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Tax Cuts and Jobs Act of 2017

An Analysis of Provisions Affecting Individuals*

Part I Act Analysis

§ 1.00 Introduction

This article discusses the tax provisions of Public Law 115-97, *An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018* (henceforth referred to as the "Act"), which was passed by Congress on December 20, 2017, and signed by President Donald J. Trump on December 22, 2017. The legislation includes sweeping tax reform. This summary offers an overview of the current law, with references to the Internal Revenue Code ("IRC"), discusses changes made by the Act, and also offers some planning guidance, only in respect to provisions affecting individual taxation.

§ 1.01 Individual Income Tax Rates (Inflation Adjustments)

The American Taxpayer Relief Act of 2012 increased from 35 to 39.6 percent the tax rate on income above prescribed levels: $450,000 for married taxpayers filing joint returns and surviving spouses; $225,000 for married taxpayers filing separate returns; $425,000 for heads of households; and $400,000 for unmarried individuals other than surviving spouses and heads of households [IRC § 1(i)(3)(A), (B)]. Dollar amounts were adjusted for inflation after 2013 [IRC § 1(i)(3)(C)].

For taxable years beginning in 2017, the 39.6 percent tax rate applies to income levels above $470,700 for married taxpayers filing joint returns and surviving spouses; $235,350 for married taxpayers filing separate returns; $444,550 for heads of household; and $418,400 for unmarried individuals other than surviving spouses and heads of households [Rev. Proc. 2016-55].

Tax rate schedules currently impose various rates based on income, with incrementally larger marginal tax rates corresponding with greater income levels. Tax rate schedules are based on a taxpayer's filing status. Under present law, there are seven tax rates for individual taxpayers: 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%. [IRC § 1(a)–(e), (i)].

The Act temporarily replaces the existing tax rates with seven new rates, for taxable years beginning after December 31, 2017 and before January 1, 2026: 10%, 12%, 22%, 24%, 32%, 35%, and 37%. Effective for taxable years beginning after December 31, 2017 and before January 1, 2019, tax rates will apply as shown in tables below [Act § 11001].

Different tables will be prescribed for taxable years beginning after December 31, 2018 and before January 1, 2026 [Act § 11001].

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* Excerpted from Rosann Torres, et al., Tax Cuts and Jobs Act of 2017—An Analysis (Matthew Bender).

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Federal Individual Income Tax Rates for 2018

Single Individuals

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

Heads of Households

Not over $13,600	10% of the taxable income
Over $13,600 but not over $51,800	$1,360 plus 12% of the excess over $13,600
Over $51,800 but not over $82,500	$5,944 plus 22% of the excess over $51,800
Over $82,500 but not over $157,500	$12,698 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$30,698 plus 32% of the excess over $157,500
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

Married Individuals Filing Joint Returns and Surviving Spouses

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

Married Individuals Filing Separate Returns

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

Estates and Trusts

Not over $2,550	10% of the taxable income

Over $2,550 but not over $9,150	$255 plus 24% of the excess over $2,550
Over $9,150 but not over $12,500	$1,839 plus 35% of the excess over $9,150
Over $12,500	$3,011.50 plus 37% of the excess over $12,500

Dollar amounts will be adjusted for inflation after 2017 for any existing tax parameters that are not reset for 2018, based on the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), permanently changed under the Act from the Consumer Price Index for All Urban Consumers (CPI-U) [IRC § 1(f)(3)]. Under the Act, all tax values reset for 2018 are subject to C-CPI-U indexing in taxable years beginning after December 31, 2018 [Act § 11002]. (The C-CPI-U's distinction from the CPI-U lies in its recognition of consumption pattern changes in response to relative price changes.)

Accordingly, different tables will be prescribed for taxable years beginning after December 31, 2018 and before January 1, 2026 [Act § 11001].

The rate structure under the Act does not apply to taxable years beginning after December 31, 2025.

§ 1.02 Unearned Income of Children ("Kiddie Tax")

Under present law, the net unearned income of a child (for 2017, unearned income over $2,100 is taxed at the parents' tax rates if the parents' tax rates are 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 2017), less the child's standard deduction) is taxed at the child's rates, whether or not the kiddie tax applies to the child [IRC § 1(g)(2)].

Under the Act ordinary and capital gains rates applicable to trusts and estates, apply to the net unearned income of a child. Thus, as under present law, taxable income attributable to earned income is taxed according to an unmarried taxpayer's brackets and rates. Taxable income attributable to net unearned income is taxed according to brackets applicable to trusts and estates, with respect to both ordinary income and income taxed at preferential rates for qualified dividends and capital gains [IRC § 1(h)]. Hence, the child's tax is unaffected by the parents' tax situation or the unearned income of any siblings [Act § 11001].

The provision applies to taxable years after December 31, 2017 and before January 1, 2026.

§ 1.03 Individual Standard Deduction

Under present law, individuals who do not elect to itemize deductions may reduce their adjusted gross income ("AGI") by the applicable standard deduction amount in arriving at taxable income [IRC 63(b)]. The standard deduction is the sum of the basic standard deduction and, if applicable, the additional standard deduction [IRC § 63(c)(1)].

Elderly and blind individuals are entitled to an additional standard deduction [IRC § 63(c)(3)]. For 2017, the additional amount is $1,250 for married taxpayers (for each spouse meeting the applicable criterion) and surviving spouses. The additional amount

for single individuals and heads of households is $1,550. An individual who qualifies as both blind and elderly is entitled to two additional standard deductions, for a total additional amount (for 2017) of $2,500 or $3,100, as applicable.

For taxable years beginning after December 31, 2017 and before January 1, 2026, the Act temporarily increases the basic standard deduction applicable to the 2017 taxable year [IRC § 63(c)(2); Rev. Proc. 2016-55] across all filing categories: From $6,350 to $12,000 for single individuals and married individuals filing separate returns; from $9,350 to $18,000 for heads of households; and from $12,700 to $24,000 for married individuals filing a joint return and surviving spouses [Act § 11021].

The additional standard deduction for elderly and blind individuals is unchanged.

§ 1.04 Suspension of Personal Exemption Deduction

Under current law, individual taxpayers reduce their AGI in computing taxable income by subtracting personal exemption deductions and either the applicable standard deduction or itemized deductions. Personal exemptions generally are allowed for the taxpayer, spouse, and any dependents [IRC § 151(a)–(c)]. For 2017, the amount deductible for each personal exemption is $4,050 [IRC § 151(d); Rev. Proc. 2016-55]. This amount is indexed annually for inflation [see IRC § 151(d)(4)]. The personal exemption amount is phased out in the case of an individual with AGI in excess of $313,800 for taxpayers filing jointly, $287,650 for heads of household and $261,500 for all other filers [IRC § 151(d)(3)]. In addition, no personal exemption is allowed in the case of a dependent if a deduction is allowed to another taxpayer [IRC § 151(b)].

Withholding rules under current law require employers to withhold amounts from wages based on the number of withholding exemptions taxpayer employees claim on Form W-4.

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Act suspends personal exemption deductions, and requires the Secretary of the Treasury to promulgate rules defining employers' requirements with regards to tax withholding from taxpayer employees' wages [Act § 11041].

§ 1.05 Treatment of Business Income of Individuals, Trusts, and Estates

For taxable years beginning after December 31, 2017 and before January 1, 2026, an individual taxpayer generally may deduct 20 percent of qualified business income from a partnership, S corporation, or sole proprietorship, as well as 20 percent of aggregate qualified REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income. Special rules apply to specified agricultural or horticultural cooperatives permitting the cooperative a deduction [Act § 11011].

A limitation based on 50 percent of W-2 wages paid, or the sum of 25 percent of W-2 wages paid plus a capital allowance, whichever is greater, is phased in above a threshold amount of taxable income. A disallowance of the deduction with respect to specified service trades or businesses is also phased in above the same threshold amount of taxable income.

A specified service trade or business is any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees.

Specified trades or businesses include those that involve performance of services in the fields of health, law, engineering, accounting, architecture, actuarial science, performing arts, consulting, athletics, financial services, and brokerage services, including investing and investment management, trading, or dealing in securities, partnership interests, or commodities.

The threshold amount is $157,500 (twice that amount or $315,000 in the case of a joint return), indexed. These limitations are fully phased in for a taxpayer with taxable income in excess of the threshold amount plus $50,000 ($100,000 in the case of a joint return).

In general, qualified business income is the net amount of domestic qualified items of income, gain, deduction, and loss with respect to the taxpayer's qualified businesses.

However, qualified business income excludes:

- S corporation disbursements treated as reasonable compensation of the taxpayer;
- Guaranteed payment for services rendered with respect to the trade or business;
- To the extent provided in regulations, amounts allocated or distributed by a partnership to a partner who is acting outside his or her capacity as a partner for services;
- Certain investment-related income, gain, deductions, or loss.

§ 1.06 Enhancement of Child Tax Credit and New Family Credit

Under current law, an individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is $1,000 [IRC § 24(a)]. The aggregate amount of child credits that may be claimed is phased out for individuals with income over certain threshold amounts: Specifically, the otherwise allowable child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income ("AGI") over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns. For purposes of this limitation, modified AGI includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories [IRC § 24(b)]. The credit is allowable against both the regular tax and the alternative minimum tax. To the extent the child credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit equal to 15 percent of earned income in excess of $3,000 (the "earned income" formula. Families with three or more children may determine the additional child tax credit using the "alternative formula," if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's Social Security taxes exceed the taxpayer's earned income credit ("EIC") [IRC § 24(d)(1)].

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Act increases the child tax credit to $2,000 per child who has not attained age 17, and adds a new $500 nonrefundable credit for qualifying dependents (as

defined by present law) other than qualifying children [Act § 11022].

The maximum amount refundable under the Act is $1,400 per qualifying child, subject to indexing that rounds the $1,400 amount to the next lowest multiple of $100. Eligibility for the refundable portion of the child tax credit (but not for the $500 nonrefundable credit for qualifying dependents other than qualifying children) requires taxpayers to provide a Social Security number for each qualifying child on their tax returns. A qualifying child who is ineligible to receive the child tax credit because that child did not have a Social Security number as the child's taxpayer identification number may nonetheless qualify for the nonrefundable $500 credit.

The Act changes AGI phase-out thresholds, but does not index them for inflation. The new AGI thresholds under the Act are $400,000 for married taxpayers filing joint returns and $200,000 for all other taxpayers [Act § 11022].

§ 1.07 Limitations on Losses for Taxpayers Other than Corporations

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Act applies changes to excess business losses of a taxpayer other than a corporation ***after*** application of passive loss rules [IRC § 469; Treas. Reg. § 1.469-5 and -5T]. Effective for the same taxable years, the Act also suspends the present-law limitation relating to excess farm losses [IRC § 461; Act § 11012].

Under current law, limitations on deductions and credits from passive trade or business activities apply to individuals, estates and trusts, and closely held corporations [IRC § 469; Treas. Reg. § 1.469-5 and -5T]. Deductions attributable to passive activities (defined as trade or business activity in which the taxpayer owns an interest, but in which the taxpayer does not materially participate), to the extent they exceed income from passive activities, generally may not be deducted against other income. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer makes a taxable disposition of his entire interest in the passive activity to an unrelated person.

Under current law, a limitation on excess farm losses applies to taxpayers other than C corporations [IRC § 461(j)]. If a taxpayer other than a C corporation receives an applicable subsidy for the taxable year, the amount of the excess farm loss is not allowed for the taxable year, and is carried forward and treated as a deduction attributable to farming businesses in the next taxable year. An excess farm loss for a taxable year means the aggregate deductions attributable to farming businesses that exceed the sum of aggregate gross income or gain attributable to farming businesses plus the threshold amount, which is the greater of:

1. $300,000 ($150,000 for married individuals filing separately), or
2. For the five-consecutive-year period preceding the taxable 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.

Under the Act, after application of passive loss rules, for taxable years beginning

after December 31, 2017 and before January 1, 2026, excess business losses of a taxpayer other than a corporation are not allowed for the taxable year [Act § 11012(a)]. Such losses are instead carried forward and treated as part of the taxpayer's net operating loss ("NOL") carryforward in subsequent taxable years. The new tax law provision limits the NOL deduction to 80 percent of taxable income (determined without regard to the deduction) for losses arising in taxable years beginning after December 31, 2017. Carryovers to other years are adjusted to take account of this limitation, and may be carried forward indefinitely [Act § 13302(b)]. 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.

An excess business loss for the taxable year is the taxpayer's aggregate deductions attributable to trades or businesses of the taxpayer (determined without regard to the limitation of the provision) that exceed the sum of the taxpayer's aggregate gross income or gain plus a threshold amount. The threshold amount for a taxable year is $250,000 (or twice the otherwise applicable threshold amount in the case of a joint return). The threshold amount is indexed for inflation.

In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. Each partner's distributive share and each S corporation shareholder's pro rata share of items of income, gain, deduction, or loss of the partnership or S corporation are accounted for in applying the limitation under the provision for the taxable year of the partner or S corporation shareholder. Regulatory authority is provided to apply the provision to any other passthrough entity to the extent necessary to carry out the provision. Regulatory authority is also provided to require any additional reporting as the Secretary determines is appropriate to carry out the purposes of the provision.

§ 1.08 Consolidation and Modification of Education Savings Rules

Under current law, an IRC Section 529 qualified tuition program is a program established and maintained by a State or agency or instrumentality thereof, or by one or more eligible educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary (a "prepaid tuition program"). Section 529 provides specified income tax and transfer tax rules for the treatment of accounts and contracts established under qualified tuition programs.

The Act essentially allows parents to save for their children's elementary or secondary education, as well as college. Effective December 31, 2017, the Act allows Section 529 plans to distribute not more than $10,000 in expenses for tuition incurred during the taxable year in connection with the enrollment or attendance of the designated beneficiary at a public, private or religious elementary or secondary school. This limitation applies on a per-student basis, rather than a per-account basis, thereby restricting the amount an individual may receive to $10,000 in distributions free of tax, regardless of whether the funds are distributed from multiple accounts. Any excess

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distributions received by the individual will be treated as a distribution subject to tax under section 529 general rules.

§ 1.09 Reforms to Discharge of Certain Student Loan Indebtedness

Under current law, in general, a discharge of an individual's student loan is not includable in gross income in some cases, as where the individual works in certain professions for a certain period of time [IRC § 108(f)].

For discharges for loans received after, and amounts received after December 31, 2017 and before January 1, 2026, the Act includes certain discharges on account of death or disability (specifically, pursuant to the death or total and permanent disability of the student) within the exclusion of student loan discharges from gross income [Act § 11031]. Eligible loans are made by:

1. The United States (or an instrumentality or agency thereof);
2. A State (or any political subdivision thereof);
3. Certain tax-exempt public benefit corporations that control a State, county, or municipal hospital and whose employees have been deemed to be public employees under State law;
4. An educational organization that originally received funds from which the loan was made from the United States, a State, or a tax-exempt public benefit corporation; or
5. Private education loans (as defined in section 140(7) of the Consumer Protection Act) [15 U.S.C. 1650(7)].

§ 1.10 Rollovers Between Qualified Tuition Programs and Qualified ABLE Programs

ABLE accounts, conceived pursuant to the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act), Pub. L. No. 113-295, are tax-advantaged savings account for individuals with disabilities and their families. The account beneficiary is also the account owner. Contributions to such accounts are post-tax, not tax deductible. Excepting rollover contributions from other ABLE accounts, contributions may not exceed the section 2503(b) limitation on annual contributions during a taxable year ($14,000 in 2017).

Under the Act, effective for distributions after the date of enactment and before January 1, 2026, amounts from qualified tuition programs (529 accounts) may 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 [Act § 11025]. For 529 account rollover purposes, the designated beneficiary's family is defined to include the taxpayer's (1) spouse; (2) child or descendant of a child; (3) brother, sister, stepbrother or stepsister; (4) father, mother or ancestor of either; (5) stepfather or stepmother; (6) niece or nephew; (7) aunt or uncle; (8) in-law; (9) the spouse of any individual described in (2)–(8); and (10) any first cousin of the designated beneficiary.

Rolled over amounts from qualified tuition programs to ABLE accounts count

toward the overall limitation on amounts that can be contributed to an ABLE account within a taxable year [IRC § 529A(b)(2)(B)]. Any amount rolled over that exceeds this limitation will be includible in the gross income of the distributee in a manner provided by section 72.

§ 1.11 Repeal of Overall Limitations on Itemized Deductions

Under current law, the total amount of most otherwise allowable itemized deductions (other than the deductions for medical expenses, investment interest and casualty, theft or gambling losses) is limited for certain upper-income taxpayers [IRC § 68]. All other limitations applicable to such deductions (such as the separate floors) are first applied. Then, the otherwise allowable total amount of itemized deductions is reduced by three percent of the amount by which the taxpayer's adjusted gross income exceeds a threshold amount corresponding with the taxpayer's filing status [IRC § 68(b)]. For 2017, these thresholds are $261,500 for single taxpayers, $287,650 for heads of household, $313,800 for married couples filing jointly, and $156,900 for married taxpayers filing separately [Rev. Proc. 2016-55]. These threshold amounts are indexed for inflation [IRC § 68(b)(2)]. Otherwise allowable itemized deductions may not be reduced by more than 80 percent by reason of the overall limit on itemized deductions [IRC § 68(a)(2)].

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Act suspends the overall limitation on itemized deductions [Act § 11046].

§ 1.12 Modification of Deduction for Home Mortgage Interest

For federal tax purposes, qualified residence (defined as the taxpayer's principal residence and one other residence selected by the taxpayer as a qualified residence) interest, paid or accrued during the taxable year as acquisition indebtedness or home equity indebtedness, is not treated as nondeductible personal interest [IRC § 163(h)(1)], and is allowed as an itemized deduction, subject to limitations. [IRC § 163(h)(2)(D) and (h)(3)].

Acquisition indebtedness means indebtedness incurred in acquiring, constructing, or substantially improving a qualified residence of the taxpayer and which secures the residence. Under current law, the maximum amount treated as acquisition indebtedness is $1 million ($500,000 with respect to a married person filing a separate return).

Home equity indebtedness means indebtedness, other than acquisition indebtedness, secured by a qualified residence. Under current law, a deduction is allowed for interest paid on up to $100,000 of home equity indebtedness. The interest is deductible, regardless of how the proceeds of the indebtedness are used. [IRC § 163(h)(2)(D), (3)(A)(ii), (C)]. Interest on home equity indebtedness is not deductible in computing alternative minimum taxable income [IRC § 56(b)(1)(C)].

Under the Act, effective for taxable years beginning after December 31, 2017, and beginning before January 1, 2026, a taxpayer may treat no more than $750,000 as acquisition indebtedness ($375,000, with respect to married taxpayers filing separately) [Act § 11043]. Regarding acquisition indebtedness incurred before December 15, 2017, this limitation is $1 million ($500,000 with respect to married taxpayers filing

separately). If indebtedness is incurred from refinancing existing acquisition indebtedness, the applicable limitation continues to apply to any indebtedness incurred on or after December 15, 2017, to refinance qualified residence indebtedness incurred before that date to the extent the indebtedness amount resulting from the refinancing does not exceed the refinanced indebtedness amount. Hence, refinancing will not reduce the maximum dollar amount that may be treated as principal residence acquisition indebtedness.

Under the Act, a taxpayer who has entered into a binding written contract before December 15, 2017 to close on the purchase of a principal residence before January 1, 2018, and who purchases such residence before April 1, 2018, will be regarded to have incurred acquisition indebtedness prior to December 15, 2017 [Act § 11043].

Effective for taxable years beginning after December 31, 2025, a taxpayer may treat up to $1 million ($500,000 with respect to married taxpayers filing separately) of indebtedness as acquisition indebtedness, regardless of when the indebtedness was incurred [Act § 11043].

Effective for taxable years beginning after December 31, 2017, and beginning before January 1, 2026, the deduction for interest on home equity indebtedness is suspended [Act § 11043].

§ 1.13 Modification of Deduction for Taxes Not Paid or Accrued in a Trade or Business

Under current law, a deduction is allowed for state and local taxes, including: state and local real and foreign property taxes; state and local personal property taxes; state, local, and foreign income, war profits, and excess profits taxes. These taxes are deductible for federal tax purposes regardless of whether they are incurred in connection with a trade or business or for the production of income [IRC § 164(a)].

Individual taxpayers may elect to deduct state and local sales taxes in lieu of state and local income taxes [IRC § 164(b)(5)]. Property taxes may be allowed as a deduction in computing adjusted gross income if incurred in connection with property used in a trade or business; otherwise they are an itemized deduction. With respect to state and local income taxes, the deduction is an itemized deduction notwithstanding that the tax may be imposed on profits from a trade or business.

Under the Act, applicable to taxable years beginning after December 31, 2017 and before January 1, 2026, an individual is allowed to claim state, local, and foreign property taxes and State and local sales taxes are allowed as a deduction only when paid or accrued in carrying on a trade or business, or an activity described in IRC § 212 (relating to expenses for the production of income). [Act § 11042] State and local income, war profits, and excess profits taxes are not allowable as a deduction for individuals.

However, an itemized deduction is allowed, up to $10,000 ($5,000 for a married taxpayer filing aseparate return) for the aggregate of (i) State and local property taxes not paid or accrued in carrying on a trade or business, or an activity described in IRC § 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 taxable year. Foreign real property taxes are not eligible for this exception [Act § 11042].

An amount paid in a taxable year beginning before January 1, 2018, with respect to a State or local income tax imposed for a taxable year beginning after December 31, 2017, the payment will be treated as paid on the last day of the taxable year for which such tax is so imposed for purposes of applying the provision limiting the dollar amount of the deduction. Hence, an individual may not claim an itemized deduction in 2017 on a pre-payment of income tax for a future taxable year in order to avoid the dollar limitation applicable for taxable years beginning after 2017 [Act § 11042].

Act § 11042 provisions are effective for taxable years beginning after December 31, 2016.

§ 1.14 Repeal of Deduction for Personal Casualty and Theft Losses

Under current law, any loss sustained during the taxable year, not compensated by insurance or otherwise, is allowed as a deduction. For individual taxpayers, deductible losses must be incurred in a trade or business or other profit-seeking activity or consist of property losses arising from fire, storm, shipwreck, or other casualty, or from theft. [IRC § 165(c)]. Personal casualty or theft losses must exceed $100 in order to be deductible. Moreover, individuals may claim a deduction for aggregate net casualty and theft losses only to the extent they exceed 10 percent of adjusted gross income.

Under the Act, effective for losses incurred in taxable years beginning after December 31, 2017 and incurred before January 1, 2026, a taxpayer may claim a personal casualty loss (subject to the limitations described above) only if such loss was attributable to a disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. [Public Law 100-707; Act § 11044].

§ 1.15 Limitation on Wagering Losses

Under current law, losses sustained during the taxable year on wagering transactions are allowed as a deduction only to the extent of the gains during the taxable year from such transactions. [IRC § 165(d)].

The Act, effective for taxable years beginning after December 31, 2017 and before January 1, 2026, clarifies that the "limitation on losses from wagering" transactions applies not only to the actual costs of wagers incurred by an individual, but to other expenses incurred by the individual in connection with the conduct of that individual's gambling makes [Act § 11050].

§ 1.16 Modifications to the Deduction for Charitable Contributions

Under current law, charitable contributions by individual taxpayers are limited to a specified percentage of the individual's contribution base. The contribution base is the taxpayer's adjusted gross income ("AGI") for a taxable year, disregarding any net operating loss carryback to the year under IRC § 172 [IRC § 170(b)(1)(G)]. Higher percentage limits apply to contributions of cash and ordinary income property than to contributions of capital gain property. Likewise, higher limits also generally apply to contributions to public charities (and certain operating foundations) than to contribu-

tions to non-operating private foundations.

The deduction for charitable contributions by an individual taxpayer of cash and property that is not appreciated to public charities, private foundations other than a non-operating private foundation, and certain governmental units may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type of property to non-operating private foundations generally may be deducted up to the lesser of 30 percent of the taxpayer's contribution base or the excess of (i) 50 percent of the contribution base over (ii) the amount of contributions subject to the 50 percent limitation [IRC § 170(b)(1)(A)].

Under the Act, effective for charitable contributions made in taxable years after December 31, 2017, the income-based percentage limit described in IRC § 170(b)(1)(A) for certain charitable contributions by an individual taxpayer of cash to public charities and certain other organizations is increased from 50 percent to 60 percent [Act § 11023].

Under current law, a payor may treat as a charitable contribution, 80 percent of a 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, provided that [IRC § 170(1)]:

1. The amount is paid to an institution of higher learning that has a regular faculty and curriculum and that also meets other requirements [IRC §§ 3304(f) and 170(b)(1)(A)(ii)]; and
2. The amount paid qualify as a deductible charitable contribution but for the fact that the taxpayer receives (directly or indirectly) the right to purchase tickets for seating at an athletic even in the institution's athletic stadium.

Effective for contributions made in taxable years after December 31, 2017, the Act amends IRC § 170(1): to provide that no charitable deduction shall be allowed for any amount described in paragraph 170(1)(2), generally, a 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 [Act § 13704].

Under current law, no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution. The acknowledgement must include the amount of cash and a description (but not value) of any property other than cash contributed, whether the donee provided any goods or services in consideration for the contribution, and a good faith estimate of the value of any such goods or services. However, such substantiation is not required for contributions reported by the donee organization if the donee organization files a return, on a form and in accordance with regulations as the Secretary may prescribe. [IRC § 170(f)(8)].

Effective for taxable years after December 31, 2016, the Act repeals the IRC

§ 170(f)(8)(D) exception to the contemporaneous written acknowledgment requirement [Act § 13705].

§ 1.17 Repeal of Certain Miscellaneous Itemized Deductions Subject to the Two-Percent Floor

Under current law, individuals may claim itemized deductions for certain miscellaneous expenses. Certain of these expenses are not deductible unless, in aggregate, they exceed two percent of the taxpayer's adjusted gross income ("AGI") [IRC §§ 67(a), 62(a)(1); IRS Publication 529, "*Miscellaneous Deductions*" (2016), pp. 2–3].

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Act suspends all miscellaneous itemized deductions that are subject to the two-percent floor under present law. Thus, under the provision, taxpayers may not claim the above-listed items as itemized deductions for the taxable years to which the suspension applies. [Act § 11045].

§ 1.18 Revised Deduction for Medical Expenses

Under current law, individuals may claim an itemized deduction for unreimbursed medical expenses, but only to the extent that such expenses exceed 10 percent of adjusted gross income. [IRC § 213] For taxable years beginning before January 1, 2017, however, the 10-percent threshold is reduced to 7.5 percent for taxpayers who have attained the age of 65 before the close of the taxable year. For married taxpayers, the 7.5 percent threshold applies if either spouse has obtained the age of 65 before the close of the taxable year. For these taxpayers, during these years, the threshold is 10 percent for Alternative Minimum Tax (AMT) purposes.

Effective for taxable years beginning after December 31, 2016 and before January 1, 2019, the Act changes the threshold for deducting medical expenses to 7.5-percent for all taxpayers, applicable for AMT purposes in addition to the regular tax [Act § 11027].

§ 1.19 Repeal of Deduction for Alimony Payments and Corresponding Inclusion in Gross Income

Under current law, alimony and separate maintenance payments are deductible by the payor spouse and includible as ordinary income by the recipient spouse. [IRC §§ 215, 61(a)(8) and 71(a)].

Under the Act, effective for any divorce or separation agreement executed after December 31, 2018, the payor spouse is not allowed a deduction for alimony and separate maintenance payments [Act § 11051]. Moreover, the payor spouse is not allowed a deduction for any divorce or separation agreement executed on or before December 31, 2017, and modified after that date, provided that the modification explicitly recognizes the application to the modification of amendments under this Act [Act § 11051].

§ 1.20 Repeal of Deduction for Moving Expenses

Existing law allows a deduction for qualified moving expenses incurred tied to beginning work as an employee or as a self-employed individual at a new principal place of work. A valid deduction is contingent on conditions related to the distance

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from the taxpayer's previous residence and his or her status as a full-time employee in the new location [IRC § 217(a)].

Special allowances apply to members of the Armed Forces of the United States who are on active duty and who move pursuant to a military order incident to a permanent change in station: The moving expense deduction is not contingent on distance from the previous residence, and status as a full-time employee in the new location is not a contingent precedent to the deduction [IRC § 217(g)]. Also, moving and storage expenses which are furnished in kind to the military conscript, spouse, or dependents, or if such expenses are reimbursed or an allowance for such expenses is provided, such amounts are excluded from gross income. Amounts furnished to the spouse and dependents if they move to a separate location are also excluded. Other exclusions for various benefits to members of the Armed Forces also apply [IRC § 134].

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Act suspends the deduction for moving expenses, except for members of the Armed Forces and their families. For members of the Armed Forces (or their spouse or dependents) on active duty that move pursuant to a military order and incident to a permanent change of station, the Act retains the deduction for moving expenses and the rules providing for exclusions of amounts attributable to in-kind moving and storage expenses (and reimbursements or allowances for these expenses). [Act § 11048].

Temporarily Increased Contributions to ABLE Accounts, Eligibility

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§ 1.22 Repeal of Exclusion for Qualified Moving Expense Reimbursement

Under current law, qualified moving expense reimbursements are excluded from an employee's gross income for income tax purposes and from wages for employment tax purposes. [IRC § 132(a)(6) and (g)].

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Act repeals the exclusion from gross income and wages for qualified moving expense reimbursements except in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order [Act § 11048].

§ 1.23 Repeal of Special Rule Permitting Recharacterization of IRS Contributions

Current law allows an individual who makes a contribution to an IRA (traditional or Roth) for a taxable year 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 [IRC § 408A(d)(6)]. Pursuant to recharacterization, the contribution is 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. The amount transferred in a recharacterization must be accompanied by any net

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income allocable to the contribution. In general, even if a recharacterization is accomplished by transferring a specific asset, net income is calculated as a pro rata portion of income on the entire account rather than income allocable to the specific asset transferred. However, when doing a Roth conversion of an amount for a year, an individual may establish multiple Roth IRAs, for example, Roth IRAs with different investment strategies, and divide the amount being converted among the IRAs. The individual can then choose whether to recharacterize any of the Roth IRAs as a traditional IRA by transferring the entire amount in the particular Roth IRA to a traditional IRA [Treas. Reg. § 1.408A-5, Q&A-2(b)].

Under the Act, effective for taxable years beginning after December 31, 2017, the special 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. Recharacterization cannot be used to unwind a Roth conversion, but recharacterization can be used with respect to other contributions. Individuals can still contribute to a traditional IRA, and convert the traditional IRA to a Roth IRA, but is not allowed later to unwind the conversion via recharacterization [Act § 13611].

§ 1.24 Extended Rollover Period for the Rollover of Plan Loan Offset Amounts in Certain Cases

Under current law, employer-sponsored retirement plans (qualified retirement plans, section 403(b) plans, governmental section 457(b) plans) may provide loans to employees without generating a deemed distribution, provided that loan terms call for a repayment period not to exceed five years (excepting home purchases) and for level loan payment amortization requiring payments not less frequently than quarterly [IRC § 72(p)].

If an employee terminates employment, or under other limited circumstances, the employee's repayment obligation may be accelerated. If the loan is not repaid, the loan is cancelled and the employee's account balance is offset by the unpaid loan balance. Under current law, loan offsets are treated as actual distributions (distinguished from deemed distributions) equal to the unpaid loan balance, which the employee can rollover tax-free to another eligible retirement plan within 60 days.

Under the Act, effective for plan offset amounts treated as distributed in taxable years beginning after December 31, 2017, the period during which a qualified plan loan offset amount may be contributed to an eligible retirement plan as a rollover contribution is 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 taxable year in which the plan loan offset occurs (i.e., the taxable year in which the amount is treated as distributed from the plan). Under the Act, a qualified plan loan offset amount is a plan loan offset amount that is treated as distributed from a qualified retirement plan, a section 403(b) plan or a governmental section 457(b) plan solely by reason of the termination of the plan or the failure to meet repayment terms of the loan because of the employee's severance from employment. As under present law, a loan offset amount under the provision is the amount by which an employee's account balance under the plan is reduced to repay a loan from the plan. [Act § 13613].

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§ 1.26 Modifications to Estate, Gift, and Generation-Skipping Transfers Taxes

A unified credit applicable to taxable transfers by gift and at death [IRC § 2010] offsets tax, computed using the applicable estate and gift tax rates, on a specified amount of transfers, referred to as the applicable exclusion amount, or exemption amount. Under current law, the exemption amount is set at $5 million for 2011 and is indexed for inflation for later years. [IRC § 2010(c)(3)]. For 2017, the inflation-indexed exemption amount is $5.49 million. [Rev. Proc. 2016-55]

The Act doubles the estate and gift tax exemption, effective for estates of decedents and gifts made after December 31, 2017 and before January 1, 2026, from $5 million (indexed for inflation occurring after 2011) to $10 million [IRC § 2010(c)(3); Act § 11061]. Regulations will account for differences between basic exclusion amounts in effect at the time of the decedent's death and at the time of any gifts made by the decedent [IRC § 2001(g); Act § 11061].

§ 1.27 Alternative Minimum Tax (Exemption, Phaseout and Repeal)

An alternative minimum tax ("AMT") is imposed on individuals, estates, or trusts in an amount by which the tentative minimum tax exceeds the regular income tax for the taxable year. For taxable years beginning in 2017, the tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $187,800 ($93,900 for a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The breakpoints are indexed for inflation. [IRC § 55; Rev. Proc. 2016-55].

The Act temporarily increases both the exemption amount and the exemption amount phaseout thresholds for the individual AMT. For taxable years beginning after December 31, 2017, and beginning before January 1, 2026, the AMT exemption amount is increased from $84,500 to $109,400 for married taxpayers filing a joint return (half this amount for married taxpayers filing a separate return), and from $54,300 to $70,300 for all other taxpayers (other than estates and trusts). Phaseout thresholds are increased to $1,000,000 for married taxpayers filing a joint return, and to $500,000 for all other taxpayers (other than estates and trusts). These amounts are indexed for inflation. [Act § 12003; IRC § 55(d); Rev. Proc. 2016-55].

An AMT is also imposed on a corporation to the extent the corporation's tentative minimum tax exceeds its regular tax. This tentative minimum tax is computed at the rate of 20 percent on the AMTI in excess of a $40,000 exemption amount that phases out. The exemption amount is phased out by an amount equal to 25 percent of the amount that the corporation's AMTI exceeds $150,000. [IRC § 55]

For taxable years beginning after December 31, 2017, the Act repeals the corporate alternative minimum tax [Act § 12001].

§ 1.28 Reduction in Corporate Tax Rate

Under current law, corporate taxable income is subject to tax under a four-step graduated rate structure [IRC § 11(a) and (b)(1)]. The top corporate tax rate is 35 percent on taxable income in excess of $10 million.

Under the new law, the current graduated corporate tax rate structure is permanently replaced with a 21 percent flat tax rate, effective for tax years beginning after 2017 [Act § 13001].

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§ 1.30 Elimination of Shared Responsibility Payment for Individuals Failing to Maintain Minimal Essential Coverage

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, requires individual health care coverage that provides at least minimum essential coverage. Individuals who elect not to procure such coverage are subject to a tax. This requirement is commonly referred to as the "individual mandate" [IRC § 5000A].

The tax ("individual responsibility payment) is imposed for any month that an individual does not carry minimum essential coverage unless the individual meets certain conditions to qualify for an exemption. A formula applies to calculate an annualized tax, which is a flat dollar amount or an excess income amount, whichever is greater. The individual adult annual dollar amount is $695 for 2017 and 2018 [IRC § 5000A(c)]. The tax for any calendar month that an individual does not carry minimum essential coverage is one-twelfth of the annual amount.

Effective with respect to health coverage status for months beginning after December 31, 2018, the Act reduces the individual responsibility payment amount to zero [Act § 11081].

§ 1.31 Temporarily Increased Contributions to ABLE Accounts, Eligibility for Saver's Credit

ABLE accounts, conceived pursuant to the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act), Public Law 113-295, are tax-advantaged savings account for individuals with disabilities and their families. The account beneficiary is also the account owner. Contributions to such accounts are post-tax, not tax deductible. Excepting rollover contributions from other ABLE accounts, contributions may not exceed the section 2503(b) limitation on annual contributions during a taxable year ($14,000 in 2017) [IRC § 529A].

Effective for taxable years after the date of enactment and beginning before January 1, 2026, the Act temporarily increases the contribution limitation to ABLE accounts under certain circumstances [Act § 11024]. While the general overall limitation on contributions (the per-donee annual gift tax exclusion ($14,000 for 2017)) remains the same, the limitation is temporarily increased with respect to contributions made by the designated beneficiary of the ABLE account: After the overall limitation on contributions is reached, an ABLE account's designated beneficiary may 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 taxable year.

Effective for taxable years after the date of enactment and beginning before January 1, 2026, the Act also allows a designated beneficiary of an ABLE account to claim the saver's credit for contributions made to his or her ABLE account. The saver's credit is a nonrefundable tax credit for eligible taxpayers for qualified retirement savings

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contributions [IRC § 25B] [Act § 11024]. The maximum annual contribution eligible for the credit is $2,000 per individual, and the credit rate depends upon the taxpayer's adjusted gross income.

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§ 1.35 Modification of Rules for Expensing Depreciable Business Assets

The Act increases the maximum amount a taxpayer may expense under IRC Section 179 to $1,000,000 [Act § 13101(a)(1)], and increases the phase-out threshold amount to $2,500,000 [Act § 13101(a)(2)]. Under the Act, 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 [Act § 13101(a)(3)]. 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 [Act § 13101(a)(3)(A) and (B)].

The Act expands the definition of IRC Section 179 property to include certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging [IRC § 50(b)(2)]. The Act also expands the definition of qualified real property eligible for IRC 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 [Act § 13101(b)].

The Act applies to property placed in service in taxable years beginning after December 31, 2017 [Act § 13101(c)].

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§ 1.38 Modification to Depreciation Limitations on Luxury Automobiles and Personal Use Property

Under present law, the "luxury automobile depreciation limitation" limits the annual cost recovery deduction for certain passenger automobiles [IRC § 280F(a)]. Also, special rules apply for certain listed property, including heightened substantiation requirements. Listed property currently includes certain kinds of computer and peripheral equipment [see IRC § 280F(d)(4)(B)].

The new tax law provision 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 taxpayer does not claim the additional first-year depreciation deduction under section 168(k), 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 [Act § 13202(a)]. The limitations are indexed for inflation for passenger automobiles placed in service after 2018.

The new provision also removes computer and peripheral equipment from the

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definition of listed property. As a result, this type of property is not subject to the heightened substantiation requirements that apply to listed property [Act § 13202(b)].

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The provision is effective for property placed in service after December 31, 2017, in taxable years ending after that date [Act § 13202(c)].

§ 1.47 Like-Kind Exchanges of Real Property

Currently under IRC § 1031, taxpayers can avoid recognition of gain or loss when they exchange like kind property held for productive use in a trade or business or for investment. Certain non-real estate items cannot qualify for non-recognition treatment under IRC § 1031, including stock in trade (i.e., inventory) or other property held primarily for sale; stocks, bonds, or notes; other securities or evidences of indebtedness or interest; interests in a partnership; certificates of trust or beneficial interests; or choses in action [IRC § 1031(a)(2)]. IRC § 1031 also does not apply to certain exchanges involving livestock [IRC § 1031(e)]. Except for these restrictions, however, both tangible and intangible private property can qualify for non-recognition under IRC § 1031. Although real estate transactions are typically involved, there is no requirement that the property exchanged be real estate [IRC § 1031(a)].

For purposes of IRC § 1031, the determination of whether property is of a "like kind" relates to the nature or character of the property and not its grade or quality, i.e., the nonrecognition rules do not apply to an exchange of one class or kind of property for property of a different class or kind (e.g., IRC § 1031 does not apply to an exchange of real property for personal property) [Treas. Reg. § 1.1031(a)-1(b)]. The different classes of property are: (1) depreciable tangible personal property; (2) intangible or nondepreciable personal property; and (3) real property [Treas. Reg. § 1.1031(a)-1(b), (c)].

To be considered "like kind," depreciable tangible personal properties must be either within the same General Asset Class or within the same Product Class. The IRS has clarified the treatment of various intangible properties for purposes of IRC § 1031. For example, an exchange of a copyright on a novel for a copyright on a different novel would be treated as property of a like kind [see Treas. Reg. § 1.1031(a)-2(c)(3)]. The goodwill or going concern value of one business, however, is not of a like kind to the goodwill or going concern value of a different business [see Treas. Reg. § 1.1031(a)-2(c)(2)]. The IRS has ruled that intangible assets such as trademarks, trade names, mastheads, and customer-based intangibles that can be separately described and valued apart from goodwill qualify as property of a like kind under IRC § 1031 [see Chief Counsel Advice 200911006, (2/12/09)].

For taxable years beginning after December 31, 2017, the new tax provisions limit the nonrecognition of gain in like-kind exchanges only to real property that is not held primarily for sale [Act § 13303(a) and 13303(c)(1)].