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# MEMORANDUM

The following is a bullet point summary of the most significant aspects of the Tax Cuts and Jobs Act (the "Bill"). Unless otherwise noted, the changes in the Bill are to take effect after December 31, 2017 and sunset after December 31, 2025.

## Estate Tax

- The Bill does not provide for a repeal of the estate tax at any point in the future.
- Exemption amount is doubled, effective for decedents dying after December 31, 2017 and before January 1, 2026 ($11,210,000 in 2018, adjusted annually for inflation).
- Portability to a surviving spouse of a decedent's unused exemption amount will still be available, provided that certain steps are taken following the decedent's death.
- Tax rate remains at 40% on assets in excess of the exemption.
- Stepped-up (or down) income tax basis under Section 1014 remains.

## Gift Tax

- The Bill does not provide for a repeal of the gift tax at any point in the future.
- Exemption amount is doubled, effective for gifts made after December 31, 2017 and before January 1, 2026 ($11,210,000 in 2018, adjusted annually for inflation).
- Tax rate remains 40% for taxable transfers made in excess of the exemption.
- Annual exclusion is unaffected; will be $15,000 in 2018, adjusted annually for inflation.

## Generation-Skipping Transfer ("GST") Tax

- The Bill does not provide for a repeal of the GST tax at any point in the future.
- Exemption amount is doubled, effective for generation-skipping transfers occurring after December 31, 2017 and before January 1, 2026 ($11,210,000 in 2018, adjusted annually for inflation).
- Tax rate remains at 40% on transfers of assets in excess of the exemption.

## Income Tax

- Seven (7) income tax brackets for individuals: 10%, 12%, 22%, 24%, 32%, 35%, and 37%. Tax tables are included at the end of this summary and will be effective for tax years beginning after December 31, 2017 and before January 1, 2026.

- Four (4) income tax brackets for estates and trusts: 10%, 24%, 35%, and 37%. The 37% rate begins at taxable income of $12,500. Tax tables are included at the end of this summary and will be effective for tax years beginning after December 31, 2017 and before January 1, 2026.

- Personal exemption suspended for tax years beginning after December 31, 2017 and before January 1, 2026.

- New individual standard deductions effective for tax years beginning after December 31, 2017 and before January 1, 2026: $24,000 for married taxpayers; $18,000 for head of household; and $12,000 for single taxpayers. Standard deductions are indexed for inflation.

- The Bill retains the enhanced standard deduction for the blind and elderly that is available under current law.

- The Bill provides for an increased child tax credit available for tax years beginning after December 31, 2017 and before January 1, 2026: $2,000 per child under age 17.

- The Bill provides a $500 nonrefundable credit for dependents other than qualifying children available for tax years beginning after December 31, 2017 and before January 1, 2026.

- Both the child tax credit and the $500 dependent tax credit are phased out at certain income levels.

- Sale of principal residence: The Bill does not include any provision previously suggested. As such, taxpayers may continue to exclude from gross income up to $500,000 for married taxpayers ($250,000 for individual taxpayers) from the sale of a principal residence, provided that the taxpayer(s) owned and used the residence as a primary residence for two out of the previous five years.

- 529 accounts: The Bill provides that elementary and secondary school expenses of up to $10,000 per year would be qualified expenses for qualified tuition programs. The Bill also permits taxpayers to roll over amounts from 529 accounts to ABLE accounts without penalty, but only if the designated beneficiary (or member of the beneficiary's family) of the 529 account owns the ABLE account.

- The Bill modifies the following income tax deductions:

    - Charitable deduction: Taxpayers may deduct charitable contributions of cash to public charities and certain other organizations up to 60% of adjusted gross income ("AGI") (increased from 50%); excess deduction may be carried over for 5 years.

- Mortgage interest deduction:

  - Deduction of interest on acquisition indebtedness is retained, maximum loan subject to interest deduction will be $750,000.
  - Deduction of interest on home equity loans is suspended.
  - Interest on indebtedness incurred prior to December 16, 2017 can be deducted pursuant to current law, but interest on indebtedness incurred after December 31, 2017 and before January 1, 2026 is subject to the above limitations.

- State and local sales, property, and income tax deduction: Limited to $10,000.
  - This provision also applies to estates and trusts.
  - Newly introduced anti-abuse provision to apply to tax years beginning after December 31, 2016; essentially provides that an individual cannot pre-pay 2018 income taxes in 2017 and deduct them under current law. The deduction for state and local income taxes will only be allowed for the year in which they relate (i.e. 2018 state and local income taxes can only be deducted in 2018, regardless of when they are paid).

- Medical expense deduction floor lowered to 7.5% of AGI for all taxpayers for tax years 2017 and 2018.

- Alimony payments: For divorce decrees, separation agreements, and certain modifications entered into after December 31, 2018, the payor spouse will no longer be able to deduct alimony payments, and the payee spouse will not include receipt of payments in income. This provision does not take effect until after December 31, 2018.

- Notable income tax deductions suspended or limited:

  - The Bill suspends all miscellaneous itemized deductions that are subject to the 2% floor under present law.
    - This provision also applies to estates and trusts. Note, however, that estates and trusts will presumably still be able to deduct expenses which would not have been incurred if the property were not held in such trust or estate.
  - Moving expenses suspended.
  - Personal casualty losses limited to property losses incurred as a result of federally-declared disasters.

- Notable income tax deductions previously addressed in House and Senate bills, but not mentioned in the Bill (presumably retained):

  - Student loan interest.

    - Tuition and education expenses.

- Corporate Alternative Minimum Tax ("AMT") is repealed but the AMT for individuals is not repealed and the exemption amounts, subject to phase-out, are increased as follows:

    - $109,400 for married taxpayers filing jointly or for surviving spouses;
    - $70,300 for single taxpayers; and
    - $54,700 for married taxpayers filing separately.

- Net Investment Income ("NII") is unchanged.

- Individual mandate is permanently repealed effective for months beginning after December 31, 2018.

- The FIFO cost basis method for specified securities is **not** included in the Bill.

**Pass-Through Entities**

- The Bill provides a new deduction of 20% (not 23%, as proposed by the Senate) of "qualified business income" (QBI) for taxpayers owning a partnership, S corporation, or sole proprietorship. The deduction would expire for tax years beginning after December 31, 2025.

- QBI would be defined as all domestic business income other than investment income, investment interest income, short-term capital gains, long-term capital gains, commodities gains, foreign currency gains, etc.

- Deduction would generally be limited to 50% of the taxpayer's allocable or pro rata share of "W-2 wages" paid by the partnership or S corporation, or 50% of the "W-2 wages" of the sole proprietorship.

- "W-2 wages" of a partnership, S corporation, or sole proprietorship would be the sum of wages subject to wage withholding, elective deferrals, and deferred compensation paid by the business during the calendar year ending during the taxable year. Thus, if the partnership, S corporation, or sole proprietorship does not pay "W-2 wages," the deduction would be zero.

- The "W-2 wage" limit would not apply to a taxpayer with taxable income not exceeding $500,000 (for married individuals filing jointly) or $250,000 (for other individuals), and the application of the "W-2 wage" limit would be phased in for individuals with taxable income exceeding these amounts.

- The general rule is that the deduction is not available for pass-through income from a "specified service trade or business."[1] **However,** the deduction is available if taxable

[1] "Specified service trade or business" includes any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees.

income is not more than $157,500 for single filers and $315,000 for married joint filers. The deduction is phased-out for taxpayers who have income between $157,500 and $207,500 (single) and $315,000 and $415,000 (married). No deduction is available when taxable income equals the $207,500/$415,000 level.

- While the Senate's pass-through provision would not have allowed pass-through entities owned by trusts or estates to take the deduction, the final Bill agreed to in conference does not contain such a prohibition.

**Corporate Tax Rate**

- 21% maximum tax rate, effective for tax years beginning after December 31, 2017. This change is permanent (i.e. not scheduled to sunset).

# TAX TABLES

## Married Filing Jointly & Surviving Spouses

| Ordinary Income | | Capital Gains | |
|---|---|---|---|
| **Income** | **Bracket** | **Income** | **Bracket** |
| $0-$19,050 | 10% | $0-$77,200 | 0% |
| $19,051-$77,400 | 12% | $77,201-$479,000 | 15% |
| $77,401-$165,000 | 22% | Above $479,000 | 20% |
| $165,001-$315,000 | 24% | | |
| $315,001-$400,000 | 32% | | |
| $400,001-$600,000 | 35% | | |
| Above $600,000 | 37% | | |

## Head of Household

| Ordinary Income | | Capital Gains | |
|---|---|---|---|
| **Income** | **Bracket** | **Income** | **Bracket** |
| $0-$13,600 | 10% | $0-$51,700 | 0% |
| $13,601-$51,800 | 12% | $51,701-$452,400 | 15% |
| $51,801-$82,500 | 22% | Above $452,400 | 20% |
| $82,501-$157,500 | 24% | | |
| $157,501-$200,000 | 32% | | |
| $200,001-$500,000 | 35% | | |
| Above $500,000 | 37% | | |

## Single

| Ordinary Income | | Capital Gains | |
|---|---|---|---|
| **Income** | **Bracket** | **Income** | **Bracket** |
| $0-$9,525 | 10% | $0-$38,600 | 0% |
| $9,526-$38,700 | 12% | $38,601-$425,800 | 15% |
| $38,701-$82,500 | 22% | Above $425,800 | 20% |
| $82,501-$157,500 | 24% | | |
| $157,501-$200,000 | 32% | | |
| $200,001-$500,000 | 35% | | |
| Above $500,000 | 37% | | |

## Married Filing Separately

| Ordinary Income | | Capital Gains | |
|---|---|---|---|
| **Income** | **Bracket** | **Income** | **Bracket** |
| $0-$9,525 | 10% | $0-$38,600 | 0% |
| $9,526-$38,700 | 12% | $38,601-$239,500 | 15% |
| $38,701-$82,500 | 22% | Above $239,500 | 20% |
| $82,501-$157,500 | 24% | | |
| $157,501-$200,000 | 32% | | |
| $200,001-$300,000 | 35% | | |
| Above $300,000 | 37% | | |

## Estates and Trusts

| Ordinary Income | | Capital Gains | |
|---|---|---|---|
| **Income** | **Bracket** | **Income** | **Bracket** |
| $0-$2,550 | 10% | $0-$2,600 | 0% |
| $2,551-$9,150 | 24% | $2,601-$12,700 | 15% |
| $9,151-$12,500 | 35% | Above $12,700 | 20% |
| Above $12,500 | 37% | | |