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2017 TAX REFORM:

Checkpoint Special Study on Individual Tax Changes in the "Tax Cuts and Jobs Act"

SPECIAL REPORT

On December 20, the House approved H.R. 1, the "Tax Cuts and Jobs Act," the sweeping tax reform measure. The Senate had passed the measure, as revised to address some procedural complications, the night before, and the bill will soon make its way to President Trump for his expected signature.

While the revised version of the bill carries the title "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," this special report refers to the Act by its former and commonly used name: The "Tax Cuts and Job Act."

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The last-minute revisions to the bill included one change that pertains to individual taxation. A provision which would have allowed Section 529 account funds to be used for home school expenses was struck from the bill prior to the Senate vote.

The bill has taken shape at breakneck pace over the past two months, making it difficult for even seasoned tax practitioners to know exactly where things stand. The bill itself is massive and contains many tax law changes, some of which are extremely complex, and many of which go into effect in a matter of weeks.

This Special Report explains the changes that affect the taxation of individuals. In addition to providing a summary of the changes, it also clearly sets out the effective dates (which in many cases include an expiration date, or "sunset"), the Code section(s) affected, the bill's section number, and a recitation of prior law to put the amendment into context.

This information will help practitioners prepare for the year ahead, which will likely include squeezing in last-minute tax planning moves in 2017 to take advantage of provisions still on the books that won't be available next year. For example, a taxpayer who will itemize in 2017 but will likely be taking the larger standard deduction next year may benefit from making charitable contributions this year instead of next and from accelerating certain discretionary medical expenses into this year, for which a retroactively lower "floor" limiting medical expense deductions is in effect. In many cases, 2017 itemizing taxpayers should pay all of 2017 state and local taxes ("SALT") this year (even if the due date for the last installment is in 2018) and consider making prepayments (e.g., of property taxes) in light of the significant reduction in the SALT deduction going into effect next year. Many taxpayers should also consider ways of deferring income to take advantage of the lower rates going into effect next year.

This report sets out all of these changes, as well as many others including dramatic changes to the tax treatment of alimony and a new rule that disallows the use of a recharacterization to unwind Roth IRA conversions.

RIA observation: One of the major distinctions between the House and Senate versions of the tax bill was that the Senate bill, in order to comply with certain budgetary constraints, contained a "sunset," or an expiration date, for many of its provisions-e.g. they apply for tax years beginning before Jan. 1, 2026. Accordingly, many of the individual tax provisions in the Act are temporary (as opposed to the business provisions, which generally are permanent).

TAX RATES & KEY FIGURES

New Income Tax Rates & Brackets

To determine regular tax liability, an individual uses the appropriate tax rate schedule (or IRS-issued income tax tables for taxable income of less than $100,000). The Code provides four tax rate schedules for individuals based on filing status-i.e., single, married filing jointly/surviving spouse, married filing separately, and head of household — each of which is divided into income ranges which are taxed at progressively higher marginal tax rates as income increases. 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 Dec. 31, 2017 and before Jan. 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%. (Code Sec. 1(i), as amended by Act Sec. 11001) The specific application of these rates, and the income brackets at which they apply, is shown below.

FOR MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES:

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

FOR SINGLE INDIVIDUALS (OTHER THAN HEADS OF HOUSEHOLDS AND SURVIVING SPOUSES):

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

FOR HEADS OF HOUSEHOLDS:

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

FOR MARRIEDS FILING SEPARATELY:

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

FOR ESTATES AND TRUSTS:

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

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 Dec. 31, 2017 and before Jan. 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. (Code Sec. 63(c)(7), as added by Act Sec. 11021(a))

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 phaseout for higher earners.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the deduction for personal exemptions is effectively suspended by reducing the exemption amount to zero. (Code Sec. 151(d), as modified by Act Sec. 11041(a)) A number of corresponding changes are made throughout the Code where specific provisions contain references to the personal exemption amount in Code Sec. 151(d) , and in each of these instances, the dollar amount to be used is $4,150, as adjusted by inflation. These include Code Sec. 642(b)(2)(C) (exemption deduction for qualified disability trusts), Code Sec. 3402 (wage withholding, subject to an exception below for 2018), and Code Sec. 6334(d) (property exempt from levy).

Withholding rules. The Conference Agreement specifies that IRS may administer the withholding rules under Code Sec. 3402 for tax years beginning before Jan. 1, 2019 without regard to the above amendments — i.e., wage withholding rules may remain the same as present law for 2018. (Act Sec. 11041(f)(2))

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 Dec. 31, 2017 (Dec. 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). (Code Sec. 1(f), as amended by Act Sec. 11002(a)) This change, unlike many provisions in the Act, is permanent.

RIA observation: In general, chained CPI 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 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 rates. 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 Dec. 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 (see above). This rule applies to the child's ordinary income and his or her income taxed at preferential rates. (Code Sec. 1(j)(4), as amended by Act Sec. 11001(a))

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 Dec. 31, 2017. (Code Sec. 1(j)(5)(A), as amended by Act Sec. 11001(a))

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 trusts and estates, 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. (Code Sec. 1(h)(1), as amended by Act Sec. 11001(a)(5))

CARRIED INTEREST

New Holding Period Requirement

In general, the receipt of a capital interest for services provided to a partnership results in taxable compensation for the recipient. However, under a safe harbor rule, the receipt of a profits interest in exchange for services provided is not a taxable event to the recipient if the profits interest entitles the holder to share only in gains and profits generated after the date of issuance (and certain other requirements are met).

Typically, hedge fund managers guide the investment strategy and act as general partners to an investment partnership, while outside investors act as limited partners. Fund managers are compensated in two ways. First, to the extent that they invest their own capital in the funds, they share in the appreciation of fund assets. Second, they charge the outside investors two kinds of annual "performance" fees: a percentage of total fund assets, typically 2%, and a percentage of the fund's earnings, typically 20%, respectively. The 20% profits interest is often carried over from year to year until a cash payment is made, usually following the closing out of an investment. This is called a "carried interest."

Under pre-Act law, carried interests were taxed in the hands of the taxpayer (i.e., the fund manager) at favorable capital gain rates instead of as ordinary income.

New law. Effective for tax years beginning after Dec. 31, 2017, the Act effectively imposes a 3-year holding period requirement in order for certain partnership interests received in connection with the performance of services to be taxed as long-term capital gain. (Code Sec. 1061, Partnership Interests Held in Connection with Performance of Services, added by Act Sec. 13309(a)) If the 3-year holding period is not met with respect to an applicable partnership interest held by the taxpayer, the taxpayer's gain will be treated as short-term gain taxed at ordinary income rates. (Code Sec. 1061(a))

LOSS PROVISIONS

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. A passive activity for this purpose is a trade or business activity in which the taxpayer owns an interest but does not materially participate. "Material participation" means that the taxpayer is involved in the operation of the activity on a basis that is regular, continuous, and substantial. (Reg. § 1.469-5) 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. An excess farm loss for a tax year meant the excess of aggregate deductions that were attributable to farming businesses over the sum of aggregate gross income or gain attributable to farming businesses plus the threshold amount. The threshold amount was the

greater of (1) $300,000 ($150,000 for married individuals filing separately), or (2) for the 5-consecutive-year period preceding the tax year, the excess of the aggregate gross income or gain attributable to the taxpayer's farming businesses over the aggregate deductions attributable to the taxpayer's farming businesses.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 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. (Code Sec. 461(l), as added by Act Sec. 11012)

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. (Code Sec. 461(l)(3), as added by Act Sec. 11012)

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; and regulatory authority is provided to apply the new provision to any other passthrough entity to the extent necessary, as well as to require any additional reporting as IRS determines is appropriate to carry out the purposes of the provision. (Code Sec. 461(l)(4), as added by Act Sec. 11012(a))

Deduction for Personal Casualty & 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 Dec. 31, 2017 and before Jan. 1, 2026, the personal casualty and theft loss deduction is suspended, except for personal casualty losses incurred in a Federally-declared disaster. (Code Sec. 165(h)(5), as amended by Act Sec. 11044) 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.

Gambling Loss Limitation Modified

In general, taxpayers can claim a deduction for wagering losses to the extent of wagering winnings. (Code Sec. 165(d)) 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 Dec. 31, 2017 and before Jan. 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. (Code Sec. 165(d), as amended by Act Sec. 11050)

CHANGES TO TAX CREDITS

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 their 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 Dec. 31, 2017 and before Jan. 1, 2026, the child tax credit is increased to $2,000, and other changes are made to phase-outs and refundability during this same period, as outlined below. (Code Sec. 24(h)(2), as added by Act Sec. 11022(a))

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). (Code Sec. 24(h)(3), as added by Act Sec. 11022(a))

Non-child dependents. In addition, a $500 nonrefundable credit is provided for certain non-child dependents. (Code Sec. 24(h)(4), as added by Act Sec. 11022(a))

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 base $2,000 base credit amount. The earned income threshold for the refundable portion of the credit is decreased from $3,000 to $2,500. ((Code Sec. 24(h)(6), as added by Act Sec. 11022(a)))

SSN required. No credit will be allowed to a taxpayer with respect to any qualifying child unless the taxpayer provides the child's SSN. (Code Sec. 24(h)(7), as added by Act Sec. 11022(a))

MODIFIED DEDUCTIONS & EXCLUSIONS

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 Dec. 31, 2017 and before Jan. 1, 2026, subject to the exception described below, State, local, and foreign property taxes, and State and local sales taxes, are deductible only when paid or accrued in carrying on a trade or business or an activity described in Code Sec. 212 (generally, for the production of income). State and local income, war profits, and excess profits are not allowable as a deduction.

However, a taxpayer may claim an itemized deduction of up to $10,000 ($5,000 for a married taxpayer filing a separate return) for the aggregate of (i) State and local property taxes not paid or accrued in carrying on a trade or business or activity described in Code Sec. 212; and (ii) State and local income, war profits, and excess profits taxes (or sales taxes in lieu of income, etc. taxes) paid or accrued in the tax year. Foreign real property taxes may not be deducted. (Code Sec. 164(b)(6), as amended by Act Sec. 11042)

Prepayment provision. For tax years beginning after Dec. 31, 2016, in the case of an amount paid in a tax year beginning before Jan. 1, 2018 with respect to a State or local income tax imposed for a tax year beginning after Dec. 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. (Code Sec. 164(b)(6), as amended by Act Sec. 11042) 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 Dec. 31, 2017 and before Jan. 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). (Code Sec. 163(h)(3)(F), as amended by Act Sec. 11043(a)) For tax years after Dec. 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 Dec. 31, 2025.

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

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

Refinancing. The $1 million/$500,000 limitations continue to apply to taxpayers who refinance existing qualified residence indebtedness that was incurred before Dec. 15, 2017, so long as the indebtedness resulting from the refinancing doesn't exceed the amount of the refinanced indebtedness. (Code Sec. 163(h)(3)(F), as amended by Act Sec. 11043(a))

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.

RIA observation: For tax years beginning after Dec. 31, 2012, and ending before Jan. 1, 2017, a 7.5%-of-AGI floor for medical expenses applied if a taxpayer or the taxpayer's spouse had reached age 65 before the close of the tax year.

And, under pre-Act law, for alternative minimum tax (AMT) purposes, the medical expenses deduction rules were modified such that medical expenses were only deductible to the extent they exceeded 10% of AGI.

New law. For tax years beginning after Dec. 31, 2016 and ending before Jan. 1, 2019, the threshold on medical expense deductions is reduced to 7.5% for all taxpayers. (Code Sec. 213(f), as amended by Act Sec. 11027(a))

In addition, the rule limiting the medical expense deduction for AMT purposes to 10% of AGI doesn't apply to tax years beginning after Dec. 31, 2016 and ending before Jan. 1, 2019. (Code Sec. 56(b)(1)(B), as amended by Act Sec. 11027(b))

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. Under Code Sec. 170(f)(8)(D), IRS is authorized to issue regs 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 regs.

New law. For contributions made in tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the 50% limitation under Code Sec. 170(b) for cash contributions to public charities and certain private foundations is increased to 60%. (Code Sec. 170(b)(1)(G), as added by Act Sec. 11023) Contributions exceeding the 60% limitation are generally allowed to be carried forward and deducted for up to five years, subject to the later year's ceiling.

And, for contributions made in tax years beginning after Dec. 31, 2016, the Code Sec. 170(f)(8)(D) provision; i.e., the donee-reporting exemption from the CWA requirement-is repealed. (Former Code Sec. 170(f)(8)(D), as stricken by Act Sec. 13705)

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 Dec. 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. (Code Sec. 170(l), as amended by Act Sec. 13704)

Alimony Deduction by Payor/Inclusion by Payee Suspended

Under pre-Act law, alimony and separate maintenance payments were deductible by the payor spouse under Code Sec. 215(a) and includible in income by the recipient spouse under Code Sec. 71(a) and Code Sec. 61(a)(8) .

New law. For any divorce or separation agreement executed after Dec. 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. (Former Code Secs. 215, 61(a)(8), and 71, as stricken by Act Sec. 11051)

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.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the deduction for miscellaneous itemized deductions that are subject to the 2% floor is suspended. (Code Sec. 67(g), as added by Act Sec. 11045)

Overall Limitation ("Pease" Limitation) on Itemized Deductions Suspended

Under pre-Act law, higher-income taxpayers who itemized their deductions were subject to a limitation on these deductions (commonly known as the "Pease limitation"). 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. 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 Dec. 31, 2017 and before Jan. 1, 2026, the "Pease limitation" on itemized deductions is suspended. (Code Sec. 68(f), as amended by Act Sec. 11046)

Qualified Bicycle Commuting Exclusion Suspended

Under pre-Act law, an employee was allowed to exclude up to $20 per month in qualified bicycle commuting reimbursements; i.e., any amount received from an employer during a 15-month period beginning with the first day of the calendar year as payment for reasonable expenses during a calendar year.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the exclusion from gross income and wages for qualified bicycle commuting reimbursements is suspended. (Code Sec. 132(f)(8), as added by Act Sec. 11047)

Exclusion for Moving Expense Reimbursements Suspended

Under pre-Act law, an employee could, under Code Sec. 3401(a)(15), Code Sec. 3121(a)(11), and Code Sec. 3306(b)(9), 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 under Code Sec. 217 if directly paid or incurred by the employee.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 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. (Code Sec. 132(g), as amended by Act Sec. 11048)

Moving Expenses Deduction Suspended

Under pre-Act law, taxpayers could claim a deduction under Code Sec. 217 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 Dec. 31, 2017 and before Jan. 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. (Code Sec. 217(k), as amended by Act Sec. 11049(a))

Deduction for Living Expenses of Members of Congress Eliminated

Individual taxpayers generally can, subject to certain limitations, deduct ordinary and necessary business expenses paid or incurred during the tax year in carrying on a trade or business, including expenses for travel away from home. Under pre-Act law, members of Congress were allowed to deduct up to $3,000 of living expenses when they were away from home (such as expenses connected with maintaining a residence in Washington, D.C.) in any tax year.

New law. For tax years beginning after the enactment date, members of Congress cannot deduct living expenses when they are away from home. (Code Sec. 162(a), as amended by Act Sec. 13311)

Combat Zone Treatment Extended to Egypt's Sinai Peninsula

Members of the Armed Forces serving in a combat zone are afforded a number of tax benefits e.g., exclusion of certain pay and special estate tax rules.

New law. For purposes of various Code provisions that provide tax benefits to members of the Armed Forces serving in a combat zone, the Act provides that a "qualified hazardous duty area" (which the Act defines as the Sinai Peninsula of Egypt) is treated in the same manner as a combat zone. Thus, under the Act, for services provided on or after June 9, 2015, combat zone tax benefits are, except as provided below, granted for the Sinai Peninsula of Egypt, if, as of the enactment date, any member of the U.S. Armed Forces is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger), for services performed in such location. This benefit lasts only during the period such entitlement is in effect.

However, the combat zone benefit under Code Sec. 3401(a)(1) relating to the withholding exemption for combat pay applies to remuneration paid after the date of enactment. (Act Sec. 11026(d))

HEALTHCARE

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 were required to 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 Dec. 31, 2018, the amount of the individual shared responsibility payment is reduced to zero. (Code Sec. 5000A(c), as amended by Act Sec. 11081) This repeal is permanent.

RIA observation: 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.

RIA observation: The Act leaves intact the 3.8% net investment income tax and the 0.9% additional Medicare tax, both enacted by Obamacare.

ALTERNATIVE MINIMUM TAX (AMT)

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.

Under pre-Act law, for 2018, the exemption amounts were scheduled to be:

(i) $86,200 for marrieds filing jointly/surviving spouses;

(ii) $55,400 for other unmarried individuals;

(iii) 50% of the marrieds-filing-jointly amount for marrieds filing separately, i.e., $43,100;

And, those exemption amounts were reduced by an amount equal to 25% of the amount by which the individual's AMTI exceeded:

(i) $164,100 for marrieds filing jointly and surviving spouses (phase-out complete at $508,900);

(ii) $123,100 for unmarried individuals (phase-out complete at $344,700); and

(iii) 50% of the marrieds-filing-jointly amount for marrieds filing separately, i.e., $82,050 (phase-out complete at $180,450).

Additionally, married persons filing must add the lesser of the following to AMTI: (1) 25% of the excess of AMTI (determined without regard to this adjustment) over the minimum amount of income at which the exemption will be completely phased out, or (2) the exemption amount. So, for 2018, married persons filing separately must add the lesser of the following to AMTI: (1) 25% of the excess of AMTI over $254,450, or $43,100.

For trusts and estates, for 2018, the exempt amount was scheduled to be $24,600, and the exemption was to be reduced by 25% of the amount by which its AMTI exceeded $82,050 (phase-out complete at $254,450).

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the Act increases the AMT exemption amounts for individuals as follows:

. . . For joint returns and surviving spouses, $109,400.
. . . For single taxpayers, $70,300.
. . . For marrieds filing separately, $54,700. (Code Sec. 55(d)(4), as amended by Act Sec. 12003(a))

Under the Act, the above exemption amounts are reduced (not below zero) to an amount equal to 25% of the amount by which the AMTI of the taxpayer exceeds the phase-out amounts, increased as follows:

. . . For joint returns and surviving spouses, $1 million.
. . . For all other taxpayers (other than estates and trusts), $500,000.

For trusts and estates, the base figure of $22,500 and phase-out amount of $75,000 remain unchanged. All of these amounts will be adjusted for inflation after 2018 under the new C-CPI-U inflation measure (see above). (Code Sec. 55(d)(4), as amended by Act Sec. 12003(a))

EDUCATION PROVISIONS

ABLE Account Changes

ABLE Accounts under Code Sec. 529A provide individuals with disabilities and their families the ability to fund a tax preferred savings account to pay for "qualified" disability related expenses. Contributions may be made by the person with a disability (the "designated beneficiary"), parents, family members or others. Under pre-Act law, the annual limitation on contributions is the amount of the annual gift-tax exemption ($15,000 in 2018).

New law. Effective for tax years beginning after the enactment date and before Jan. 1, 2026, the contribution limitation to ABLE accounts with respect to contributions made by the designated beneficiary is increased, and other changes are in effect as described below. After the overall limitation on contributions is reached (i.e., the annual gift tax exemption amount; for 2018, $15,000), an ABLE account's designated beneficiary can contribute an additional amount, up to the lesser of (a) the Federal poverty line for a one-person household; or (b) the individual's compensation for the tax year. (Code Sec. 529A(b), as amended by Act Sec. 11024(a))

Saver's credit eligible. Additionally, the designated beneficiary of an ABLE account can claim the saver's credit under Code Sec. 25B for contributions made to his or her ABLE account. (Code Sec. 25B(d)(1), as amended by Act Sec. 11024(b))

Recordkeeping requirements. The Act also requires that a designated beneficiary (or person acting on the beneficiary's behalf) maintain adequate records for ensuring compliance with the above limitations. (Code Sec. 529A(b)(2) , as amended by Act Sec. 11024(a))

For distributions after the date of enactment, amounts from qualified tuition programs (QTPs, also known as 529 accounts; see below) are allowed to be rolled over to an ABLE account without penalty, provided that the ABLE account is owned by the designated beneficiary of that 529 account, or a member of such designated beneficiary's family. (Code Sec. 529(c)(3), as amended by Act Sec. 11025) Such rolled-over amounts are counted towards the overall limitation on amounts that can be contributed to an ABLE account within a tax year, and any amount rolled over in excess of this limitation is includible in the gross income of the distributee.

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 Dec. 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 tax year. (Code Sec. 529(c)(7), as added by Act Sec. 11032(a))

Student Loan Discharged on Death or Disability

Gross income generally includes the discharge of indebtedness of the taxpayer. Under an exception to this general rule, gross income does not include any amount from the forgiveness (in whole or in part) of certain student loans, if the forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers.

New law. For discharges of indebtedness after Dec. 31, 2017 and before Jan. 1, 2026, certain student loans that are discharged on account of death or total and permanent disability of the student are also excluded from gross income. (Code Sec. 108(f), as amended by Act Sec. 11031)

DEFERRED COMPENSATION

New Deferral Election for Qualified Equity Grants

Code Sec. 83 governs the amount and timing of income inclusion for property, including employer stock, transferred to an employee in connection with the performance of services. Under Code Sec. 83(a), 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 Dec. 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. (Code Sec. 83(i), as amended by Act Sec. 13603(a)) 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. (Code Sec. 83(i)(4)(A), as added by Act Sec. 13603(a)) 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. (Code Sec. 83(i)(1)(B), as amended by Act Sec. 13603(a))

The election is available for "qualified stock" (defined in Code Sec. 83(i)(2)(A), as amended by Act Sec. 13603(a)) attributable to a statutory option. In such a case, the option is not treated as a statutory option, and the rules relating to statutory options and related stock do not apply. In addition, an arrangement under which an employee may receive qualified stock is not treated as a nonqualified deferred compensation plan solely because of an employee's inclusion deferral election or ability to make the election.

Deferred income inclusion also applies for purposes of the employer's deduction of the amount of income attributable to the qualified stock. That is, if an employee makes the election, the employer's deduction is deferred until the employer's tax year in which or with which ends the tax year of the employee for which the amount is included in the employee's income as described in (1) - (5) above.

The new election applies for qualified stock of an eligible corporation. A corporation is treated as such for a tax year if: (1) no stock of the employer corporation (or any predecessor) is readily tradable on an established securities market during any preceding calendar year, and (2) the corporation has a written plan under which, in the calendar year, not less than 80% of all employees who provide services to the corporation in the US (or any US possession) are granted stock options, or restricted stock units (RSUs), with the same rights and privileges to receive qualified stock. (Code Sec. 83(i)(2)(C), as amended by Act Sec. 13603(a))

Detailed employer notice, withholding, and reporting requirements also apply with regard to the election. (Code Sec. 83(i)(6), as amended by Act Sec. 13603(a))

As noted above, the income deferral election generally applies with respect to stock attributable to options exercised or RSUs settled after Dec. 31, 2017. However, under a transition rule, until IRS issues regs or other guidance implementing the 80% and employer notice requirements under the provision, a corporation will be treated as complying with those requirements if it complies with a reasonable good faith interpretation of them. The penalty for a failure to provide the notice required under the provision applies to failures after Dec. 31, 2017. (Code Sec. 6652)(p), as amended by Act Sec. 13603(e))

RETIREMENT PLAN PROVISIONS

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 Dec. 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. (Code Sec. 408A(d), as amended by Act Sec. 13611)

Length of Service Award Programs for Public Safety Volunteers

Under pre-Act law, any plan that solely provides length of service awards to bona fide volunteers or their beneficiaries, on account of qualified services performed by the volunteers, is not treated as a plan of deferred compensation for purposes of the Code Sec. 457 rules. Qualified services are fire fighting and prevention services, emergency medical services, and ambulance services, including services performed by dispatchers, mechanics, ambulance drivers, and certified instructors. The exception applies only if the aggregate amount of length of service awards accruing for a bona fide volunteer with respect to any year of service does not exceed $3,000.

New law. For tax years beginning after Dec. 31, 2017, the Act increases the aggregate amount of length of service awards that may accrue for a bona fide volunteer with respect to any year of service, from $3,000 to $6,000, and adjusts that amount to reflect changes in cost-of-living for years after the first year the proposal is effective. Also, if the plan is a defined benefit plan, the limit applies to the actuarial present value of the aggregate amount of length of service awards accruing with respect to any year of service. Actuarial present value is calculated using reasonable actuarial assumptions and methods, assuming payment will be made under the most valuable form of payment under the plan, with payment commencing at the later of the earliest age at which unreduced benefits are payable under the plan or the participant's age at the time of the calculation. (Code Sec. 457(e), as amended by Act Sec. 13612)

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 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 Dec. 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. (Code Sec. 402(c), as amended by Act Sec. 13613)

DISASTER RELIEF PROVISIONS

2016 "Net Disaster Loss" Relief Available to Non-Itemizers & Taxpayers Subject to AMT

In general, no personal casualty loss (under Code Sec. 165(h)) 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. Effective for tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026, if an individual has a net disaster loss (defined below) for any tax year beginning after Dec. 31, 2017, and before Jan. 1, 2026, the standard deduction is increased by the net disaster loss. (Act Sec. 11028(c)(1)(C))

The Act also provides that, if any individual has a net disaster loss for any tax year beginning after Dec. 31, 2017 and before Jan. 1, 2026, the AMT adjustment for the standard deduction doesn't apply to the increase in the standard deduction that is attributable to the net disaster loss. (Act Sec. 11028(c)(1)(D))

RIA observation: Thus, while the standard deduction is generally disallowed under the AMT rules, the portion of the standard deduction attributable to a net disaster loss is allowed for AMT purposes.

Net disaster loss. A net disaster loss is the excess of (i) qualified disaster-related personal casualty losses, over (ii) personal casualty gains. "Qualified disaster-related personal casualty losses" are those described in Code Sec. 165(c)(3) that arise in a 2016 disaster area (below). Personal casualty gains are those described in Code Sec. 165(h)(3)(A).

2016 disaster area. The Act provides tax relief relating to any "2016 disaster area," which means any area with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act during calendar year 2016. (Act Sec. 11028(a))

RIA observation: The application of this provision might be limited as it applies to losses potentially deductible in the 2018 through 2025 tax years, but is limited to losses incurred in the 2016 disaster areas.

Raised Casualty Floor & Modified Threshold for 2016 Disaster Losses

In general, the deduction for casualty and theft losses of personal-use property under Code Sec. 165(h) is subject to two limitations: the $100 per-casualty floor and the 10%-of-adjusted-gross-income (10%-of-AGI) threshold.

New law. For tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026, the Act provides that if an individual has a net disaster loss (for this purpose, the definition above applies except that the timeframe is changed to any tax year beginning after Dec. 31, 2015 and before Jan., 1, 2018), (i) the $100-per-casualty floor is increased to $500 (Act Sec. 11028(c)(1)(A)); and (ii) the 10%-of-AGI threshold doesn't apply. (Act Sec. 11028(c)(2)(B)

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 under Code Sec. 72(t) (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." (Act Sec. 11028(b)) These distributions are defined as distributions from an eligible retirement plan made (a) on or after Jan. 1, 2016, and before Jan. 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, under the Act, be included in income ratably over three years (Act Sec. 11028(b)(1)(E)), and the amount of a qualified 2016 disaster distribution can be recontributed to an eligible retirement plan within three years.

The Act also provides that a plan amendment made pursuant to the above disaster relief provisions may be retroactively effective if certain requirements are met, including that it be made on or before the last day of the first plan year beginning after Dec. 31, 2018 (Dec. 31, 2020 for a governmental plan), or a later date prescribed by IRS. (Act Sec. 11028(b)(1)(F)(2)(B))

SELF-CREATED PROPERTY

Certain Self-Created Property Not Treated as Capital Asset

Under pre-Act law, property held by a taxpayer (whether or not connected with the taxpayer's trade or business) is generally considered a capital asset under Code Sec. 1221(a). However, certain assets are specifically excluded from the definition of a capital asset, including inventory property, depreciable property, and certain self-created intangibles (e.g., copyrights, musical compositions).

New law. Effective for dispositions after Dec. 31, 2017, the Act amends Code Sec. 1221(a)(3), resulting in the exclusion of patents, inventions, models or designs (whether or not patented), and secret formulas or processes, which are held either by the taxpayer who created the property or by 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." (Code Sec. 1221(a)(3), amended by Act Sec. 13314)

ESTATE AND GIFT TAX

Estate and Gift Tax Retained, with Increased Exemption Amount

A gift tax is imposed on certain lifetime transfers (Code Sec. 2511), and an estate tax is imposed on certain transfers at death. (Code Sec. 2001)

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" was $5.6 million ($11.2 million for a married couple).

New law. For estates of decedents dying and gifts made after Dec. 31, 2017 and before Jan. 1, 2026, the Act doubles the base estate and gift tax exemption amount from $5 million to $10 million. (Code Sec. 2010(c)(3), as amended by Act Sec. 11061(a)) The $10 million amount is indexed for inflation occurring after 2011 and is expected to be approximately $11.2 million in 2018 ($22.4 million per married couple).

RIA observation: 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.

IRS PRACTICE & PROCEDURAL CHANGES

Time To Contest IRS Levy Extended

The IRS is authorized to return property that has been wrongfully levied upon. Under pre-Act law, monetary proceeds from the sale of levied property could generally be returned within nine months of the date of the levy.

New law. For levies made after the date of enactment; and for levies made on or before the date of enactment if the 9-month period has not expired as of the date of enactment, the 9-month period during which IRS may return the monetary proceeds from the sale of property that has been wrongfully levied upon is extended to two years. The period for bringing a civil action for wrongful levy is similarly extended from nine months to two years. (Code Sec. 6343(b), as amended by Act Sec. 11071)

Due Diligence Requirements for Claiming Head of Household

Any person who is a tax return preparer for any return or claim for refund, who fails to comply with certain regulatory due diligence requirements imposed by regs with regard to determining the eligibility for, or the amount of, an earned income credit, a child tax credit, a additional child tax credit, or an American opportunity tax credit, must pay a penalty. (Code Sec. 6695(g))

The base amount of the penalty is $500; for 2018, as adjusted for inflation under Code Sec. 6695(h), the penalty is $520.

New law. Effective for tax years beginning after Dec. 31, 2017, the Act expands the due diligence requirements for paid preparers to cover determining eligibility for a taxpayer to file as head of household. A penalty of $500 (adjusted for inflation) is imposed for each failure to meet these requirements. (Code Sec. 6695(g), as amended by Act Sec. 11001(b))