KATZ TAX
SEMINARS

Tax Cuts & Jobs Act

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TAX CUTS AND JOBS ACT

I. Individual Provisions

A. Ordinary Income Tax Rates

1. Under Pre-**Tax Cuts and Jobs Act** (the ***"Act"***) law individuals were subject to six tax brackets ranging from 10% to 39.6%, with each bracket breaking based upon the individual's filing status.

2. For tax years beginning after December 31, 2017 and before January 1, 2026, seven brackets will apply to individuals: 10%, 12%, 22%, 24%, 32%, 35% and 37%.

    a. No change has been made to the filing statuses that apply to individuals.

    b. The brackets will be indexed annually for inflation using C-CPI-U in tax years beginning after December 31, 2018.

    c. In 2017 all taxpayers (other than those filing Married Filing Separately) became subject to the 35% bracket at the same level of taxable income ($416,700). For tax years beginning after December 31, 2017 and before January 1, 2026, the 2nd highest bracket will now apply based upon filing status.

        i. Unmarried taxpayers will have the 35% bracket apply once taxable income exceeds $200,000.

        ii. Joint filers will have the 35% bracket apply once taxable income exceeds $400,000.

        iii. Separate filers will have the 35% bracket apply once taxable income exceeds $200,000.

    c. For unmarried taxpayers (both Single and Head of Household filing statuses), the top bracket applies to taxable income in excess of $500,000.

    d. Married taxpayers filing jointly will have the 37% rate apply once taxable income exceeds $600,000, with one-half that amount ($300,000) being the threshold for married taxpayers filing separate returns.

3. Beginning in 2018 (and continuing until 2026), Trusts and Estates will be subject to four tax brackets (10%, 24%, 35% and 37%) with the highest bracket applying to taxable income in excess of $12,500.

4. For tax years beginning after December 31, 2017 the taxable income of a child attributable to net unearned income (the ***"Kiddie Tax"***) will be taxed according to the brackets applicable to trusts and estates.

   a. No longer is the tax status of the child's parent(s) applicable in determining the tax on net unearned income of the child.

   b. The earned income of the child will continue to be taxed as regular ordinary income rates applicable to a single individual.

B. Capital Gains Tax Rates

1. Long-Term Capital Gains (and Qualified Dividends) have been subject to special maximum tax rates. The Act generally retains the maximum tax rate structure.

2. Prior to the Act, a 0% capital gain rate applied to capital gains where the taxpayer is paying in the 10% or 15% rate on ordinary income; a 15% capital gain rate applied to any taxpayer paying any other rate below 39.6%; and a 20% rate applied to the high-income taxpayers paying 39.6% on ordinary income.

3. For 2018 the 15% rate applies once the following income limits are met:

   a. Joint returns - $77,200

   b. Head of Household returns - $51,700

   c. Single returns - $38,600

   d. Married Separate returns - $38,600

   e. Trusts and Estates - $2,600

4. For 2018 the 20% rate will apply to long-term capital gains and qualified dividends above these income levels:

   a. Joint returns - $479,000

   b. Head of Household returns - $452,400

   c. Single returns - $425,800

d. Married Separate returns - $239,500

e. Trusts and Estates - $12,700

C. Standard Deduction and Personal/Dependency Exemptions

1. The Act increases the base standard deduction from the inflation adjusted levels that applied in 2017 to $24,000 for married taxpayers filing joint returns, $18,000 for taxpayers filing as Head of Household and $12,000 for all other taxpayers.

   a. The additional standard deduction available to taxpayers who are age 65 or older and/or blind remain unchanged. For 2018 the additional amount is $1,300 for married taxpayers and $1,600 for unmarried taxpayers.

   b. These amounts will be indexed for inflation beginning after 2018.

   c. The increased standard deduction applies for years beginning after December 31, 2017 and before January 1, 2026.

2. For tax years 2018 through 2025 the deduction for personal and dependency exemptions is effectively suspended by the Act reducing those amounts to zero.

D. Individual Alternative Minimum Tax

1. Despite a great amount of discussion leading up to the final bill, the Individual Alternative Minimum tax was not repealed. Instead, for tax years beginning after December 31, 2017 and before January 1, 2026, the AMT regime remains, albeit with distinct modifications.

2. Two significant changes were made to the AMT for the years 2018 through 2025. All of the changes will be subject to inflation adjustment in years after 2018.

   a. The exemption amounts that were scheduled to be $86,200 for joint filers (one-half of that amount for separate filers) and $55,400 for unmarried taxpayers, for 2018, have been increased to $109,400 for joint filers ($54,700 for separate filers) and $70,300 for all others.

   b. The AMTI threshold, above which the exemption is phased out $1 for every $4 of excess, has been increased to $1,000,000 for married taxpayers filing jointly and $500,000 for all others. These amounts were scheduled to be $164,100 for joint filers, $82,050 for separate filers and $123,100 for all other taxpayers.

3. The exemption amount and phase-out level for trusts and estates did not change under the Act, other than the modification that will apply as a result of the new inflation index that is being utilized.

E. Itemized Deductions

1. For tax years beginning after December 31, 2017 and before January 1, 2026, the overall itemized deduction limitation of 3% of the excess of AGI over the threshold amount (applicable to certain itemized deductions) (the ***"Pease Limitation"***) is suspended. As such, subject to the modifications that follow, all allowable itemized deductions will be fully deductible.

2. Miscellaneous Itemized Deductions

   a. For tax years beginning after December 31, 2017 and before January 1, 2026 all miscellaneous itemized deductions that were previously subject to a 2% AGI limitation are suspended. Among the items included in this elimination are:

      i. All expenses related to tax return preparation;

      ii. All unreimbursed employee business expenses;

      iii. Appraisal fees for charitable contributions;

      iv. Investment expenses; and

      v. Union dues.

   b. The elimination of 2% miscellaneous itemized deductions applies to all taxpayers (including trusts and estates).

   c. Gambling losses remain deductible as a miscellaneous itemized deduction (not subject to the 2% limitation) to the extent of gambling winnings. The Act provides that all deductions for expenses incurred in carrying out wagering transactions, and not just gambling losses, are limited to the extent of gambling winnings.

3. Qualified Residence Interest

   a. For 2017, the deduction for Qualified Residence Interest was limited to interest paid on up to $1,000,000 of borrowing that qualified as ***"Acquisition Indebtedness"*** and up to $100,000 of borrowing that qualifies as ***“Home Equity Indebtedness”***. Acquisition Indebtedness being defined as debt incurred to acquire, construct or substantially improve a principal residence or a second home, with no restriction on the use of Home Equity Indebtedness.

b. Pursuant to the Act, for tax years beginning after December 31, 2017 and before January 1, 2026, a deduction will only be allowed for interest on a debt that qualifies as Acquisition Indebtedness. No deduction will be allowed for Home Equity debt.

c. In addition, the Act reduces the amount of eligible Acquisition Indebtedness borrowing to $750,000 for any debt incurred on or after December 15, 2017.

i. A taxpayer who entered into a binding contract before December 15, 2017 to close on the purchase of a residence before January 1, 2018, and who actually closes on the acquisition before April 1, 2018, shall be considered to have incurred the Acquisition Indebtedness before December 15, 2017.

ii. The old Acquisition Indebtedness limits continue to apply to taxpayers who refinance existing Acquisition Indebtedness as long as the indebtedness resulting from the refinancing does not exceed the amount of the original debt.

4. State and Local Taxes

a. Subject to the exception described below, for tax years beginning after December 31, 2017 and before January 1, 2026, State, local and foreign property taxes; and State and local sales taxes are deductible only when paid or accrued in carrying on a trade or business or when paid or incurred in activity carried on for the production of income. State and local income taxes are not allowable as a deduction.

b. A limited exception is provided to allow individuals to claim as an itemized deduction up to $10,000, in the aggregate, for:

i. State and local property taxes not paid or accrued in carrying on a trade or business or an activity carried on for the production of income; and

ii. State and local income taxes (or sales taxes in lieu of income taxes).

Foreign real property taxes cannot be deducted as part of the allowable $10,000 amount.

c. The Act also included a provision to keep a taxpayer from paying State and local income taxes in 2017, for a year after 2017, and taking an itemized deduction for such amount in 2017.

5. Charitable Contributions

a. Prior to the enactment of the new law, charitable contributions were deductible with certain ceilings based upon a percentage of AGI. A 50% of AGI limit applied to cash contributions to public charities and certain private foundations.

b. For contributions made in tax years beginning after December 31, 2107 and before January 1, 2026 the 50% limitation is increased to 60%. Any amounts in excess of the new limit can be carried forward and deducted for up to five years (as was allowed under prior law).

c. For any contribution made in a tax year beginning after December 31, 2016, the requirement of a charity to provide contemporaneous written acknowledgement as substantiation for any contribution of $250 or more is repealed.

d. Beginning in 2018, no charitable deduction is allowed for any payment to an institution of higher learning in exchange for which the contributor is given a right to purchase seats at an athletic event.

6. Other Itemized Deductions

a. Personal casualty losses occurring in a tax year beginning after December 31, 2017 but before January 1, 2026 are not deductible, unless the loss is incurred as a result of a federally-declared disaster.

b. For tax years beginning after December 31, 2016 and before January 1, 2019, medical expenses, for all taxpayers, are deductible to the extent that they exceed 7.5% of AGI. In addition, the AMT preference related to medical expenses is eliminated.

F. Additional Individual Changes

1. Child Tax Credit

   a. Under pre-Act provisions, a taxpayer could claim a child tax credit of up to $1,000 per qualifying child under the age of 17. This amount would be phased out by $50 for every $1,000 that the taxpayer's AGI exceeded certain threshold amounts.

      i. For unmarried individuals the threshold was $75,000, for joint filers the threshold was $110,000 and for separate filers the threshold was $55,000.

      ii. In addition, to the extent that the credit exceeded the taxpayer's tax liability, the credit was refundable up to 15% of the earned income of the taxpayer in excess of $3,000.

   b. Pursuant to the Act, the child tax credit is increased to $2,000 per eligible child for 2018 through 2025.

   c. The income level at which the credit phase-out begins is increased to $400,000 for taxpayers filing married filing jointly and $200,000 for all others. The credit continues to phase out at a rate of $50 for every $1,000 that AGI exceeds the threshold amounts.

   d. The refundability of the credit was also modified so that the earned income threshold is reduced to $2,500.

   e. No child tax credit will be allowed unless the taxpayer provides the child's Social Security Number.

   f. The Act creates a new non-refundable $500 credit for each dependent (using the definition that exists currently) other than a qualifying child.

2. Alimony Deduction

   a. For any divorce or separation agreement executed after December 31, 2018, or executed before that date but modified after, alimony payments are not deductible by the payor spouse.

      i. If a pre-existing agreement is modified after December 31, 2018, the new rules will only apply if the modification expressly provides that the new law should be applicable.

b. Correspondingly, the recipient spouse will not have to include the alimony payments received as income.

3. Moving Expenses

a. Effective for tax years 2018 through 2025, the deduction for moving expenses is suspended.

b. The deduction will still be available for active duty members of the Armed Forces who move pursuant to a military order and incident to a permanent change of station.

4. Carried Interest

a. Generally, the receipt of a capital interest in a partnership in exchange for services rendered results in the partner recognizing ordinary income equal to the value of the partnership interest received. Receipt of a profits interest, however, is not a taxable event if the owner is only entitled to receive gains and profits generated after the date of receipt of the interest. Upon disposition of a profits interest the owner will report a capital gain.

b. Under the new law, and effective for tax years beginning after December 31, 2017, a 3-year holding period requirement is imposed in order for certain partnership interests received in connection with the performance of services to be taxed as long-term capital gains. If the 3-year holding period is not met, the gain will be treated as a short-term capital gain.

5. Miscellaneous

a. The $250 (as adjusted for inflation) deduction for eligible educators remains at that level. The Senate had proposed an increase to $500 that was not included in the final bill.

b. Despite both the Senate and the House proposing changes to ***§121***, the rules relating to the exclusion of gain on the sale of a principal residence remained unchanged.

c. While the House of Representatives had proposed repeal of the Adoption Credit (and corresponding employee exclusion), no change was made to those provisions.

d. The Act permanently repeals the individual mandate under the Affordable Care Act by reducing the ***"shared responsibility payment"*** to zero.

i. No change is made to the 3.8% Net Investment Income Tax or the 0.9% additional Medicare tax.

G. Education Changes

1. The original bill that passed the House of Representatives contained a number of changes to the Hope Credit/American Opportunity Credit along with the Lifetime Learning Credit. The Act contains no provisions relating to any of the education credits and thus they remain intact.

2. ***§529*** Plans

   a. Distributions can be made tax-free from a ***§529*** plan, if the distribution is used for “qualified higher education expenses”.

      i. Qualified higher education expenses include tuition, fees, books, supplies and required equipment, as well as reasonable room and board.

   b. Under prior law, the qualified expenses required the student to be enrolled at least half-time in a college, university, vocational or other post-secondary school.

   c. For distributions after December 31, 2017, qualified expenses included tuition at an elementary or secondary public, private or religious school (along with various expenses related to home-schooling) up to a $10,000 per tax year limit.

3. While gross income generally includes the discharge of indebtedness, an exception has existed allowing no recognition of income if a student loan is forgiven contingent upon the student working for a certain period of time in certain professions.

   a. The Act adds that for student loan forgiveness after December 31, 2017 and before January 1, 2026, no income will be recognized if the discharge was as a result of the death or permanent disability of the student.

4. The Act increases the contribution limit on ABLE accounts. Once the overall limitation is reached, the designated beneficiary is able to contribute an additional amount, up to the lesser of the federal poverty line for a one-person household or the individual’s compensation for the tax year.

5. While the House of Representative’s bill would have eliminated the deduction for student loan interest, the Act does not contain any such

provision. As such, taxpayers can continue to deduct up to $2,500 of interest paid on student loans, annually, subject to the existing phase-out structure.

II. <u>Business Provisions</u>

A. C Corporation Changes

1. Tax Rates

   a. Under prior law, C Corporations were subject to a graduated tax rate schedule. A C Corporation was subject to tax at 15%, 25%, 34% and 39% depending on its level of taxable income. In addition a surcharge of 5% or 3% would be imposed for certain corporations to eliminate the benefit of lower tax brackets.

   b. For tax years beginning after December 31, 2017, C Corporations will be subject to a flat tax rate of 21%.

2. Dividend Received Deduction

   a. In order to alleviate the impact of multiple levels of taxation on corporations that receive dividends from a corporation that it owns, ***§243*** provides a Dividend Received Deduction at varying percentages depending on the amount of stock owned in the dividend-paying corporation.

      i. If the corporation owns at least 20% of the dividend paying corporation but less than 80% of the stock, then the prior law provided a deduction equal to 80% of the dividend received.

      ii. If the ownership was less than 20%, then the DRD was reduced to 70%.

   b. The Act reduces the 80% deduction to 65% and the 70% deduction to 50% for tax years beginning after December 31, 2017.

3. For tax years beginning after December 31, 2017 the corporate Alternative Minimum Tax is repealed.

   a. For tax years beginning after 2017 but before 2022, the AMT credit is refundable and can offset regular tax liability in an amount equal to 50% (100% for tax years beginning after 2021) of the excess of the minimum tax credit for the tax year over the amount of the credit allowable for the year against the regular tax liability.

B. Other Business Tax Changes

1. Cash to Accrual

    a. Under pre-Act law, certain entities (corporations and partnerships with a corporate partner) may use the cash method of accounting unless and until the entity's average annual gross receipts for a three-year period exceeds $5,000,000. At such point, and thereafter, the entity must use the accrual method of accounting.

    b. The Act increases the $5,000,000 average annual gross receipts threshold to $25,000,000.

    c. Personal service corporations, partnerships without C Corporation partners, S Corporations and other pass-through entities can use the cash method without regard to whether they meet the $25,000,000 gross receipts test, so long as the method used clearly reflects income.

2. Business Interest Deduction

    a. For tax years beginning after December 31, 2017, every business, regardless of its form, is subject to a limited deduction for interest expense. The limit is generally equal to 30% of the adjusted taxable income of the business. Any amount that is not deductible can be carried forward to subsequent years.

        i. The interest expense disallowance is determined at the tax filer level.

        ii. A special rule applies to pass-through entities, requiring the determination to be made at the entity level, rather than the entity-owner level.

    b. Until January 1, 2022, adjusted taxable income is computed without regard to deductions allowable for depreciation, amortization, or depletion.

    c. Businesses with average annual gross receipts of $25,000,000 or less are exempt from these interest limitations.

        i. Businesses with more than $25,000,000 in gross receipts can elect out of the deduction limitation but are then required to utilize ADS for the depreciation of their assets, thus slowing down their depreciation deductions.

d. An exception to the limitation is provided for floor plan financing, allowing interest on the financing of motor vehicles, boats or farm machinery held for sale to customers in the ordinary course of business to be fully deductible.

3. Net Operating Losses

   a. Generally, under prior law, a Net Operating Loss can be carried back two years and carried forward twenty years to offset taxable income in those years.

   b. For Net Operating Losses arising in years beginning after December 31, 2017, the two-year carryback is repealed (other than for losses incurred in farming businesses). As such, NOLs can only be carried forward.

   c. In addition, for losses arising in years beginning after December 31, 2017, the NOL deduction is now limited to offsetting 80% of taxable income (determined without regard to the NOL deduction).

   d. However, these NOLs can now be carried forward indefinitely.

4. Miscellaneous Business Changes

   a. Effective for tax years beginning after December 31, 2017 the Domestic Production Activities Deduction is repealed for non-corporate taxpayers. For C Corporations, the deduction is repealed for tax years beginning after December 31, 2018.

   b. For transfers after December 31, 2017 the rules of ***§1031*** are amended to provide that tax-deferred treatment is only available for real estate that is not held primarily for sale. Like-Kind exchange treatment is no longer available for personal property.

      i. If a taxpayer has disposed of property or acquired replacement property prior to December 31, 2017, tax deferral is still available even if the exchange is finalized in 2018.

   c. For amounts paid or incurred after December 31, 2017, no deduction will be allowed for amounts paid for:

      i. Entertainment, amusement or recreation;

      ii. Membership dues for a club organized for business, pleasure, recreation, or other social purposes; or

iii. A facility used in connection with any of the above.

iv. The deduction for 50% of food and beverage expenses associated with operating a trade or business generally is retained.

d. Effective for amounts paid or incurred after the enactment date, no deduction is allowed for any settlement, payout or attorney's fees related to sexual harassment or sexual abuse if such payments are subject to a non-disclosure agreement.

e. Effective for dispositions after December 31, 2017, the definition of Capital Asset under ***§1221*** is amended so that patents, inventions, models or designs, and secret formulas and processes, held by the creator or someone who derives their basis from the creator are no longer Capital Assets.

f. The deduction for compensation paid to certain employees of publicly traded corporations is limited to no more than $1,000,000 per year. Under pre-Act rules amounts paid as commissions, amounts paid as performance-based remuneration, payments to qualified retirement plans and amounts otherwise excludible from the individual's gross income were not taken into consideration in determining the $1,000,000 limit.

i. For tax years beginning after December 31, 2017, the exceptions for commissions and performance-based compensation are repealed and the definition of employees covered by this limitation is expanded.

C. Depreciation Changes

1. Bonus Depreciation

a. 100% additional first-year bonus depreciation is allowed for qualified property acquired and placed into service after September 27, 2017 and before January 1, 2023.

b. In the years that follow the bonus depreciation percentage will diminish.

i. For property placed into service after December 31, 2022 and before January 1, 2024 bonus depreciation is 80%.

ii. For property placed into service after December 31, 2023 and before January 1, 2025 bonus depreciation is 60%.

iii. For property placed into service after December 31, 2024 and before January 1, 2026 bonus depreciation is 40%.

iv. For property placed into service after December 31, 2025 and before January 1, 2027 bonus depreciation is 20%.

c. The new rules eliminate the requirement that the original use of the property commence with the taxpayer. As such, bonus depreciation is available for new or used property.

d. Taxpayers have a right to elect 50% bonus depreciation for property placed into service after September 27, 2017 during the first tax year that ends after September 27, 2017.

2. ***§179*** Expensing

a. The PATH Act permanently extended the enhanced $500,000 maximum amount of expensing available (along with the $2,000,000 phase-out threshold) under ***§179***.

b. Under the new law, for property placed into service in tax years beginning after December 31, 2017, the maximum amount of expensing is increased to $1,000,000, and the phase-out threshold amount is increased to $2,500,000.

i. For tax years after 2018 these amounts will be indexed for inflation.

ii. The definition of Qualified Real Property eligible for ***§179*** expensing is expanded under the new rules.

3. Luxury Automobile Depreciation Limits

a. ***§280F*** limits the ***§179*** expensing and depreciation deductions (including bonus depreciation) with respect to certain passenger automobiles.

b. For passenger automobiles placed into service after December 31, 2017 the maximum amount of allowable depreciation is increased to:

i. $10,000 for the first year;

ii. $16,000 for the second year;

iii. $9,600 for the third year; and

iv. $5,760 for the fourth and later years.

c. Each of these amounts will be indexed for inflation in years after 2018.

d. The maximum first-year bonus depreciation (which was scheduled to reduce to $6,400 in 2018 and $4,800 in 2019) will remain at $8,000.

4. For property placed into service after December 31, 2017, qualified leasehold improvement, qualified restaurant and qualified retail improvement property will be subject to a 15-year recovery period and straight-line depreciation.

III. <u>Partnership and S Corporation Provisions</u>

A. The Pass-Thru Entity Deduction

1. One of the most significant changes imposed by the Tax Cuts and Jobs Act is the creation of new ***§199A, "Qualified Business Income"***.

2. Pursuant to this new code section, non-corporate taxpayers (including trusts and estates) that have Qualified Business Income (***"QBI"***) from a partnership, S Corporation or sole proprietorship can take a deduction of up to 20% of the QBI.

   a. QBI is generally defined as the net amount of income, gain, deduction and loss relating to a qualified trade or business and effectively connected to the conduct of the trade or business within the United States.

   b. If the net amount is less than zero, the amount is treated as a loss from a qualified trade or business in the succeeding tax year.

   c. Certain types of income are specifically excluded from being treated as QBI, and thus not eligible for the deduction. Investment income along with reasonable compensation payments, guaranteed payment to a partner for services rendered and payments for services to partners not acting in their capacity as partners are not included.

3. The deduction is a deduction from AGI in arriving at Taxable Income. It is not an upstairs (or above the line) deduction.

4. A limitation is imposed on income from certain specified service businesses, including businesses that perform services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, investing and investment management, trading or dealing with securities and 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 or owners.

   a. Specifically exempt from the definition of service business are engineering and architectural services.

   b. For pass-through income from a service business, a limitation phases in when the owner's taxable income (from all sources) exceeds $157,500 for single taxpayers and $315,000 for married taxpayers filing joint returns and is completely phased-out when taxable income exceeds $207,500 and $415,000 respectively.

5. A second limitation applies based upon W-2 wages and capital of a trade or business. In general, the deduction cannot exceed the greater of:

   a. 50% of the W-2 wages of the business; or

   b. The sum of 25% of the W-2 wages paid plus 2.5% of the unadjusted basis, immediately after acquisition, of all "qualified property".

      i. Qualified property is defined as all tangible, depreciable property held by and used by the business at the close of the year.

5. The limitation based on W-2 wages and capital does not apply to any pass-thru entity owner with taxable income that does not exceed the $157,500/$315,000 threshold. Once income exceeds this amount, the W-2/Capital limitation phases in and applies fully once the taxpayer's taxable income exceeds the $207,500/$415,000 threshold.

Taxable Income	Service Business	W-2/Capital Limitation
Less than $157,500/$315,000	Full Deduction (20% of QBI)	Full Deduction 20% of QBI
Income between $157,500/$315,000 and $207,500/$415,000	Partial Deduction will be allowed	Deduction reduced to the Extent it exceeds the partial W-2/Capital Limitation
Income in excess of $207,500//$415,000	No Deduction Allowed	Deduction reduced to the Extent it exceeds the full W-2/Capital Limitation

B. S Corp to C Corp Conversion

1. After the termination of S status, a shareholder can carry over losses that were disallowed because of the basis limitation and the at-risk limit to the "Post-Termination Transition Period" and may deduct these losses as if there was sufficient basis (or amount at-risk) as of the last day of the PTTP.

2. In addition, cash distributions by a former S Corporation during the PTTP are treated as nontaxable distributions out of AAA, rather than as normal C Corporation distributions.

3. Generally the PTTP is the period beginning on the day after the last day of the corporation's last tax year as an S corporation and ending on the later of:

    a. The day that is one year after that day; or

    b. The due date for the filing of the return for the corporation's last tax year as an S Corp.

4. Pursuant to the Act (and effective December 22, 2017) the following rules apply on the conversion of an S Corporation to a C Corporation:

    a. Any ***§481*** adjustment attributable to the revocation of the S election (for example: a required conversion from cash to accrual) is taken into account ratably during the 6-year period beginning with the year of the change.

b. Any distribution by a terminated S Corporation shall be treated as coming from AAA and C Corporation earnings and profits on a pro-rata basis.

C. Electing Small Business Trusts

1. Generally, to qualify as an Electing Small Business Trust, all beneficiaries of the trust must otherwise be eligible to be a shareholder of a Subchapter S Corporation.

    a. Effective on or after January 1, 2018, a non-resident alien individual can be a beneficiary of an Electing Small Business Trust, despite the fact that the individual could not be a direct owner of S Corporation stock.

2. For tax years beginning after December 31, 2017, the Act provides that the charitable contribution deduction of an Electing Small Business Trust is determined based upon the rules applicable to individuals rather than the rules applicable to trusts. As a result, the percentage limitations and carryforward provisions applicable to individuals will apply.

D. Provisions Specific to Partnerships

1. Under pre-Act ***§708(b)(1)(B)***, a partnership would be considered terminated if there was a sale or exchange of 50% or more of the partnership capital and profits interests within a 12-month period. Upon such a technical termination, a new partnership was treated as being formed causing a loss of certain tax attributes and partnership-level elections. In addition, a partnership return would be required.

    a. For partnership tax years beginning after December 31, 2017, ***§708(b)(1)(B)*** is repealed.

2. Pursuant to ***§704*** a partner is only allowed to deduct losses to the extent of the partner's adjusted basis in their partnership interest. In various private letter rulings, the IRS had determined that the basis limitation did not apply to a partner's share of charitable contributions or foreign taxes.

    a. The new law overrides the IRS ruling position by revising ***§702*** to include a partner's distributive share of charitable contributions and foreign taxes in the determination of the partner's share of partnership loss. As a result, the basis limitation will apply to the flow-through of each of those items.

IV. Transfer Tax Provisions

A. Estate and Gift Tax Changes

1. For decedents dying and gifts made after 2017 and before 2026 the basic exemption equivalent exclusion amount is increased to $10,000,000 (with inflation adjustments).

2. For 2018, the exclusion amount is $11,200,000 per taxpayer or with proper planning $22,400,000 for a married couple.

B. Generation Skipping Transfer Tax Changes

1. Effective for Generation Skipping Transfers made after 2017 and before 2026 the GST exemption is increased to $10,000,000 (adjusted for inflation).

2. For 2018, the GST transfer tax exemption amount is $11,200,000.

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1) **The Carry-Over Basis Dilemma**
   Nassau Lawyer, December 2010
   Co-authors: Robert Katz and Neil D. Katz
2) **Death in 2010: Federal Estate Tax Election**
   NYSBA Elder Law Attorney, Spring 2011
   Co-authors: Robert Katz and Neil D. Katz
3) **Tax Consequences of the Marriage Equality Act**
   Suffolk Lawyer, September 2011
   Co-authors: Robert Katz and Neil D. Katz
4) **What Planners Need to Know About Portability**
   The CPA Journal, December 2011
   Co-authors: Robert Katz and Neil D. Katz
5) **iPad: Changing Computing for Lawyers**
   The Nassau Lawyer, March 2012
   Co-authors Neil D. Katz and Michael Glasser
6) **Does the Increased Estate Tax Exemption and Portability Mean the Death of Estate Planning?**
   Nassau Lawyer, November 2014
   Co-authors: Robert Katz and Neil D. Katz
7) **The Tax Implications of Divorce Part One - Alimony**
   Journal of Taxation, November 2017
   Co-authors: Neil D. Katz and Gina M. DiGaudio
8) **The Tax Implications of Divorce Part Two – Property Transfers, Home Sale, Dependency Exemption and Administrative Issues**
   Journal of Taxation, December 2017
   Co-authors: Neil D. Katz and Gina M. DiGaudio