BUSINESS TAX REFORM

Tax Rates

Reduction in corporate tax rate

The Tax Cuts and Jobs Act provides for a 21-percent corporate tax rate effective for taxable years beginning after December 31, 2017. This means that the maximum corporate tax rate was lowered from 35% to 21%. The corporate tax rate will remain at 21% for 2023.

In addition, for taxpayers subject to the normalization method of accounting (e.g., regulated public utilities), the conference agreement clarifies the normalization of excess tax reserves resulting from the reduction of corporate income tax rates (with respect to prior depreciation or recovery allowances taken on assets placed in service before the corporate rate reduction takes effect).

The provision applies to taxable years beginning after December 31, 2017

Cost Recovery

Increased expensing

The Tax Cuts and Jobs Act extends and modifies the additional first-year depreciation deduction through 2026 (or through 2027 for longer production period property and certain aircraft). The 50-percent allowance is increased to 100 percent for property placed in service after September 27, 2017, and before January 1, 2023 (January 1, 2024, for longer production period property and certain aircraft), as well as for specified plants which were either planted or grafted after September 27, 2017, and before January 1, 2023. Thus, the provision repeals the phase-down of the 50-percent allowance for property placed in service after December 31, 2017, and for specified plants planted or grafted after such date.

The 100-percent allowance is phased down by 20 percent per calendar year for property placed in service, and specified plants planted or grafted, in taxable years beginning after 2022 (after 2023 for longer production period property and certain aircraft). Under the provision, the bonus depreciation percentage rates are as follows.

Placed in Service year	**Bonus Depreciation Percentage**	
	Qualified Property In General	**Longer Production Period Property and Certain Aircraft**
2023	**80 percent**	**100 percent**
2024	**60 percent**	**80 percent**
2025	**40 percent**	**60 percent**
2026	**20 percent**	**40 percent**
2027	**None**	**20 percent**
2028 and thereafter	**None**	**None**

The provision generally applies to property acquired and placed in service after September 27, 2017, and to specified plants planted or grafted after such date.

Modifications to depreciation limitations on luxury automobiles and personal use property

The Tax Cuts and Jobs Act increases the depreciation limitations under section 280F that apply to listed property. For passenger automobiles placed in service after December 31, 2017, and for which the additional first-year depreciation deduction under section 168(k) is not claimed, the maximum amount of allowable depreciation is:

- $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.

If a taxpayer claims 100 percent bonus depreciation, the greatest allowable depreciation deduction is:

- $18,000 for the first year,
- $16,000 for the second year,
- $9,600 for the third year, and
- $5,760 for each later taxable year in the recovery period.

The limitations are indexed for inflation for passenger automobiles placed in service after 2018. The new law also removes computer or peripheral equipment from the definition of listed property.

The provision is effective for property placed in service after December 31, 2017, in taxable years ending after such date.

Modifications of treatment of certain farm property

The Tax Cuts and Jobs Act shortens the recovery period 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 commences with the taxpayer and is placed in service after December 31, 2017.

The provision also repeals the required use of the 150-percent declining balance method for property used in a farming business (i.e., for 3-, 5-, 7-, and 10-year property). The 150- percent declining balance method will continue to apply to any 15-year or 20-year property used in the farming business to which the straight line method does not apply, or to property for which the taxpayer elects the use of the 150-percent declining balance method.

Applicable recovery period for real property

The Tax Cuts and Jobs Act keeps the general recovery periods of 39 years for nonresidential real property and 27.5 years for residential rental property. However, the new law changes the alternative depreciation system recovery period for residential rental property from 40 years to 30 years. Qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property are no longer separately defined and given a special 15-year recovery period under the new law.

These changes affect property placed in service after Dec. 31, 2017.

Under the Tax Cuts and Jobs Act, a real property trade or business electing out of the interest deduction limit must use the alternative depreciation system to depreciate any of its nonresidential real property, residential rental property, and qualified improvement property. This change applies to taxable years beginning after Dec. 31, 2017.

Use of alternative depreciation system for electing farming businesses

Farming businesses that elect out of the interest deduction limit must use the alternative depreciation system to depreciate any property with a recovery period of 10 years or more, such as single purpose agricultural or horticultural structures, trees or vines bearing fruit or nuts, farm buildings, and certain land improvements. This provision applies to taxable years beginning after Dec. 31, 2017.

Expensing of certain costs of replanting citrus plants lost by reason of casualty

The Tax Cuts and Jobs Act modifies the special rule for costs incurred by persons other than the taxpayer in connection with replanting an edible crop for human consumption following loss or damage due to casualty. Under the provision, with respect to replanting costs paid or incurred after the date of enactment, but no later than a date which is ten years after such date of enactment, for citrus plants lost or damaged due to casualty, such replanting costs may also be deducted by a person other than the taxpayer if:

(1) the taxpayer has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which the replanting costs are paid or incurred and such other person holds any part of the remaining equity interest, or

(2) such other person acquires all of the taxpayer’s equity interest in the land on which the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land.

Small Business Reforms

Expansion of section 179 expensing

The Tax Cuts and Jobs Act increases the maximum amount a taxpayer may expense under section 179 to $1,000,000 and increases the phase-out threshold amount to $2,500,000. Thus, the provision provides that the maximum amount a taxpayer may expense, for taxable years beginning after 2017, is $1,000,000 of the cost of qualifying property placed in service for the taxable year. The $1,000,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $2,500,000. The $1,000,000 and $2,500,000 amounts, as well as the $25,000 sport utility vehicle limitation, are indexed for inflation for taxable years beginning after 2018.

These amounts have increased for 2023. Section 179 caps the total amount that can be written off to $1,160,000 for 2023 for a single purchase and limits to the total amount of the equipment purchased to $2,890,000 in 2023. The deduction begins to phase out on a dollar-for-dollar basis after $2,890,000 is spent by a business to $4,050,000 where the entire deduction goes away.

The provision expands the definition of section 179 property to include certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging.

The provision also expands the definition of qualified real property eligible for section 179 expensing to include any of the following improvements to nonresidential real property placed in service 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.

Small business accounting method reform and simplification

The Tax Cuts and Jobs Act expands the number of taxpayers that may use the cash method of accounting. Under the provision, the cash method of accounting may be used by taxpayers, other than tax shelters, that satisfy the gross receipts test, regardless of whether the purchase, production, or sale of merchandise is an income-producing factor. The gross receipts test allows taxpayers with annual average gross receipts that do not exceed $25 million for the three prior taxable-year periods (the "$25 million gross receipts test") to use the cash method. The $25 million amount is indexed for inflation for taxable years beginning after 2018.

The provision expands the number of farming C corporations (and farming partnerships with a C corporation partner) that may use the cash method to include any farming C corporation (or farming partnership with a C corporation partner) that meets the $25 million gross receipts test.

The provision retains the exceptions from the required use of the accrual method for qualified personal service corporations and taxpayers other than C corporations. Thus, qualified personal service corporations, partnerships without C corporation partners, S corporations, and other passthrough entities are allowed to use the cash method without regard to whether they meet the $25 million gross receipts test, so long as the use of such method clearly reflects the entity's income.

In addition, the provision also exempts certain taxpayers from the requirement to keep inventories. Specifically, taxpayers that meet the $25 million gross receipts test are not required to account for inventories under section 471, but rather may use a method of accounting for inventories that either (1) treats inventories as non-incidental materials and supplies, or (2) conforms to the taxpayer's financial accounting treatment of inventories.

The provision expands the exception for small taxpayers from the uniform capitalization rules. Under the provision, any producer or reseller that meets the $25 million gross receipts test is exempted from the application of section 263A.The provision retains the exemptions from the uniform capitalization rules that are not based on a taxpayer's gross receipts.

Finally, the provision expands the exception for small construction contracts from the requirement to use the percentage-of-completion method. Under the provision, contracts within this exception are those 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 two years of commencement of the contract and (2) is performed by a taxpayer that (for the taxable year in which the contract was entered into) meets the $25 million gross receipts test.

Modification of treatment of S corporation conversions to C corporations

Under the Tax Cuts and Jobs Act, any section 481(a) adjustment of an eligible terminated S corporation attributable to the revocation of its S corporation election (i.e., a change from the cash method to an accrual method) is taken into account ratably during the six-taxable-year period beginning with the year of change. An eligible terminated S corporation is any C corporation which (1) is an S corporation the day before the enactment of this bill, (2) during the two-year period beginning on the date of such enactment revokes its S corporation election under section 1362(a), and (3) all of the owners of which on the date the S corporation election is revoked are the same owners (and in identical proportions) as the owners on the date of such enactment.

Under the provision, in the case of a distribution of money by an eligible terminated S corporation, the accumulated adjustments account shall be allocated to such distribution, and the distribution shall be chargeable to accumulated earnings and profits, in the same ratio as the amount of the accumulated adjustments account bears to the amount the accumulated earnings and profits.

Reform of Business Related Exclusions, Deductions, etc.

Interest

In the case of any taxpayer for any taxable year, the deduction for business interest is limited to the sum of:

(1) business interest income;

(2) 30 percent of the adjusted taxable income of the taxpayer for the taxable year; and

(3) the floor plan financing interest of the taxpayer for the taxable year.

The amount of any business interest not allowed as a deduction for any taxable year may be carried forward for up to five years beyond the year in which the business interest was paid or accrued, treating business interest as allowed as a deduction on a first-in, first-out basis. The limitation applies at the taxpayer level. In the case of a group of affiliated corporations that file a consolidated return, the limitation applies at the consolidated tax return filing level.

Modification of net operating loss deduction

The Tax Cuts and Jobs Act limits the NOL deduction to 80 percent of taxable income (determined without regard to the deduction). Carryovers to other years are adjusted to take account of this limitation, and may be carried forward indefinitely. In addition, NOL carryovers attributable to losses arising in taxable years beginning after December 31, 2017, are increased annually to take into account the time value of money. The limitation does not apply to a property and casualty insurance company.

The provision repeals the two-year carryback and the special carryback provisions, but provides a one-year carryback in the case of certain disaster losses incurred in the trade or business of farming.

Like-kind exchanges of real property

The Tax Cuts and Jobs Act modifies the provision providing for nonrecognition of gain in the case of like-kind exchanges by limiting its application to real property that is not held primarily for sale.

Revision of treatment of contributions to capital

The Tax Cuts and Jobs Act repeals the provision of the Internal Revenue Code under which, generally, a corporation's gross income does not include contributions of capital to the corporation. The provision provides that a contribution to capital, other than a contribution of money or property made in exchange for stock of a corporation or any interest in an entity, is included in gross income of the corporation.

The provision further provides that a contribution of capital in exchange for stock is not includible in the gross income of the corporation to the extent that the fair market value of any money or other property contributed does not exceed the fair market value of stock received.

Repeal of deduction for local lobbying expenses

The Tax Cuts and Jobs Act repeals the exception for amounts paid or incurred relating to lobbying local councils or similar governing bodies, including Indian tribal governments. Thus, the general disallowance rules applicable to lobbying and political expenditures will apply to costs incurred which are related to such local legislation.

Repeal of deduction for income attributable to domestic production activities

The Tax Cuts and Jobs Act repeals the deduction for income attributable to domestic production activities.

Entertainment, etc. expenses

The Tax Cuts and Jobs Act provides that no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement or recreation, (2) membership dues with respect to any club organized for business, pleasure, recreation or other social purposes, or (3) a facility or portion thereof used in connection with any of the above items. Thus, the provision repeals the present-law exception to the deduction disallowance for entertainment, amusement, or recreation that is directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business (and the related rule applying a 50 percent limit to such deductions). In addition, the provision disallows a deduction for expenses associated with providing any qualified transportation fringe benefits to employees of the taxpayer, and except as necessary for ensuring the safety of an employee, any expense incurred for providing transportation (or any payment or reimbursement) for commuting between the employee's residence and place of employment. Taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business (e.g., meals consumed by employees on work travel).

For amounts incurred and paid after December 31, 2017 and until December 31, 2025, the provision expands this 50 percent limitation to employer expenses associated with providing food and beverages to employees through an eating facility that meets requirements for de minimis fringes and for the convenience of the employer. Such amounts incurred and paid after December 31, 2025 are not deductible.

Repeal of exclusion, etc., for employee achievement awards

The Tax Cuts and Jobs Act adds a definition of "tangible personal property" that may be considered a deductible employee achievement award. It provides that tangible personal property shall not include cash, cash equivalents, gift cards, gift coupons or gift certificates (other than arrangements conferring only the right to select and receive tangible personal property from a limited array of such items pre-selected or pre-approved by the employer), or vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items.

Unrelated business taxable income increased by amount of certain fringe benefit expenses for which deduction is disallowed

Under the Tax Cuts and Jobs Act, unrelated business taxable income includes any expenses paid or incurred by a tax exempt organization for qualified transportation fringe benefits (as defined in section 132(f)), a parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)), or

any on-premises athletic facility (as defined in section 132(j)(4)(B)), provided such amounts are not deductible under section 274.

FDIC premium means any assessment imposed under section 7(b) of the Federal Deposit Insurance Act. The term total consolidated assets has the meaning given such term under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Limitation on deduction for FDIC premiums

No deduction is allowed for the applicable percentage of any FDIC premium paid or incurred by the taxpayer. For taxpayers with total consolidated assets of $50 billion or more, the applicable percentage is 100 percent. Otherwise, the applicable percentage is the ratio of the excess of total consolidated assets over $10 billion to $40 billion.

Repeal of rollover of publicly traded securities gain into specialized small business investment companies

The Tax Cuts and Jobs Act repeals the election described above to roll over tax-free capital gain realized on the sale of publicly-traded securities

Certain self-created property not treated as a capital asset

The Tax Cuts and Jobs Act amends section 1221(a)(3), resulting in the exclusion of a patent, invention, model or design (whether or not patented), and a secret formula or process which is held either by the taxpayer who created the property or a taxpayer with a substituted or transferred basis from the taxpayer who created the property (or for whom the property was created) from the definition of a "capital asset." Thus, gains or losses from the sale or exchange of a patent, invention, model or design (whether or not patented), or a secret formula or process which is held either by the taxpayer who created the property or a taxpayer with a substituted or transferred basis from the taxpayer who created the property (or for whom the property was created) will not receive capital gain treatment.

Repeal of special rule for sale or exchange of patents

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not implement a repeal of the special rule for sale or exchange of patents.

Repeal of technical termination of partnerships

The Tax Cuts and Jobs Act repeals the section 708(b)(1)(B) rule providing for technical terminations of partnerships. The provision does not change the present-law rule of section 708(b)(1)(A) that a

partnership is considered as terminated if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

Recharacterization of certain gains in the case of partnership profits interests held in connection with performance of investment services

The Tax Cuts and Jobs Act provides a three-year holding period in the case of certain net long-term capital gain with respect to any applicable partnership interest held by the taxpayer, notwithstanding the rules of section 83 or any election in effect under section 83(b).

Short-term capital gain

The provision treats as short-term capital gain taxed at ordinary income rates the amount of the taxpayer's net long-term capital gain with respect to an applicable partnership interest for the taxable year that exceeds the amount of such gain calculated as if a three-year (not one-year) holding period applies. In making this calculation, the provision takes account of long-term capital losses calculated as if a three-year holding period applies.

Transfer of applicable partnership interest to related person

If a taxpayer transfers any applicable partnership interest, directly or indirectly, to a person related to the taxpayer, then the taxpayer includes in gross income as short-term capital gain however much of the taxpayer's net long-term capital gain that is attributable to the sale or exchange of an asset held for not more than three years as is allocable to the interest.

Amortization of research and experimental expenditures

Under the Tax Cuts and Jobs Act, amounts defined as specified research or experimental expenditures are required to be capitalized and amortized ratably over a five-year period, beginning with the midpoint of the taxable year in which the specified research or experimental expenditures were paid or incurred.

Specified research or experimental expenditures which are attributable to research that is conducted outside of the United States are required to be capitalized and amortized ratably over a period of 15 years, beginning with the midpoint of the taxable year in which such expenditures were paid or incurred.

Specified research or experimental expenditures subject to capitalization include expenditures for software development.

Certain special rules for taxable year of inclusion

The Tax Cuts and Jobs Act revises the rules associated with the timing of the recognition of income. Specifically, the provision requires an accrual method taxpayer subject to the all events test for an item of gross income to recognize such income no later than the taxable year in which such income is taken

into account as revenue in an applicable financial statement or another financial statement under rules specified by the Secretary, but provides an exception for taxpayers without an applicable or other specified financial statement. In the case of a contract which contains multiple performance obligations, this provision allows the taxpayer to allocate the transaction price in accordance with the allocation made in the taxpayer's applicable financial statement.

In addition, this provision directs accrual method taxpayers with an applicable financial statement to apply the income recognition rules under section 451 before applying the special rules under part V of subchapter P, which, in addition to the OID rules, also includes rules regarding the treatment of market discounts on bonds, discounts on short-term obligations, OID on tax-exempt bonds, and stripped bonds and stripped coupons.

The provision also codifies the current deferral method of accounting for advance payments for goods, services, and other specified items provided by the IRS under Revenue Procedure 2004-34.

Denial of deduction for certain fines, penalties, and other amounts

The Tax Cuts and Jobs Act denies deductibility 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.

Denial of deduction for settlements subject to nondisclosure agreements paid in connection with sexual harassment or sexual abuse

Under the Tax Cuts and Jobs Act, no deduction is allowed for any settlement, payout, or attorney fees related to sexual harassment or sexual abuse if such payments are subject to a nondisclosure agreement.

Uniform treatment of expenses in contingency fee cases

The Tax Cuts and Jobs Act denies attorneys an otherwise-allowable deduction for litigation costs paid under arrangements that are primarily on a contingent fee basis until the contingency ends.

Reform of Business Credits

Repeal of credit for clinical testing expenses for certain drugs for rare diseases or conditions

The Tax Cuts and Jobs Act reduces the credit rate to 25 percent of qualified clinical testing expenses.

Repeal of employer-provided child care credit

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not repeal the employer-provided child care credit.

Rehabilitation credit

The Tax Cuts and Jobs Act repeals the 10-percent credit for pre-1936 buildings. The provision retains the 20-percent credit for qualified rehabilitation expenditures with respect to a certified historic structures, with a modification. Under the provision, the credit allowable for a taxable year during the five-year period beginning in the taxable year in which the qualified rehabilitated building is placed in service is an amount equal to the ratable share. The ratable share for a taxable year during the five-year period is amount equal to 20 percent of the qualified rehabilitation expenditures for the building, as allocated ratably to each taxable year during the five-year period. It is intended that the sum of the ratable shares for the taxable years during the five-year period does not exceed 100 percent of the credit for qualified rehabilitation expenditures for the qualified rehabilitated building.

Repeal of work opportunity tax credit

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not repeal the work opportunity tax credit.

Repeal of deduction for certain unused business credits

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not repeal the deduction for certain unused business credits.

Termination of new markets tax credit

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not terminate the new markets tax credit.

Repeal of credit for expenditures to provide access to disabled individuals

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not repeal the credit for expenditures to provide access to disabled individuals.

Modification of credit for portion of employer social security taxes paid with respect to employee tips

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not implement any modification of credit for the portion of employer social security taxes paid with respect to employee tips.

Employer credit for paid family and medical leave

The Tax Cuts and Jobs Act allows eligible employers to claim a general business credit equal to 12.5 percent of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave if the rate of payment under the program is 50 percent of the wages normally paid to an employee. The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent. The maximum amount of family and medical leave that may be taken into account with respect to any employee for any taxable year is 12 weeks.

Energy Credits

Modifications to credit for electricity produced from certain renewable resources

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not implement any modifications to the credit for electricity produced from certain renewable resources.

Modification of the energy investment tax credit

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not implement any modifications to the energy investment tax credit.

Extension and phaseout of residential energy efficient property credit

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not implement an extension and phaseout of the residential energy efficient property credit.

Repeal of enhanced oil recovery credit

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not repeal the enhanced oil recovery credit.

Repeal of credit for producing oil and gas from marginal wells

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not repeal the credit for producing oil and gas from marginal wells.

Modification of credit for production from advanced nuclear power facilities

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not modify the credit for production from advanced nuclear power facilities.

Bond Reforms

Termination of private activity bonds

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not repeal the exception from the exclusion from gross income for interest paid on qualified private activity bonds.

Repeal of advance refunding bonds

The Tax Cuts and Jobs Act repeals the exclusion from gross income for interest on a bond issued to advance refund another bond.

Repeal of tax credit bonds

The Tax Cuts and Jobs Act prospectively repeals the authority to issue tax-credit bonds and direct-pay bonds.

No tax-exempt bonds for professional stadiums

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not implement a provision disallowing that the interest on bonds, the proceeds of which are to be used to finance or refinance capital expenditures allocable to a professional sports stadium, is not tax-exempt.

Insurance

Net operating losses of life insurance companies

The Tax Cuts and Jobs Act repeals the operating loss deduction for life insurance companies and allows the NOL deduction under section 172.

Repeal of small life insurance company deduction

The Tax Cuts and Jobs Act repeals the small life insurance company deduction.

Surtax on life insurance company taxable income

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not impose an additional eight-percent income tax on life insurance company taxable income.

Adjustment for change in computing reserves

Income or loss resulting from a change in method of computing life insurance company reserves is taken into consideration in a way that is consistent with IRS procedures, generally ratably over a four-year period, instead of over a 10-year period.

Repeal of special rule for distributions to shareholders from pre-1984 policyholders surplus account

The Tax Cuts and Jobs Act repeals section 815, the rules imposing income tax on distributions to shareholders from the policyholders surplus account of a stock life insurance company.

In the case of any stock life insurance company with an existing policyholder's surplus account (as defined in section 815 before its repeal), tax is imposed on the balance of the account as of December 31, 2017.

Modification of proration rules for property and casualty insurance companies

The Tax Cuts and Jobs Act replaces the 15-percent reduction under present law with a reduction equal to 5.25 percent divided by the top corporate tax rate. After 2017, the top corporate tax rate is 21 percent and thereafter, so the percentage reduction is 25 percent under the proration rule for property and casualty insurance companies.

Modification of discounting rules for property and casualty insurance companies

The Tax Cuts and Jobs Act modifies the reserve discounting rules applicable to property and casualty insurance companies. In general, the provision modifies the prescribed interest rate, extends the periods applicable under the loss payment pattern, and repeals the election to use a taxpayer's historical loss payment pattern.

Interest rate

The provision provides that the interest rate is an annual rate for any calendar year to be determined by Treasury based on the corporate bond yield curve (rather than the mid-term AFR as under present law). For this purpose, the corporate bond yield curve means, with respect to any month, a yield curve that reflects the average, for the preceding 60-month period, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available.

Loss payment patterns

The provision extends the periods applicable for determining loss payment patterns. Under the provision, the maximum duration of the loss payment pattern is determined by the amount of losses remaining unpaid using aggregate industry experience for each line of business, rather than by a set number of years as under present law.

Election to use own historical loss payment pattern

The Tax Cuts and Jobs Act repeals the present-law election permitting a taxpayer to use its own (rather than an aggregate industry-experience-based) historical loss payment pattern with respect to all lines of business.

Repeal of special estimated tax payments

The Tax Cuts and Jobs Act repeals section 847. Thus, the election to apply section 847, the additional deduction, special loss discount account, special estimated tax payment, and refundable amount rules of present law are eliminated. The entire balance of an existing account is included in income of the taxpayer for the first taxable year beginning after 2017, and the entire amount of existing special estimated tax payments are applied against the amount of additional tax attributable to this inclusion. Any special estimated tax payments in excess of this amount are treated as estimated tax payments under section 6655.

Computation of life insurance tax reserves

The Tax Cuts and Jobs Act provides that for purposes of determining the deduction for increases in certain reserves of a life insurance company, the amount of the life insurance reserves for any contract (other than certain variable contracts) is the greater of (1) the net surrender value of the contract (if any), or (2) 92.81 percent of the amount determined using the tax reserve method otherwise applicable to the contract as of the date the reserve is determined.

In the case of a variable contract, the amount of life insurance reserves for the contract is the sum of (1) the greater of (a) the net surrender value of the contract, or (b) the separate-account reserve amount under section 817 for the contract, plus (2) 92.81 percent of the excess (if any) of the amount determined using the tax reserve method otherwise applicable to the contract as of the date the reserve is determined over the amount determined in (1). In no event shall the reserves exceed the amount which would be taken into account in determining statutory reserves. No amount or item shall be taken into account more than once in determining any reserve. As under present law, no deduction for asset adequacy or deficiency reserves is allowed.

The amount of life insurance reserves may not exceed the annual statement reserves. The provision provides reserve rules for supplemental benefits and retains present-law rules regarding certain contracts issued by foreign branches of domestic life insurance companies.

Modification of rules for life insurance proration for purposes of determining the dividends received deduction

The Tax Cuts and Jobs Act modifies the life insurance company proration rule for reducing dividends received deductions and reserve deductions with respect to untaxed income. For purposes of the life insurance proration rule of section 805(a)(4), the company's share is 70 percent. The policyholder's share is 30 percent.

Capitalization of certain policy acquisition expenses

The Tax Cuts and Jobs Act extends the amortization period for specified policy acquisition expenses from a 120-month period to a 180-month period beginning with the first month in the second half of the taxable year. The provision does not change the special rule providing for 60-month amortization of the

first $5 million of specified policy acquisition expenses (with phaseout). The provision provides that for annuity contracts, the percentage is 2.09 percent; for group life insurance contracts, the percentage is 2.45 percent; and for all other specified insurance contracts, the percentage is 9.20 percent.

Tax reporting for life settlement transactions, clarification of tax basis of life insurance contracts, and exception to transfer for valuable consideration rules

The Tax Cuts and Jobs Act imposes reporting requirements in the case of the purchase of an existing life insurance contract in a reportable policy sale and imposes reporting requirements on the payor in the case of the payment of reportable death benefits. The provision sets forth rules for determining the basis of a life insurance or annuity contract. Lastly, the provision modifies the transfer for value rules in a transfer of an interest in a life insurance contract in a reportable policy sale.

Compensation

Modification of limitation on excessive employee remuneration

The Tax Cuts and Jobs Act revises the definition of covered employee to include both the principal executive officer and the principal financial officer. Further, an individual is a covered employee if the individual holds one of these positions at any time during the taxable year. The provision also defines as a covered employee the three (rather than four) most highly compensated officers for the taxable year (other than the principal executive officer or principal financial officer) who are required to be reported on the company’s proxy statement (i.e., the statement required pursuant to executive compensation disclosure rules promulgated under the Exchange Act) for the taxable year (or who would be required to be reported on such a statement for a company not required to make such a report to shareholders). This includes such officers of a corporation not required to file a proxy statement but which otherwise falls within the revised definition of a publicly held corporation, as well as such officers of a publicly traded corporation that would otherwise have been required to file a proxy statement for the year (for example, but for the fact that the corporation delisted its securities or underwent a transaction that resulted in the nonapplication of the proxy statement requirement).

In addition, if an individual is a covered employee with respect to a corporation for a taxable year beginning after December 31, 2016, the individual remains a covered employee for all future years.

Excise tax on excess tax-exempt organization executive compensation

Under the Tax Cuts and Jobs Act, an employer is liable for an excise tax equal to 21 percent of the sum of (1) any remuneration (other than an excess parachute payment) in excess of $1 million paid to a covered employee by an applicable tax-exempt organization for a taxable year, and (2) any excess parachute payment (under a new definition for this purpose that relates solely to separation pay) paid by the applicable tax-exempt organization to a covered employee. Accordingly, the excise tax applies as a result of an excess parachute payment, even if the covered employee’s remuneration does not exceed $1 million.

Treatment of qualified equity grants

The Tax Cuts and Jobs Act allows a qualified employee to elect to defer, for income tax purposes, the inclusion in income of the amount of income attributable to qualified stock transferred to the employee by the employer. An election to defer income inclusion ("inclusion deferral election") with respect to qualified stock 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 an employee elects to defer income inclusion under the provision, the income must be included in the employee's income for the taxable 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 (as described below); (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 her inclusion deferral election.

Under the provision, a corporation that transfers qualified stock to a qualified employee must provide a notice to the qualified employee at the time (or a reasonable period before) the employee's right to the qualified stock is substantially vested (and income attributable to the stock would first be includible absent an inclusion deferral election). The notice must (1) certify to the employee that the stock is qualified stock, and (2) notify the employee (a) that the employee may (if eligible) elect to defer income inclusion with respect to the stock and (b) that, if the employee makes an inclusion deferral election, the amount of income required to be included at the end of the deferral period will be based on the value of the stock at the time the employee's right to the stock first becomes substantially vested, notwithstanding whether the value of the stock has declined during the deferral period (including whether the value of the stock has declined below the employee's tax liability with respect to such stock), and the amount of income to be included at the end of the deferral period will be subject to withholding as provided under the provision, as well as of the employee's responsibilities with respect to required withholding. Failure to provide the notice may result in the imposition of a penalty of $100 for each failure, subject to a maximum penalty of $50,000 for all failures during any calendar year.

Increase in excise tax rate for stock compensation of insiders in expatriated corporations

The Tax Cuts and Jobs Act increases the 15 percent rate of excise tax, imposed on the value of stock compensation held by insiders of an expatriated corporation, to 20 percent.

Other Provisions

Treatment of gain or loss of foreign persons from sale or exchange of interests in partnerships engaged in trade or business within the United States

Under the Tax Cuts and Jobs Act, gain or loss from the sale or exchange of a partnership interest is effectively connected with a U.S. trade or business to the extent that the transferor would have had

effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange.

The provision requires that any gain or loss from the hypothetical asset sale by the partnership be allocated to interests in the partnership in the same manner as nonseparately stated income and loss. The provision also requires the transferee of a partnership interest to withhold 10 percent of the amount realized on the sale or exchange of a partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or foreign corporation. If the transferee fails to withhold the correct amount, the partnership is required to deduct and withhold from distributions to the transferee partner an amount equal to the amount the transferee failed to withhold.

Modification of the definition of substantial built-in loss in the case of transfer of partnership interest

The Tax Cuts and Jobs Act modifies the definition of a substantial built-in loss for purposes of section 743(d), affecting transfers of partnership interests. Under the provision, in addition to the present-law definition, a substantial built-in loss also exists if the transferee would be allocated a net loss in excess of $250,000 upon a hypothetical disposition by the partnership of all partnership's assets in a fully taxable transaction for cash equal to the assets' fair market value, immediately after the transfer of the partnership interest.

Charitable contributions and foreign taxes taken into account in determining limitation on allowance of partner's share of loss

The Tax Cuts and Jobs Act modifies the basis limitation on partner losses to provide that the limitation takes into account a partner's distributive share of partnership charitable contributions (as defined in section 170(c)) and taxes (described in section 901) paid or accrued to foreign countries and to possessions of the United States. Thus, the amount of the basis limitation on partner losses is decreased to reflect these items. In the case of a charitable contribution by the partnership, the amount of the basis limitation on partner losses is decreased by the partner's distributive share of the adjusted basis of the contributed property. In the case of a charitable contribution by the partnership of property whose fair market value exceeds its adjusted basis, a special rule provides that the basis limitation on partner losses does not apply to the extent of the partner's distributive share of the excess.

Cost basis of specified securities determined without regard to identification

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not alter the cost basis of specified securities.

Expansion of qualifying beneficiaries of an electing small business trust

The Tax Cuts and Jobs Act allows a nonresident alien individual to be a potential current beneficiary of an electing small business trust, or ESBT.

Charitable contribution deduction for electing small business trusts

The Tax Cuts and Jobs Act provides that the charitable contribution deduction of an ESBT is not determined by the rules generally applicable to trusts, but rather by the rules applicable to individuals. Thus, the percentage limitations and carryforward provisions applicable to individuals apply to charitable contributions made by the portion of an ESBT holding S corporation stock.

Production period for beer, wine, and distilled spirits

The Tax Cuts and Jobs Act excludes the aging periods for beer, wine, and distilled spirits from the production period for purposes of the UNICAP interest capitalization rules. Thus, under the provision, producers of beer, wine and distilled spirits are able to deduct interest expenses (subject to any other applicable limitation) attributable to a shorter production period.

Reduced rate of excise tax on beer

The Tax Cuts and Jobs Act lowers the rate of tax on beer to $16 per barrel on the first six million barrels brewed by the brewer or imported by the importer. In general, in the case of a controlled group of brewers, the six million barrel limitation is applied and apportioned at the level of the controlled group. Beer brewed or imported in excess of the six million barrel limit would continue to be taxed at $18 per barrel. In the case of small brewers, such brewers would be taxed at a rate of $3.50 per barrel on the first 60,000 barrels domestically produced, and $16 per barrel on any further barrels produced. The same rules applicable to controlled groups under present law apply with respect to this limitation.

Transfer of beer between bonded facilities

The Tax Cuts and Jobs Act relaxes the shared ownership requirement of section 5414. Thus, under the provision, a brewer may transfer beer from one brewery to another without incurring tax, provided that: (i) the breweries are owned by the same person; (ii) one brewery owns a controlling interest in the other; (iii) the same person or persons have a controlling interest in both breweries; or (iv) the proprietors of the transferring and receiving premises are independent of each other, and the transferor has divested itself of all interest in the beer so transferred, and the transferee has accepted responsibility for payment of the tax.

Reduced rate of excise tax on certain wine

The Tax Cuts and Jobs Act modifies the credit against the wine excise tax for small domestic producers, by removing the 250,000 wine gallon domestic production limitation (and thus making the credit available for all wine producers and importers). Additionally, under the provision, sparkling wine producers and importers are now eligible for the credit. With respect to wine produced in, or imported into, the United States during a calendar year, the credit amount is (1) $1.00 per wine gallon for the first 30,000 wine gallons of wine, plus; (2) 90 cents per wine gallon on the next 100,000 wine gallons of wine, plus; (3) 53.5 cents per wine gallon on the next 620,000 wine gallons of wine. There is no phaseout of the credit.

Adjustment of alcohol content level for application of excise tax rates

The Tax Cuts and Jobs Act modifies alcohol-by-volume levels of the first two tiers of the excise tax on wine, by changing 14 percent to 16 percent. Thus, under the provision, a wine producer or importer may produce or import "still wine" that has an alcohol-by-volume level of up to 16 percent, and remain subject to the lowest rate of $1.07 per wine gallon.

Definition of mead and low alcohol by volume wine

The Tax Cuts and Jobs Act designates mead and certain sparkling wines to be taxed at the lowest rate applicable to "still wine," of $1.07 per wine gallon of wine. Mead is defined as a wine that contains not more than 0.64 grams of carbon dioxide per hundred milliliters of wine, which is derived solely from honey and water, contains no fruit product or fruit flavoring, and contains less than 8.5 percent alcohol-by-volume. The sparkling wines eligible to be taxed at the lowest rate are those wines that contain not more than 0.64 grams of carbon dioxide per hundred milliliters of wine, which are derived primarily from grapes or grape juice concentrate and water, which contain no fruit flavoring other than grape, and which contain less than 8.5 percent alcohol by volume.

Reduced rate of excise tax on certain distilled spirits

The Tax Cuts and Jobs Act institutes a tiered rate for distilled spirits. The rate of tax is lowered to $2.70 per proof gallon on the first 100,000 proof gallons of distilled spirits, $13.34 for all proof gallons in excess of that amount but below 22,130,000 proof gallons, and $13.50 for amounts thereafter. The provision contains rules so as to prevent members of the same controlled group from receiving the lower rate on more than 100,000 proof gallons of distilled spirits. Importers of distilled spirits are eligible for the lower rates.

Bulk distilled spirits

The Tax Cuts and Jobs Act allows distillers to transfer spirits in approved containers other than bulk containers in bond without payment of tax.

Modification of tax treatment of Alaska Native Corporations and Settlement Trusts

The Tax Cuts and Jobs Act includes three separate but related sections.

The first section allows a Native Corporation to assign certain payments described in ANCSA to a Settlement Trust without having to recognize gross income from those payments, provided the assignment is in writing and the Native Corporation has not received the payment prior to assignment. The Settlement Trust is required to include the assigned payment in gross income when received.

The second section allows a Native Corporation to elect annually to deduct contributions made to a Settlement Trust. If the contribution is in cash, the deduction is in the amount of cash contributed. If the contribution is property other than cash, the deduction is the amount of the Native Corporation's basis in the contributed property (or the fair market value of such property, if less than the Native Corporation's basis), and no gain or loss can be recognized on the contribution. The Native Corporation's deduction is limited to the amount of its taxable income for that year, and any unused deduction may be carried forward 15 additional years. The Native Corporation's earnings and profits for the taxable year are reduced by the amount of any deduction claimed for that year.

The third section of the provision requires any Native Corporation which has made an election to deduct contributions to a Settlement Trust as described above to furnish a statement to the Settlement Trust containing: (1) the total amount of contributions; (2) whether such contribution was in cash; (3) for non-cash contributions, the date that such property was acquired by the Native Corporation and the adjusted basis of such property on the contribution date; (4) the date on which each contribution was made to the Settlement Trust; and (5) such information as the Secretary determines is necessary for the accurate reporting of income relating to such contributions.

Amounts paid for aircraft management services

The Tax Cuts and Jobs Act exempts certain payments related to the management of private aircraft from the excise taxes imposed on taxable transportation by air. Exempt payments are those amounts paid by an aircraft owner for management services related to maintenance and support of the owner's aircraft or flights on the owner's aircraft. Applicable services include support activities related to the aircraft itself, such as its storage, maintenance, and fueling, and those related to its operation, such as the hiring and training of pilots and crew, as well as administrative services such as scheduling, flight planning, weather forecasting, obtaining insurance, and establishing and complying with safety standards. Aircraft management services also include such other services as are necessary to support flights operated by an aircraft owner. Payments for flight services are exempt only to the extent that they are attributable to flights on an aircraft owner's own aircraft.

The provision provides a pro rata allocation rule in the event that a monthly payment made to a management company is allocated in part to exempt services and flights on the aircraft owner's aircraft, and in part to flights on aircraft other than the aircraft owner's. In such a circumstance, Federal excise tax must be collected on that portion of the payment attributable to flights on aircraft not owned by the aircraft owner.

Opportunity zones

The Tax Cuts and Jobs Act provides for the temporary deferral of inclusion in gross income for capital gains reinvested in a qualified opportunity fund and the permanent exclusion of capital gains from the sale or exchange of an investment in the qualified opportunity fund.

The provision allows for the designation of certain low-income community population census tracts as qualified opportunity zones, where low-income communities are defined in Section 45D(e). The designation of a population census tract as a qualified opportunity zone remains in effect for the period beginning on the date of the designation and ending at the close of the tenth calendar year beginning on or after the date of designation.

Provisions relating to the low-income housing credit

This section of the IRC was meant to be altered by The Tax Cuts and Jobs Act of 2018, but this portion was not included in the final draft of the bill (H.R.1).

The Tax Cuts and Jobs Act did not alter the provisions relating to the low-income housing credit.