Federal Tax Legislative Analysis

TAX CUTS AND JOBS ACT OF 2017*

AN ANALYSIS

(Public Law Number 115-97)

Signed by President Donald J. Trump on December 22, 2017

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*The "Tax Cuts and Jobs Act of 2017" was renamed "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018" on December 19, 2017.

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§ 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 individual, corporate and international 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.

§ 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].

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 FAMI LY 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 S AVINGS 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 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 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 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 prepayment 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 contributions 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(l)]:

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(l)]: to provide that no charitable deduction shall be allowed for any amount described in paragraph 170(l)(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), p. 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 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].

§ 1.21 SUSPENSION OF EXCLUSION FOR QUALIFIED BICYCLE COMMUTING REIMBURSEMENT

An exclusion from gross income is allowed for qualified transportation fringe benefits [IRC § 132(a)]. A qualified transportation fringe includes up to $20 a month for a qualified bicycle commuting reimbursement [IRC § 132(f)(1)(D), (5)(F)]. An exclusion from gross income is allowed for qualified reimbursements [IRC § 132(a), (g)].

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Act suspends the exclusion from gross income and wages for qualified bicycle commuting reimbursements. [Act § 11047].

§ 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 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].

§ 1.25 MODIFICATION OF RULES APPLICABLE TO LENGTH OF SERVICE AWARD PROGRAMS FOR BONA FIDE SAFETY VOLUNTEERS

Under current deferred compensation plan rules, certain plans are not treated as providing for the deferral of compensation, including plans paying solely length of service awards to bona fide volunteers (or their beneficiaries) on account of qualified services they perform [IRC § 457(e)(11)(A)(ii)]. A plan qualifies under this provision only if the aggregate amount of length of service awards accruing with respect to any year of service for any volunteer does not exceed $3,000 [IRC § 457(e)(11)(B)(ii)].

Effective for taxable years beginning after December 31, 2017, the Act increases the aggregate amount of length of service awards that may accrue for a bona fide volunteer for any year of service to $6,000 and adjusts that amount in $500 increments to reflect cost-of-living changes for ensuing years [Act § 13612]. For defined benefit plans, the limit applies to the actuarial present value of length of service awards accruing in any year of service.

§ 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 top corporate rate of 35-percent would be permanently reduced to 21-percent, effective for tax years beginning after 2017 [Act § 13001].

§ 1.29 REDUCTION IN DIVIDENDS RECEIVED DEDUCTION

Under current law, corporations are allowed a deduction with respect to dividends received from other taxable domestic corporations [IRC § 243(a)]. The amount of the deduction is generally equal to 70 percent of the dividend received. In the case of any dividend received from a 20-percent owned corporation, the amount of the deduction is equal to 80 percent of the dividend received [IRC § 243(c)]. The term "20-percent owned corporation" means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. For this purpose, certain preferred stock is not taken into account. In the case of a dividend received from a corporation that is a member of the same affiliated group, a corporation is generally allowed a deduction equal to 100 percent of the dividend received [IRC §§ 243(a)(3) and (b)(1)].

The Act reduces the 70% dividends received deduction to 50-percent, and it reduces the 80-percent dividends received deduction to 65-percent [Act § 13002(a)].

This provision is effective for taxable years beginning after December 31, 2017 [Act § 13002(f)].

§ 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 TEMPORARI LY INCREASED CONTRIBUTIONS TO ABLE ACCOUNTS, ELIGIBILITY FOR S AVER'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 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.

§ 1.32 EXTENSION OF TIME FOR CONTESTING IRS LEVY

The IRS is authorized to return property or money that has been wrongfully levied upon. Property may be returned at any time. The return of money, however, is subject a to time restriction. The amount of money levied upon, or the amount of money received from a sale of wrongfully levied-upon property, may be returned at any time before the expiration of 9 months from the date of the levy [IRC § 6343(b)].

Effective for levies made after enactment, the Act extends from nine months to two years the period for returning monetary proceeds from the sale of property that has been wrongly levied upon [Act § 11071].

Effective for levies made on or before the date of enactment, provided that the nine-month period has not expired as of the date of enactment, the Act also extends from nine months to two years the period for bringing a civil action for wrongful levy [Act § 11071].

§ 1.33 TREATMENT OF CERTAIN INDIVIDUALS PERFORMING SERVICES IN THE SINAI PENINSULA OF EGYPT

Current law provides special treatment for members of the Armed Forces who are serving in a combat zone, as defined in IRC § 112 [see IRC §§ 2(a)(3), 112, 692, 2291m 3401(a)(1), 4253(d), 6013(f)(1), 7508]. Among them is an exclusion from gross income of certain military pay received for any month during which a member served in a combat zone or is hospitalized pursuant to serving in a combat zone [IRC § 112].

Effective, in general, June 9, 2015, the Act provides that the Sinai Peninsula in Egypt is treated as a combat zone for purposes of those provisions [Act § 11026].

§ 1.34 RELIEF FOR 2016 DISASTER AREAS

Current law provides that a distribution from a tax-favored employer-sponsored retirement plan (that is, a qualified retirement plan, section 403(b) plan, or a governmental section 457(b) plan) is generally includible in gross income, except in the case of a qualified distribution from a designated Roth account or to the extent the distribution is a recovery of basis under the plan or the distribution is contributed to another such plan or an IRA (referred to as eligible retirement plans) in a tax-free rollover [IRC §§ 402(a), (c), 402A(d), 403(a), (b), 457(a), (e)(16)]. In the case of a distribution from a retirement plan to an employee under age 59½, the distribution (other than a distribution from a governmental section 457(b) plan) is also subject to a 10-percent early distribution tax unless an exception applies [IRC § 72(t)].

Current law provides that a distribution from a tax-favored employer-sponsored retirement plan that is an eligible rollover distribution may be rolled over to an eligible retirement plan. The rollover generally can be achieved by direct rollover (direct payment from the distributing plan to the recipient plan) or by contributing the distribution to the eligible retirement plan within 60 days of receiving the distribution ("60-day rollover") [IRC § 402(c)(3)]. Employer-sponsored retirement plans are required to offer an employee a direct rollover with respect to any eligible rollover distribution before paying the amount to the employee. If an eligible rollover distribution is not directly rolled over to an eligible retirement plan, the taxable portion of the distribution generally is subject to mandatory 20-percent income tax withholding [Treas. Reg. § 1.402(c)-2, Q&A-1(b)(3)]. Employees who do not elect a direct rollover but who roll over eligible distributions within 60 days of receipt also defer tax on the rollover amounts [IRC § 402(c)(3)].

Effective on the date of enactment, casualty loss relief applies to losses arising in taxable years beginning after December 31, 2015 and before January 1, 2018:

The Act provides an exception to the 10-percent early withdrawal tax applied with respect to a qualified 2016 disaster distribution from a qualified retirement plan, a section 403(b) plan, or an IRA. The maximum total amount eligible as qualified 2016 disaster distributions is $100,000. For purposes of this relief, a qualified 2016 disaster distribution relates to the "2016 disaster area," defined as 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, Pub. L. No. 100-707 [Act § 11029].

The Act also provides that income attributable to a qualified 2016 disaster distribution may be included in income ratably over three years, and the amount of a qualified 2016 disaster distribution may be recontributed to an eligible retirement plan within three years [Act § 11029].

Under current law, a taxpayer may generally claim a deduction for any loss sustained during the taxable year, not compensated by insurance or otherwise [IRC § 165(a)]. 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 are deductible only if they exceed $100 per casualty or theft. In addition, aggregate net casualty and theft losses are deductible only to the extent they exceed 10 percent of an individual taxpayer's adjusted gross income [IRC § 165(h)(2)].

The Act extends additional IRC § 165 casualty loss itemized deduction relief to affected taxpayers with respect to personal casualty losses arising on or after January 1, 2016, and occurring in the "2016 disaster area" attributable to events giving rise to the Presidential disaster declaration: The deduction is allowed, for losses exceeding $500 (not $100) per casualty, without regard to whether aggregate net losses exceed ten percent of gross income. Moreover, affected taxpayers can claim such losses in addition to the standard deduction [Act § 11029].

§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)].

§1.36 SMALL BUSINESS ACCOUNTING METHODS REFORM AND SIMPLIFICATION [13102]

Under current law, a taxpayer is generally allowed to select the method of accounting to be used to compute taxable income, provided that such method clearly reflects the income of the taxpayer [IRC § 446]. The term "method of accounting" includes not only the overall method of accounting used by the taxpayer, but also the accounting treatment of any one item [Treas. Reg. § 1.446-1(a)(1)]. Permissible overall methods of accounting include the cash receipts and disbursements method ("cash method"), an accrual method, or any other method (including a hybrid method) permitted under regulations prescribed by the Secretary [IRC § 446(c)].

Taxpayers using the cash method generally recognize items of income when actually or constructively received and items of expense when paid. The cash method has the benefit of administrative ease and provides the taxpayer flexibility in the timing of income recognition. It is the method generally used by most individual taxpayers, including farm and nonfarm sole proprietorships. Taxpayers using an accrual method generally accrue items of income when all the events have occurred that fix the right to receive the income and the amount of the income can be determined with reasonable accuracy [IRC § 451]. Taxpayers using an accrual method of accounting generally may not deduct items of expense prior to when all events have occurred that fix the obligation to pay the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred [IRC § 461]. Accrual methods of accounting generally result in a more accurate measure of economic income than does the cash method. The accrual method is often used by businesses for financial accounting purposes.

The Act expands the scope of taxpayers that may use the cash method of accounting. Under the provision, the cash method of accounting may be used by taxpayers, other than tax shelters, that satisfy the gross receipts test, regardless of whether the purchase, production, or sale of merchandise is an income-producing factor [Act § 13102]. The gross receipts test allows taxpayers with annual average gross receipts that do not exceed $25 million for the three-prior taxable-year period to use the cash method. The $25 million amount is indexed for inflation for taxable years beginning after 2018 [Act § 13102(a)].

The expansion of the scope of taxpayers eligible to use the cash method applies to taxable years beginning after December 31, 2017 [Act § 13102(e)]. In addition, the Act exempts certain taxpayers from the requirement to keep inventories, this applies to taxable years beginning after December 31, 2017 [Act § 13102(e)]. The expansion of the exception from the uniform capitalization rules applies to taxable years beginning after December 31, 2017 [Act § 13102(e)]. Finally, the provision to expand the exception for small construction contracts from the requirement to use the percentage-of-completion method applies to contracts entered into after December 31, 2017, in taxable years ending after such date [Act § 13102(e)].

§ 1.37 TEMPORARY INCREASED EXPENSING FOR CERTAIN BUSINESS ASSETS

Under current law, in addition to modified accelerated cost recovery system (MACRS) depreciation applicable to various tangible property types, a first-year depreciation deduction is allowed, provided that use of the property originated with the taxpayer. Film productions are not eligible. The first-year depreciation deduction is 50 percent of adjusted basis of qualified property acquired and placed in service before January 1, 2020 (January 1, 2021 for longer production property and qualified aircraft) [IRC § 168(k)(2)(B) and (C)]. The first-year depreciation deduction is also allowed for certain plants bearing fruits and nuts planted or grafted after 2015 and before 2020. The 50 percent depreciation allowance is phased down for property placed in service after December 31, 2017 or after December 31, 2018 for longer production property.

The Act repeals the phase-down of the 50 percent allowance for property placed in service after December 31, 2017, and for specified plants planted or grafted after the same date. The Act increases the 50 percent allowance to 100 percent for property acquired and placed in service after September 27, 2017and before January 1, 2023 (January 1, 2024 for longer production property and qualified aircraft). However, the current law phase-down remains in place for property acquired and adjusted basis incurred before September 28, 2017, and placed in service after September 27, 2017 [Act § 13201].

The increased depreciation deduction allowance also applies to specified plants planted or grafted after September 27, 2017 and before January 1, 2023. In addition, the 100 percent depreciation allowance applies to qualified film, television, and live theatrical productions [Act § 13201].

The Act extends and modifies the additional first-year depreciation deduction through 2026 (through 2027 for longer production period property and certain aircraft) [Act § 13201].

For a taxpayer's first taxable year ending after September 27, 2017, an election to apply a 50 percent allowance instead of a 100 percent allowance is available. In addition, the additional first-year depreciation applies to new and used property, so that the property's original use by the taxpayer is no longer requisite to depreciation deduction eligible [Act § 13201].

§ 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 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)].

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

§ 1.39 MODIFICATION OF TREATMENT OF CERTAIN FARM PROPERTY

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income. The taxpayer then recovers the cost through annual deductions for depreciation or amortization [see IRC §§ 263(a), 167]. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention [IRC § 168].

The applicable recovery period for an asset is determined in part by statute and in part by historic Treasury guidance. The "type of property" of an asset is used to determine the "class life" of the asset, which in turn dictates the applicable recovery period for the asset. The MACRS recovery periods that apply to most tangible personal property range from three to 20 years. The depreciation methods that generally apply to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the first taxable year in which straight line method yields a larger depreciation allowance.

Property used in a farming business is assigned various recovery periods in the same manner as other business property.

The new tax law provision shortens the recovery period from 7 to 5 years for any machinery or equipment used in a farming business, other than any grain bin, cotton ginning asset, fence, or other land improvement. The original use of the machinery or equipment must commence with the taxpayer and the machinery or equipment must be placed in service after December 31, 2017 [Act § 13203(a)].

The new provision also repeals the required use of the 150-percent declining balance method for property used in a farming business for 3-, 5-, 7-, and 10-year property. The 150 percent declining balance method continues to apply to any 15-year or 20-year property used in the farming business to which the straight-line method does not apply, or to property for which the taxpayer elects the use of the 150-percent declining balance method [Act § 13203(b)].

For the purposes of the new tax law, the "farming business" must meet the definitional requirements in Section 263A(e)(4).

The new provision is effective for property placed in service after December 31, 2017, in taxable years ending after that date [Act § 13203(c)].

§ 1.40 APPLICABLE RECOVERY PERIOD FOR REAL PROPERTY

Existing law provides that taxpayers must use a specified depreciation method that varies according to the particular type of property [IRC § 168(a), (b)]. Taxpayers must use the 150-percent declining balance method for certain 15- or 20-year property, property used in a farming business, qualified smart electric meters or qualified smart electric grid systems, and property for which a taxpayer has properly elected to use the 150- percent declining balance method [IRC § 168(b)(2)]. Taxpayers must use the straight-line method for rental property and a variety of other specified property, including qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property [IRC § 168(b)(3)].

Taxpayers must generally depreciate residential rental property over 27.5 years, nonresidential real property over 39 years [IRC § 168(c)].

The new tax law eliminates the separate definitions of qualified leasehold improvement, qualified restaurant, and qualified retail improvement property. The provision then provides a general 15-year modified accelerated cost recovery system ("MACRS") recovery period for "qualified improvement property" as well as a 20-year alternative depreciation system ("ADS") recovery period. Restaurant building property placed in service after December 31, 2017, that does not meet the definition of qualified improvement property is depreciable over 25 years as nonresidential real property, using the straight-line method and the mid-month convention [Act § 13204(a)].

The provision also shortens the ADS recovery period for residential rental property from 40 years to 30 years, as well as shortening the recovery period for determining the depreciation deduction for nonresidential real and residential rental property to 25 years [Act § 13204(a)].

The provision also requires a real property trade or business electing out of the limitation on the deduction for interest to use ADS to depreciate any of its nonresidential real property, residential rental property, and qualified improvement property [Act § 13204(a)].

The new provision is effective for property placed in service after December 31, 2017 [Act § 13204(b)].

§ 1.41 USE OF ALTERNATIVE DEPRECIATION SYSTEM (ADS) FOR ELECTING FARMING BUSINESSES

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income. The taxpayer then recovers the cost through annual deductions for depreciation or amortization [see IRC §§ 263(a), 167]. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention [IRC § 168].

The applicable recovery period for an asset is determined in part by statute and in part by historic Treasury guidance. The "type of property" of an asset is used to determine the "class life" of the asset, which in turn dictates the applicable recovery period for the asset. The MACRS recovery periods that apply to most tangible personal property range from three to 20 years. The depreciation methods that generally apply to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the first taxable year in which straight line method yields a larger depreciation allowance.

Property used in a farming business is assigned various recovery periods in the same manner as other business property.

The new tax law provision requires a farming business electing out of the limitation on the deduction for interest to use the alterative depreciation system ("ADS") to depreciate any property with a recovery period of 10 years or more, including property such as single purpose agricultural or horticultural structures, trees or vines bearing fruit or nuts, farm buildings, and certain land improvements [Act § 13205(a)].

The new provision is effective for taxable years beginning after December 31, 2017 [Act § 13205(b)].

§ 1.42 AMORTIZATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Under current law, taxpayers may elect to expense currently, rather than capitalize, research and experimental ("R&E") expenditures [IRC § 174(a)]. Alternatively, taxpayers may amortize those expenses over a period of not less than 60 months [IRC § 174(b)].

Under the new tax law provision, the taxpayer must capitalize specified R&E expenditures and amortize them ratably over five-years (15 years for specified R&E expenditures attributable to research conducted outside the U.S.), beginning with the midpoint of the taxable year in which the taxpayer paid or incurred the expenditures [Act § 13206(a)]. Specified R&E expenditures subject to capitalization include expenditures for software development, among others. The application of this provision is treated as a change in the taxpayer's method of accounting under Section 481, initiated by the taxpayer, and made with the consent of the Secretary [Act § 13206(b)].

The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2021 [Act § 13206(e)].

§ 1.43 EXPENSING OF CERTAIN COSTS OF REPLANTING CITRUS PLANTS LOST BY REASON OF CASUALTY

Under existing law, the uniform capitalization ("UNICAP") rules require certain direct and indirect costs allocable to real or tangible personal property produced by the taxpayer to be included in either inventory or capitalized into the basis of that property, as applicable. For real or personal property acquired by the taxpayer for resale, IRC § 263A generally requires certain direct and indirect costs allocable to that property to be included in inventory [IRC § 263A(a), (b)].

IRC § 263A provides a number of exceptions to the general UNICAP requirements. One exception applies to certain small taxpayers who acquire property for resale and have $10 million or less of average annual gross receipts. These taxpayers are not required to include additional IRC § 263A costs in inventory [IRC § 263A(B)(2)(B)].

Another exception applies to taxpayers who raise, harvest, or grow trees [IRC § 263A(c)(5)]. The UNICAP rules also do not apply to any plant having a preproductive period of two years or less, or to any animal, that the taxpayer produces in a farming business, unless the taxpayer is required to use an accrual method of accounting under IRC § 447 or 448(a)(3) [IRC § 263A(d)(1)(B)].

No exception is available for small taxpayers who produce property subject to IRC § 263A. A de minimis rule under Treasury regulations, however, treats producers with total indirect costs of $200,000 or less as having no additional indirect costs beyond those normally capitalized for financial accounting purposes [Treas. Reg. § 1.263A-2(b)(3)(iv)].

A taxpayer who replaces certain edible crops that were lost or damaged by reason of a casualty may elect to expense those costs, rather than have the costs capitalized under IRC § 263A [IRC § 263A(d)(2)].

The new provision modifies the special rule for costs that persons other than the taxpayer incur in replanting an edible crop following a loss or damage due to casualty. Under the new provision, with respect to replanting costs paid or incurred for citrus plants lost or damaged due to casualty after the date of enactment (but no later than ten years after the date of enactment) a person other than the taxpayer may also deduct the replanting costs if: (1) the taxpayer has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which the replanting costs are paid or incurred and the other person holds any part of the remaining equity interest; or (2) the other person acquires all of the taxpayer's equity interest in the land on which the lost or damaged citrus plants were located at the time of the loss or damage, and the replanting is on that land [Act § 13207(a)].

The provision is effective for costs paid or incurred after the date of enactment [Act § 13207(b)].

§ 1.44 CERTAIN SPECIAL RULES FOR TAXABLE YEAR OF INCLUSION

Under present law, gross income generally includes all income realized from all sources, unless the Code provides otherwise [IRC § 61(a)]. Once an item of gross income is realized for Federal income tax purposes, Section 451 and the related regulations provide the general rules as to when the item is to be included in gross income. A taxpayer generally must include an item in gross income no later than the time of its actual or constructive receipt, unless the item properly is accounted for in a different period under the taxpayer's method of accounting [IRC § 451(a)]. If a taxpayer has an unrestricted right to demand the payment of an amount, the taxpayer is in constructive receipt of that amount regardless of when the taxpayer actually receives the payment [Treas Reg § 1.451-2].

In general, for a cash basis taxpayer, an amount is included in gross income when actually or constructively received. For an accrual basis taxpayer, an amount is included in gross income when all the events have occurred that fix the right to receive such income and the amount can be determined with reasonable accuracy (the "all events test"), unless an exception permits deferral or exclusion or a special method of accounting applies [Treas Reg §§ 1.446-1(c)(1), 1.451-1(a)].

Exceptions permit a deferral of gross income for advance payments. An advance payment is when a taxpayer receives payment before the taxpayer provides the goods or services. The exceptions often allow tax deferral to mirror financial accounting deferral, that is, income is recognized as the goods are provided or the services are performed.

The new tax law provision revises the rules associated with the timing of the recognition of income [Act § 13221(a)]. Specifically, the provision requires an accrual method taxpayer subject to the all events test for an item of gross income to recognize the income no later than the taxable year in which the income is taken into account as revenue in an applicable financial statement. The provision provides an exception for taxpayers without an applicable financial statement. In the case of a contract that contains multiple performance obligations, the provision allows the taxpayer to allocate the transaction price in accordance with the allocation made in the taxpayer's applicable financial statement.

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

The provision also codifies the current deferral method of accounting for advance payments for goods, services, and other specified items provided under Revenue Procedure 2004-34. The application of these rules is a change in the taxpayer's method of accounting for purposes of section 481 [Act § 13221(b)].

The provision generally applies to taxable years beginning after December 31, 2017 [Act § 13221(c)]. In the case of income from a debt instrument having OID, the provision applies to taxable years beginning after December 31, 2018 [Act § 13221(d)].

§ 1.45 LIMITATION ON DEDUCTION FOR INTEREST

Under present law, corporate taxpayers are currently limited in their ability to reduce the U.S. tax on the income derived from their U.S. operations through certain earnings stripping transactions involving interest payments. If the payor has debt-to-equity ratio exceeds 1.5 to 1 (a debt-to-equity ratio of 1.5 to 1 or less is considered a “safe harbor”), a deduction for disqualified interest paid or accrued by the payor in a taxable year is generally disallowed to the extent of the payor’s excess interest expense [IRC § 163(j)(1)].

Disqualified interest includes interest paid or accrued to related parties when no federal income tax is imposed with respect to such interest; to unrelated parties in certain instances in which a related party guarantees the debt (“guaranteed debt”); or to a REIT by a taxable REIT subsidiary of that REIT [IRC § 163(j)(3)]. Excess interest expense is the amount by which the payor’s net interest expense (that is, the excess of interest paid or accrued over interest income) exceeds 50 percent of its adjusted taxable income (generally taxable income computed without regard to deductions for net interest expense, net operating losses, domestic production activities under IRC § 199, depreciation, amortization, and depletion) [IRC § 163(j)(2)(B)].

Interest amounts disallowed under these rules can be carried forward indefinitely and are allowed as a deduction to the extent of excess limitation in a subsequent tax year [IRC § 163(j)(1)(B)]. If a tax treaty reduces the rate of tax on interest paid or accrued by the taxpayer, the interest is treated as interest on which no federal income tax is imposed to the extent of the same proportion of such interest as the rate of tax imposed without regard to the treaty, reduced by the rate of tax imposed under the treaty, bears to the rate of tax imposed without regard to the treaty [IRC § 163(j)(5)(B)].

The new tax bill limits the deduction to net interest expense that exceeds 30 percent of adjusted taxable income [Act § 13301(a)]. For taxable years beginning after December 31, 2017 and before January 1, 2022, adjusted taxable income is computed without regard to deductions allowable for depreciation, amortization, or depletion. Beginning in the 2022 taxable year, adjusted taxable income is reduced by depreciation, amortization, or depletion. The new tax bill generally exempts regulated utilities from these new provisions.

This provision applies to taxable years beginning after December 31, 2017 [Act § 13301(c)].

§ 1.46 MODIFICATION OF NET OPERATING LOSS DEDUCTION

Under existing law, a net operating loss ("NOL") generally means the amount by which a taxpayer's business deductions exceed its gross income [IRC § 172(c)]. In general, a NOL may be carried back two years and carried over 20 years to offset taxable income in those years [IRC § 172(b)(1)]. NOLs offset taxable income in the order of the taxable years to which the NOL may be carried [IRC § 172(b)(2)]. Different carryback periods apply with respect to NOLs arising in different circumstances. Extended carryback periods are allowed for NOLs attributable to specified liability losses and certain casualty and disaster losses [IRC § 172(b)(1)(C), (E)]. Limitations are placed on the carryback of excess interest losses attributable to corporate equity reduction transactions [IRC § 172(b)(1)(D)].

The new 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.

The provision repeals the two-year carryback and the special carryback provisions effective for NOLs arising in tax years after December 31, 2017 [Act § 13302(e)(1) but provides a one-year carryback in the case of certain disaster losses incurred in the trade or business of farming, or by certain small businesses.

§ 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)].

§ 1.48 LIMITATION ON DEDUCTION BY EMPLOYERS OF FRINGE BENEFITS

Existing law provides that, subject to a number of exceptions, no deduction is allowed for entertainment, amusement, or recreation expenses unless the taxpayer establishes that they were directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that the item was associated with, the active conduct of the taxpayer’s trade or business [IRC § 274(a)]. Even then, only 50 percent of the expenses are deductible [IRC § 274(n)(1)].

A deduction for any expense for food or beverages generally is limited to 50 percent of the amount otherwise deductible [IRC § 274(n)(1)(A)]. This restriction does not apply to expenses for food and beverages on the business premises of the taxpayer primarily for the employees [IRC § 274(e)(1)].

There are a number of exceptions to the general rule disallowing deduction of entertainment expenses and the rules limiting deductions to 50 percent of the otherwise deductible amount. Those rules do not apply to (1) expenses for goods, services, and facilities to the extent that the expenses are reported by the taxpayer as compensation and as wages to an employee [IRC § 274(e)(2)(A)]; (2) expenses for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient who is not an employee (e.g., a nonemployee director) as compensation for services rendered or as a prize or award [IRC § 274(e)(9)]; (3) expenses paid or incurred by the taxpayer, in connection with the performance of services for another person (other than an employer), under a reimbursement or other expense allowance arrangement if the taxpayer accounts for the expenses to such person [IRC § 274(e)(3)]; (4) expenses for recreational, social, or similar activities primarily for the benefit of employees other than certain owners and highly compensated employees [IRC § 274(e)(4)]; (5) expenses for food and beverages that are excludable from the gross income of the recipient as a de minimis fringe [IRC § 274(n)(2)(B); see IRC § 132(e)] and (6) expenses for food and beverages provided to crew members of certain commercial vessels and certain oil or gas platform or drilling rig workers [IRC § 274(n)(2)(E)].

The existing law has no restriction under existing IRC § 274 regarding transportation or commuting benefits or reimbursements provided to employees, or for expenses for meals provided for the benefit of the employer.

For taxable years beginning after December 31, 2017, the new tax provision provides that no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement, or recreation, (2) membership dues with respect to any club organized for business, pleasure, recreation, or other social purposes, or (3) a facility or portion thereof used in connection with any of the above items [Act § 13304(a)]. Thus, the provision repeals the present-law exception to the deduction disallowance for entertainment, amusement, or recreation that is directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business (and the related rule applying a 50 percent limit to such deductions).

In addition, the provision disallows a deduction for expenses associated with providing any qualified transportation fringe to employees of the taxpayer, and except as necessary for ensuring the safety of an employee, any expense incurred for providing transportation (or any payment or reimbursement) for commuting between the employee's residence and place of employment [Act § 13304(c)].

Taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business (e.g., meals consumed by employees on work travel). For amounts incurred and paid after December 31, 2017 and until December 31, 2025, the provision expands this 50 percent limitation to expenses of the employer associated with providing food and beverages to employees through an eating facility that meets requirements for de minimis fringes and for the convenience of the employer. These amounts incurred and paid after December 31, 2025 are not deductible. [Act § 13304(e)].

§ 1.49 REPEAL OF DEDUCTION FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES

Existing law generally provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to nine percent of the lesser of the taxpayer's qualified production activities income or taxable income for the taxable year [IRC § 199(a)]. The amount of the deduction for a taxable yea is limited to 50 percent of the wages paid by the taxpayer, and properly allocable to domestic production gross receipts, during the calendar year that ends in such taxable year [IRC § 199(b)]. The provision was enacted to help domestic manufacturers and encourage investment in domestic manufacturing facilities.

In general, qualified production activities income is equal to domestic production gross receipts reduced by the sum of: (1) the costs of goods sold that are allocable to those receipts; and (2) other expenses, losses, or deductions which are properly allocable to those receipts [IRC § 199(c)(1)].

Domestic production gross receipts generally are gross receipts of a taxpayer that are derived from: (1) any sale, exchange, or other disposition, or any lease, rental, or license, of qualifying production property that was manufactured, produced, grown or extracted by the taxpayer in whole or in significant part within the United States; (2) any sale, exchange, or other disposition, or any lease, rental, or license, of qualified film produced by the taxpayer; (3) any lease, rental, license, sale, exchange, or other disposition of electricity, natural gas, or potable water produced by the taxpayer in the United States; (4) construction of real property performed in the United States by a taxpayer in the ordinary course of a construction trade or business; or (5) engineering or architectural services performed in the United States for the construction of real property located in the United States [IRC § 199(c)(4)]. Qualifying production property generally includes any tangible personal property, computer software, and sound recordings [IRC § 199(c)(5)].

The new tax provision repeals the deduction for income attributable to domestic production activities [Act § 13305(a)] for taxable years beginning after December 31, 2017, and for C corporations for taxable years beginning after December 31, 2018 [Act § 13305(c)].

§ 1.50 DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS

Under existing law, no deduction is allowed for fines or similar penalties paid to a government for the violation of any law [IRC § 162(f)]. In addition, no provisions require information reporting requirements with respect to any fines, penalties, or similar amounts that are paid.

The new provision denies deductibility for any otherwise deductible amount paid or incurred (whether by suit, agreement, or otherwise) to or at the direction of a government or specified nongovernmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law [Act § 13306(a)]. An exception applies to payments that the taxpayer establishes are either restitution (including remediation of property) or amounts required to come into compliance with any law that was violated or involved in the investigation or inquiry, that are identified in the court order or settlement agreement as restitution, remediation, or required to come into compliance [Act § 13306(a)]. In the case of any amount of restitution for failure to pay any tax and assessed as restitution under the Code, such restitution is deductible only to the extent it would have been allowed as a deduction if it had been timely paid. The IRS remains free to challenge the characterization of an amount so identified; however, no deduction is allowed unless the identification is made. Restitution or included remediation of property does not include reimbursement of government investigative or litigation costs.

The provision applies only where a government (or other entity treated in a manner similar to a government under the provision) is a complainant or investigator with respect to the violation or potential violation of any law. An exception also applies to any amount paid or incurred as taxes due.

The provision requires government agencies (or entities treated as such agencies under the provision) to report to the IRS and to the taxpayer the amount of each settlement agreement or order entered into where the aggregate amount required to be paid or incurred to or at the direction of the government is at least $600 (or such other amount as may be specified by the Secretary of the Treasury as necessary to ensure the efficient administration of the Internal Revenue laws) [Act § 13306(b)]. The report must separately identify any amounts that are for restitution or remediation of property, or correction of noncompliance. The report must be made at the time the agreement is entered into, as determined by the Secretary of the Treasury.

The new tax provision denying the deduction and the reporting provision are effective for amounts paid or incurred on or after the date of enactment, except that it would not apply to amounts paid or incurred under any binding order or agreement entered into before that date. This exception does not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

§ 1.51 DENIAL OF DEDUCTION FOR SETTLEMENTS SUBJECT TO NONDISCLOSURE AGREEMENTS FILED IN CONNECTION WITH SEXUAL HARASSMENT OR SEXUAL ABUSE

Under present law, a taxpayer generally is allowed a deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business [IRC § 162(a)]. Certain exceptions apply. No deduction is allowed for (1) any charitable contribution or gift that would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section; (2) any illegal bribe, illegal kickback, or other illegal payment; (3) certain lobbying and political expenditures; (4) any fine or similar penalty paid to a government for the violation of any law; (5) two thirds of treble damage payments under the antitrust laws; (6) certain foreign advertising expenses; (7) certain amounts paid or incurred by a corporation in connection with the reacquisition of its stock or of the stock of any related person; or (8) certain applicable employee remuneration.

Under the new tax provision, no deduction is allowed for any settlement, payout, or attorney fees related to sexual harassment or sexual abuse if such payments are subject to a nondisclosure agreement [Act § 13307(a)]. This provision is effective for amounts paid or incurred after the date of enactment [Act § 13307(b)].

§ 1.52 REPEAL OF DEDUCTION FOR LOCAL LOBBYING EXPENSES

Existing law provides, in general, that no deduction is allowed for lobbying or political expenses [IRC § 162(e)]. A deduction is allowed, however, in the case of expenses incurred with respect to legislation of a local council or similar governing body, including Indian tribal governments [IRC § 162(e)(2), (7)].

The new tax provision repeals the exception for amounts paid or incurred related to lobbying local councils or similar governing bodies, including Indian tribal governments [Act § 13308(a)]. Thus, the general disallowance rules applicable to lobbying and political expenditures will apply to costs incurred related to such local legislation. The new tax provision applies to amounts paid or incurred on or after the date of enactment [Act § 13308(c)].

§ 1.53 PROFITS INTERESTS IN PARTNERSHIPS

A "profits interest" refers to the partnership interest that a new partner receives upon entering a partnership when the partner contributes only services, not property or cash, to the partnership. A profits interest is the right to receive future profits in the partnership. A profits interest typically does not include any right to receive money or other property upon the partnership's liquidation. Generally, a taxpayer receiving a profits interest for performing services is not been taxed upon the receipt of the partnership interest [see, e.g., Campbell v. Comm'r, 943 F2d 815 (8th Cir 1991); but see Diamond v. Comm'r, 56 TC 530 (1971), aff'd 492 F2d 286 (7th Cir 1974) for a limited exception]. Instead, the partner pays tax only as the partner receives its share of the partnership's profits. The tax treatment of the receipt of a profits interest in a partnership (a "carried interest") has been controversial.

In 1993, the IRS issued guidance that it would generally treat the receipt of a profits interest for services as not a taxable event for both the partnership and the partner [Rev Proc 93-27 (1993-2 CB 343)]. This treatment does not apply if: (1) the profits interest relates to a substantially certain and predictable stream of income from partnership assets, such as income from high-quality debt securities or a high-quality net lease; (2) within two years of receipt, the partner disposes of the profits interest; or (3) the profits interest is a limited partnership interest in a publicly traded partnership. More recent administrative guidance [Rev Proc 2001-43 (2001-2 CB 191)] clarifies that this tax treatment applies with respect to substantially unvested profits interests, provided that the service partner takes into income his distributive share of partnership income and the partnership does not deduct any amount either on grant or on vesting of the profits interest.

By contrast, a partnership capital interest received for services is includable in the partner's income under generally applicable rules relating to the receipt of property for the performance of services [Treas Reg § 1.721-1(b)(1)]. A partnership capital interest is an interest that would entitle the partner to a share of the proceeds if the partnership's assets were sold at fair market value and the proceeds distributed in liquidation [Rev Proc 93-27, 1993-2 CB 343].

Section 83 governs the amount and timing of income and deductions attributable to transfers of property in connection with the performance of services. If property is transferred in connection with the performance of services, the person performing the services (the "service provider") generally must recognize income for the taxable year in which the property is first substantially vested (i.e., transferable, or not subject to a substantial risk of forfeiture. The amount includible in the service provider's income is the excess of the fair market value of the property over the amount (if any) paid for the property. A deduction is allowed to the person for whom such services are performed (the "service recipient") equal to the amount included in gross income by the service provider [IRC § 83(h)].

Property that is subject to a substantial risk of forfeiture and that is not transferable is generally referred to as "substantially nonvested." Property is subject to a substantial risk of forfeiture if the individual's right to the property is conditioned on the future performance (or refraining from performance) of substantial services. In addition, a substantial risk of forfeiture exists if the right to the property is subject to a condition other than the performance of services, provided that the condition relates to a purpose of the transfer and there is a substantial possibility that the property will be forfeited if the condition does not occur.

Under section 83(b), even if the property is substantially nonvested at the time of transfer, the service provider may nevertheless elect within 30 days of the transfer to recognize income for the taxable year of the transfer. This election is referred to as a “section 83(b) election.” The service provider makes an election by filing with the IRS a written statement that includes the fair market value of the property at the time of transfer and the amount (if any) paid for the property. The service provider must also provide a copy of the statement to the service recipient.

In trying to help close the profits interest loophole, new IRC § 1061 provides for a three-year holding period in the case of certain net long-term capital gain with respect to any applicable partnership interest held by the taxpayer, notwithstanding the rules of IRC § 83 or any election in effect under IRC § 83(b) [Act § 13310(a)]. The three-year holding period applies to the partner’s holding period in its profits interest, not to the underlying assets.

The amendments made by this section apply to taxable years beginning after December 31, 2017 [13310(c)].

§ 1.54 EXCLUSION, ETC., FOR EMPLOYEE ACHIEVEMENT AWARDS

Under existing law, deductions for employee achievement awards are subject to a per-employee annual limit of $400 for awards that are not a qualified plan award and $1,600 for awards that are qualified plan awards [IRC § 274(j)(1), (2)]. An “employee achievement award” includes “tangible personal property” that, among other requirements, does not create a significant likelihood of the payment as disguised compensation [IRC § 274(f)(3)(A)]. There are no restrictions, however, on the types of tangible personal property that can be given as part of an employee achievement award.

The new tax provision repeals the deduction limitation for employee achievement awards. It also repeals the exclusions from gross income and wages. The provision adds a definition of “tangible personal property” that may be considered a deductible employee achievement award. It provides that tangible personal property shall not include cash, cash equivalents, gift cards, gift coupons or gift certificates (other than arrangements conferring only the right to select and receive tangible personal property from a limited array of such items pre-selected or pre-approved by the employer), or vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items [Act § 13310(a)] The provision applies to amounts paid or incurred after December 31, 2017 [Act § 13310(b)].

§ 1.55 ELIMINATION OF DEDUCTION FOR LIVING EXPENSES INCURRED BY MEMBERS OF CONGRESS

Existing law provides that up to $3,000 in living expenses incurred by members of Congress are deductible each year [IRC § 162(a)].

The new tax bill eliminates this deduction for living expenses incurred by members of Congress [Act § 1311(a)].

This provision applies to taxable years beginning after the date of enactment of this Act [Act § 13311(b)].

§ 1.56 REVISION OF TREATMENT OF CONTRIBUTIONS TO CAPITAL

Under present law, the gross income of a corporation does not include any contribution to its capital [IRC § 118(a)]. For purposes of this rule, a contribution to the capital of a corporation does not include any contribution in aid of construction or any other contribution from a customer or potential customer [IRC § 118(a)]. A special rule allows certain contributions in aid of construction received by a regulated public utility that provides water or sewerage disposal services to be treated as a tax-free contribution to the capital of the utility [IRC § 118(c)(1)]. No deduction or credit is allowed for, or by reason of, any expenditure that constitutes a contribution that is treated as a tax-free contribution to the capital of the utility [IRC § 118(c)(4)].

If property is acquired by a corporation as a contribution to capital and is not contributed by a shareholder as such, the adjusted basis of the property is zero [IRC § 362(c)(1)]. If the contribution consists of money, the corporation must first reduce the basis of any property acquired with the contributed money within the following 12-month period, and then reduce the basis of other property held by the corporation [IRC § 362(c)(2)]. Similarly, the adjusted basis of any property acquired by a utility with a contribution in aid of construction is zero [IRC § 118(c)(4)].

The new tax law does not repeal the provision of the Internal Revenue Code under which, generally, a corporation's gross income does not include contributions to capital. Rather, it preserves that provision, but provides that the term "contributions to capital" does not include: (1) any contribution in aid of construction or any other contribution as a customer or potential customer, and (2) any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such) [Act § 13312(a). Section 118, as modified, continues to apply only to corporations.

The amendments made in this section apply to contributions made after the date of enactment of this Act [Act § 13312(b)(1)]. Further, the amendments made by this section will not apply to any contribution, made after the date of enactment by a governmental entity that is made according to a master development plan approved prior to such date by a governmental entity [Act § 13312(b)(2)].

§ 1.57 REPEAL OF ROLLOVER OF PUBLIC LY TRADED SECURITIES GAIN INTO SPECIALIZED SBICS

A corporation or individual may elect to roll over tax-free any capital gain realized on the sale of publicly- traded securities to the extent of the taxpayer's cost of purchasing common stock or a partnership interest in a specialized small business investment company within 60 days of the sale [IRC § 1044(a)]. The amount of gain that an individual may elect to roll over under this provision for a taxable year is limited to (1) $50,000 or (2) $500,000 reduced by the gain previously excluded under this provision [IRC § 1044(b)(1)]. For corporations, these limits are $250,000 and $1 million, respectively [IRC § 1044(b)(2)].

The new tax law repeals the election described above to roll over tax-free capital gain realized on the sale of publicly-traded securities [Act § 13313(a)].

The amendments made by this Act will be effective to sales after December 31, 2017.

§ 1.58 CERTAIN SELF-CREATED PROPERTY NOT TREATED AS A CAPITAL ASSET

The present law provides, in general, that property held by a taxpayer (whether or not connected with his trade or business) is considered a capital asset [IRC § 1221(a)]. Certain assets, however, are specifically excluded from the definition of capital asset. These excluded assets are: inventory property, property of a character subject to depreciation (including real property) [IRC § 1231], certain self-created intangibles, accounts or notes receivable acquired in the ordinary course of business (e.g., for providing services or selling property), publications of the U.S. Government received by a taxpayer other than by purchase at the price offered to the public, commodities derivative financial instruments held by a commodities derivatives dealer unless established to the satisfaction of the Secretary that any such instrument has no connection to the activities of such dealer as a dealer and clearly identified as such before the close of the day on which it was acquired, originated, or entered into, hedging transactions clearly identified as such, and supplies regularly used or consumed by the taxpayer in the ordinary course of a trade or business of the taxpayer [IRC § 1221(a)(1)-(8)].

Self-created intangibles subject to the exception are copyrights, literary, musical, or artistic compositions, letters or memoranda, or similar property that is held either by the taxpayer who created the property, or (in the case of a letter, memorandum, or similar property) a taxpayer for whom the property was produced [IRC § 1221(a)(3)(A), (B)]. For the purpose of determining gain, a taxpayer with a substituted or transferred basis from the taxpayer who created the property, or for whom the property was created, also is subject to the exception [IRC § 1221(a)(3)(C)]. A taxpayer may elect, however, to treat musical compositions and copyrights in musical works as capital assets [IRC § 1221(b)(3)].

Since the intent of Congress is that profits and losses arising from everyday business operations be characterized as ordinary income and loss, the general definition of capital asset is narrowly applied and the categories of exclusions are broadly interpreted.

This new tax law amends IRC Section 1221(a)(3), resulting in the exclusion of a patent, invention, model or design (whether or not patented), and a secret formula or process that is held either by the taxpayer who created the property or a taxpayer with a substituted or transferred basis from the taxpayer who created the property (or for whom the property was created) from the definition of a "capital asset." As a result of this exclusion, gains or losses from the sale or exchange of a patent, invention, model or design (whether or not patented), or a secret formula or process that is held either by the taxpayer who created the property or a taxpayer with a substituted or transferred basis from the taxpayer who created the property (or for whom the property was created) will not receive capital gain treatment. [Act § 13314(a)].

The amendment made by this section applies to dispositions after December 31, 2017 [Act § 13314(b)].

§ 1.59 MODIFICATION OF ORPHAN DRUG CREDIT

Under present law, IRC § 45C provides a 50-percent business tax credit for qualified clinical testing expenses incurred in testing of certain drugs for rare diseases or conditions, generally referred to as "orphan drugs." [IRC § 54C(a)]. No deduction is allowed for that portion of the qualified clinical testing expenses otherwise allowable as a deduction that is equal to the amount of the orphan drug credit allowable for the year [IRC § 280C(b)(1)]. For taxpayers that capitalize expenses, if the amount of the orphan credit allowable for the year exceeds the amount allowable as a deduction for qualified clinical testing expenses, then the amount chargeable to capital account for those expenses must be reduced by the amount of that excess
[IRC § 280C(b)(2)].

The new provision reduces the credit rate to 25.0 percent of qualified clinical testing expenses
[Act § 13401(a)]. The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2017 [Act § 13401(c)].

§ 1.60 REHABILITATION CREDIT LIMITATIONS

Under existing law, IRC § 47 provides a two-tier tax credit for rehabilitation expenditures. A 20-percent credit is provided for qualified rehabilitation expenditures with respect to a certified historic structure
[IRC § 47(a)(2)]. For this purpose, a certified historic structure means any building that is listed in the National Register, or that is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district [IRC § 47(c)(3)]. A 10-percent credit is provided for qualified rehabilitation expenditures with respect to a qualified rehabilitated building [IRC § 47(a)(1)].

A qualified rehabilitated building is generally a building that was first placed in service before 1936 [IRC § 47(c)(1)(B)]. A pre-1936 building must meet requirements with respect to retention of existing external walls and internal structural framework of the building in order for expenditures with respect to it to qualify for the 10-percent credit [IRC § 47(c)(1)(A)(iii)]. A building is treated as having met the substantial rehabilitation requirement under the 10-percent credit only if the rehabilitation expenditures during the 24-month period selected by the taxpayer and ending within the taxable year exceed the greater of (1) the adjusted basis of the building (and its structural components), or (2) $5,000 [IRC § 47(c)(1)(C)(i)]. In addition, a depreciation deduction (or amortization in lieu of depreciation) must be allowable with respect to the property [IRC § 47(c)(1)(A)(iv)].

The new tax provision repeals the 10-percent credit for pre-1936 buildings [Act § 13402(a)]. The provision retains the 20-percent credit for qualified rehabilitation expenditures with respect to a certified historic structure, with a modification. Under the provision, the credit allowable for a taxable year during the five year period beginning in the taxable year in which the qualified rehabilitated building is placed in service is an amount equal to the ratable share. The ratable share for a taxable year during the five-year period is amount equal to 20 percent of the qualified rehabilitation expenditures for the building, as allocated ratably to each taxable year during the five-year period. It is intended that the sum of the ratable shares for the taxable years during the five-year period does not exceed 100 percent of the credit for qualified rehabilitation expenditures for the qualified rehabilitated building.

The new provision applies to amounts paid or incurred after December 31, 2017. A transition rule provides that in the case of qualified rehabilitation expenditures (for either a certified historic structure or a pre-1936 building), with respect to any building owned or leased (as provided under present law) by the taxpayer at all times on and after January 1, 2018, the 24-month period selected by the taxpayer (section 47(c)(1)(C)(i)), or the 60-month period selected by the taxpayer under the rule for phased rehabilitation (section 47(c)(1)(C)(ii)), is to begin not later than the end of the 180-day period beginning on the date of the enactment of the Act, and the amendments made by the provision apply to the expenditures paid or incurred after the end of the taxable year in which the 24-month or 60-month period ends [Act § 13402(c)].

§ 1.61 EMPLOYER CREDIT FOR PAID FAMI LY AND MEDICAL LE AVE

Present law does not provide a credit to employers for compensation paid to employees while on leave.

The new provision [IRC § 45S] allows eligible employers to claim a general business credit equal to 12.5 percent of the amount of wages paid to qualifying employees during any period in which these employees are on family and medical leave if the rate of payment under the program is 50 percent of the wages normally paid to an employee [Act § 13403(a)]. The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent. The maximum amount of family and medical leave that may be taken into account with respect to any employee for any taxable year is 12 weeks.

An eligible employer is one who has in place a written policy that allows all qualifying full-time employees not less than two weeks of annual paid family and medical leave, and who allows all less-than-full-time qualifying employees a commensurate amount of leave on a pro rata basis. For purposes of this requirement, leave paid for by a state or local government is not taken into account. A “qualifying employee” means any employee as defined in section 3(e) of the Fair Labor Standards Act of 1938 who has been employed by the employer for one year or more, and who for the preceding year, had compensation not in excess of 60 percent of the compensation threshold for highly compensated employees [Act § 13403(a)].

The provision is generally effective for wages paid in taxable years beginning after December 31, 2017 [Act § 1303(b)].

§ 1.62 REPEAL OF TAX CREDIT BONDS

Under existing law, tax credit bonds provide tax credits to investors to replace a prescribed portion of the interest cost. The borrowing subsidy generally is measured by reference to the credit rate set by the Treasury Department. Current tax credit bonds include qualified tax credit bonds, which have certain common general requirements, and include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds. Tax credit bonds help finance other projects, such as low-to-moderate income housing, and 501(c)(3) institutions, including hospitals and universities [IRC §§ 54A, 54B, 54C, 54D, 54E, 54F, and 6431].

The new tax law provision prospectively repeals authority to issue tax-credit bonds and direct-pay bonds [Act § 13404(a)].

The amendments made by this section apply to bonds issued after December 31, 2017.

§ 1.63 TREATMENT OF GAIN OR LOSS OF FOREIGN PERSONS FROM SALE OR EXCHANGE OF PARTNERSHIPS ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES

Under existing law, a variety of complex provisions apply to source income to sources within or outside the United States [IRC §§ 861-864]. A foreign person that is engaged in the conduct of a trade or business within the United States is subject to U.S. net-basis taxation on the income that is "effectively connected" with the business. Specific statutory rules govern whether income is effectively connected income "ECI" [IRC § 864(c)].

In the case of U.S.-source capital gain and U.S.-source income of a type that would be subject to gross basis U.S. taxation, the factors taken into account in determining whether the income is ECI include whether the income is derived from assets used in or held for use in the conduct of the U.S. trade or business and whether the activities of the trade or business were a material factor in the realization of the amount (the "asset use" and "business activities" tests) [IRC § 864(c)(2)].

Under the asset use and business activities tests, due regard is given to whether the income, gain, or asset was accounted for through the U.S. trade or business. All other U.S.-source income is treated as ECI [IRC § 864(c)(3)]. A foreign person who is engaged in a U.S. trade or business may have limited categories of foreign- source income that are considered to be ECI. This income is subject to net-basis U.S. taxation after allowance of a credit for any foreign income tax imposed on the income under IRC § 906. Foreign-source income not included in one of these categories generally is exempt from U.S. tax.

A foreign person's income from foreign sources generally is considered to be ECI only if the person has an office or other fixed place of business within the United States to which the income is attributable and the income is in one of the following categories: (1) rents or royalties for the use of patents, copyrights, secret processes or formulas, good will, trade-marks, trade brands, franchises, or other like intangible properties derived in the active conduct of the trade or business; (2) interest or dividends derived in the active conduct of a banking, financing, or similar business within the United States or received by a corporation the principal business of which is trading in stocks or securities for its own account; or (3) income derived from the sale or exchange (outside the United States), through the U.S. office or fixed place of business, of inventory or property held by the foreign person primarily for sale to customers in the ordinary course of the trade or business, unless the sale or exchange is for use, consumption, or disposition outside the United States and an office or other fixed place of business of the foreign person in a foreign country participated materially in the sale or exchange [IRC § 864(c)(4)(B)].

Foreign-source dividends, interest, and royalties are not treated as ECI if the items are paid by a foreign corporation more than 50 percent (by vote) of which is owned directly, indirectly, or constructively by the recipient of the income [IRC § 864(c)(4)(D)]. In determining whether a foreign person has a U.S. office or other fixed place of business, the office or other fixed place of business of an agent generally is disregarded. The place of business of an agent other than an independent agent acting in the ordinary course of business is not disregarded, however, if the agent either has the authority (regularly exercised) to negotiate and conclude contracts in the name of the foreign person or has a stock of merchandise from which he regularly fills orders on behalf of the foreign person [IRC § 864(c)(5)(A)]. If a foreign person has a U.S. office or fixed place of business, income, gain, deduction, or loss is not considered attributable to the office unless the office was a material factor in the production of the income, gain, deduction, or loss and the office regularly carries on activities of the type from which the income, gain, deduction, or loss was derived [IRC § 864(c)(5)(B)].

Special rules apply in determining the ECI of an insurance company. The foreign-source income of a foreign corporation that is subject to tax under the insurance company provisions of the Code is treated as ECI if the income is attributable to its United States business [IRC § 864(c)(4)(C)]. Income, gain, deduction, or loss for a particular year generally is not treated as ECI if the foreign person is not engaged in a U.S. trade or business in that year [IRC § 864(c)(1)(B)]. If, however, income or gain taken into account for a taxable year is attributable to the sale or exchange of property, the performance of services, or any other transaction that occurred in a prior taxable year, the determination whether the income or gain is taxable on a net basis is made as if the income were taken into account in the earlier year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the later taxable year [IRC § 864(c)(6)].

If any property ceases to be used or held for use in connection with the conduct of a U.S. trade or business and the property is disposed of within 10 years after the cessation, the determination whether any income or gain attributable to the disposition of the property is taxable on a net basis is made as if the disposition occurred immediately before the property ceased to be used or held for use in connection with the conduct of a U.S. trade or business and without regard to the requirement that the taxpayer be engaged in a U.S. business during the taxable year for which the income or gain is taken into account [IRC § 864(c)(7)].

Currently no ECI rules source the treatment of gain or loss of foreign persons from the sale or exchange of interests in partnerships engaged in trade or business within the United States.

Under the new provision, gain or loss from the sale or exchange of a partnership interest is effectively connected with a U.S. trade or business to the extent that the transferor would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange [Act § 13501(a)]. The provision requires that any gain or loss from the hypothetical asset sale by the partnership be allocated to interests in the partnership in the same manner as non-separately stated income and loss.

The provision also requires the transferee of a partnership interest to withhold 10 percent of the amount realized on the sale or exchange of a partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or foreign corporation [Act § 13501(b)]. If the transferee fails to withhold the correct amount, the partnership is required to deduct and withhold from distributions to the transferee partner an amount equal to the amount the transferee failed to withhold.

The portion of the provision treating gain or loss on sale of a partnership interest as effectively connected income is effective for sales, exchanges, and dispositions on or after November 27, 2017. The portion of the provision requiring withholding on sales or exchanges of partnership interests is effective for sales, exchanges, and dispositions after December 31, 2017 [Act § 13501(e)].

§ 1.64 MODIFICATION OF THE DEFINITION OF SUBSTANTIAL BUILT-IN LOSS IN THE CASE OF TRANSFER OF PARTNERSHIP INTEREST

Under existing law, when there is a transfer of a partnership interest by sale or exchange, or if a partner dies, the basis of the partnership property must generally be adjusted as provided in IRC § 743(b) if the partnership has a "substantial built-in loss" immediately after the transfer [IRC § 743(a)]. For this purpose, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than $250,0000 the fair market value of the property [IRC § 743(d)(1)].

The provision modifies the definition of a substantial built-in loss for purposes of section 743(d), which affects transfers of partnership interests [Act § 13502(a)]. Under the provision, in addition to the present- law definition, a substantial built-in loss also exists if the transferee would be allocated a net loss in excess of $250,000, upon a hypothetical disposition by the partnership of all partnership's assets in a fully taxable transaction for cash equal to the assets' fair market value, immediately after the transfer of the partnership interest [Act § 13502(a)].

The amendments made by this section apply to transfers of partnership interests after December 31, 2017 [Act § 13502(b)].

§ 1.65 CHARITABLE CONTRIBUTIONS AND FOREIGN TAXES TAKEN INTO ACCOUNT IN DETERMINING LIMITATION ON ALLOWANCE OF PARTNER'S SHARE OF LOSS

Under existing law, a partner's distributive share of tax items from the partnership is generally determined by the partnership agreement [IRC § 704(a)]. A partner's distributive share of partnership loss (including capital loss), however, is allowed only to the extent of the adjusted basis of that partner's interest in the partnership at the end of the partnership year in which the loss occurred. Any excess of that loss over that basis is allowed as a deduction at the end of the partnership year in which the excess is repaid to the partnership [IRC § 704(d)].

The provision modifies the basis limitation on partner losses to provide that the limitation takes into account a partner's distributive share of partnership charitable contributions (as defined in section 170(c)) and taxes (described in section 901) paid or accrued to foreign countries and to possessions of the United States. Thus, the amount of the basis limitation on partner losses is decreased to reflect these items. In the case of a charitable contribution by the partnership, the amount of the basis limitation on partner losses is decreased by the partner's distributive share of the adjusted basis of the contributed property. In the case of a charitable contribution by the partnership of property whose fair market value exceeds its adjusted basis, a special rule provides that the basis limitation on partner losses does not apply to the extent of the partner's distributive share of the excess [Act § 13503(a)].

The amendments made by this section apply to partnership taxable years beginning after December 31, 2017.

§ 1.66 REPEAL OF TECHNICAL TERMINATION OF PARTNERSHIPS

Under existing law, partnership termination refers to the technical conclusion of a partnership for federal income tax purposes. A partnership terminates when "no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership" [IRC § 708(b)(1)(A)].
Often, a termination occurs because a partnership ceases doing business or because a partnership changes its form to a corporation, a sole proprietorship, or another entity.

But a partnership can terminate but still continue conducting its business if the composition of the partnership changes significantly. Under existing law, a partnership terminates for federal income tax purposes if "within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits" [IRC § 708(b)(1)(B)]. With this type of "technical" termination, a partnership can seamlessly conduct its prior business following the termination.

As for the tax consequences, the technical termination gives rise to a deemed contribution of all the partnership's assets and liabilities to a new partnership in exchange for an interest in the new partnership, followed by a deemed distribution of interests in the new partnership to the purchasing partners and the other remaining partners.

The effect of a technical termination is not necessarily the end of the partnership's existence, but rather the termination of some tax attributes. Upon a technical termination, the partnership's taxable year closes, potentially resulting in short taxable years. Partnership-level elections generally cease to apply following a technical termination. A technical termination generally results in the restart of partnership depreciation recovery periods.

The new partnership tax law provision repeals the section 708(b)(1)(B) rule providing for technical terminations of partnerships. The provision does not change section 708(b)(1)(A), under which a partnership is considered as terminated if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership [Act § 13504(a).

The amendments made by this section apply to partnership taxable years beginning after December 31, 2017.

§ 1.67 NET OPERATING LOSSES OF LIFE INSURANCE COMPANIES

Under existing law, deductions allowable to life insurance companies in computing taxable income are subject to modifications set forth in IRC § 805(b) [IRC § 805(a)(8)]. One of the modifications disallows a deduction for net operating losses under IRC § 172 except as provided by IRC § 844 [IRC § 805(b)(4)]. IRC § 844 allows loss carryovers when a life insurance company becomes a property/casualty insurance company or a property/ casualty insurance company becomes a life insurance company. The succeeding company may take advantage of unused loss carryovers that the prior company had before it changed its tax status.

The new tax provision repeals the operations loss deduction for life insurance companies and allows the NOL deduction under section 172 [Act § 13511(a)].

The amendments made by this section apply to losses arising in taxable years beginning after December 31, 2017 [Act § 13511(c)].

§ 1.68 REPEAL OF SMALL LIFE INSURANCE COMPANY DEDUCTION

Based on existing law, the small life insurance company deduction for any taxable year is 60 percent of so much of the tentative life insurance company taxable income ("LICTI") for such taxable year as does not exceed $3 million, reduced by 15 percent of the excess of tentative LICTI over $3 million. The maximum deduction that can be claimed by a small company is $1.8 million, and a company with a tentative LICTI of $15 million or more is not entitled to any small company deduction [IRC § 806(a). A small life insurance company for this purpose is one with less than $500 million of assets [IRC § 806(a)(3)].

The new tax provision repeals the small life insurance company deduction, effective for taxable years beginning after December 31, 2017 [Act § 13512(c)].

§ 1.69 ADJUSTMENT FOR CHANGE IN COMPUTING RESERVES

In determining life insurance company taxable income under existing law, a life insurance company includes in gross income any net decrease in reserves, and deducts a net increase in reserves [IRC § 807]. Methods for determining reserves for tax purposes generally are based on reserves prescribed by the National Association of Insurance Commissioners for purposes of financial reporting under state regulatory rules.

Income or loss resulting from a change in the method of computing reserves is taken into account ratably over a 10-year period [IRC § 807(f)(1)]. The rule for a change in basis in computing reserves applies only if there is a change in basis in computing the Federally prescribed reserve (as distinguished from the net surrender value).

Although life insurance tax reserves require the use of a federally prescribed method, interest rate, and mortality or morbidity table, changes in other assumptions for computing statutory reserves (e.g., when premiums are collected and claims are paid) may cause increases or decreases in a company's life insurance reserves that must be spread over a 10-year period. changes in the net surrender value of a contract are not subject to the 10-year spread because, apart from its use as a minimum in determining the amount of life insurance tax reserves, the net surrender value is not a reserve but a current liability. If for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments to reserves is taken into account for the preceding taxable year [IRC § 807(f)(2)].

Under the new tax provision, income or loss resulting from a change in the method of computing life insurance company reserves is taken into account consistent with IRS procedures, generally ratably over a four-year period, instead of over a ten-year period [Act § 13513(a)].

The amendments made by this section apply to taxable years beginning after December 31, 2017 [13513(b)].

§ 1.70 SPECIAL RULE FOR DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT

Existing law contains a special rule for distributions to shareholders from pre-1984 policyholders surplus accounts [IRC § 815]. Under the law in effect from 1959 through 1983, a life insurance company was subject to a three-phase taxable income computation under Federal tax law. Under the three-phase system, a company was taxed on the lesser of its gain from operations or its taxable investment income (Phase I) and, if its gain from operations exceeded its taxable investment income, 50 percent of such excess (Phase II). Federal income tax on the other 50 percent of the gain from operations was deferred, and was accounted for as part of a policyholder's surplus account and, subject to certain limitations, taxed only when distributed to stockholders or upon corporate dissolution (Phase III).

To determine whether amounts had been distributed, a company maintained a shareholder's surplus account, which generally included the company's previously taxed income that would be available for distribution to shareholders. Distributions to shareholders were treated as being first out of the shareholders surplus account, then out of the policyholders surplus account, and finally out of other accounts. The Deficit Reduction Act of 1984 included provisions that, for 1984 and later years, eliminated further deferral of tax on amounts that previously would have been deferred under the three-phase system.

Although for taxable years after 1983, life insurance companies may not enlarge their policyholders surplus account, the companies are not taxed on previously deferred amounts unless the amounts are treated as distributed to shareholders or subtracted from the policyholders surplus account. Any direct or indirect distribution to shareholders from an existing policyholders surplus account of a stock life insurance company is subject to tax at the corporate rate in the taxable year of the distribution [IRC § 815].

The new tax provision repeals IRC Section 815, the rules imposing income tax on distributions to shareholders from the policyholders surplus account of a stock life insurance company [Act § 13514(a)].

In the case of any stock life insurance company with an existing policyholders surplus account (as defined in section 815 before its repeal), tax is imposed on the balance of the account as of December 31, 2017. A life insurance company is required to pay tax on the balance of the account ratably over the first eight taxable years beginning after December 31, 2017 [Act § 13514(c)]. Specifically, the tax imposed on a life insurance company is the tax on the sum of life insurance company taxable income for the taxable year (but not less than zero) plus 1/8 of the balance of the existing policyholders surplus account as of December 31, 2017 [Act § 13514(c)]. Thus, life insurance company losses are not allowed to offset the amount of the policyholders surplus account balance subject to tax.

§ 1.71 MODIFICATION OF PRORATION RULES FOR PROPERTY AND CASUALTY INSURANCE COMPANIES

Under existing law, the taxable income of a property and casualty insurance company is determined as the sum of its gross income from underwriting income and investment income (as well as gains and other income items), reduced by allowable deductions [IRC § 832(a), (b)(1)]. A proration rule applies to property and casualty insurance companies.

In calculating the deductible amount of its reserve for losses incurred, a property and casualty insurance company must reduce the amount of losses incurred by 15 percent of (1) the insurer's tax-exempt interest, (2) the deductible portion of dividends received (with special rules for dividends from affiliates), and (3) the increase for the taxable year in the cash value of life insurance, endowment, or annuity contracts the company owns [IRC § 832(b)(5)] This proration rule reflects the fact that reserves are generally funded in part from tax-exempt interest, from deductible dividends, and from other untaxed amounts.

§ 1.72 REPEAL OF SPECIAL ESTIMATED TAX PAYMENTS

Existing law allows an insurance company required to discount its reserves an additional deduction that is not to exceed the excess of (1) the amount of the undiscounted unpaid losses over (2) the amount of the related discounted unpaid losses, to the extent the amount was not deducted in a preceding taxable year [IRC § 847(1)].

The provision requires a special loss discount account to be established and maintained, and that special estimated tax payments be made [IRC § 847(2), (3)]. Unused amounts of special estimated tax payments are treated as an IRC § 6655 estimated tax payment for the 16th year after the year for which the special estimated tax payment was made [IRC § 847(2)]. Special rules are used to calculate special estimated tax payments based on the tax benefit attributable to the deduction [IRC § 847(8)]. Detailed regulations that were authorized under IRC § 847 were never promulgated [Act § 13516(a)].

The provision repeals section 847. Thus, the election to apply section 847, the additional deduction, special loss discount account, special estimated tax payment, and refundable amount rules of present law are eliminated [Act § 13516(a)].

The entire balance of an existing account is included in income of the taxpayer for the first taxable year beginning after 2017, and the entire amount of existing special estimated tax payments are applied against the amount of additional tax attributable to this inclusion. Any special estimated tax payments in excess of this amount are treated as estimated tax payments under section 6655.

The amendments made by this section apply to taxable years beginning after December 31, 2017 [Act § 13516(b)].

§ 1.73 COMPUTATION OF LIFE INSURANCE TAX RESERVES

In determining life insurance company taxable income under existing law, a life insurance company includes in gross income any net decrease in reserves, and deducts a net increase in reserves [IRC § 807]. Methods for determining reserves for tax purposes generally are based on reserves prescribed by the National Association of Insurance Commissioners for purposes of financial reporting under State regulatory rules.

Income or loss resulting from a change in the method of computing reserves is taken into account ratably over a 10-year period [IRC § 807(f)(1)]. The rule for a change in basis in computing reserves applies only if there is a change in basis in computing the federally prescribed reserve (as distinguished from the net surrender value).

Although life insurance tax reserves require the use of a federally prescribed method, interest rate, and mortality or morbidity table, changes in other assumptions for computing statutory reserves (e.g., when premiums are collected and claims are paid) may cause increases or decreases in a company's life insurance reserves that must be spread over a 10-year period. changes in the net surrender value of a contract are not subject to the 10-year spread because, apart from its use as a minimum in determining the amount of life insurance tax reserves, the net surrender value is not a reserve but a current liability. If for any taxable year, the taxpayer is not a life insurance company, the balance of any adjustments to reserves is taken into account for the preceding taxable year [IRC § 807(f)(2)].

The new tax law provision provides that for purposes of determining the deduction for increases in certain reserves of a life insurance company, the amount of the life insurance reserves for any contract (other than certain variable contracts) is the greater of (1) the net surrender value of the contract (if any), or (2) 92.81 percent of the amount determined using the tax reserve method otherwise applicable to the contract as of the date the reserve is determined. In the case of a variable contract, the amount of life insurance reserves for the contract is the sum of (1) the greater of (a) the net surrender value of the contract, or (b) the separate- account reserve amount under section 817 for the contract, plus (2) 92.81 percent of the excess (if any) of the amount determined using the tax reserve method otherwise applicable to the contract as of the date the reserve is determined over the amount determined in (1). In no event shall the reserves exceed the amount which would be taken into account in determining statutory reserves. As under present law, no deduction for asset adequacy or deficiency reserves is allowed [Act § 13517(a)].

The amount of life insurance reserves may not exceed the annual statement reserves. A no-doublecounting rule provides that no amount or item is taken into account more than once in determining any reserve under subchapter L of the Code. For example, an amount taken into account in determining a loss reserve under section 807 may not be taken into account again in determining a loss reserve under section 832. Similarly, a loss reserve determined under the tax reserve method (whether the Commissioners Reserve Valuation Method, the Commissioner's Annuity Reserve Valuation Method, a principles -based reserve method, or another method developed in the future, that is prescribed for a type of contract by the National Association of Insurance Commissioners) may not again be taken into account in determining the portion of the reserve that is separately accounted for under section 817 or be included also in determining the net surrender value of a contract.

The provision provides reserve rules for supplemental benefits and retains present-law rules regarding certain contracts issued by foreign branches of domestic life insurance companies. The provision requires the Secretary to provide for reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening balance and closing balance or reserves and with respect to the method of computing reserves for purposes of determining income. For this purpose, the Secretary may require that a life insurance company (including an affiliated group filing a consolidated return that includes a life insurance company) is required to report each of the line item elements of each separate account by combining them with each such item from all other separate accounts and the general account, and to report the combined amounts on a line-by-line basis on the taxpayer's return. Similarly, the Secretary may in such guidance provide that reporting on a separate account by separate account basis is generally not permitted. Under existing regulatory authority, if the Secretary determines it is necessary in order to carry out and enforce this provision, the Secretary may require e-filing or comparable filing of the return on magnetic medial or other machine-readable form, and may require that the taxpayer provide its annual statement via a link, electronic copy, or other similar means.

§ 1.74 MODIFICATION OF RULES FOR LIFE INSURANCE PRORATION FOR PURPOSES OF DETERMINING THE DIVIDENDS RECEIVED DEDUCTION

Under present law, a life insurance company is subject to proration rules in calculating life insurance company taxable income. The proration rules reduce the company's deductions, including reserve deductions and dividends received deductions, if the life insurance company has tax-exempt income, deductible dividends received, or other similar untaxed income items, because deductible reserve increases can be viewed as being funded proportionately out of taxable and tax-exempt income. Under the proration rules, the net increase and net decrease in reserves are computed by reducing the ending balance of the reserve items by the policyholders' share of tax-exempt interest [IRC § 807(a)(2)(B), (b)(1)(B)].

Similarly, under the proration rules, a life insurance company is allowed a dividend received deduction for intercorporate dividends from non-affiliates only in proportion to the company's share of those dividends [IRC §§ 805(a)(4), 812] but not for the policyholders' share. The life insurance company proration rules provide that the company's share, for this purpose, means the percentage obtained by dividing the company's share of the net investment income for the taxable year by the net investment income for the taxable year [IRC § 812(a)]. The company's share of net investment income, for purposes of this calculation, is the net investment income for the taxable year, reduced by the sum of (a) the policy interest for the taxable year and (b) a portion of policyholder dividends [IRC § 812(b)(1)].

The new tax law modifies the life insurance company proration rule for reducing dividends received deductions and reserve deductions with respect to untaxed income. For purposes of the life insurance proration rule of section 805(a)(4), the company's share is 70 percent. The policyholder's share is 30 percent [Act § 13518(a)].

The amendments made by this section apply to taxable years beginning after December 31, 2017 [Act § 13518(c)].

§ 1 .75 CAPITALIZATION OF CERTAIN POLICY ACQUISITION EXPENSES

Existing law provides that, in the case of an insurance company, specified policy acquisition expenses for any taxable year are required to be capitalized, and generally are amortized over the 120-month period beginning with the first month in the second half of the taxable year [IRC § 848].

Specified policy acquisition expenses are determined as that portion of the insurance company's general deductions for the taxable year that does not exceed a specific percentage of the net premiums for the taxable year on each of three categories of insurance contracts. For annuity contracts, the percentage is 1.75; for group life insurance contracts, the percentage is 2.05; and for all other specified insurance contracts, the percentage is 7.7 [IRC § 848(c)].

The provision extends the amortization period for specified policy acquisition expenses from a 120-month period to the 180-month period beginning with the first month in the second half of the taxable year [Act § 13519(a)]. The provision provides that for annuity contracts, the percentage is 2.09 percent; for group life insurance contracts, the percentage is 2.45 percent; and for all other specified insurance contracts, the percentage is 9.20 percent.

§ 1.76 TAX REPORTING FOR LIFE SETTLEMENT TRANSACTIONS, CLARIFICATION OF TAX BASIS OF LIFE INSURANCE CONTRACTS, AND EXCEPTION TO TRANSFER FOR VALUABLE CONSIDERATION RULES

Under existing law, gross income generally does not include amounts received under a life insurance contract if they are received by reason of the death of the insured [IRC § 101(a)(1)]. This general rule is subject to several exceptions. Under one of the exceptions, if a life insurance contract, or any interest therein, is transferred for a valuable consideration, the exclusion from gross income provided by § 101(a)(1) cannot exceed an amount equal to the sum of the actual value of the consideration and the premiums and other amounts subsequently paid by the transferee [IRC § 101(a)(2)]. This exception, however, does not apply to a transfer (1) if the contract or interest in it has a basis for determining gain or loss in the hands of a transferee determined by reference its basis in the hands of the transferor; or (2) of a life insurance contract or any interest therein to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer [IRC § 101(a)(2)].

Under existing IRC § 1016(a), proper adjustments must be made to the basis of property for expenditures, receipts, losses, or other items, properly chargeable to capital account for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior taxable years. No such adjustment is made, however, for taxes or other carrying charges [see IRC § 266] or for circulation expenditures [see IRC § 173]. The provision does not clarify any treatment for the tax basis of life insurance contracts.

The provision imposes reporting requirements in the case of the purchase of an existing life insurance contract in a reportable policy sale and imposes reporting requirements on the payor in the case of the payment of reportable death benefits [Act § 13520(a)]. The provision sets forth rules for determining the basis of a life insurance or annuity contract [Act § 13521(a)]. Lastly, the provision modifies the transfer for valuable consideration rules in a transfer of an interest in a life insurance contract in a reportable policy sale [Act § 13522(a)].

§ 1 .77 LIMITATION ON DEDUCTION FOR FDIC PREMIUMS

Under existing law, the Federal Deposit Insurance Corporation ("FDIC") provides deposit insurance for banks and savings institutions. To maintain its status as an insured depository institution, a bank must pay semiannual assessments into the deposit insurance fund. Assessments for deposit insurance are treated as ordinary and necessary business expenses. These assessments, also known as premiums, are deductible once the all events test for the premium is satisfied [Technical Advice Memorandum 199924060, March 5, 1999, and Rev. Rul. 80-230, 1980-2 C.B. 169, 1980. 477 12 U.S.C. IRC § 1817(b)].

Under existing law, no Code provision addresses the deductibility of FDIC premiums.

No deduction is allowed for the applicable percentage of any FDIC premium paid or incurred by the taxpayer. For taxpayers with total consolidated assets of $50 billion or more, the applicable percentage is 100 percent. Otherwise, the applicable percentage is the ratio of the excess of total consolidated assets over $10 billion to $40 billion. For example, for a taxpayer with total consolidated assets of $20 billion, no deduction is allowed for 25 percent of FDIC premiums. The provision does not apply to taxpayers with total consolidated assets (as of the close of the taxable ear) that do not exceed $10 billion [Act § 13531(a)].

The amendments made by this section apply to taxable years beginning after December 31, 2017 [Act § 13531(b)].

§ 1.78 REPEAL OF ADVANCE REFUNDING BONDS

Under existing law, IRC § 103 generally provides that gross income does not include interest received on State or local bonds. State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental facilities or the debt is repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals) [IRC § 141].

Bonds issued to finance the activities of charitable organizations described in IRC § 501(c)(3) ("qualified 501(c)(3) bonds") are one type of private activity bond. The exclusion from income for interest on State and local bonds only applies if certain Code requirements are met. The exclusion for income for interest on State and local bonds applies to refunding bonds but there are limits on advance refunding bonds. A refunding bond is defined as any bond used to pay principal, interest, or redemption price on a prior bond issue (the refunded bond).

Different rules apply to current as opposed to advance refunding bonds. A current refunding occurs when the refunded bond is redeemed within 90 days of issuance of the refunding bonds. Conversely, a bond is classified as an advance refunding if it is issued more than 90 days before the redemption of the refunded bond [IRC § 149(d)(5)]. Proceeds of advance refunding bonds are generally invested in an escrow account and held until a future date when the refunded bond may be redeemed. Although there is no statutory limitation on the number of times that tax-exempt bonds may be currently refunded, the Code limits advance refundings.

Generally, governmental bonds and qualified 501(c)(3) bonds may be advance refunded one time [IRC § 149(d)(3). Bonds issued before 1986 and pursuant to certain transition rules contained in the Tax Reform Act of 1986 may be advance refunded more than one time in certain cases]. Private activity bonds, other than qualified 501(c)(3) bonds, may not be advance refunded at all [IRC § 149(d)(2)]. Furthermore, in the case of an advance refunding bond that results in interest savings (e.g., a high interest rate to low interest rate refunding), the refunded bond must be redeemed on the first call date 90 days after the issuance of the refunding bond that results in debt service savings [IRC § 149(d)(3)(A)(iii) and (B); Treas. Reg. § 1.149(d)-1(f)(3)].

The provision repeals the exclusion from gross income for interest on a bond issued to advance refund another bond [Act § 13532(a)].

The amendments made by this section apply to advance refunding bonds issued after December 31, 2017 [Act § 13532(c)].

§ 1.79 EXPANSION OF QUALIFYING BENEFICIARIES OF AN ELECTING SMALL BUSINESS TRUST

Under existing law, certain trusts and their beneficiaries may be treated as shareholders of S corporations under special statutory rules. In the case of an electing small business trust that is a shareholder [see IRC § 1361(c)(2)(A)(v)], each potential current beneficiary of the trust is treated as a shareholder. If, however, for any period there is no potential current beneficiary, then the trust is treated as the shareholder during that period [IRC § 1361(b)(2)(B)(v)].

The new tax provision allows a nonresident alien individual to be a potential current beneficiary of an ESBT, effective January 1, 2018 [Act § 13541(a) and (b)].

§ 1.80 CHARITABLE CONTRIBUTION DEDUCTION FOR ELECTING SMALL BUSINESS TRUSTS

Under existing law, an electing small business trust ("ESBT") may be a shareholder of an S corporation.
The portion of an ESBT that consists of the stock of an S corporation is treated as a separate trust and generally is taxed on its share of the S corporation's income at the highest rate of tax imposed on individual taxpayers. This income (whether or not distributed by the ESBT) is not taxed to the beneficiaries of the ESBT.

In addition to non-separately computed income or loss, an S corporation reports to its shareholders their pro rata share of certain separately stated items of income, loss, deduction, and credit. For this purpose, charitable contributions (as defined in section 170(c)) of an S corporation are separately stated and taken by the shareholder.

The treatment of a charitable contribution passed through by an S corporation depends on the shareholder. Because an ESBT is a trust, the deduction for charitable contributions applicable to trusts, rather than the deduction applicable to individuals, applies to the trust. Generally, a trust is allowed a charitable contribution deduction for amounts of gross income, without limitation, which pursuant to the terms of the governing instrument are paid for a charitable purpose. No carryover of excess contributions is allowed. An individual is allowed a charitable contribution deduction limited to certain percentages of adjusted gross income generally with a five-year carryforward of amounts in excess of this limitation.

The new tax provision provides that the charitable contribution deduction of an ESBT is not determined by the rules generally applicable to trusts but rather by the rules applicable to individuals. Thus, the percentage limitations and carryforward provisions applicable to individuals apply to charitable contributions made by the portion of an ESBT holding S corporation stock [Act § 13541(a)].

This provision applies to taxable years beginning after December 31, 2017 [Act § 13542(b)].

§ 1.81 MODIFICATION OF TREATMENT OF S CORPORATION CONVERSIONS TO C CORPORATIONS

Under existing law, a taxpayer filing its first return may adopt any permissible method of accounting in computing taxable income for such year. Except as otherwise provided, section 446(e) requires taxpayers to secure consent of the Secretary before changing a method of accounting. The regulations under this section provide rules for determining: (1) what a method of accounting is, (2) how an adoption of a method of accounting occurs, and (3) how a change in method of accounting is effectuated.

Section 481 prescribes the rules to be followed in computing taxable income in cases where the taxable income of the taxpayer is computed under a different method than the prior year (e.g., when changing from the cash method to an accrual method). In computing taxable income for the year of change, the taxpayer must take into account those adjustments which are determined to be necessary solely by reason of such change in order to prevent items of income or expense from being duplicated or omitted. The year of change is the taxable year for which the taxable income of the taxpayer is computed under a different method than the prior year. Congress has provided the Secretary with the authority to prescribe the timing and manner in which such adjustments are taken into account in computing taxable income. Net adjustments that decrease taxable income generally are taken into account entirely in the year of change, and net adjustments that increase taxable income generally are taken into account ratably during the four-taxable-year period beginning with the year of change.

Under present law, in the case of an S corporation that converts to a C corporation, distributions of cash by the C corporation to its shareholders during the post-termination transition period (to the extent of the amount in the accumulated adjustment account) are tax-free to the shareholders and reduce the adjusted basis of the stock. The post-termination transition period is generally the one-year period after the S corporation election terminates.

Under the new provision, any IRC Section 481(a) adjustment of an eligible terminated S corporation attributable to the revocation of its S corporation election (i.e., a change from the cash method to an accrual method) is taken into account ratably during the six-taxable-year period beginning with the year of change. An eligible terminated S corporation is any C corporation which: (1) is an S corporation the day before the enactment of this bill, (2) during the two-year period beginning on the date of such enactment revokes its S corporation election under section 1362(a), and (3) all of the owners of which on the date the S corporation election is revoked are the same owners (and in identical proportions) as the owners on the date of such enactment [Act § 13543(a)].

Under the new provision, in the case of a distribution of money by an eligible terminated S corporation, the accumulated adjustments account shall be allocated to such distribution, and the distribution shall be chargeable to accumulated earnings and profits, in the same ratio as the amount of the accumulated adjustments account bears to the amount the accumulated earnings and profits [Act § 13543(b)].

§ 1.82 MODIFICATION OF LIMITATION ON EXCESSIVE EMPLOYEE REMUNERATION

Under existing law, an employer generally may deduct reasonable compensation for personal services as an ordinary and necessary business expense. IRC § 162(m) provides an explicit limitation on the deductibility of compensation expenses in the case of publicly held corporate employers. The otherwise allowable deduction for compensation paid or accrued with respect to a covered employee of a publicly held corporation is limited to no more than $1 million per year [IRC § 162(m)(1)]. The deduction limitation applies when the deduction would otherwise be taken.

Covered employees include: (1) the chief executive officer of the corporation (or an individual acting in such capacity) as of the close of the taxable year, and (2) the four most highly compensated officers for the taxable year (other than the chief executive officer) [IRC § 162(m)(3); see Notice 2007-49, 2007-25 I.R.B. 1429 (guidance in determining which employees are covered under IRC § 162(m)].

Unless specifically excluded, the deduction limitation applies to all remuneration for services, including cash and the cash value of all remuneration (including benefits) paid in a medium other than cash. If an individual is a covered employee for a taxable year, the deduction limitation applies to all compensation not explicitly excluded from the deduction limitation, regardless of whether the compensation is for services as a covered employee and regardless of when the compensation was earned [IRC § 162(m)(4)(A)]. The $1 million cap is reduced by excess parachute payments (as defined in IRC § 280G) that are not deductible by the corporation [IRC § 162(m)(4)(F)].

Certain types of compensation are not subject to the deduction limit and are not taken into account in determining whether other compensation exceeds $1 million. The following types of compensation are not taken into account: (1) remuneration payable on a commission basis; (2) remuneration payable solely on account of the attainment of one or more performance goals if certain outside director and shareholder approval requirements are met ("performance-based compensation"); (3) payments to a tax-favored retirement plan (including salary reduction contributions); (4) amounts that are excludable from the executive's gross income (such as employer-provided health benefits and miscellaneous fringe benefits); and (5) any remuneration payable under a written binding contract which was in effect on February 17, 1993 [IRC § 162(m)(4)]. In addition, remuneration does not include compensation for which a deduction is allowable after a covered employee ceases to be a covered employee [see IRC § 162(m)(1)]. Thus, the deduction limitation often does not apply to deferred compensation that is otherwise subject to the deduction limitation (e.g., is not performance-based compensation) because the payment of compensation is deferred until after termination of employment.

The new tax provision repeals the exceptions for "performance-based compensation" under I.R.C. Section 162(m). As a result, all compensation paid to a "covered employee" that exceeds $1 million is not deductible [Act § 13601(a)].

§ 1.83 EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION

The existing law imposes no special taxes or sets other statutory limitations on the compensation paid to executives of tax-exempt organizations. The limits on excessive compensation deductions by publicly held companies [IRC § 162(m)] and limits on golden parachute payments [IRC § 280G] generally do not affect tax- exempt organizations.

The new tax law makes several changes to provisions covering tax-exempt entities, including imposing an excise tax on executive compensation that exceeds $1 million [IRC § 4960 and Act § 13602(a)].

The amendments made by this section apply to taxable years beginning after December 31, 2017 [Act § 13602(c)].

§ 1.84 TREATMENT OF QUALIFIED EQUITY GRANTS

Under existing law, specific rules apply to property, including employer stock, transferred to an employee in connection with the performance of services. These rules govern the amount and timing of income inclusion by the employee and the amount and timing of the employer's compensation deduction.

Under these rules, an employee generally must recognize income in the taxable year in which the employee's right to the stock is transferable or is not subject to a substantial risk of forfeiture, whichever occurs earlier (referred to herein as "substantially vested"). Thus, if the employee's right to the stock is substantially vested when the stock is transferred to the employee, the employee recognizes income in the taxable year of such transfer, in an amount equal to the fair market value of the stock as of the date of transfer (less any amount paid for the stock). If at the time the stock is transferred to the employee, the employee's right to the stock is not substantially vested (referred to herein as "nonvested"), the employee does not recognize income attributable to the stock transfer until the taxable year in which the employee's right becomes substantially vested. In this case, the amount includible in the employee's income is the fair market value of the stock as of the date that the employee's right to the stock is substantially vested (less any amount paid for the stock. However, if the employee's right to the stock is nonvested at the time the stock is transferred to employee, under section 83(b), the employee may elect within 30 days of transfer to recognize income in the taxable year of transfer, referred to as a "section 83(b)" election. If a proper and timely election under section 83(b) is made, the amount of compensatory income is capped at the amount equal to the fair market value of the stock as of the date of transfer (less any amount paid for the stock). A section 83(b) election is available with respect to grants of "restricted stock" (nonvested stock), and does not generally apply to the grant of options.

The new tax provision allows a qualified employee to elect to defer, for income tax purposes, the inclusion in income of the amount of income attributable to qualified stock transferred to the employee by the employer. An election to defer income inclusion ("inclusion deferral election") with respect to qualified stock must be made no later than 30 days after the first time the employee's right to the stock is substantially vested or is transferable, whichever occurs earlier.

§ 1.85 INCREASE IN EXCISE TAX RATE FOR STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS

Existing law imposes an excise tax of 15 percent on the stock compensation of certain insiders in expatriated corporations [IRC § 4985(a)(1); see IRC § 1(h)(1)(C)].

The new tax provision increases the 15 percent rate of excise tax, imposed on the value of stock compensation held by insiders of an expatriated corporation, to 20 percent. The provision applies to corporations first becoming expatriated corporations after the date of enactment [IRC § 1(h)(1)(D)].

§ 1.86 REPEAL OF SPECIAL RULE PERMITTING RECHARACTERIZATION OF IRA CONTRIBUTIONS

Under existing law, an individual who makes a contribution to an IRA (traditional or Roth) for a taxable year is permitted 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)]. 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. The amount transferred in a recharacterization must be accompanied by any net 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.

When doing a Roth conversion of an amount for a year, however, 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 new tax provision, 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. Thus, recharacterization cannot be used to unwind a Roth conversion. Recharacterization is still permitted, however, with respect to other contributions. For example, an individual may make a contribution for a year to a Roth IRA and, before the due date for the individual's income tax return for that year, recharacterize it as a contribution to a traditional IRA [Act § 13611(a)].

The amendments for this section apply to taxable years beginning after December 31, 2017.

§ 1.87 MODIFICATION OF RULES APPLICABLE TO LENGTH OF SERVICE AWARD PROGRAMS FOR BONA FIDE PUBLIC SAFETY VOLUNTEERS

Existing law provides that, under deferred compensation plan rules, certain plans are not treated as providing for the deferral of compensation, including any plan paying solely length of service awards to bona fide volunteers (or their beneficiaries) on account of qualified services they perform [IRC § 457(e)(11)(A)(ii)]. A plan qualifies under this provision only if the aggregate amount of length of service awards accruing with respect to any year of service for any volunteer does not exceed $3,000 [IRC § 457(e)(11)(B)(ii)].

The new tax law increases the aggregate amount of length of service awards that may accrue for a bona fide volunteer with respect to any year of service to $6,000 and adjusts that amount in $500 increments to reflect changes in cost-of-living for years after the first year the provision is effective. In addition, under the provision, 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 to be 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 [Act § 13612(a)].

The amendments made by this section apply to taxable years beginning after December 31, 2017.

§ 1.88 EXTENDED ROLLOVER PERIOD FOR THE ROLLOVER OF PLAN LOAN OFFSET AMOUNTS IN CERTAIN CASES

Under existing law, a distribution from a tax-favored employer-sponsored retirement plan (that is, a qualified retirement plan, section 403(b) plan, or a governmental section 457(b) plan) is generally includible in gross income, except in the case of a qualified distribution from a designated Roth account or to the extent the distribution is a recovery of basis under the plan or the distribution is contributed to another such plan or an IRA (referred to as eligible retirement plans) in a tax-free rollover [IRC §§ 402(a), (c), 402A(d), 403(a),(b), 457(a), (e)(16)]. In the case of a distribution from a retirement plan to an employee under age 59½, the distribution (other than a distribution from a governmental section 457(b) plan) is also subject to a 10-percent early distribution tax unless an exception applies [IRC § 72(t)].

A distribution from a tax-favored employer-sponsored retirement plan that is an eligible rollover distribution may be rolled over to an eligible retirement plan. The rollover generally can be achieved by direct rollover (direct payment from the distributing plan to the recipient plan) or by contributing the distribution to the eligible retirement plan within 60 days of receiving the distribution ("60-day rollover") [IRC § 402(c)(3)].

Employer-sponsored retirement plans are required to offer an employee a direct rollover with respect to any eligible rollover distribution before paying the amount to the employee. If an eligible rollover distribution is not directly rolled over to an eligible retirement plan, the taxable portion of the distribution generally is subject to mandatory 20-percent income tax withholding [Treas. Reg. § 1.402(c)-2, Q&A-1(b)(3)]. Employees who do not elect a direct rollover but who roll over eligible distributions within 60 days of receipt also defer tax on the rollover amounts [IRC § 402(c)(3)].

Under the new tax provision, 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, that is, the taxable year in which the amount is treated as distributed from the plan. Under the provision, 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 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. 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(a)].

The provision applies to plan loan offset amounts treated as distributed in taxable years beginning after December 31, 2017 [Act § 13613(c)].

§ 1.89 EXCISE TAX BASED ON INVESTMENT INCOME OF PRI VATE COLLEGES AND UNIVERSITIES

Under existing law, tax-exempt private foundations are subject to an excise of 2 percent of their net investment income for the taxable year (one percent in some cases) [IRC § 4940]. Private colleges and universities generally are treated as public charities rather than private foundations and thus are not subject to the private foundation excise tax on net investment income. (new IRC § 4968 imposes excise tax).

The new provision imposes an excise tax on an applicable educational institution for each taxable year equal to 1.4 percent of the net investment income of the institution for the taxable year. Net investment income is determined using rules similar to the rules of section 4940(c) (relating to the net investment income of a private foundation) [Act § 13701(a)].

The amendments made by this section apply to taxable years beginning after December 31, 2017 [Act § 13701(c)].

§ 1.90 UNRELATED BUSINESS TAXABLE INCOME SEPARATE LY COMPUTED FOR EACH TRADE OR BUSINESS ACTIVITY

Under existing tax law, most exempt organizations are subject to the tax on unrelated business income [IRC § 511]. Unrelated business taxable income is defined in IRC § 512, with various items included and excluded [IRC § 512]. For an organization with more than one trade or business, there is no requirement that the unrelated business taxable income be separately computed for each trade or business.

The new tax law makes several changes to provisions covering tax-exempt entities, including requiring that business taxable income to be computed separately for each line of business with any loss allocable only to the line from which it arose [Act § 13702(a)].

The new tax law provision is effective for taxable years beginning after December 31, 2017. Under a special transition rule, net operating losses arising in a taxable year beginning before January 1, 2018, that are carried forward to a taxable year beginning on or after that date are not subject to the rule of the provision.

§1.91 MODIFICATIONS TO THE DEDUCTION FOR CHARITABLE CONTRIBUTIONS

Under existing 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).]. In general, more favorable (higher) percentage limits apply to contributions of cash and ordinary income property than to contributions of capital gain property [see IRC § 170(b)(1)(A), (C)].

More favorable limits also generally apply to contributions to public charities (and certain operating foundations) than to contributions to non-operating private foundations. More specifically, the deduction for charitable contributions by an individual taxpayer of cash and property that is not appreciated to a charitable organization described in IRC § 170(b)(1)(A) (public charities, private foundations other than non- operating private foundations, and certain governmental units) may not exceed 50 percent of the taxpayer's contribution base [IRC § 170(b)(1)(A)]. 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)(B)].

Pursuant to existing 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 [IRC § 170(f)(8)].

In addition, any charity receiving a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the harity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution [IRC § 6115].

IRC § 170(f)(8)(D) provides an exception to the contemporaneous written acknowledgment requirement described above. Under the exception, a contemporaneous written acknowledgment is not required if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, that includes the same content. In its notice of proposed rulemaking related to the provision, the IRS stated that the IRC § 170(f)(8)(D) exception was not available unless and until the Treasury Department and the IRS issued final regulations prescribing the method by which donee reporting could be accomplished [See IRS, Notice of Proposed Rulemaking, Substantiation Requirement for Certain Contributions, REG- 138344-13 (October 13, 2015), I.R.B. 2015-41 (preamble)]. Proposed regulations were issued in October 2015, but were withdrawn in January 2016. No final regulations have been issued.

Existing law provides that, if amounts are donated to a college or university and the taxpayer receives (directly or indirectly) the right to purchase tickets for a college athletic event, then only 80 percent of the amount paid is deductible as a charitable contribution [IRC § 170(l)].

The new tax law makes several changes to provisions covering tax-exempt entities. The new tax provisions modify the present-law charitable contribution rules: (1) the increase in the percentage limit for charitable contributions of cash to public charities [Act § 11023(a)]; (2) the denial of a charitable deduction for payments made in exchange for college athletic event seating rights [Act § 13704(a); and (3) the repeal of the substantiation exception for certain contributions reported by the donee organization [Act § 13705(a)].

The provisions that increase the charitable contribution percentage limit and deny a deduction for stadium seating payments are effective for contributions made in taxable years beginning after December 31, 2017 [Act §§ 11023(b), 13704(b)]. The provision that repeals the substantiation exception for certain contributions reported by the donee organization is effective for contributions made in taxable years beginning after December 31, 2016 [Act § 13705(b)].

§ 1.92 PRODUCTION PERIOD FOR BEER, WINE, AND DISTILLED SPIRITS

Existing law provides that, under the uniform capitalization rules, certain costs must either be added to the cost of inventory or capitalized [IRC § 263A(a)]. Special rules apply to allocate interest to property produced by the taxpayer. Interest costs must be capitalized under IRC § 263A only if (1) they are paid or incurred during the production period; (2) they are allocable to property produced by the taxpayer that has (a) a long useful life, (b) an estimated production period exceeding 2 years; or (c) an estimated production period exceeding 1 year and a cost exceeding $1 million [IRC § 263A(f)(1)].

Regulations state that interest must be capitalized under Treas. Reg. § 1.263A-9 for computation periods that include the production period of a unit of designated property. The regulations give further guidance regarding the beginning and end of the production period [Treas. Reg. 1.263A-12(a)]. No authority currently provides guidance regarding the production period for beer, wine, or distilled spirits.

The new tax provision excludes the aging periods for beer, wine, and distilled spirits from the production period for purposes of the UNICAP interest capitalization rules. Thus, under the new provision, producers of beer, wine and distilled spirits are able to deduct interest expenses (subject to any other applicable limitation) attributable to a shorter production period [Act § 13801(a)].

This section applies to interest costs paid or accrued in calendar years beginning after December 31, 2017.

§ 1.93 REDUCED RATE OF EXCISE TAX ON BEER

Under existing law, Federal excise taxes are imposed at different rates on distilled spirits, wine, and beer and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the TTB, except the taxes on imported bottled distilled spirits, wine, and beer are collected by the Customs and Border Protection Bureau (the "CBP") of the Department of Homeland Security (under delegation by the Secretary of the Treasury) [I.R.C. § 5051].

The new provision lowers the rate of tax on beer to $16 per barrel on the first six million barrels brewed by the brewer or imported by the importer. In general, in the case of a controlled group of brewers, the six million-barrel limitation is applied and apportioned at the level of the controlled group. Beer brewed or imported in excess of the six-million-barrel limit would continue to be taxed at $18 per barrel. In the case of small brewers, such brewers would be taxed at a rate of $3.50 per barrel on the first 60,000 barrels domestically produced, and $16 per barrel on any further barrels produced. The same rules applicable to controlled groups under present law apply with respect to this limitation [Act § 13802(a)].

For barrels of beer that have been brewed or produced outside of the United States and imported into the United States, the reduced tax rate may be assigned by the brewer to any importer of such barrels pursuant to requirements set forth by the Secretary of the Treasury in consultation with the Secretary of Health and Human Services and the Secretary of the Department of Homeland Security.

The amendments made to this section apply to beer removed after December 31, 2017 [Act § 13802(e)].

§ 1.94 TRANSFER OF BEER BETWEEN BONDED FACILITIES

Under present tax law, federal excise taxes are imposed at different rates on distilled spirits, wine, and beer and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the TTB, except the taxes on imported bottled distilled spirits, wine, and beer are collected by the Customs and Border Protection Bureau (the "CBP") of the Department of Homeland Security (under delegation by the Secretary of the Treasury). The rate of tax on beer is $18 per barrel (31 gallons) [I.R.C. § 5051].

Also under present law, liability for the excise tax on beer also come into existence when the alcohol is produced but is not payable until the beer is removed from the brewery for consumption or sale. Generally, beer may be transferred between commonly owned breweries without payment of tax; however, tax liability follows these products. Imported bulk beer may be released from customs custody without payment of tax and transferred in bond to a brewery. Beer may be exported without payment of tax and may be withdrawn without payment of tax or free of tax from the production facility for certain authorized uses, including industrial uses and non-beverage uses.

The new provision relaxes the shared ownership requirement of section 5414. Thus, under the provision, a brewer may transfer beer from one brewery to another without incurring tax, provided that: (i) the breweries are owned by the same person; (ii) one brewery owns a controlling interest in the other; (iii) the same person or persons have a controlling interest in both breweries; or (iv) the proprietors of the transferring and receiving premises are independent of each other, and the transferor has divested itself of all interest in the beer so transferred, and the transferee has accepted responsibility for payment of the tax [Act § 13803(a)].

For purposes of transferring the tax liability pursuant to (iv) above, the relief from liability shall be effective from the time of removal from the transferor's bonded premises, or from the time of divestment, whichever is later [Act § 13803(a)].

This new provision applies to any calendar quarters beginning after December 31, 2017 [Act § 13803(c)].

§ 1.95 REDUCED RATE OF EXCISE TAX ON CERTAIN WINE

Under present law, excise taxes are imposed at different rates on wine, depending on the wine's alcohol content and carbonation levels [IRC § 5041].

The new provision modifies the credit against the wine excise tax for small domestic producers, by removing the 250,000-wine gallon domestic production limitation (and thus making the credit available for all wine producers and importers). Additionally, under the provision, sparkling wine producers and importers are now eligible for the credit. With respect to wine produced in, or imported into, the United States during a calendar year, the credit amount is $1.00 per wine gallon for the first 30,000 wine gallons of wine, plus; (2) 90 cents per wine gallon on the next 100,000 wine gallons of wine, plus; (3) 53.5 cents per wine gallon on the next 620,000 wine gallons of wine [Act § 13804(a)].

The amendments made by this provision apply to wine removed after December 31, 2017 [Act § 13804(d)].

§ 1.96 ADJUSTMENT OF ALCOHOL CONTENT LEVEL FOR APPLICATION OF EXCISE TAX RATES

Under present law, excise taxes are imposed at different rates on wine, depending on the wine's alcohol content and carbonation levels [see IRC § 5041].

The new provision modifies alcohol-by-volume levels of the first two tiers of the excise tax on wine, by changing 14 percent to 16 percent. Thus, under the provision, a wine producer or importer may produce or import "still wine" that has an alcohol-by-volume level of up to 16 percent, and remain subject to the lowest rate of $1.07 per wine gallon [Act § 13805(a)].

The amendments made to this provision apply to win removed after December 31, 2017 [Act § 13805(b)].

§ 1.97 DEFINITION OF MEAD AND LOW ALCOHOL BY VOLUME WINE

Under present law, excise taxes are imposed at different rates on wine, depending on the wine's alcohol content and carbonation levels [see IRC § 5041].

The Senate amendment designates mead and certain sparkling wines to be taxed at the lowest rate applicable to "still wine," of $1.07 per wine gallon of wine [Act § 13806(a)(1)].

The amendments made by this section apply to wine removed after December 31, 2017 [Act § 13806(b)].

§ 1.98 REDUCED RATE OF EXCISE TAX ON CERTAIN DISTILLED SPIRITS

Under present law, an excise tax is imposed on all distilled spirits produced in, or imported into, the United States. The tax liability legally comes into existence the moment the alcohol is produced or imported but payment of the tax is not required until a subsequent withdrawal or removal from the distillery, or, in the case of an imported product, from customs custody or bond. Distilled spirits are taxed at a rate of $13.50 per proof gallon [see IRC §§ 5006, 5010, 5043, 5054].

The new provision institutes a tiered rate for distilled spirits. The rate of tax is lowered to $2.70 per proof gallon on the first 100,000 proof gallons of distilled spirits, $13.34 for all proof gallons in excess of that amount but below 22,130,000 proof gallons, and $13.50 for amounts thereafter. The provision contains rules so as to prevent members of the same controlled group from receiving the lower rate on more than 100,000 proof gallons of distilled spirits. Importers of distilled spirits are eligible for the lower rates [Act § 13807(a)].

The amendments in this provision apply to distilled spirits removed after December 31, 2017 [Act § 13807(d)].

§ 1.99 BULK DISTILLED SPIRITS

Under present law, an excise tax is imposed on all distilled spirits produced in, or imported into, the United States. The tax liability legally comes into existence the moment the alcohol is produced or imported but payment of the tax is not required until a subsequent withdrawal or removal from the distillery, or, in the case of an imported product, from customs custody or bond [see IRC §§ 5001, 5006, 5043, 5054].

The new provision allows distillers to transfer spirits in approved containers other than bulk containers in bond without payment of tax [Act § 13808(a)]

The amendments to this provision apply to distilled spirits transferred in bond after December 31, 2017 [Act § 13808(b)].

§ 1.100 MODIFICATION OF TAX TREATMENT OF ALASKA NATIVE CORPORATIONS AND SETTLEMENT TRUSTS

Under present law, the Alaska Native Claims Settlement Act ("ANCSA") [43 U.S.C. 1601 et. seq.] established Native Corporations [43 U.S.C. 1602(m)] to hold property for Alaska Natives. Alaska Natives are generally the only permitted common shareholders of those corporations, unless a Native Corporation specifically allows other shareholders under specified procedures.

ANCSA permits a Native Corporation to transfer money or other property to an Alaska Native Settlement Trust ("Settlement Trust") for the benefit of beneficiaries who constitute all or a class of the shareholders of the Native Corporation, to promote the health, education and welfare of beneficiaries and to preserve the heritage and culture of Alaska Natives.

Native Corporations and Settlement Trusts, as well as their shareholders and beneficiaries, are generally subject to tax under the same rules and in the same manner as other taxpayers that are corporations, trusts, shareholders, or beneficiaries.

Special tax rules enacted in 2001 allow an election to use a more favorable tax regime for transfers of property by a Native Corporation to a Settlement Trust and for income taxation of the Settlement Trust.

The new provision comprises three separate but related sections. The first section allows a Native Corporation to assign certain payments described in ANCSA to a Settlement Trust without having to recognize gross income from those payments, provided the assignment is in writing and the Native Corporation has not received the payment prior to assignment [Act § 13821(a)]. The second section allows a Native Corporation to elect annually to deduct contributions made to a Settlement Trust [Act § 13821(b)]. The third section of the provision requires any Native Corporation that has made an election to deduct contributions to a Settlement Trust as described above to furnish a statement to the Settlement Trust [Act § 13821(c); see also IRC §§ 6039H, 139G, 247].

The provision relating to the exclusion for ANCSA payments assigned to Settlement Trusts is effective to taxable years beginning after December 31, 2016 [Act § 13821(a)].

The provision relating to the deduction of contributions is effective for taxable years for which the Native Corporation's refund statute of limitations period has not expired, and the provision provides a one-year waiver of the refund statute of limitations period in the event that the limitation period expires before the end of the one-year period beginning on the date of enactment [Act § 13821(b)].

The provision relating to the reporting requirement applies to taxable years beginning after December 31, 2016 [Act § 13821(c)].

§ 1.101 AMOUNTS PAID FOR AIRCRAFT MANAGEMENT SERVICES

Existing tax law provides that, for domestic passenger transportation, IRC Section 4261 imposes an excise tax on amounts paid for taxable transportation. In general, for domestic flights, the tax consists of two parts: a 7.5 percent ad valorem tax applied to the amount paid and a flat dollar amount for each flight segment. The tax is paid by the person making the payment subject to tax and the tax is collected by the person receiving the payment. For commercial freight aviation, the ad valorem tax is 6.25 percent of the amount paid for transportation

In determining whether a flight constitutes taxable transportation and whether the amounts paid for such transportation are subject to tax, the IRS has looked at who has “possession, command, and control” of the aircraft based on the relevant facts and circumstances [see, e.g., Rev. Rul. 60-311, 1960-2 C.B. 341].

The new provision exempts certain payments related to the management of private aircraft from the excise taxes imposed on taxable transportation by air. Exempt payments are those amounts paid by an aircraft owner for management services related to maintenance and support of the owner’s aircraft or flights on the owner’s aircraft [Act § 13822(a)]. Payments for flight services are exempt only to the extent that they are attributable to flights on an aircraft owner’s own aircraft [Act § 13822(a)].

The provision provides a pro rata allocation rule in the event that a monthly payment made to a management company is allocated in part to exempt services and flights on the aircraft owner’s aircraft, and in part to flights on aircraft other than the aircraft owner’s [Act § 13822(a)].

The provision is effective for amounts paid after the date of enactment [Act § 13822(b)].

§ 1.102 OPPORTUNITY ZONES

The Code occasionally has provided several new incentives aimed at encouraging economic growth and investment in distressed communities by providing Federal tax benefits to businesses located within designated boundaries. One of these incentives is a federal income tax credit that is allowed in the aggregate amount of 39 percent of a taxpayer investment in a qualified community development entity (CDE) [IRC § 45D].

The new provision provides for the temporary deferral of inclusion in gross income for capital gains reinvested in a qualified opportunity fund and the permanent exclusion of capital gains from the sale or exchange of an investment in the qualified opportunity fund [Act § 13823(a)]. The provision allows for the designation of certain low-income community population census tracts as qualified opportunity zones, where low-income communities are defined in Section 45D(e). The designation of a population census tract as a qualified opportunity zone remains in effect for the period beginning on the date of the designation and ending at the close of the tenth calendar year beginning on or after the date of designation [Act § 13823(a)].

The provision provides two main tax incentives to encourage investment in qualified opportunity zones.
First, it allows for the temporary deferral of inclusion in gross income for capital gains that are reinvested in a qualified opportunity fund. The second main tax incentive in the bill excludes from gross income the postacquisition capital gains on investments in opportunity zone funds that are held for at least 10 years [Act§ 13823(a); see also new IRC §§ 1400Z-1, 1400Z-2].

The provision is effective on the date of enactment [Act § 13823(d)].

§ 1.103 DEDUCTION FOR FOREIGN SOURCE PORTION OF DIVIDENDS

The Act creates new IRC Section 245A, "Deduction for Foreign Source-Portion of Dividends Received by Domestic Corporations from Specified 10-Percent Owned Foreign Corporations." New IRC Section 245A establishes a participation exemption system for foreign income. IRC Section 245A would provide a 100- percent dividends received deduction (DRD) for the foreign source portion of dividends received from specified 10 percent owned foreign corporations by domestic corporations, who under IRC Section 951(b), are U.S. shareholders of those foreign corporations. A specified 10-percent owned foreign corporation does not include a passive foreign investment company. The 100% deduction applies to distributions made after December 31, 2017. The deduction does not apply to capital gains or directly-earned foreign income [Act §14101(a)].

Under the new rules, the Secretary of the Treasury may prescribe guidance to define the term "dividend received." The new rules intend the term "dividend received" to be broadly interpreted. The Senate Committee Report gives the example of a domestic corporation that indirectly owns stock of a foreign corporation through a partnership. The domestic corporation qualifies for the participation DRD with respect to dividends from the foreign corporation if the domestic corporation owned such stock directly. The domestic corporation would be allowed a participation DRD with respect to its distributive share of the partnership's dividend from the foreign corporation.

With respect to the foreign-source portion of a dividend, the DRD is available only for the foreign source portion of dividends received by a domestic corporation from specified 10-percent owned foreign corporations.

The provision also revises IRC Section 951(b). A domestic corporation is a United States shareholder of a foreign corporation if it owns, within the meaning of section 958(a), or is considered as owning by applying the rules of section 958(b), 10-percent or more of the vote or value of the foreign corporation [Act §14101(e).]

Note that there is no foreign tax credit or deduction allowed for any taxes paid or accrued with respect to any portion of a distribution treated as a dividend that qualifies for the DRD. Taxpayers should be aware that for computing the IRC Section 904(a) foreign tax credit limitation, a domestic corporation that is a U.S. shareholder of a specified 10-percent owned foreign corporation must compute its foreign-source taxable income (and entire taxable income) by disregarding the foreign-source portion of any dividend received from that foreign corporation for which the DRD is taken, and any deductions properly allocable or apportioned to that foreign-source portion or the stock with respect to which it is paid.

The provision applies to distributions made (and for purposes of determining a taxpayer's foreign tax credit limitation under IRC Section 904, deductions in taxable years beginning) after December 31, 2017 [Act § 14101(f); IRC §§ 254A, 904].

§1.104 SALES OR TRANSFERS OF SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS

Under current law, in cases where a U.S. corporation sells or exchanges stock in its foreign subsidiary, any gain may be characterized as a dividend to the extent of the earnings and profits of the foreign corporation not previously subject to U.S. taxation.

Under the Act, and in the case of the sale or exchange by a domestic corporation of stock in a foreign corporation held for one year or more, any amount received by the domestic corporation which is treated as a dividend for purposes of Internal Revenue Code Section 1248, is treated as a dividend for purposes of applying new IRC Section 245A [Act § 14102(a)(1); IRC § 1248(j)].

For purposes of calculating and determining a loss, a domestic corporate shareholder's adjusted basis in the stock of a specified 10-percent owned foreign corporation is reduced by an amount equal to the portion of any dividend received with respect to such stock from such foreign corporation that was not taxed by anallowable dividends received deduction [IRC § 245A and IRC § 961(d)].

The provisions relating to sales or exchanges of stock apply to sales or exchanges after December 31, 2017 [Act §14102(a)(2); IRC § 961(d)].

§1.105 REPEAL OF ACTIVE TRADE OR BUSINESS EXCEPTION UNDER IRC SECTION 367

Under current law, in general, an exchange where a U.S. person transfers property to a foreign corporation is not eligible for non-recognition treatment. However, under the active trade or business exception, certain property that a domestic corporation transfers to a foreign corporation will not be recognized if the foreign corporation uses the property in the active conduct of a trade or business outside of the U.S. [IRC § 367(a)].

The Act amends IRC Section 367 to provide that in connection with any exchange described in IRC Sections 332, 351, 354, 356, or 361, if a U.S. person transfers property used in the active conduct of a trade or business to a foreign corporation, the foreign corporation will not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

The repeal of the active trade or business exception under IRC Section 367(a) will generally have an impact on certain outbound transactions. For example, in a transaction where the taxpayer is incorporating a branch or transferring assets to a foreign corporation utilizing a nonrecognition provision of the IRC. The active trade or business exception of IRC Section 367(a) will no longer be available to the taxpayer. Therefore, gain, but not loss, would be required to be recognized under the example where a U.S. taxpayer transfers appreciated assets to a foreign corporation despite being used in an active trade or business [Act § 14102(e)(1)].

The provisions relating to transfer of loss amounts from foreign branches to certain foreign corporations and to the repeal of the active trade or business exception are effective for transfers after December 31, 2017 [Act § 14102(e)(3)].

§1.106 TREATMENT OF DEFERRED FOREIGN INCOME (TRANSITION EXEMPTION SYSTEM)

There is currently no repatriation toll tax. The U.S. operates under a "worldwide" taxation system, using the foreign tax credits regime to mitigate the effects of double taxation [IRC § 61(a)]. The current "worldwide" regime taxes U.S. persons on their worldwide income, regardless of whether the income is derived in the U.S. or in a non-U.S. jurisdiction. There is limited deferral of taxation of income earned by foreign subsidiaries of U.S. companies and source-based taxation of the U.S.-source income of nonresident aliens and foreign entities.

How the taxpayer applies to Internal Revenue Code depends on whether there exists and outbound or inbound investment creating the revenue. An outbound investment refers to the foreign activities of U.S. persons. An inbound investment is an investment by foreign persons in U.S. assets or activities. There are certain commonalities, between the rules relating to inbound and outbound activities.

The Act amends IRC Section 965, and applies to all controlled foreign corporations, as well as to all foreign corporations (except passive foreign investment companies) where a U.S. person owns a 10-percent voting interest. In a transaction where there is a foreign corporation that is not a CFC, there must be at least one U.S. shareholder that is a domestic corporation in order for the foreign corporation to be a specified foreign corporation [Act § 14103(a)].

The Act offers alternative dates to determine the income amount that is subject to the subpart F inclusion [Act § 14102(a)(1)]. Qualifying entities determine their deferred foreign income based on the greater of the aggregate post-1986 accumulated foreign earnings and profits as of November 2, 2017 or December 31, 2017, not reduced by distributions during the taxable year ending with or including the measurement date, unless such distributions were made to another specified foreign corporation [Act § 14103(a)(1)]. The Act creates a onetime transition tax on post-1986 earnings of 10% owned foreign subsidiaries. The earnings must have been accumulated in periods of 10% U.S. corporate shareholder ownership. There is a 15.5% rate on liquid assets like cash and cash equivalents, and an 8% rate for other profits, payable over eight years. Therefore, a U.S. multinational corporation with 10 percent owned foreign subsidiaries must now include its subsidiaries' post-86 new E&P into income. That portion of the E&P that consist of liquid assets is taxed at 15.5%, while the portion that is illiquid, is taxed at 8% [IRC § 965(c)]. The Act provides a taxpayer with the ability to make the payments in eight installments.

The provision applies to taxable years beginning after December 31, 2017 [Act § 14103, amending IRC § 965].

§1.107 GLOBAL INTANGIBLE LOW-TAXED INCOME IN GROSS INCOME OF U.S. SHAREHOLDERS

Under current law, a U.S. person is generally not subject to U.S. federal income tax on foreign income earned by a foreign corporation in which it owns shares until the point where that income is redistributed to the U.S. person in the form of a dividend.

Under the new rules, which effectively create another Subpart F income category, a U.S. shareholder of any CFC must include in gross income for a taxable year its global intangible low-taxed income ("GILTI") in a manner generally similar to inclusions of subpart F income. The term GILTI means, with respect to any U.S. shareholder, the excess (if any) of such shareholder's net CFC tested income for such taxable year, over such shareholder's net deemed tangible return for such taxable year (IRC § 951A(b)(1). This is a mandatory annual inclusion in which the GILTI is determined on an aggregate basis for all controlled foreign corporations that are owned by the same U.S. shareholder [IRC § 951A(a)].

Note that GILT does not include the following:

- Effectively connected income;
- Subpart F income;
- Foreign oil and gas income; or
- Certain related party payments

The new rules allow foreign tax credits for foreign income taxes paid on GILTI. There is a limit to the foreign tax credit to 80% of the foreign income taxes paid; there is no carry back or carry forward to other years [IRC § 951A].

The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end [Act § 14201(d)].

§1.108 DEDUCTION FOR FOREIGN DERIVED INTANGIBLE INCOME (FDII)

Under the current rules, the U.S. employs a worldwide tax system taxing U.S. persons on all income, regardless of where derived (in the U.S. of in a non-U.S. jurisdiction). In general, any foreign income earned by U.S. corporate shareholders through foreign corporations is subject to tax only upon distribution of the income as a dividend to the U.S. corporate shareholder.

Under new IRC Section 951A, a domestic corporation's FDII is the portion of its intangible income, determined by formula and derived from serving foreign markets.

The provision provides domestic corporations with reduced rates of U.S. tax on their FDII income. The FDII of any domestic corporation is its deemed intangible income multiplied by the percentage of its deduction eligible income that is foreign-derived.

The calculation is as follows:

$$\text{FDII} = \text{Deemed Intangible Income} \times \frac{\text{Foreign Derived Deductible Eligible Income}}{\text{Deduction Eligible Income}}$$

Deduction eligible income is the excess of the gross income of the corporation over deductions properly allocable to such gross income. However, there are exceptions to deduction eligible income:

- The corporation's Subpart F income [IRC § 951];
- The GILTI of the corporation;
- Any financial services income of the corporation [IRC Section 904(d)(2)(D)];
- Any dividend received from a CFC with respect to which the corporation is a U.S. shareholder;
- Any domestic oil and gas extraction income of the corporation; and
- Any foreign branch income of the corporation – defined in IRC Section 904(d)(2)(J).

Note that under the new law, only C corporations that are not RICs or REITS can avail themselves of the deduction for FDII.

In the case of domestic corporations for taxable years beginning after December 31, 2017, and before January 1, 2026, the provision generally allows as a deduction an amount equal to the sum of 37.5 percent of its FDII plus 50 percent of its GILTI (if any). For taxable years beginning after December 31, 2025, the deduction for FDII is reduced to 21.875 percent and the deduction for GILTI is lowered to 37.5 percent [Act § 14202(c)].

§1.109 DEDUCTION FOR GLOBAL INTANGIBLE LOW-TAXED INCOME (GILTI)

Under the current rules, the U.S. employs a worldwide tax system taxing U.S. persons on all income, regardless of where derived (in the U.S. of in a non-U.S. jurisdiction). In general, any foreign income earned by U.S. corporate shareholders through foreign corporations is subject to tax only upon distribution of the income as a dividend to the U.S. corporate shareholder.

The new law states that the only C corporations that are not RICs or REITS can avail themselves of the deduction for GILTI. The deduction for GILTI applies to the amount treated as a dividend received by a domestic corporation under IRC Section 78 that is attributable to the corporation's GILTI amount under new section 951A.

For domestic corporations in taxable years beginning after December 31, 2025, the effective tax rate on GILTI is 13.125 percent. The minimum foreign tax rate, with respect to GILTI, at which no U.S. residual tax is owed is 16.406 percent.

The provision is effective for taxable years after December 31, 2017 [Act § 14202(c)].

§1.110 REPEAL OF IRC SECTION 902 (INDIRECT FOREIGN TAX CREDIT)

Under current law, there are two types of foreign tax credits available to U.S. taxpayers. The first type is for directly paid foreign taxes [IRC §§901 and 903]. The second are indirect foreign tax credits generally based on foreign income taxes paid by foreign subsidiaries [IRC §§902 and 960].

The Act repeals IRC Section 902 under the rationale that new rules allow a 100% deduction for the foreign source portion of dividends received by a domestic corporation from qualifying foreign subsidiaries [Act § 14301(a)]. The new law repeals the deemed-paid credit with respect to dividends received by a domestic corporation that owns 10 percent or more of the voting stock of a foreign corporation. Instead, the new rules provide a deemed-paid credit for any income inclusion under subpart F to the extent properly attributable to the subpart F inclusion.

The new law also amends IRC Section 1293(f) to provide IRC Section 960(a) credits to an inclusion of income of a qualified electing fund (as defined in IRC Section 1295) consistent with present law [Act § 14301(b)]

The provision applies to taxable years taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end [Act § 14301(d)].

§1.111 SEPARATE FTC LIMITATION BASKET CREATED FOR FOREIGN BRANCH INCOME

Under current law, the foreign tax credit amount is subject to a limitation based on the taxpayer's foreign source income. The foreign tax credit limitation is calculated separately for the different categories of income, also called "baskets of income." Currently, there is a passive category income and a general category income [IRC § 904(d)].

The provision created a separate foreign tax credit limitation basket for foreign branch income. Foreign branch income is defined as the business profits of a United States person that are attributable to one or more QBUs in one or more foreign countries. The Secretary will establish rules to determine the business profits of a QBU under this new provision. Business profits of a QBU will not include any passive category income.

The provision is effective for taxable years beginning after December 31, 2017 [Act § 14302(c)].

§1.112 SOURCE OF INCOME FROM SALES OF INVENTORY

Under current law, up to 50 percent of the income from the sale of inventory property that is produced within the U.S. and sold outside the U.S. may be treated as foreign-source income. Conversely, 50 percent of the income from the sale of inventory property that is produced outside of the U.S. and sold inside the U.S. may be treated as foreign source income [IRC § 863].

Under the Act, gains, profits, and income from the sale or exchange of inventory property will be allocated and apportioned between sources within and without the U.S. solely on the basis of the production activities with respect to the property [Act § 14303(a)].

The provision is effective in taxable years beginning after December 31, 2017 [Act § 14303(b)].

§1.113 ELECTION TO INCREASE PERCENTAGE OF DOMESTIC TAXABLE INCOME

Under current law, any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, treats that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year, which is equal to the lesser of the amount of such loss or 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year shall be treated as income from sources without the United States (and not as income from sources within the United States) [IRC § 904(g)].

The Act amends IRC Section 904(g) by adding a provision regarding the election to increase the percentage (but not greater than 100 percent) of domestic taxable income offset by any pre-2018 unused overall domestic loss and recharacterized as foreign source. [Act § 14304(a)].

Pre-2018 unused overall domestic loss means any overall domestic loss which arises in a qualified taxable year beginning before January 1, 2018, and has not been used under the general rule of IRC Section 904(g) (1). A qualified taxable year means any taxable year of the taxpayer beginning after December 31, 2017, and before January 1, 2028.

The provision applies to taxable years beginning after December 31, 2017 [Act § 14304(b)].

§1.114 REPEAL OF FOREIGN BASE COMPANY OIL-RELATED INCOME RULE (IRC SECTION 954(A))

Under current law, the foreign base company oil related income of a controlled foreign corporation generally consists of the items of foreign oil related income ("FORI") [IRC §§ 907(c)(2) and (3)], other than income derived from a source within a foreign country in connection with oil or gas that was extracted from an oil or gas well located in that foreign county or oil, gas, or a primary product of oil or gas which is sold by the controlled foreign corporation or a related person for use or consumption within that country or is loaded in that country on a vessel or aircraft as fuel for the vessel or aircraft.

The provision eliminates foreign base company oil related income as a category of foreign base company income [Act § 14211(a)].

The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end [Act § 14211(c)].

§1.115 REPEAL OF IRC SECTION 955

Under the current law, there are the subpart F rules, whereby the United States generally taxes the 10- percent U.S. shareholders of a CFC on their pro rata shares of certain income of the CFC (referred to as "subpart F income"), without regard to whether the income is distributed to the shareholders [IRC §§ 951- 964]. In effect, the United States treats the 10-percent U.S. shareholders of a CFC as having received a current distribution of the corporation's subpart F income. With exceptions described below, subpart F income generally includes passive income and other income that is readily movable from one taxing jurisdiction to another. Subpart F income consists of foreign base company income, insurance income, and certain income relating to international boycotts and other violations of public policy.

Under current law, IRC Section 955 states the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is an amount equal to the decrease in the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation for such year. This rule, however, generally applies only to the extent that the amount of such decrease does not exceed an amount equal to—(A) the sum of the amounts excluded under IRC Section 954(b)(2) from the foreign base company income of such corporation for all prior taxable years beginning before 1987, reduced by (B) the sum of the amounts of previously excluded subpart F income withdrawn from investment in foreign base company shipping operations of such corporation determined under this subsection for all prior taxable years.

The Act repeals IRC Section 955. As a result, a U.S. shareholder in a CFC that invested its previously excluded subpart F income in qualified foreign base company shipping operations is no longer required to include in income a pro rata share of the previously excluded subpart F income when the CFC decreases such investments [Act § 14212(a)].

The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders within which or with which such taxable years of foreign corporations end [Act § 14212(c)].

§1.116 MODIFICATION OF CFC STATUS STOCK ATTRIBUTION RULES

The current rules subject the U.S. parent of a controlled foreign corporation to current U.S. taxation on its pro rate share of the CFC's subpart F income [IRC §§ 318 and 958]. A foreign subsidiary is categorized as a controlled foreign corporation if it is more than 50-percent owned by one or more U.S. persons each of whom owns at least 10% of the foreign subsidiary.

The provision amends the ownership attribution rules of IRC Section 958(b) so that certain stock of a foreign corporation owned by a foreign person is attributed to a related U.S. person for determining whether the related U.S. person is a U.S. shareholder of the foreign corporation and, therefore, whether the foreign corporation is a CFC [Act § 14213(a)].

The new provision, therefore, modifies the current law by providing for "downward attribution" from a foreign person to a related U.S. person. The pro rata share of a CFC's subpart F income that a U.S. shareholder is required to include in gross income, however, continues to be determined based on direct or indirect ownership of the CFC, without application of the new downward attribution rule.

The provision is effective for the last taxable year of foreign corporations beginning before January 1, 2018 and each subsequent year of such foreign corporations, and for the taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end [Act § 14213(b)].

§1.117 EXPANSION OF U.S. SHAREHOLDER DEFINITION

Under current law, a U.S. shareholder of a foreign corporation is a U.S. person who owns 10 percent or more of the total combined voting power of all classes of stock entitled to vote of foreign corporation [IRC § 951(b)].

The provision expands the definition of U.S. shareholder under subpart F to include any U.S. person who owns 10 percent or more of the total value of shares of all classes of stock of a foreign corporation.

The provision is effective for taxable years of foreign corporations beginning after December 31,2017, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end [Act § 14214(b)].

§1.118 ELIMINATION OF MINIMUM 30-DAY CFC HOLDING PERIOD

The current rules subject a U.S. parent of a CFC to U.S. federal income tax on its pro rata share of the CFC's subpart F income [IRC § 951(a)(1)]. This only applies in the scenario where the U.S. parent (shareholder) owns stock in the foreign subsidiary for an uninterrupted period of 30 days or more during the year.

The provision eliminates the requirement that a corporation must be controlled for an uninterrupted period of 30 days before subpart F inclusions apply [Act § 14215(a)].

The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end [Act § 14215(b)].

§1.119 LIMITATIONS ON INCOME SHIFTING THROUGH INTANGIBLE PROPERTY TRANSFERS

Under current law, shareholders recognize ordinary income on distributions of a corporation's E&P. Generally, the distributing corporation would recognize gain if there is a distribution of appreciated property. Intangible assets are defined in IRC Section 936.

Under the new law, a CFC, and its shareholders do not recognize gain on the distribution of intangible property to a United States shareholder that is a corporation if made by the CFC prior to the last day of the third tax year of the CFC beginning after December 31, 2017. This new law presents U.S. with repatriation opportunities (if made within the indicated window) [Act § 14221(a) and (b)].

The provision applies to transfers in taxable years beginning after December 31, 2017 [Act § 14221(c)].

§1.120 DENIAL OF DEDUCTIONS FOR CERTAIN HYBRID PAYMENTS

Under current law, there could be scenarios whereby there is a deduction in the U.S. for a related party payment, but no corresponding inclusion in a non-U.S. jurisdiction [IRC § 267A].

The Act denies a deduction for any disqualified related party amount paid or accrued pursuant to a hybrid transaction or by, or to, a hybrid entity. A disqualified related party amount is any interest or royalty paid or accrued to a related party to the extent that the following occurs:

- There is no corresponding inclusion to the related party under the tax law of the country of which such related party is a resident for tax purposes or is subject to tax, or
- Such related party is allowed a deduction with respect to such amount under the tax law of such country.

A disqualified related party amount does not include any payment to the extent such payment is included in the gross income of a U.S. shareholder [IRC § 951(a)]. A related party for these purposes is determined under the rules of IRC Section 954(d)(3), except that such section applies with respect to the payor as opposed to the CFC otherwise referred to in such section [Act § 14222(a) and (b)].

A hybrid transaction is any transaction, series of transactions, agreement, or instrument one or more payments with respect to which are treated as interest or royalties for Federal income tax purposes and which are not so treated for purposes of the tax law of the foreign country of which the recipient of such payment is resident for tax purposes or is subject to tax [Act § 14222(a) and (b)].

A hybrid entity is any entity which is either: (1) treated as fiscally transparent for Federal income tax purposes but not so treated for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax, or (2) treated as fiscally transparent for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax but not so treated for federal income tax purposes [Act § 14222(a) and (b)].

Note that Treasury has been given the authority to expand these rules to domestic entities. There could be future Treasury Regulations on the matter.

The provision would be effective for tax years beginning after December 31, 2017 [Act § 14222(c)].

§1.121 QDI TREATMENT DENIED FOR DIVIDENDS PAID BY SURROGATE FOREIGN CORPORATIONS

Dividends are the most common type of distribution from a corporation. Dividends are generally paid out of the earnings and profits of the corporation, and are classified as either Ordinary dividends are taxable as ordinary income. Under current law, qualified dividends that meet certain requirements are taxed at lower capital gain rates [IRC § 1(h)].

Any individual shareholder who receives a dividend from a corporation that is a surrogate foreign corporation under IRC Section 7874(a)(2)(B), other than a foreign corporation which is treated as a domestic corporation under section 7874(b), is not entitled to the lower rates on qualified dividends provided for in IRC section 1(h). The provision applies to dividends received from foreign corporations that first become surrogate foreign corporations after date of enactment [Act § 14223(a)].

The provision is effective for dividends paid in taxable years beginning after December 31, 2017 [Act § 14223(b)].

§1.122 CURRENT YEAR INCLUSION OF FOREIGN HIGH RETURN AMOUNTS OR GILTI

Under current law, a U.S. person is generally not subject to U.S. federal income tax on foreign income earned by a foreign corporation in which it owns shares until the point where that income is redistributed to the U.S. person in the form of a dividend.

Under the new rules, which effectively create another Subpart F income category, a U.S. shareholder of any CFC must include in gross income for a taxable year its global intangible low-taxed income ("GILTI") in a manner generally similar to inclusions of subpart F income. This is a mandatory annual inclusion in which the GILTI is determined on an aggregate basis for all controlled foreign corporations that are owned by the same U.S. shareholder. [Act §14201(a)].

Note that GILTI does not include the following:

- Effectively connected income;
- Subpart F income;
- Foreign oil and gas income; or
- Certain related party payments

The new rules allow foreign tax credits for foreign income taxes paid on GILTI. There is a limit to the foreign tax credit to 80% of the foreign income taxes paid; there is no carryback or carryforward to other years. [Act § 14201(b)]. See IRC Section 951A, as added by Act §14201(a).

The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end [Act §14201(d)].

§1.123 PREVENTION OF BASE EROSION

In general, under current law, base erosion payments are characterized as deductible cross-border payments made between the U.S. and related foreign parties. Under IRC Section 1441 and 1442, U.S. withholding tax applies to these payments, there may be a treaty in force to reduce or eliminate the withholding liability. The current rules do not have a provision whereby a minimum tax must be paid on cross-border payments to foreign affiliates.

The base erosion and anti-avoidance tax (BEAT) is a new tax targeting companies that potentially reduce their U.S. federal income tax liability by making cross-border payments to their affiliates, also referred to as “excessive earnings stripping.” Under the provision, an applicable taxpayer is required to pay a tax equal to the base erosion minimum tax amount for the taxable year [Act § 14401(a)].

The base erosion minimum tax amount is the excess of 10 percent of the modified taxable income of the taxpayer for the taxable year over an amount equal to the regular tax liability of the taxpayer for the taxable year reduced (but not below zero) by the excess (if any) of the credits allowed under Chapter 1 against such regular tax liability over the sum of: (1) the credit allowed under IRC Section 38 for the taxable year which is properly allocable to the research credit determined under section 41(a), plus (2) the portion of the applicable IRC Section 38 credits not in excess of 80 percent of the lesser of the amount of such credits or the base erosion minimum tax amount [Act § 14401(c)].

There is generally a 10% rate for tax years beginning before 2025. A 12.5% rate for all years thereafter. However, in the case of a bank as defined in IRC Section 581 or a registered securities dealer as defined in Section 15(a) of the Securities Exchange Act of 1934, the rates are 11 percent instead of 10 percent and 13.5 percent instead of 12.5 percent. See IRC Section 59A, as added by this Act.

The provision applies to base erosion payments paid or accrued in taxable years beginning after December 31, 2017 [Act § 14401(e)].

§1.124 RESTRICTION ON INSURANCE BUSINESS EXCEPTION TO THE PASSIVE FOREIGN INVESTMENT COMPANY RULES

Under current law, passive income does not include any income derived in the active conduct of an insurance business by a corporation that is predominantly engaged in an insurance business and that would be subject to tax under subchapter L if it were a domestic corporation [IRC § 1297(b)(2)(B)].

Under the new provision, passive income for purposes of the PFIC rules does not include income derived in the active conduct of an insurance business by a corporation (1) that would be subject to tax under subchapter L if it were a domestic corporation; and (2) the applicable insurance liabilities of which constitute more than 25 percent of its total assets as reported on the company's applicable financial statement for the last year ending with or within the taxable year [Act § 14501(a) and (b)].

The provision applies to taxable years beginning after December 31, 2017 [Act § 14501(c)].

§1.125 REPEAL OF FMV OF INTEREST EXPENSE APPORTIONMENT

Under current law, U.S. affiliated group members are allowed to allocate interest expense based on fair market value or adjusted tax basis of assets [IRC § 864(e)].

The provision prohibits members of a U.S. affiliated group from allocating interest expense on the basis of the fair market value of assets for purposes of section 864(e). Instead, the members must allocate interest expense based on the adjusted tax basis of assets [Act § 14502(a)].

The provision is effective for taxable years beginning after December 31, 2017 [Act § 14502(b)].

TABLES
IRC SECTIONS AMENDED – ACT SECTION CROSS REFERENCE TABLE

IRC Section	Act Section
1	11001(a)
1(f)	11002(b)
1(f)(2)(A)	11002(c)(1)
1(f)(3)	11002(a)
1(h)(11)(C)(iii)	14223(a)
1(i)	11002(c)(2)
2(a)(3)	11026(a)(1))
11(b)	13001(a)
11(d)	12001(b)(11)
12	12001(b)(12), 13001(b)(2)(B)
23(h)(2)	11002(d)(1)(A)
24	11022(a)
25A(h)(1)(A)	11002(d)(1)(B)
25B((b)(3)(B)	11002(d)(1)(C)
25D(b)(1)	11024(b)
26(b)(2)	14401(c)
32(b)(2)(B)(ii)(II)	11002(d)(1)(D)
32(j)(1)(B)	11002(d)(1)(D)
36B(f)(2)(B)(ii)(II)	11002(d)(1)(E)
38(b)	13403(b)
38(c)(4)(B)	13403(c)
38(c)(6)	12001(b)(1)
41(c)(5)(C)(ii)	11002(d)(2)
41(d)(1)(A)	13206(d)(1)
41(e)(5)(C)(i)	11002(d)(1)(F)
42(e)(3)(D)(ii)	11002(d)(1)(G)
42(h)(3)(H)(i)(II)	11002(d)(1)(G)
42(h)(6)(G)	11002(d)(3)
45C(a)	13401(a)

IRC Section	Act Section
45R(d)(3)(B)(ii)	11002(d)(1)(H)
47(a)	13402(a)
47(c)	13402(b)(1)
53	12002(a)
53(d)	12002(b)
53(d)(2)	12001(b)(2)
54	13404(a)
54(l)(3)(B)	13404(c)(2)
54A	13404(a)
54B	13404(a)
54C	13404(a)
54D	13404(a)
54E	13404(a)
54F	13404(a)
54AA	13404(a)
55	12001(b)(6)
55(a)	12001(a)
55(b)(1)	12001(b)(3)(A)
55(b)(3)	12001(b)(3)(B)
55(c)(1)	12001(b)(4)
55(d)	12001(b)(5), 12003(a)
55(d)(4)(A)(ii)	11002(d)(1)(I)
56	12001(b)(8)(A)
56(b)(1)(B)	11027(b)
56(b)(2)	12001(b)(7)
58(a)	12001(b)(9)
59	12001(b)(10)
59(a)	12001(b)(3)(C)
59(j)(2)(B)	11002(d)(4)
61(a)	11051(b)(1)(A)
62(a)	11011(b)(1), 11051(b)(2)(A)
62(d)(3)(B)	11002(d)(1)(J)
63(b)	11011(b)(2)
63(c)	11021(a)

IRC Section	Act Section
63(d)	11011(b)(3)
67	11045(a)
68	11046(a)
68(b)(2)(B)	11002(d)(2)
71	11051(b)(1)(B)
74(d)(2)(B)	13305(b)(1)
78	14301(c)(1)
83	13603(a)
83(c)(4)(B)	11002(d)(1)(K)
86(b)(2)(A)	13305(b)(1)
101(a)	13522(a), (b)
108(f)	11031(a)
112	11026(a)(2)
118	13312(a)
121(d)(3)	11051(b)(3)(A)
125(i)(2)(B)	11002(d)(1)(L)
132(f)	11047(a)
132(f)(6)(A)(ii)	11002(d)(5)
132(g)	11048(a)
135(b)(2)(B)(ii)	11002(d)(1)(M)
135(c)(4)(A)	13305(b)(1)
137(b)(3)(A)	13305(b)(1)
137(f)(2)	11002(d)(1)(N)
145(d)(4)	13402(b)(2)
146(d)(2)(B)	11002(d)(1)(O)
147(c)(2)(H)(ii)	11002(d)(1)(P)
148(f)(4)(C)	13532(b)(2)
149(d)	13532(b)(1)
149(d)(1)	13532(a)
151(d)	11041(a)
151(d)(4)(B)	11002(d)(1)(Q)
152(d)(5)	11051(b)(3)(B)
162	13307(a), 13531(a)
162(a)	13311(a)

IRC Section	Act Section
162(e)	13308(a)
162(f)	13306(a)(1)
162(m)	13601(a)(2), (c), (d)
162(m)(3)	13601(b)
162(m)(4)	13601(a)(1)
162(o)(3)	11002(d)(6)
163(h)(3)	11043(a)
163(j)	13301(a)
164(b)	11042(a)
165(d)	11050(a)
165(h)	11044(a)
168(b)(2)	13203(b)
168(b)(3)	13204(a)(2)
168(e)	13204(a)(1), (a)(4)(B)(i)
168(e)(3)(B)(vii)	13203(a)
168(g)	13204(a)(3)(A)
168(g)(1)	13205(a)
168(g)(3)(B)	13204(a)(3)(B)
168(i)(7)(B)	13504(b)(1)
168(k)	12001(b)(13)
168(k)	13201(a)(3)(B), (b)(2)(B), (d), (e)
168(k)(1)(A)	13201(a)(1)(A)
168(k)(2)	13201(b)(1)(A), (c), (g)
168(k)(2)(A)(i)	13204(a)(4)(A)
168(k)(2)(F)(iii)	13201(f)
168(k)(5)	13201(a)(3)(A)
168(k)(5)(A)	13201(b)(1)(B)
168(k)(5)(A)(i)	13201(a)(1)(B)
168(k)(6)	13201(a)(2)
170(b)(1)	11023(a)
170(b)(2)(D)	11011(d)(5), 13305(b)(2)
170(f)(8)	13705(a)
170(l)	13704(a)
172	13302(c)(2)(A), (d)(2)

IRC Section	Act Section
172(a)	13302(a)(1)
172(b)(1)	13302(b)(2), (c)(1), (d)(1)
172(b)(1)(A)	13302(b)(1)
172(b)(2)	13302(a)(2)
172(d)	11011(d)(1), 13305(b)(3), 14202(b)(1)
172(d)(6)	13302(a)(3)
174	13206(a)
179(b)(1)	13101(a)(1)
179(b)(2)	13101(a)(2)
179(b)(6)(A)	13101(a)(3)(A), (B)(i)
179(b)(6)(A)(ii)	11002(d)(1)(R)
179(b)(6)(B)	13101(a)(3)(B)(ii)
179(d)(1)	13101(c)
179(d)(1)(B)	13101(b)(1)
179(f)	13101(b)(2)
199	13305(a)
213(d)(10)(B)(ii)	11002(d)(7)
213(f)	11027(a)
215	11051(a)
217	11049(a)
219(b)(5)(C)(i)(II)	11002(d)(1)(S)
219(f)(1)	11051(b)(3)(C)
219(g)(3)(A)(ii)	13305(b)(1)
219(g)(8)(B)	11002(d)(1)(S)
220(f)(7)	11051(b)(3)(D)
220(g)(2)	11002(d)(1)(T)
221(b)(2)(C)	13305(b)(1)
221(f)(1)(B)	11002(d)(1)(U)
222(b)(2)(C)	13305(b)(1)
223(f)(7)	11051(b)(3)(E)
223(g)(1)(B)	11002(d)(1)(V)
243(a)(1)	13002(a)(1)
243(c)	13002(a)(3)
243(c)(1)	13002(a)(2)

IRC Section	Act Section
245(a)(4)	14301(c)(2)
245(a)(10)(C)	14301(c)(3)
245(c)(1)(B)	13002(b)
246(a)(1)	14101(c)(1)
246(b)(1)	11011(d)(2), 13305(b)(1), 14202(b)(2)
246(b)(3)	13002(c)
246(c)	14101(b)
246A(a)(1)	13002(d)
263A	13102(b)(1)
263A(b)(2)	13102(b)(2)
263A(d)(2)	13207(a)
263A(f)	13801(a)
263A(f)	13801(b)
274	13304(a)(2)(B), (c), (d)
274(a)	13304(a)(1)
274(d)	13304(a)(2)(A)
274(j)(3)(A)	13310(a)
274(n)	13304(a)(2)(C)
274(n)(1)	13304(a)(2)(D)
274(n)(2)	13304(a)(2)(E), (b)
280C(a)	13403(d)(1)
280C(b)	13401(b)
280C(c)	13206(d)(2)
280C(c)(3)(B)(ii)(II)	13001(b)(1)(A)
280F(a)(1)(A)	13202(a)(1)
280F(a)(1)(B)(ii)	13202(a)(2)(A)
280F(d)(4)	13202(b)(2)
280F(d)(4)(A)	13202(b)(1)
280F(d)(7)(A)	13202(a)(2)(B)(i)
280F(d)(7)(B)	11002(d)(8)
280F(d)(7)(B)(i)(II)	13202(a)(2)(B)(ii)
367(a)	14102(e)(1))
367(a)(4)	14102(e)(2)
367(d)(2)	14221(b)(1)

IRC Section	Act Section
381(c)	13301(b)(1)
381(d)	13511(b)(3)
382(d)	13301(b)(2)
382(k)(1)	13301(b)(3)
382(l)(3)(B)(iii)	11051(b)(3)(F)
402(c)(3)	13613(a), (b)
408(d)(6)	11051(b)(3)(G)
408A(d)(6)(B)	13611(a)
408A(c)(3)(D)(ii)	11002(d)(1)(W)
409A(d)	13603(c)(2)
422(b)	13603(c)(1)(A)
423	13603(c)(1)(B)(ii)
423(b)(5)	13603(c)(1)(B)(i)
430(c)(7)(D)(vii)(II)	11002(d)(1)(X)
447	13102(a)(5)(C)
447(c)	13102(a)(5)(A)
447(f)	13102(a)(5)(B)
448(b)(3)	13102(a)(2)
448(c)	13102(a)(1)
448(c)	13102(a)(3)
448(d)(7)	13102(a)(4)
451	13221(a), (b)
453(c)(3)	13001(b)(2)(C)
453B(e)	13512(b)(1)
457(e)(11)(B)	13612(b), (c)
457(e)(11)(B)(ii)	13612(a)
460(c)(6)(B)	13201(b)(2)(A)
460(e)	13102(d)
461	11012(a)
465(c)(7)(D)(v)(II)	13512(b)(2)
469(i)(3)(F)(iii)	13305(b)(1), (3)
471	13102(c)
481	13543(a)
482	14221(b)(2)

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