December 20, 2017

TAX REFORM PASSED- BILL HEADING TO PRESIDENT'S DESK

At 1 PM the House passed H.R. 1, as amended by the Senate, and the bill will soon go to the President for his signature.

Republicans have been invited to the White House this afternoon to celebrate.

WOTC continues under current law through December 31st, 2019.

Before that date we will have challenges if Speaker Ryan decides, as he's promised, to enact a major overhaul of the nation's welfare programs.

Welfare programs fall under the jurisdiction of Ways and Means, which will give Chairman Brady another chance to make a run at WOTC.

For now though, let's honor the coming holidays for all of you who worked day and night in an intensive campaign--your splendid efforts won the struggle for WOTC.

A few thoughts - first after having read this tax bill over the last few days, this is a VERY COMPLICATED tax bill and contains many more changes than the highlights would lead one to think. My initial thoughts are that the new pass-through provisions make most of the other tax code sections look like they're simple! I can just imagine the hundreds of pages of IRS regulations we're going to see on just this section alone. It appears that upper middle class taxpayers who itemize and live in states with higher state and local income taxes and/or have higher property taxes will end up with a tax increase right away – and will do better when and if the provisions sunset in 2025.

On the positive side, many non-service small businesses who operate as pass-throughs will end up ahead. A lot of the changes we worked on with the conferees were included in the final bill – for instance, trusts and estates are now entitled to use the pass-through deduction, pass-throughs are entitled to take advantage of the state and local income tax and property tax deduction, the cut off for allowing 100% deduction of business interest and cash method of accounting went with the higher $25 million threshold and we were able to retain the step up in basis. A big loss, that was initially reported as a win, is that the AMT is retained for individuals with a fairly low exemption. Initially this was reported as the exemption increasing up to $500k for an individual and a $1m for a couple. What was raised to that level were the threshold amounts which is not nearly as important for most small business owners.

One final thought – it will be interesting to see what the aftershocks will be of such a major piece of tax legislation. In the past a tax bill of this magnitude would have been vetted over a number of years and the public and tax experts would have been able to weigh in with their concerns and suggestions. Businesses will barely have time to process the changes almost all of which start immediately. There will be unintended winners and losers and IRS will have a huge role in developing regulations to implement this monster of a bill, with a reduced budget. Stay tuned!

		HOUSE	SENATE	FINAL VERSION

Business Provisions				
	C Corp Rates	20% for most C corps, 25% for personal service corps. These rates would be permanent and immediate.	20% for C corps and personal service corps. This rate would be effective for tax years after 2018 and would be permanent.	**21% for C corps and personal service corps. This rate would be effective for tax years after 2017 and would be permanent.** Would reduce the 80% dividends received deduction to 65% and the 70% dividends received deduction to 50%.
	Bonus Depreciation	Companies would be able to immediately write off the full cost of investments in their businesses, starting with assets purchased and placed in service after September 27, 2017 and before January 1, 2023. In 2024, the provisions would revert back to current law.	For the first five years companies would be able to immediately write off the full cost of investments in their businesses. Thereafter, the deduction will phase out by 20% each year through 2026.	**Companies would be able to immediately write off the full cost of investments in their businesses, starting with assets purchased and placed in service after September 27, 2017 and before January 1, 2023. Thereafter, the deduction will phase out by 20% each year through 2026.**
	Section 179	For tax years 2018 through 2022, the Section 179 deduction would be increased from $500,000 to $5 million with an increased phase-out threshold at $20 million. After 2022, the provision would revert back to existing law.	Section 179 deduction would be increased from $500,000 to $1 million with an increased phase-out threshold at $2.5 million. The definition of qualified real property would also be expanded to include improvements made to nonresidential real property including roofs, heating and air-conditioning property.	**Section 179 deduction would be increased from $500,000 to $1 million with an increased phase-out threshold at $2.5 million.** These amounts will be indexed for inflation starting in 2019. The definition of qualified real property would also be expanded to include improvements made to nonresidential real

				property including roofs, heating and air-conditioning property.
	Research and Development Credit	Retained in its current form	Retained in its current form	Retained in its current form
	Availability of Cash Method of Accounting	The average gross receipts threshold for using the cash method would be permanently increased from $5 million to $25 million.	The average gross receipts threshold for using the cash method would be permanently increased from $5 million to $15 million.	The average gross receipts threshold for using the cash method would be **permanently increased from $5 million to $25 million.**
	Employer Credit for Paid FMLA	No provision	A new credit would be added for 2018 and 2019 for wages paid to employees on FMLA if certain conditions are met.	A new credit would be added for 2018 and 2019 for wages paid to employees on FMLA if certain conditions are met.
	Deduction of Business Interest	Businesses would only be able to deduct net interest expenses up to 30% of their adjusted taxable income. Businesses with annual gross receipts of $25 million or less would not be subject to the 30% limit.	Businesses would only be able to deduct net interest expenses up to 30% of their adjusted taxable income. Businesses with annual gross receipts of $15 million or less would not be subject to the 30% limit.	**Businesses would only be able to deduct net interest expenses up to 30% of their adjusted taxable income**. 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 or the Section 199 deduction (domestic manufacturing deduction which is

				repealed in the bill). **Businesses with annual gross receipts of $25 million or less would not be subject to the 30% limit.**
	Qualified Retirement Plans	Generally not impacted - though it appears unless language is fixed, retirement plan contributions will not be as advantageous because contribution would be against the active business income tranche which would have a lower tax rate than the personal income tax rate, but when taken out of the plan would be subject to the higher personal income tax rates	Generally not impacted - though it appears unless language is fixed, retirement plan contributions will not be as advantageous because contribution would be against qualified business income which would have a lower tax rate than the personal income tax rate, but when taken out of the plan would be subject to the higher personal income tax rates	Generally not impacted - though some concern that unless language is fixed in technical corrections, retirement plan contributions for pass-throughs may not be as advantageous because contribution would be against the qualified business income which would have a lower tax rate than the personal income tax rate, but when taken out of the plan would be subject to the higher personal income tax rates
	Capital Gains and Dividends Rates	No change	No change	No change
	Non-qualified Deferred Compensation (409A)	No change	No change	No change

	Contributions to Capital	Added provision requiring contributions in excess of fair market value of the interest received to be included in gross income.	No provision	Added provision providing that capital contributions aren't excludeable from taxable income unless they are made by a shareholder, potential customer, or government entity. Provision in House bill dealing with the inclusion in gross income of contributions to capital of a partnership in excess of fair market value of interest received is **not** included in final bill
	Technical Termination of Partnership	Technical termination rule would be repealed. Partnership would be treated as continuing even if more than 50% of the total capital and profit interests of partnership were sold or exchanged.	No provision	Technical termination rule would be repealed. Partnership would be treated as continuing even if more than 50% of the total capital and profit interests of partnership were sold or exchanged.

	Pass Though Provisions	For owners of a pass-through entity who actually work in the business, the default provision would be that 30% of the income generated by the business is deemed to be attributable to the capital of the business and thus taxed at a new 25% tax rate while the remaining 70% is subject to the normal income tax rates. Alternatively, business owners would be able to apply a facts and circumstances test to show that more than 30% of the income from the business is attributable to capital they have invested and have that amount taxed at the 25% tax rate. For owners of personal service organizations, the default presumption for active business income would be 0% not 30%. There would also be a 9% tax rate for the first $75,000 ($37,500 for unmarried individuals, $56,250 for heads of household) of net business taxable income of an active owner or shareholder earning less than $150,000 ($75,000 for unmarried individuals, $122,500 for heads of household) in taxable income from a pass-through business. For taxable income over these levels, there would be a phase out of the reduced tax rate which would be totally phased out at $225,000. The 9% tax rate would be phased in over four years and would be fully effective in 2022.	If the individual makes $250,000 or less (or $500,000 or less in the case of a joint return) the individual taxpayer would receive a 23% deduction on "qualified business income" from a partnership, S corporation or sole proprietorship. If the individual makes more than $250,000 (or more than $500,000 in the case of a joint return), then the deduction from "qualified business income" would be *the lesser of* (i) 23% of "qualified business income" or (ii) 50% of the W-2 wages with respect to the trade or business. Once the $250,000 (or $500,000) threshold is hit, a "qualified trade or business" does not include a service businesses. "Qualified business income" would not include *reasonable compensation paid to the taxpayer by any qualified business for services rendered with respect to the business.* There would be a phase in of $50,000 for individuals or $100,000 for joint returns. These provisions would all sunset in 2025.	**If the individual makes $157,500 or less (or $315,000 or less in the case of a joint return), indexed, the individual taxpayer would receive a 20% deduction on "qualified business income" from a partnership, S corporation or sole proprietorship.** If the individual makes more than $157,500 (or more than $315,000 in the case of a joint return), then the deduction from "qualified business income" would be the greater of (i) the sum of 25% of the W-2 wages with respect to the trade or business plus 2.5% of the unadjusted basis, immediately after acquisition, of all "qualified property" or (ii) 50% of the W-2 wages with respect to the trade or business. Once the $157,500 (or $315,000) threshold is hit, a "qualified trade or business" does not include a service businesses. "Qualified business income" would not include reasonable compensation paid to the taxpayer by any qualified business for services rendered with respect to the

				business. "Qualified property" is defined as tangible property subject to depreciation, held by a qualified trade or business and used in the production of qualified business income. It is the first alternative for calculating the wage limit which is seen as helping real estate businesses with large capital investments but few employees to qualify under the pass-through provisions.There would be a phase in of $50,000 for individuals or $100,000 for joint returns. A specified service means thoses performing services in the fields of health, law, consulting, athletics, financial services, brokerage services or where the reputation or skill of one or more of its employees or owners or dealing with investing and investment management trading or dealing in securities, partnership interests or commodities. Note that this definition excludes engineers and architects. The deduction would be allowed to nonitemizers as well as those that itemize.

				Trusts and estates would be eligible for the 20% deduction. These provisions would all sunset in 2025.
Individual Provisions				
	Estate and Generation Skipping Transfer (GST) Tax	Starting in 2018 the estate and GST exemptions would double. In 2025 the estate and GST tax would be permanently repealed.	From 2018 through the end of 2025 estate and GST exemptions would double. In 2026, the exemptions would revert back to their current levels, indexed for inflation.	**From 2018 through the end of 2025 estate and GST exemptions would double.** In 2026, the exemptions would revert back to their current levels, indexed for inflation.
	Gift Tax	Starting in 2018 the gift exemptions would double. Starting in 2025 the gift tax rate would permanently drop from 40% to 35%.	From 2018 through the end of 2025 the gift tax exemption would double. In 2026, the exemption would revert back to their current levels, indexed for inflation.	**From 2018 through the end of 2025 the gift tax exemption would double**. In 2026, the exemption would revert back to their current levels, indexed for inflation.
	Step-Up in Basis	Retained in its current form	Retained in its current form	Retained in its current form

	Low Income Housing Credit	Retained in its current form	Retained with a number of provisions added.	Retained in its current form
	ACA	No change	Individual mandate repealed	Individual mandate repealed
	Mortgage Interest Deduction	Deduction limit reduced from $1 million to $500,000 million and limited to debt incurred on the principal residence. Taxpayers could continue to exclude sale proceeds from the sale of a principal residence but only if taxpayers lived in the home 5 out of the last 8 years. Exclusion would phase out for joint filers with over $500k and single filers with over $250k. These changes would be permanent.	Deduction limit reduced from $1 million to $500,000 million and limited to debt incurred on the principal residence. No deduction for home equity loans. Taxpayers could continue to exclude sale proceeds from the sale of a principal residence but only if taxpayers lived in the home 5 out of the last 8 years unless certain exceptions apply. Exclusion would phase out for joint filers with over $500k and single filers with over $250k. This change would sunset in 2025.	Deduction limit reduced from $1 million to **750,000 million** and limited to debt incurred on the principal residence or a second home. **Starting next year, no deduction will be allowed for interest on home equity loans**. These changes would **sunset in 2025**. Taxpayers could continue to exclude sale proceeds from the sale of a principal residence as under current law.
	Graduate and Undergraduate Tuition Waivers	Would require tuition waivers or assistance to be reported as part of student's taxable income.	No change	No change
	Standard Deduction	Permanently increased to $24,400 for joint, $18,300 for unmarried with at least one child, and $12,200 for single filers.	Increased to $24,000 for joint, $18,00 for unmarried with at least one child, and $12,00 for single filers. These increases would sunset at the end of 2025 and revert to current levels.	Increased to $24,000 for joint, $18,00 for unmarried with at least one child, and $12,00 for single filers. These increases would sunset at the end of 2025 and revert to current levels.
	Personal Exemptions	Eliminated	Eliminated until 2025.	Eliminated until 2025.
	Child Tax Credit	Increased from $1,000 to $1,600, with increased phase out threshold at $115,000 for single taxpayers and $230 for married.	Increased to $2,000 with an increased phase-out of up to $500,00 for married taxpayers. These provisions would sunset at the end of 2025.	Increased to $2,000 with an increased phase-out of up to $400,00 for married taxpayers. Increase the amount of the credit that is refundable from

				$1,000 to $1,400. These provisions would sunset at the end of 2025.
	Non-Dependent Credit	Added $300 credit for children over 17 or non-child dependents. This credit would sunset in 2022.	Added $500 credit for dependents other children until the end of 2025.	Added $500 credit for dependents other children until the end of 2025.
	Family Flexibility Credit	Added $300 credit for taxpayer who is neither a child or non-child dependent. This credit would sunset in 2022.	No added provision	No added provision
	Dependent Care Flexible Savings Accounts	No change	No change	No change
	Number of Tax Brackets	Four	Seven	Seven
	Top Rate	39.60%	38.50%	37%
Provisions Covering Individuals and Businesses				
	AMT - Alternative Minimum Tax	Permanently repealed for individuals and corporations	Maintains the AMT for corporations and individuals but increases the exemption amount and phase-out threshold for individuals.	**Corporate AMT repealed**. **Individual AMT retained with a higher AMT exemption (starting at $109,400 for joint and $70,300 for single) for the years 2018 through 2025. Phase-out of exemption amounts would be increased to $1m for married taxpayers filing jointly and $500,000 for single taxpayers.** This means that the exemption amount is

				not phased out until the alternative minimum taxable income exceeds these phase-out amounts. The increase in the individual AMT exemption sunsets in 2025. The repeal of the corporate AMT is permanent.
	State and Local Tax (SALT) Deduction	Deduction for state and local income and sales tax permanently eliminated. Deduction of up to $10,000 for state and local property tax.	Deduction for state and local income and sales tax permanently eliminated. Deduction of up to $10,000 for state and local property tax.	**Deduction for state and local income, sales and/or property taxes capped at $10,000. This provision sunsets in 2025. Cannot pre-pay income tax for 2018 in 2017.** Not clear if property taxes can be prepaid in 2017 for 2018. **State and local tax deduction maintained for corporations and pass throughs.**