001—$75,000), 34% (for taxable income of $75,001—$10,000,000), and 35% (for taxable income over $10,000,000). Personal service corporations pay tax on their entire taxable income at the rate of 35%.

New law. For tax years beginning after December 31, 2017, the corporate tax rate is a flat 21% rate.

Dividends-Received Deduction Percentages Reduced
Under pre-Act law, corporations that receive dividends from other corporations are entitled to a deduction for dividends received. If the corporation owns at least 20% of the stock of another corporation, an 80% dividends-received deduction is allowed. Otherwise, a 70% deduction is allowed.

New law. For tax years beginning after December 31, 2017, the 80% dividends-received deduction is reduced to 65%, and the 70% dividends-received deduction is reduced to 50%.

Corporate Alternative Minimum Tax Repealed
Under pre-Act law, the corporate alternative minimum tax (AMT) is 20%, with an exemption amount of up to $40,000. Corporations with average gross receipts of less than $7.5 million for the preceding three tax years are exempt from the AMT. The exemption amount phases out starting at $150,000 of alternative minimum taxable income.

New law. For tax years beginning after December 31, 2017, the corporate AMT is repealed.

For a corporation, the AMT credit is allowed to offset the regular tax liability for any tax year. For tax years beginning after 2017 and before 2022, the AMT credit is refundable in an amount equal to 50% (100% for tax years beginning in 2021) of the excess of the minimum tax credit for the tax year over the amount of the credit allowable for the year against regular tax liability. Accordingly, the full amount of the minimum tax credit will be allowed in tax years beginning before 2022.

Increased Code Sec. 179 Expensing
A taxpayer may elect, subject to limitations, under Code Sec. 179 to deduct (or "expense") the cost of qualifying property, rather than to recover such costs through depreciation deductions.

Under pre-Act law, the maximum amount a taxpayer could expense was $500,000 of the cost of qualifying property placed in service for the tax year. The $500,000 amount was reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the tax year exceeds $2 million. These amounts were indexed for inflation.

In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business and includes off-the-shelf computer software and qualified real property (i.e., qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property).

Passenger automobiles subject to the luxury vehicle limitation are eligible for Code Sec. 179 expensing only to the extent of the luxury vehicle dollar limitations. For sport utility vehicles above the 6,000-pound weight rating and not more than the 14,000-pound weight rating, the maximum cost that may be expensed for any tax year under Code Sec. 179 is $25,000.

New law. For property placed in service in tax years beginning after December 31, 2017, the maximum amount a taxpayer may expense under Code Sec. 179 is increased to $1 million, and the phase-out threshold amount is increased to $2.5 million. For tax years beginning after 2018, these amounts (as well as the $25,000 sport utility vehicle limitation) are indexed for inflation. Property is not treated as acquired after the date on which a written binding contract is entered into for such acquisition.

"Qualified real property." The definition of Code Sec. 179 property is expanded to include certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging. The definition of qualified real property eligible for Code Sec. 179 expensing is also expanded to include the following improvements to nonresidential real property after the date such property was first placed in service: roofs; heating, ventilation and air-conditioning property; fire protection and alarm systems; and security systems.

Temporary 100% Cost Recovery of Qualifying Business Assets
Under pre-Act law, an additional first-year bonus depreciation deduction was allowed equal to 50% of the adjusted basis of qualified property, the original use of which began with the taxpayer, placed in service before January 1, 2020. The 50% allowance was phased down for property placed in service after December 31, 2017. A first-year depreciation deduction is also electively available for certain plants bearing fruit or nuts planted or grafted after 2015 and before 2020.

New law. A 100% first-year deduction for the adjusted basis is allowed for qualified property acquired and placed in service after September 27, 2017 and before January 1, 2023 (after September 27, 2017 and before January 1, 2024, for certain property with longer production periods). Thus, the phase-down of the 50% allowance for property placed in service after December 31, 2017, and for specified plants planted or grafted after that date, is repealed. The additional first-year depreciation deduction is allowed for new and used property. The pre-Act law phase-down of bonus depreciation applies to property acquired before September 28, 2017, and placed in service after September 27, 2017.

The Act refers to the new 100% depreciation deduction in the placed-in-service year as "100% expensing," but the tax break should not be confused with expensing under Code Sec. 179, which is subject to entirely separate rules.

In later years, the first-year bonus depreciation deduction phases down, as follows:

- 80% for property placed in service after December 31, 2022 and before January 1, 2024.
- 60% for property placed in service after December 31, 2023 and before January 1, 2025.
- 40% for property placed in service after December 31, 2024 and before January 1, 2026.
- 20% for property placed in service after December 31, 2025 and before January 1, 2027.

First-year bonus depreciation sunsets after 2026.

For the first tax year ending after September 27, 2017, a taxpayer can elect to claim 50% bonus first-year depreciation (instead of claiming a 100% first-year depreciation allowance).

Luxury Automobile Depreciation Limits Increased
Code Sec. 280F limits the Code Sec. 179 expensing and cost recovery deduction with respect to certain passenger autos (the luxury auto depreciation limit).

Under pre-Act law, for passenger autos placed in service in 2017, for which the additional first-year depreciation deduction is not claimed, the maximum amount of allowable depreciation deduction is $3,160 for the year in which the vehicle is placed in service, $5,100 for the second year, $3,050 for the third year and $1,875 for the fourth and later years in the recovery period. This limitation is indexed for inflation.

For passenger automobiles eligible for the additional first-year depreciation allowance in 2017, the first-year limitation is increased by an additional $8,000. This amount is phased down from $8,000 by $1,600 per calendar year beginning in 2018. Thus, the Code Sec. 280F increase amount for property placed in service during 2018 is $6,400 and, during 2019, is $4,800.

Special rules also apply to listed property, such as any passenger auto; any other property used as a means of transportation; any property of a type generally used for purposes of entertainment, recreation or amusement; and, under pre-Act law, any computer or peripheral equipment.

New law. For passenger automobiles placed in service after December 31, 2017, in tax years ending after that date, for which the additional first-year depreciation deduction is not claimed, the maximum amount of allowable depreciation is increased to $10,000 for the year in which the vehicle is placed in service, $16,000 for the second year, $9,600 for the third year and $5,760 for the fourth and later years in the recovery period. For passenger automobiles placed in service after 2018, these dollar limits are indexed for inflation. For passenger automobiles eligible for bonus first-year depreciation, the maximum first-year depreciation allowance remains at $8,000.

In addition, computer or peripheral equipment is removed from the definition of listed property and, therefore, isn't subject to the heightened substantiation requirements that apply to listed property.

New Farming Equipment and Machinery is 5-Year Property
Under pre-Act law, depreciable assets used in agriculture activities that are assigned a recovery period of 7 years include machinery and equipment, grain bins and fences (but no other land improvements) that are used in the production of crops or plants, vines and trees; livestock; the operation of farm dairies, nurseries, greenhouses, sod farms, mushrooms cellars, cranberry bogs, apiaries and fur farms; and the performance of agriculture, animal husbandry and horticultural services. Cotton ginning assets are also assigned a recovery period of 7 years, while land improvements, such as drainage facilities, paved lots and water wells, are assigned a recovery period of 15 years.

For new farm machinery or equipment (other than any grain bin, cotton ginning asset, fence or other land improvement) used in a farming business, the original use of which began with the taxpayer after December 31, 2008, and was placed in service before January 1, 2010, a 5-year recovery period had applied. Under pre-Act law, any property (other than nonresidential real property, residential rental property and trees or vines bearing fruits or nuts) used in a farming business was subject to the 150% declining-balance method. Under a special accounting rule, certain taxpayers engaged in the business of farming who elect to deduct pre-productive period expenditures are required to depreciate all farming assets using the alternative depreciation system (ADS; i.e., using longer recovery periods and the straight-line method).

New law. For property placed in service after December 31, 2017, in tax years ending after that date, the cost recovery period is shortened from 7 to 5 years for any machinery or equipment (other than any grain bin, cotton ginning asset, fence or other land improvement) used in a farming business, the original use of which begins with the taxpayer.

In addition, the required use of the 150% declining-balance depreciation method for property used in a farming business (i.e., for 3-, 5-, 7- and 10-year property) is repealed. The 150% declining-balance method continues to apply to any 15-year or 20-year property used in the farming business to which the straight-line method does not apply, and to property for which the taxpayer elects the use of the 150% declining-balance method.

Thus, farming property can be depreciated under the 200% declining-balance method except for (1) buildings and trees or vines bearing fruits or nuts (to which the straight-line method applies), (2) property for which the taxpayer elects either the straight-line method or 150% declining-balance method, (3) 15- or 20-year MACRS property that has to be depreciated under the 150% declining-balance method, and (4) property subject to the ADS. Land improvements, other than buildings, are 15-year property, and fences and grain bins have a 7-year recovery period, and single-purpose agricultural or horticultural structures (e.g., greenhouses, specialized housing for livestock) have a 10-year recovery period.

Recovery Period for Real Property Shortened

The cost recovery periods for most real property are 39 years for nonresidential real property and 27½ years for residential rental property. The straight-line depreciation method and mid-month convention are required for such real property.

Under pre-Act law, qualified leasehold improvement property was an interior building improvement to nonresidential real property, by a landlord, tenant or subtenant, that was placed in service after the date the building was first placed in service. Qualified restaurant property was either (a) a building improvement in a building in which more than 50% of the building's square footage was devoted to the preparation of, and seating for, on-premises consumption of prepared meals (the more-than-50% test), or (b) a building that passed the more-than-50% test. Qualified retail improvement property was an interior improvement to retail space that was placed in service more than 3 years after the date the building was first placed in service and that meets other requirements.

Qualified improvement property is any improvement to an interior portion of a building that is nonresidential real property if such improvement is placed in service after the date such building was first placed in service. Qualified improvement property does not include any improvement for which the expenditure is attributable to the enlargement of the building, any elevator or escalator, or the internal structural framework of the building.

New law. A general 15-year recovery period and straight-line depreciation are provided for qualified improvement property, and a 20-year ADS recovery period is provided for such property.

Limits on Deduction of Business Interest

Under pre-Act law, interest paid or accrued by a business generally is deductible in the computation of taxable income subject to a number of limitations.

New law. For tax years beginning after December 31, 2017, business gross receipts in excess of $25 million are generally subject to a disallowance of a deduction for net interest expense in excess of 30% of the business' adjusted taxable income, business interest income and floor plan financing interest. Adjusted taxable income is the taxpayer's regular taxable income computed without regard to any business interest, net operating loss, the new Sec. 199A pass-through deduction and, for years before 2022, the allowance for depreciation or depletion.

A taxpayer can elect to exclude from the limitation any real property trade or business such as real estate development, redevelopment, construction, rental, operation, management, leasing or brokerage trade or business. If the election is made, the business must use the alternative depreciation system for certain property. Similarly, an election can be made to exclude any farming business.

Any business interest not allowed as a deduction for the tax year may be carried forward. In the case of a partnership or S corporation, the limitation on the deduction is applied at the entity level. A partnership or S corporation that has an excess business interest allocates the excess to the partners or shareholders. The carryover can be used in subsequent years to the extent the partner or shareholder is allocated excess taxable income from the entity in the succeeding year.

Modification of Net Operating Loss Deduction
Under pre-Act law, a net operating loss (NOL) may generally be carried back 2 years and carried over 20 years to offset taxable income in such years. However, different carryback periods apply with respect to NOLs arising in different circumstances. For example, extended carryback periods are allowed for NOLs attributable to specified liability losses and certain casualty and disaster losses.

New law. For NOLs arising in tax years ending after December 31, 2017, the 2-year carryback and the special carryback provisions are repealed, but a 2-year carryback applies in the case of certain losses incurred in the trade or business of farming.

For losses arising in tax years beginning after December 31, 2017, the NOL deduction is limited to 80% of taxable income (determined without regard to the deduction). Carryovers to other years are adjusted to take account of this limitation and, except as provided below, NOLs can be carried forward indefinitely.

However, NOLs of property and casualty insurance companies can be carried back 2 years and carried over 20 years to offset 100% of taxable income in such years.

Domestic Production Activities Deduction Repealed
Under pre-Act law, taxpayers could claim a domestic production activities deduction (DPAD) under Code Sec. 199 equal to 9% of the lesser of the taxpayer's qualified production activities income or the taxpayer's taxable income for the tax year. The deduction was limited to 50% of the W-2 wages paid by the taxpayer during the calendar year. Qualified production activities income was equal to domestic production gross receipts less the cost of goods sold and expenses properly allocable to such receipts. Qualifying receipts were derived from property that was manufactured, produced, grown or extracted within the U.S.; qualified film productions; production of electricity, natural gas or potable water; construction activities performed in the U.S.; and certain engineering or architectural services.

New law. For tax years beginning after December 31, 2017, the DPAD is repealed.

Like-Kind Exchange Treatment Limited
Under pre-Act law, the like-kind exchange rule provided that no gain or loss was recognized to the extent that property—which included a wide range of property from real estate to tangible personal property—held for productive use in the taxpayer's trade or business, or property held for investment purposes, is exchanged for property of a like-kind that also is held for productive use in a trade or business or for investment.

New law. Generally effective for transfers after December 31, 2017, the rule allowing the deferral of gain on like-kind exchanges is modified to allow for like-kind exchanges only with respect to real property that is not held primarily for sale. However, under a transition rule, the pre-Act like-kind exchange rules apply to exchanges of personal property if the taxpayer has either disposed of the relinquished property or acquired the replacement property on or before December 31, 2017.

Five-Year Write-off of Specified R&E Expenses
Under pre-Act law, taxpayers may elect to deduct currently the amount of certain reasonable research or experimentation (R&E) expenses paid or incurred in connection with a trade or business. Alternatively, taxpayers may forgo a current deduction, capitalize their research expenses and recover them ratably over the useful life of the research but, in no case, over a period of less than 60 months. Or, they may elect to recover them over a period of 10 years.

New law. For amounts paid or incurred in tax years beginning after December 31, 2021, "specified R&E expenses" must be capitalized and amortized ratably over a 5-year period (15 years if conducted outside of the U.S.), beginning with the midpoint of the tax year in which the specified R&E expenses were paid or incurred. Certain exclusions apply.

Deduction for Fringe Benefit Expenses and Entertainment Limited
Under pre-Act law, a taxpayer may deduct up to 50% of expenses relating to meals and entertainment. Housing and meals provided for the convenience of the employer on the business premises of the employer are excluded from the employee's gross income. Various other fringe benefits provided by employers are not included in an employee's gross income, such as qualified transportation fringe benefits.

New law. For amounts incurred or paid after December 31, 2017, deductions for entertainment expenses are disallowed, eliminating the subjective determination of whether such expenses are sufficiently business related; the current 50% limit on the deductibility of business meals is expanded to meals provided through an in-house cafeteria or otherwise on the premises of the employer; and deductions for employee transportation fringe benefits (e.g., parking and mass transit) are denied, but the exclusion from income for such benefits received by an employee is retained. In addition, no deduction is allowed for transportation expenses that are the equivalent of commuting for employees (e.g., between the employee's home and the workplace), except as provided for the safety of the employee.

Entertainment includes any activity of a type that is generally considered to constitute entertainment, amusement or recreation, such as entertaining at night clubs, cocktail lounges, theaters, country clubs, golf and athletic clubs and sporting events, and on hunting, fishing, vacation and similar trips.

Some entertainment expenses also remain fully deductible, including: (1) certain entertainment expenses for goods, services and facilities that are treated as compensation to an employee recipient; (2) expenses for recreational, social or similar activities and related facilities primarily for the benefit of employees who are not highly compensated employees; (3) expenses for entertainment sold to customers; and (4) entertainment expenses for goods, services and facilities that are includible in the gross income of a nonemployee recipient as compensation for services rendered or as a prize or award. As under current law, these deductions must satisfy strict substantiation requirements; however, the taxpayer will not have to substantiate the time and place of the entertainment.

For tax years beginning after December 31, 2025, the Act will disallow an employer's deduction for expenses associated with meals provided for the convenience of the employer on the employer's business premises or provided on or near the employer's business premises through an employer-operated facility that meets certain requirements.

Nondeductible Penalties and Fines
Under pre-Act law, no deduction is allowed for fines or penalties paid to a government for the violation of any law.

New law. For amounts generally paid or incurred on or after the date of enactment, no deduction is allowed for any otherwise deductible amount paid or incurred (whether by suit, agreement or otherwise) to, or at the direction of, a government or specified nongovernmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law. An exception applies to payments that the taxpayer establishes are either restitution (including remediation of property) or amounts required to come into compliance with any law that was violated or involved in the investigation or inquiry, that are identified in the court order or settlement agreement as restitution, remediation or required to come into compliance. IRS remains free to challenge the characterization of an amount so identified; however, no deduction is allowed unless the identification is made.

An exception also applies to any amount paid or incurred as taxes due.

Restitution for failure to pay any tax that is assessed as restitution under the Code is deductible only to the extent the tax would have been allowed as a deduction if it had been timely paid.

Government agencies (or entities treated as such) must report to IRS and to the taxpayer the amount of each settlement agreement or order entered into where the aggregate amount required to be paid or incurred to or at the direction of the government is at least $600 (or such other amount as may be specified by IRS). The report must separately identify any amounts that are for restitution or remediation of property or correction of noncompliance. The report must be made at the time the agreement is entered into, as determined by IRS.

The provisions don't apply to amounts paid or incurred under any binding order or agreement entered into before the date of enactment. But this exception would not apply to an order or agreement requiring court approval unless the approval was obtained before the enactment date.

New Credit for Employer-Paid Family and Medical Leave
Under pre-Act law, no credit is provided to employers for compensation paid to employees while on leave.

New law. For wages paid in tax years beginning after December 31, 2017, but not beginning after December 31, 2019, the Act allows businesses to claim a general business credit equal to 12.5% of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave (FMLA) if the rate of payment is 50% of the wages normally paid to an employee. The credit is increased by 0.25 percentage points (but not above 25%) for each percentage point by which the rate of payment exceeds 50%. To be eligible for the credit, qualifying full-time employees have to be given at least 2 weeks of annual paid family and medical leave (all less-than-full-time qualifying employees have to be given a commensurate amount of leave on a pro rata basis).

Capitalization and Inclusion of Certain Expenses in Inventory Costs
The uniform capitalization (UNICAP) rules generally require certain direct and indirect costs associated with real or tangible personal property manufactured by a business to be included in either inventory or capitalized into the basis of such property. However, under pre-Act law, a business with average annual gross receipts of $10 million or less in the preceding 3 years is not subject to the UNICAP rules for personal property acquired for resale. The exemption does not apply to real property (e.g., buildings) or personal property that is manufactured by the business.

New law. For tax years beginning after December 31, 2017, any producer or reseller that meets the $25 million gross receipts test is exempted from the application of Code Sec. 263A. Use of this provision is a change in the taxpayer's accounting method.

Accounting for Long-Term Contracts
Under pre-Act law, taxpayers must generally account for long-term construction contracts using the percentage-of-completion method. Exception from the requirement to use the percentage-of-completion method was provided for construction companies with average annual gross receipts of $10 million or less in the preceding 3 years for real property construction contracts. They were allowed to instead deduct costs associated with construction when they were paid and recognize income when the building was completed.

New law. For contracts entered into after December 31, 2017, in tax years ending after that date, the exception for small construction contracts from the requirement to use the percentage-of-completion method is expanded to apply to contracts for the construction or improvement of real property if the contract: (1) is expected (at the time such contract is entered into) to be completed within 2 years of commencement of the contract and (2) is performed by a taxpayer that (for the tax year in which the contract was entered into) meets the $25 million gross receipts test. Use of this percentage-of-completion method exception for small construction contracts is applied on a cutoff basis for all similarly classified contracts.

New Deduction for Pass-Through Income
Under pre-Act law, the net income of these pass-through businesses—sole proprietorships, partnerships, limited liability companies (LLCs) and S corporations—was not subject to an entity-level tax and was instead reported by the owners or shareholders on their individual income tax returns. Thus, the income was effectively subject to individual income tax rates.

New law. Generally, for tax years beginning after December 31, 2017 and before January 1, 2026, the Act adds a new section, Code Sec. 199A, "Qualified Business Income," under which a noncorporate taxpayer, including a trust or estate, who has qualified business income (QBI) from a partnership, S corporation or sole proprietorship, is allowed to deduct:

1. the *lesser* of: (a) the "combined qualified business income amount" of the taxpayer or (b) 20% of the excess, if any, of the taxable income of the taxpayer for the tax year over the sum of net capital gain and the aggregate amount of the qualified cooperative dividends of the taxpayer for the tax year; *plus*
2. the *lesser* of: (i) 20% of the aggregate amount of the qualified cooperative dividends of the taxpayer for the tax year or (ii) taxable income (reduced by the net capital gain) of the taxpayer for the tax year.

"Qualified business income amount" means, for any tax year, an amount equal to: (i) the sum of the deductible amounts for each qualified trade or business of the taxpayer (defined as 20% of the taxpayer's QBI subject to the W-2 wage limitation; see below); *plus* (ii) 20% of the aggregate amount of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership income of the taxpayer for the tax year.

QBI is generally defined as the net amount of "qualified items of income, gain, deduction and loss" relating to any qualified trade or business of the taxpayer. For this purpose, qualified items of income, gain, deduction and loss are items of income, gain, deduction and loss to the extent these items are effectively connected with the conduct of a trade or business within the U.S. under Code Sec. 864(c) and included or allowed in determining taxable income for the year. If the net amount of qualified income, gain, deduction and loss relating to qualified trade or businesses of the taxpayer for any tax year is less than zero, the amount is treated as a loss from a qualified trade or business in the succeeding tax year. QBI does *not* include certain investment items; reasonable compensation paid to the taxpayer by any qualified trade or business for services rendered with respect to the trade or business; any guaranteed payment to a partner for services to the business; or a payment made to a partner for services rendered with respect to the trade or business.

The 20% deduction is not allowed in computing adjusted gross income (AGI), but rather is allowed as a deduction reducing *taxable* income.

Limitations. The wage and service business limitations discussed below do not apply to those taxpayers below the threshold amount. The "threshold amount" is defined as $315,000 for married individuals filing jointly and $157,500 for other individuals, indexed for inflation after 2018.

Except as provided below, the deduction cannot exceed the greater of:

1. 50% of the W-2 wages with respect to the qualified trade or business; or
2. the sum of 25% of the W-2 wages paid with respect to the qualified trade or business *plus* 2.5% of the unadjusted basis, immediately after acquisition, of all "qualified property."

Qualified property is defined in Code Sec. 199A(b)(6) as meaning tangible, depreciable property which is held by and available for use in the qualified trade or business at the close of the tax year, which is used at any point during the tax year in the production of qualified business income, and the depreciable period for which has not ended before the close of the tax year, or 10 years if greater.

Item 2. above, which was added to the bill in Conference, will, for example, benefit people who own businesses with large real estate holdings but have few actual employees.

The above limit does *not* apply for taxpayers with taxable income below the "threshold amount" ($315,000 for married individuals filing jointly, $157,500 for other individuals, indexed for inflation after 2018). The application of the limit is phased in for individuals with taxable income exceeding the threshold amount, over the next $100,000 of taxable income for married individuals filing jointly ($50,000 for other individuals). Thus, for 2018, the limit fully applies to married taxpayers with taxable income over $415,000 and other individuals with taxable income over $207,500.

For a partnership or S corporation, each partner or shareholder is treated as having W-2 wages for the tax year in an amount equal to his or her allocable share of the W-2 wages of the entity for the tax year. A partner's or shareholder's allocable share of W-2 wages is determined in the same way as the partner's or shareholder's allocable share of wage expenses. For an S corporation, an allocable share is the shareholder's pro rata share of an item.

Service businesses. Except as provided below, the deduction does not apply to specified service businesses (i.e., fields of accounting, actuarial science, athletics, brokerage services, consulting, financial services, health, law or the performing arts; and trades or businesses that involve the performance of services that consist of investment-type activities, or those businesses whose principal asset is the reputation or skill of one or more of its employees or owners). However, the disallowance of the deduction for specified service trades or businesses of the taxpayer does *not* apply for taxpayers with taxpayer income below the threshold amount described above. And, the benefit of the deduction for service businesses is phased out over the next $100,000 of taxable income for joint filers ($50,000 for other individuals). Thus, for 2018, the limit fully applies to married taxpayers with taxable income over $415,000 and other individuals with taxable income over $207,500.

The deduction does not apply to the trade or business of being an employee.

The new deduction for pass-through income is also available to specified agricultural or horticultural cooperatives, in an amount equal to the lesser of (i) 20% of the co-op's taxable income for the tax year, or (ii) the greater of (a) 50% of the W-2 wages of the co-op with respect to its trade or business, or (b) the sum of 25% of the W-2 wages of the co-op with respect to its trade or business plus 2.5% of the unadjusted basis immediately after acquisition of qualified property of the co-op.

2017 TAX REFORM:
"Tax Cuts and Jobs Act"

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