1/25/19

List, Summary, Guidance, and Comments for the Tax Cuts and Jobs Act (Public Law 115-97 (12/22/17))

[work-in-progress that will continue to be updated as formal and informal guidance is issued]

List is in the order presented in JCX-67-17 (12/18/17) - https://www.jct.gov/publications.html?func=startdown&id=5053

Text of P.L. 115-97 - https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.pdf

Conference Report for H.R. 1 - https://www.congress.gov/115/crpt/hrpt466/CRPT-115hrpt466.pdf

Joint Committee on Taxation Bluebook (JCS-1-18 (12/20/18)) - https://www.jct.gov/publications.html?func=startdown&id=5152

Technical Corrections bill proposed by Rep. Brady 1/2/19 + JCT Explanation (JCX-1-19; 1/2/19)

IRS Tax Reform Website - https://www.irs.gov/tax-reform

IRS National Taxpayer Advocate Tax Reform Changes Website - https://taxchanges.us/

Links to IRS Tax Forms and Publications - https://apps.irs.gov/app/picklist/list/formsPublications.html

AICPA Tax Section letter to IRS/Treasury of 1/29/18 listing several areas in need of immediate guidance + other comment letters.

FTB Conformity Reports (California does not conform to most TCJA provisions; waiting for legislative action to possibly conform to some):

- FTB's Report on Federal Income Tax Changes – 2017 - https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/2017-051618.pdf
    - FTB's Preliminary Report on Specific Provisions of the Federal Tax Cuts and Jobs Act (2/14/18, revised 3/20/18) - https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/CAPreliminaryReport3Provisions-Revise.pdf
    - FTB's Preliminary Summary of Federal Income Tax Changes – 2017 – First Release (3/4/18) - https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/2017-First-Release.pdf
    - FTB's Preliminary Summary of Federal Income Tax Changes – 2017 – Second Release (3/26/18) - https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/2017-Second-Release.pdf
- Additional information from FTB on non-conformity to change to 708 on technical termination of a partnership (July 2018).
- FTB information on the TCJA transition tax of Section 965 which California does not conform to.

Key to following table: # column is just for reference in using this table.
P = Permanent; T = Temporary (generally 2018 through 2025)

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#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments

INDIVIDUALS

- IRS Pub 5307, Tax Reform: Basics for Individuals and Families for 2018
- New postcard size 1040 and its six new schedules (no 1040A or 1040EZ for 2018) + link to all forms, instructions and publications.
- Relief for under-withholding and estimated tax payments for 2018 – IR-2019-03 (1/16/19) and Notice 2019-11 (1/16/19). Per the IRS: "This waiver is limited to individuals whose total withholding and estimated tax payments equal or exceed eighty-five percent of the tax shown on the return for the 2018 taxable year." (rather than usual 90% threshold)

1.	10%, 12%, 22%, 24%, 32%, 35%, and 37% income tax rate brackets Changes also made to computation of the kiddie tax to use the estate/trust rates rather than tie to earnings of parents or siblings. Capital gain rates of 15% and 20% start at pre-TCJA levels (rather than 20% rate starting when individual reaches top ordinary rate). IRC §1.[1]	11001	T	Tax years beginning after (tyba) 12/31/17	• Draft Form 1040 for 2018 including postcard size version – IR-2018-146 (6/29/18) AND Treasury release with more background information. Postcard-size 1040 and six new schedules are intended to replace 1040EZ and 1040A. • Pub 15 (Circular E), Employer's Tax Guide updated for use in 2018. • IR-2018-93 (4/13/18) – reminder to use updated estimated tax form. • IR-2018-80 (4/2/18) – reminder to do "paycheck checkup" to be tax withholding is correct. Also see IR-2018-73 (3/26/18). • IRS Tax Withholding online calculator updated. Also see	• Comments on postcard-size Form 1040. • For 2018 rate schedules, see pages 6-8 of the JCT report on overview to the federal tax law (reproduced at end of this chart). • Be sure to review W-4 and estimated tax payments to be sure have the amount paid in to avoid estimated tax penalty for 2018. • See AICPA comments (7/12/18) on draft W-4 for 2019 which is much different than in past years. [Draft W-4 for 2019: Form + Instructions] Link to original draft W-4 for 2019.

[1] To see how changes affect IRC §1, see track changes at http://www.sjsu.edu/people/annette.nellen/1_AmendedByPL115-97.pdf.

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	Preparer due diligence penalty at §6695(g) expanded to also include returns where client claims head-of-household status.				IR-2018-36 (2/28/18) which includes tips on doing a paycheck checkup. Also see IRS Tax Reform Tax Tip 2018-48 (3/29/18) on how to update Form W-4. And see Tax Tip 2018-47 (3/28/18) + Tax Tip 2018-46 (3/27/18) for using the withholding calculator. • Notice 2018-14[2] and Pub 15, Employer's Tax Guide and Notice 1036 (1/29/18) issued to help employers use the new payroll tax tables; required to start using by 2/15/18. • IRS issues FAQs on withholding tables (1/12/18). • W-4 for 2018 • Draft W-4 for 2019: Form + Instructions at 6/5/18. On 9/25/18, the IRS announced it	• The 15% capital gain rate starts at $200 below where the regular 12% rate ends (for MFJ) and $100 for other filers. But, the 15% rate is not to start until the taxpayer leaves the 12% bracket. Is an oddity. For example, if a single person had just $50,000 of net capital gain income, the first $38,600 is taxed at 0%, the next $100 at 12%, and the balance at 15%. The rationale for $100 at 12% is that the 15% capital gain rate starts at $38,700, but if it were instead ordinary income, the last $100 would still be in the 12% bracket (not the 22% regular bracket). Tax prep software programs likely to handle this. See tables at the end of this chart.

[2] Per the IRS (1/29/18): "Notice 2018-14: 1) extends the effective period of Forms W-4 furnished to claim exemption from income tax withholding under § 3402(n) for 2017 until February 28, 2018 and temporarily permits employees to claim exemption from withholding under § 3402(n) for 2018 by using 2017 Form W-4, (2) suspends the requirement that employees must furnish their employers new Forms W-4 within 10 days of changes of status resulting in fewer withholding allowances, (3) provides that the optional withholding rate on supplemental wage payments is 22% for taxable years 2018 through 2025, and (4) provides that, for 2018, withholding on annuities or similar periodic payments where no withholding certificate is in effect is based on treating the payee as a married individual claiming three withholding allowances under § 3405(a)(4)."

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					would postpone updating the W-4 and release a new draft more similar to the 2018 version which does not ask employees to provide details on other income, deductions and credits. • Notice 2018-92 (11/26/18) notes that the IRS delayed overhaul of W-4 until 2020. Also, regulations under §3402 and §3405 will be issued that include allowing taxpayers to use the online withholding calculator or Pub 505 rather than the W-4 worksheets. • Proposed regulations under §6695(g) were issued on 7/18/18 (REG-103474-18 (7/18/18)). Final regulations were released – TD 9842 911/7/18). Also see IR-2018-216 (11/7/18). o Form 8867 + instructions • §6695(g) caution: The TCJA specifically expanded this preparer penalty to cover any return they prepare where	• Change to §6695(g) preparer penalty not effective until regs are issued. Proposed regulations were issued on 7/18/18 (REG-103474-18). FINAL regulations were issued 11/7/18 (TD 9842). The IRS announced this in IR-2018-216 (11/7/18). The IRS has highlighted the obvious TCJA change to §6695(g) of requiring specific due diligence of the preparer whose client claims head-of-household status (see IR-2018-216(11/7/18)). NOTE – the IRS has not highlighted the reality that the 6695(g) due diligence penalty now also covers the "other dependent credit" of $500 created by the TCJA (to partially replace the dependency exemption where the taxpayer can't claim the child tax credit). This other dependent credit is part of §24 where the child tax credit is explained. Because the §6695(g) penalty applies to credits under §24, this $500 dependent credit is also covered by extra due diligence. This means that many

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					taxpayer claims head-of-household status. The TCJA indirectly expanded the penalty to also cover the $500 dependent credit too because that credit is in §24 where the child credit is. So, extra due diligence is also required for any prepared return where client claims a $500 dependent credit (referred to as other dependent credit (ODC) on Form 8867). • IRS reminds businesses about backup withholding, now at 24% rate. Pub 1281 has been updated. See IR-2018-205 (10/18/18), Tax Reform Tax Tip 2018-168 910/30/18) and IRS Pub 1281.	returns will require extra due diligence and attachment of a properly completed Form 8867 and documentation in the preparer's files for at least three years of the questions asked of clients to confirm they are entitled to the credit and the client answers to those questions and any documentation obtained. Be sure to read the §6695(g) regs and Form 8867 and its instructions.
2.	Increase standard deduction	11021	T	tyba 12/31/17		2018 Single $12,000 MFJ $24,000 MFS $12,000 HH $18,000 — 2019 Single $12,200 MFJ $24,400 MFS $12,200 HH $18,350

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3.	Repeal deduction for personal exemptions Includes changes at §151 (d)(5) and §3402(a) on withholding.	11041	T	tyba 12/31/17	Notice 2018-70 (8/28/18) informs individual taxpayers that Treasury and the IRS intend to issue proposed regulations clarifying who is a qualifying relative for the new $500 credit for dependents and head of household filing status for years in which the exemption amount is zero – taxable years 2018-2025. The notice explains that proposed regulations will provide that the reduction of the personal exemption amount to zero will not be taken into account for purposes of the $500 credit and head of household filing status. Instead, the exemption amount for the application of these provisions will be treated as $4,150, as adjusted for inflation, for years in which the exemption amount is zero. The notice further provides that taxpayers may rely on the rules of this notice prior to the issuance of proposed regulations." PTC and Personal Exemption Amount after TCJA – Notice 2018-84 (10/18/18) – Regulations under	• For many individuals, the loss of this deduction will be made up for by a $2,000 child credit or $500 dependent credit or reduction in rates. • Apparently, the purpose of Notice 2018-70 and the expected regulations is to address §151(d)(5)(B) as modified by the TCJA that a new zero personal exemption amount doesn't affect other provisions where that figure is used. For example, part of the definition of qualifying relative at §151 is that gross income must be less than the exemption amount. *Observation*: Part of the problem is also that in Rev. Proc. 2018-18 on inflation adjustments for 2018 after the TCJA changes, sec. 3.24 states that for tax years beginning in 2018, the personal exemption under §151(d) is zero. Instead, it should be $4,150 despite no personal or dependency exemption can be claimed for

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					§36B and §5000A refer to individuals whom the taxpayer claims a personal exemption for. Since the TCJA changed the personal exemption to zero, individuals won't claim this deduction. The IRS will modify the regulations under these provisions to address this change. In the meantime, Notice 2018-84 provides that a taxpayer is considered to have claimed a personal exemption deduction: • For himself if he files a return and is not a dependent of another taxpayer. • For another individual if he is allowed he is allowed a personal exemption deduction and lists that individual's name and TIN on his Form 1040 or Form 1040NR.	2018 through 2025 per §151(d)(5). • GAO, *Federal Tax Withholding: Treasury and IRS Should Document the Roles and Responsibilities for Updating Annual Withholding Table*, GAO-18-548 (7/31/18). This report explains pre-TCJA and post-TCJA challenges creating withholding tables.
4.	Use of chained CPI rather than CPI for inflation adjusted amounts	11002	P	tyba 12/31/17; but not for 2018 brackets or standard deduction	Updated amounts for 2018 Rev Proc. 2018-18 Corrected by Rev. Proc. 2018-22 (also see IR-2018-94 (4/13/18). IR-2018-19 (2/6/18) – TCJA does not affect the 2018 dollar	• Rev. Proc. 2018-57 provides the inflation adjusted amounts for 2019. • Rev. Proc. 2018-18 states that personal exemption under 151(d) is $0. This is incorrect; should be $4,150 (or new

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					amounts relevant to pension/IRS plans previously announced in Notice 2017-64. Rev. Proc. 2018-27, IRS will allow the HSA HDHP amount originally given ($6,900) rather than the one released in February 2018 ($6,850) because of issues of updating systems after the start of the year. Rev. Proc. 2018-11 – inflation adjusted amounts under §1274A for 2018. 2019 Inflation Adjustments – Rev. Proc. 2018-57 (11/15/18).	number using chained CPI). Figure still relevant in determine if person is a dependent as a "qualifying relative" which includes gross income test tied to personal exemption amount. • Updated amounts are generally the same as in Rev. Proc. 2017-58 or lower. For example, §911 foreign earned income exclusion for 2018 changed from $104,100 to $103,900. • Correction includes that AMT exemption phase-out for estates and trusts starts at $81,900 rather than $500,000.
5.	20% QBI deduction for individual owners of businesses (199A)	11011	T	tyba 12/31/17	[P.L. 115-141 (3/23/18), Sec. 101, fixes the "grain glitch" of §199A. It modifies §199A(a) and adds (g).] Prop Regs – Advance release 8/8/18 (REG-107892-18). Also see Notice 2018-64 (8/8/18) on methods for calculating W-2 wages for §199A purposes. The IRS is requesting comments on specific items. IR-2018-162 (8/8/18). **Final and Prop Regs** (1/18/19):	• Favorable provision for business owners outside of the C corp format. When taxable income is below $157,500 ($315,000 MFJ), computations are easier because the only limitation that applies is the taxable income one (QBI deduction can't exceed 20% of taxable income less net capital gains per §1(h)). When income is above the thresholds + phaseout levels ($50,000 or $100,000 MFJ), a phase-out applies. If the taxpayer has a specified service

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					• IR-2019-04 (1/18/19) • TD (xxx) • Rev. Proc. 2019-11 (1/18/19) with guidance on determining W-2 wages for 199A purposes.[3] • Notice 2019-07 (1/18/19) - a proposed revenue procedure on a safe harbor where certain real estate activities are considered a trade or business for §199A purposes. Note: This is a safe harbor meaning if you meet it, no questions asked. But it is not the only way to show that a rental activity is a trade or business so be sure to check on the extensive case law on this which generally finds rentals of real property (other than a triple net lease) to be a trade or business where there is a profit motive and regular	trade or business (such as accounting, law, consulting, athletics, brokerage or where skill and reputation of owner or employee is key asset), then income above the thresholds prohibits a QBI deduction for that business. The taxpayer can still get a QBI deduction for non-specified service businesses, but subject to limitations. • Various interpretive issues require guidance. For a list of many of these, see AICPA comment letter of 2/21/18. Several have been addressed by the final regulations. • Also see WSJ article of 4/3/18 on "crack and pack." The regulations address this (generally doesn't work). • Senate staff says reason deduction is after AGI was to help states that start with AGI.[6]

[3] IRS Summary: "Rev. Proc. 2019-11 provides methods for calculating W-2 wages, as defined in section 199A(b)(4) and § 1.199A-2 of the Income Tax Regulations, (1) for purposes of section 199A(b)(2) of the Internal Revenue Code (Code) which, for certain taxpayers, provides a limitation based on W-2 wages to the amount of the deduction for qualified business income (QBI); and (2) for purposes of section 199A(b)(7), which, for certain specified agricultural and horticultural cooperative patrons, provides a reduction to the section 199A deduction based on W-2 wages."

[6] Amy Hamilton, "Congress Reworked Passthrough Deduction With States in Mind," *State Tax Notes*, 6/11/18, quoting SFC senior tax counsel Anthony Coughlan.

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					and continuous work by the owner.[4] *Query*: What if a taxpayer makes the safe harbor election (which requires a special signed statement attached to the return), but case law would treat the rentals as a trade or business or owner does something else indicating the rentals are a trade or business such as perhaps issuing 1099s under §6041 or claiming any §179 depreciation (see §179(d)(1)(C))? • Proposed regs under §199A – REG-134652-18 (1/18/19) IRS FAQs on §199A 1040 instructions (page 37) include basic information as well as a Simplified Worksheet for individuals with taxable income	• Application of §199A for owners of fiscal year entities, for year ending in 2018 – see Nellen article of 3/15/18. Also see comments in this table for item #49 on repeal of §199. • In seeking comments for the draft postcard-size 1040, the IRS notes 3 key changes in filing burden. More taxpayers will claim the standard deduction and not owe AMT due to the increased exemption and phase-out level. Both of these changes decrease burden. The IRS notes that §199A deduction will increase taxpayer filing burden. But they note: "the decreases in burden from the change in Schedule A and Form 6251 filings are expected to more than offset the increase burden from the Sec 199A Deduction." FR 34700 (7/20/18). This is

[4] Summary from IRS: "Notice 2019-07 contains a proposed revenue procedure that provides for a safe harbor under which a rental real estate enterprise will be treated as a trade or business solely for purposes of section 199A of the Internal Revenue Code (Code) and §§ 1.199A-1 through 1.199A-6 of the Income Tax Regulations (Regulations) (26 CFR Part 1), which are being published contemporaneously with this notice. To qualify for treatment as a trade or business under this safe harbor, the rental real estate enterprise must satisfy the requirements of the proposed revenue procedure. If an enterprise fails to satisfy these requirements, the rental real estate enterprise may still be treated as a trade or business for purposes of section 199A if the enterprise otherwise meets the definition of trade or business in § 1.199A-1(b)(14)."

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					below the §199A thresholds. For individuals with taxable income above the thresholds, they will find more information in Pub 535 (see draft of 1/7/19 which doesn't reflect the final regs). The final 1040 instructions include information clarified by the final regulations that was not in the draft 1040 instructions or the release of the final instructions prior to 1/18/19 (see more below). For example, in "Determining Your Qualified Business Income" the final instructions state that QBI "also includes other deductions attributable to the trade or business including, but not limited to, deductible tax on self-employment income, self-employed health insurance, and contributions to qualified retirement plans." *Note*: The earlier version of the final 1040 instructions, such as one found from 1/7/19 (using the Wayback Machine), did not state that QBI is reduced by ½ SE tax and the other items now noted in	probably true for most individuals because their taxable income will be below the taxable income thresholds where it gets more complicated any many individuals will only have one business.

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					the final regs and the more current final 1040 instructions. So apparently, the final 1040 instructions were updated for the final §199A regulations released on 1/18/19 (and the instructions were not really "final" when published in a form that didn't say "draft"). *Note*: The preamble of the final regulations includes this for effective date: "These regulations are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Sections 1.199A-1 through 1.199A-6 are generally applicable to taxable years ending after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, taxpayers may rely on the rules set forth in §§1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under §§1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018." There are references in the regs themselves too, which use similar language	

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					except provide that the anti-abuse rules apply to tax years ending after 12/31/17. *Observations*: • The regulations were released by the IRS on 1/18/19 but had not yet been published in the Federal Register. The publication date will be early 2019. So, sounds like the regs are not effective for 2018. But, read on. • What does the "entirety" language mean? Sounds like if you use any part of the proposed or final regulations, you must use them all. What if you are only using portions that are also clear in the statute, such as the formula to compute the deduction? • Apparently, you can't use something in the proposed regs and something in the final regs that is not in both; you'd have to choose one set. • Can you opt not to follow the regulations and just the statute? Sounds like it, but	

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					what does that mean? Again, much of what is in the regs is in the statute. Arguably, even the provision at Reg. 1.199A-3(b)(vi) to reduce QBI by the deductions claimed for half of SE tax, self-employed health insurance and qualified retirement contributions, is part of §199A(c) although not as explicitly as in the final reg. In *Argo Sales Company v. Comm'r.*, 105 TC 86 (1995), the court denied a taxpayer's position that they did not have to follow something in a regulation because it wasn't effective yet because the court said the rule was in the statute (even though not explicitly as laid out in the regulations); and the statute was effective for the year involved.[5] • Will tax prep software ask users if they want to follow	

[5] The court stated: "The absence of regulations does not relieve us of the duty of interpreting our tax laws. While it has been stated in the context of a regulation applied retroactively by the Commissioner that "if the interpretation of the statute embodied in the regulation is correct, one must conclude that the statute has meant the same thing all along, with or without the regulation", Butka v. Commissioner, 91 T.C. 110, 128 (1988), affd. 886 F.2d 442 (D.C. Cir. 1989), that does not mean that where a regulation is *not* applied retroactively that the statute has *no* meaning prior thereto without the regulation. It simply falls on us to interpret the statute without the aid of a regulation."

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					the proposed regs, final regs or neither (and be programmed to deal with the answer)? • §7805(b) allows the IRS to make regulations retroactive to the effective date of the related legislation if issued within 18 months of enactment. So, why didn't the IRS just make the regs effective at of 12/22/17? Possibly because the proposed regulations were reliance regulations. But the IRS could have caveated a 12/22/17 effective date by allowing certain items in the proposed regulations to be followed (but perhaps that's too messy). Taxable income thresholds for 2019: Per Rev. Proc. 2018-57, the inflation adjusted amounts for 2019 are: ➢ MFJ $321,400 ➢ S or HH $160,725 ➢ MFS $160,700	

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					Observation: There was no MFS figure for 2018. It seems odd that the MFJ figure is not 200% of the S and HH figure as described at §199A(e)(2). Apparently, it is due to application of the inflation adjustment approach of §1(f)(7) as required under §199A. That provision says that the inflation factors for MFS are rounded to $25 rather than $50. But still not entirely clear is why IRS doesn't start with $157,500 in §199A, adjust it for inflation and then state that the MFJ figure is 200% of that, as specified at §199A(e)(2)(A).	
6.	Disallow active passthrough losses in excess of $500,000 for joint filers, $250,000 for all others (§461(l))	11012	T	tyba 12/31/17 and before 1/1/26	Form 461 and instructions. IR-2018-254 (12/19/18) – the IRS points out that it has a website summarizing this loss limitation rule.	The JCT Bluebook (page 40) states: "An excess business loss (the deduction for which is limited by section 461(l)) does not take into account gross income or gains or deductions attributable to the trade or business of performance of services as an employee.[209]" Footnote 209 states: "A technical correction may be necessary to carry out this intent. For this purpose, the trade or business of performance of services by the

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						taxpayer as an employee has the same meaning as it does under section 62(a)(1)." Form 461 assumes a technical correction is needed as it includes wages in the computation of the excess business loss. Note: Should this technical correction be made retroactive to the effective date of §461(l), it will increase the disallowed loss.
7.	Increase and modify child tax credit from $1,000 to $2,000 (up to $1,400 refundable); $500 non-refundable credit for non-child dependents (those that don't qualify as child under §24).	11022	T	tyba 12/31/17	IRS Publication 972, Child Tax Credit IRS Interactive Tax Assistant Tool to determine if you qualify for the child credit. IRS Tax Reform Tax Tip 2018-182 (11/27/18).	Child must be under age 17 (same as before TCJA). Income level where phase-out of credit begins is much higher ($400,000 for MFJ) meaning that more individuals will be claiming this credit.
8.	Require valid Social Security number to claim $2,000 child tax credit	11022		tyba 12/31/17		
9.	2017 and 2018 medical expense threshold of 7.5% for regular tax and AMT; 10% thereafter (§213)	11027	P	2017 and 2018		• 2018 is last year for the 7.5% threshold. In 2019 and later, it is 10%.
10.	Limit of $10,000 deduction for state and	11042	T	tyba 12/31/17	IR-2017-210 (12/27/17) – explains the law on when property taxes	• At the end of 2017, many homeowners tried to prepay

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	local taxes ($5,000 if MFS) [§164[7]] - Prepayment of 2018 Tax Rule and Issue [SALT]				are deductible by a cash method taxpayer. The IRS reminds taxpayers that the tax must be both assessed and paid to be deductible by a cash basis taxpayer. Information Letter 2018-0009 (6/29/18) – In response to a request from NJ Attorney General Grewal on deducting 2018 property taxes in 2017 and the effect of Governor Christie's Exec Order 237 dated 12/27/17, the IRS used the same position of IR-2017-210 (above). Information Letter 2018-22 (9/28/18) encourages taxpayers who prepaid property taxes in 2017 for 2018 to do a "thorough examination of all provisions relevant to the assessment and levy process" in the state to determine if the tax was assessed in 2017.	2018 property taxes to avoid the new $10,000 tax deduction limit that started in 2018. Many of these individuals were likely really paying the second installment of their 2017 taxes which are deductible in 2017. Some county assessors, such as in Los Angeles, told the public that they could not accept a tax that was not yet assessed. For assessors who did accept unassessed taxes, the payors should determine what the assessor did with the payment to be sure it is credited to their account or refunded. The prepaid, unassessed tax is arguably a deposit that is applied to the homeowner's bill once assessed in 2018 and is treated as a payment at that time thereby generating a deduction for the cash basis payor, subject to the new $10,000 state and local tax limit.

[7] For track changes version of §164, see http://www.sjsu.edu/people/annette.nellen/164_AmendedByPL115-97.pdf. This document also includes the pages from the 1944 Cumulative Bulletin that are referenced in footnote 168 of the Committee Report. The links are in the document at the URL in this footnote.

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						• 3/20/18 - Senators Kaine and Warner sent a letter to Acting IRS Commissioner Kautter questioning the December IRS news release on paying 2018 unassessed property taxes in 2017 for a 2017 deduction. • NJ Governor Christie Executive Order No. 237 (12/27/17) to require cities to credit 2018 property tax payments made in 2017 to 2018 liabilities. *Query*: Does this make the tax "assessed" by year end? o Information Letter 2018-0009 (4/30/18) – AG Grewal of NJ asked whether a cash basis NJ resident can deduct in 2017, 2018 property taxes paid in2017. The IRS refers to IR-2017-20 (above) and that "state or local law controls the imposition and assessment of real property taxes." The letter does not address anything about the effect of the governor's EO. •

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	Limit of $10,000 deduction for state and local taxes ($5,000 if MFS) [§164[8]] - Cap and SALT Workaround Issues [SALT]	11042	T	tyba 12/31/17	Notice 2018-54 (5/23/18) – The IRS intends to issue proposed regs on federal income tax treatment of certain payments made by taxpayers that generate a credit against state or local taxes, while yielding a charitable contribution deduction for federal purposes. Per the notice, these regs "will make clear that the requirements of the Internal Revenue Code, informed by substance-over-form principles, govern the federal income tax treatment of such transfers. The proposed regulations will assist taxpayers in understanding the relationship between the federal charitable contribution deduction and the new statutory limitation on the deduction for state and local tax payments." Also see IR-2018-122 (5/23/18). Information Letter 2018-0010 (6/29/18) to New York Senator Bonacic in response to his request for IRS opinion on "whether	Guidance needed on how an itemizer determines what taxes make up the $10,000 amount as this effects the tax treatment of any state income tax refund, the home office deduction, the NIIT calculation, and other provisions. Which taxes imposed on business and investment (§212) activities are not part of the $10,000 cap? Section 164(b)(6) states that property taxes paid or accrued in carrying on a trade or business or §212 activity are not subject to the cap. So, apparently, property taxes on land held for investment are still deductible on Schedule A but not subject to the $10,000 cap. State and local income taxes are not listed in that exception. But, pre-TCJA law treats income tax imposed directly on a business, such as a state tax on an S corporation, as deductible for AGI. See Rev. Rul. 58-25 and Rev. Rul. 81-288 and cases and regs they cite. In contrast, state income taxes imposed on all of a sole proprietor's

[8] For track changes version of §164, see http://www.sjsu.edu/people/annette.nellen/164_AmendedByPL115-97.pdf. This document also includes the pages from the 1944 Cumulative Bulletin that are referenced in footnote 168 of the Committee Report. The links are in the document at the URL in this footnote.

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					amounts contributed by taxpayer under [the New York governor's charitable contribution] proposal would be recognized by the IRS as a charitable contribution." The IRS stated it was not allowed to respond to questions about proposed legislation. But also noted: "Nevertheless, we are aware of his and similar proposals, and are continuing to study the application of the federal tax laws to these matters." Similarly, see Information Letter 2018-0007 (6/29/18) with a similar question posed by NY Senator DeFrancisco. NOTE: Legislation was enacted in New Jersey, New York and Connecticut for new donation funds designed to help residents reduce the impact of the $10,000 cap. Proposals exist in other states. Connecticut also enacted a tax of 6.99% on partnerships and S corporation income, with a refundable credit for the owners (SB 11, Public Act No. 18-49;	income (business and all other) continues to be a Schedule A deduction only and subject to the $10,000 cap (for example, your personal income taxes paid on your Schedule C and E activities are only remotely imposed on the business and are subject to the $10,000 cap – Congress reminded us of this in footnote 168 in the TCJA committee reports – see my prior footnote with the §164 track changes and copy of the 1944 legislation referred to in footnote 168). Per §164(b)(6), foreign income taxes are not subject to the $10,000 cap. *Queries regarding SALT Cap Workarounds*: Subsequent to the request in Info Letters 2018-0007 and 2018-0010, the NY legislation was enacted. Would the IRS answer the question now? The Lawsuit – On 7/17/18, New York, Connecticut, Maryland and New Jersey filed a lawsuit against Treasury Secretary Mnuchin on the illegality of the $10K state and local tax cap in calculating federal income

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					5/31/18), effective for tax years starting on or after 1/1/18 including making estimated tax payments. See DOR Special Notice SN 2018(4) (6/6/18) + CT-1065/CT-1120SI ES for Estimated Tax by Passthrough Entity; also see OCG-6. Notice 2018-63 (8/3/18) – Per IRS: "extends application of HFA Hardest Hit Fund safe harbor to homeowners who may be affected by the $10,000 limitation on deductible property taxes. Under modified safe harbor, participating homeowners may allocate mortgage payments actually made first to deductible mortgage interest, and thereafter use any reasonable method to allocate remaining balance of payments made to real property taxes, mortgage insurance premiums, home insurance premiums and principal." Proposed regulations - REG-112176-18 (8/27/18)) & IR-2018-172 (8/23/18) – basically requires the donation to be reduced by the state tax credit claimed or	tax. Two of the arguments are that historically, the SALT deduction has been allowed, and a federalism concern. A 1927 case brought by Florida against the U.S. Treasury against the federal inheritance tax failed. The U.S. Supreme Court noted that Congress has the power to lay and collect taxes, its law is the supreme law of the land, when constitutional powers of the federal and state are in conflict state law must yield, a claim that Floridians will take their property out of the state is "purely speculative." *Florida v Mellon,* Secretary of the Treasury, 273 US 12 (1927). Upon issuance of the SALT regulations, Governor Cuomo (NY) issued a statement that included "we will not stand for this abuse of government power" (8/23/18). He also stated that he is "confident that the recently enacted opportunities for charitable contributions to New York State and local governments are consistent with federal law and follow well-established precedent. And make

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					available unless that credit was 15% or less of the amount transferred to the state or local government. Applies to donations after 8/27/18. Applies beyond the "SALT workaround" legislation enacted after the TCJA in some states. Also applies to charitable donation/state tax credit programs that existed prior to the TCJA. Treasury Secretary Mnuchin also issued a press release on 8/23 about the regulations and intent. About one week later, the IRS issued IR-2018-178 (9/5/18) to clarify that business taxpayers making business-related payments to charities or governments for which they receive a state or local tax credit can "generally deduct the payments as business expenses." Also see FAQs and Information Letter 2018-0030 (9/28/18) related to IR-2018-178.	no mistake: we will use every tool at our disposal, including litigation, to fight back." On 10/11/18, Attorney Generals in California, Connecticut, New Jersey and New York issued a joint comment letter on the proposed regulations. They state that the proposed regs are "contrary to law" in that the IRS allowed these payments as charitable contributions in prior years. They also refer to the regulations as "misguided as a matter of policy." In addition, the AGs note that IR-2018-178 (9/5/18) allows corporations to still get the tax break, but not individuals. *Note*: the IR applies to any type of business, although how it would actually work for an individual business owner is questionable assuming the state only allows a credit and not a charitable or business deduction. • *Observation* on REG-112176-18 (8/27/18) – The proposed regs are contrary to the position in

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					Rev. Proc. 2019-12 (12/28/18) clarifies IR-2018-178. It provides a safe harbor for business entities that make payment to a tax-exempt entity and receive a state or local tax credit. Under the safe harbor, the credit received is deemed to be a §162 deduction. If the credit amount is not 100%, the balance of the payment is not covered by the revenue procedure and facts and circumstances determine its treatment (generally it should fall under §170 or under §162 if the business received a benefit commensurate with that amount). While the safe harbor applies to all types of business entities, it only helps owners of passthrough entities "workaround" the $10,000 SALT cap if the tax credit is against a tax imposed directly upon the entity, such as an excise tax or property tax. The guidance applies to payments made on or after 1/1/18.	CCA 201105010 (2/4/11). However, this CCA does not state the credit percentage amount. Also, CCAs are not binding authority. As noted in the preamble to the prop. Regs. "The 2010 CCA cautioned, however, that ''there may be unusual circumstances in which it would be appropriate to recharacterize a payment of cash or property that was, in form, a charitable contribution as, in substance, a satisfaction of tax liability.'" • *Observation* on IR-2018-178 (9/5/18) – it is not clear what this really means. For example, does it mean a sole proprietor can transfer money to a state fund and claim a 100% Schedule C deduction and reduce state taxes by the credit received from the state? In contrast, an individual without a business interest doing the same thing has to reduce their charitable contribution deduction by the amount of the credit. Clarification from the IRS is

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						needed on the meaning of this news release. In addition, the state likely only allows the charitable contribution benefit as a credit and not a deduction. What issues will exist when, for example, the individual claims the ”donation” on Schedule C but is unable under state law to add that back in computing state taxable income? See the IRS clarification of the IR in Rev. Proc. 2019-12 (summary and link in the column to the left). • 9/9/18 – Governor Cuomo (NY) sent a letter to TIGTA asking for an investigation into the process that led to the issuance of the proposed regs imposing a charitable deduction cutback if the donor obtains a credit of more than 15%.
11.	Limit acquisition debt to $750,000 with grandfathering provision (§163(h))	11043	T	tyba 12/31/17	IR-2018-32 (2/21/18)	• Grandfather rule allows acquisition debt up to $1 million if incurred on or before 12/15/17. PL 115-97 includes binding contract exception if written contract was entered into before 12/15/17 to close on purchase before 1/1/18 and

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						actually purchase before 4/1/18. No definition provided of binding contract. • Refinancing of grandfathered debt: See §163(h)(3)(F)(iii).
12.	Home equity debt interest expense not treated as qualified residence interest (§163(h))[9]	11043	T	tyba 12/31/17	IR-2018-32 (2/21/18) with three examples to help illustrate that if home equity debt was used for substantial improvements on the taxpayer's principal or second residence, it likely remains as deductible qualified residence interest.	• Be sure to ask clients what they did with proceeds of any outstanding equity loans. Apply the interest tracing regs of 1.163-8T including the modification to the 15-day rule in Notice 89-35 which changes that 15-day rule to a 30-day before and after the borrowing date and any account rule. Under this tracing guidance, for example, if an individual borrowed against the equity in their home on March 1, 2016 to pay credit card debt, that seems to now produce non-deductible personal interest. But if that borrower happened to sell stock in the 30 days before or after 3/1/16 or on that date and buy new stock, the 30-day rule will allow the borrower to pretend the 3/1 borrowing was used to

[9] See track changes version of §163 at http://www.sjsu.edu/people/annette.nellen/163_AmendedByPL115-97.pdf.

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						buy the stock, thereby producing investment interest expense to the extent the stock purchase is covered by the borrowed amount. • Even if the Form 1098 or lender paperwork calls the debt a home equity debt, the tax rules (see above), are applied to determine the tax treatment. • If the equity debt was used to substantially improve the home it is secured by, it has always been acquisition debt, not home equity debt (unless the prior $1 million acquisition debt limit had already been reached).
13.	Personal casualty and theft limited to federal-declared disaster	11044	T	tyba 12/31/17		• Pertains to personal casualties, not those for business or investment property.
14.	No deduction for miscellaneous itemized deductions subject to 2% AGI floor	11045	T	tyba 12/31/17	Notice 2018-42 "updates Notice 2018-03, 2018-2 I.R.B. 285 (released to the Public Dec. 14, 2017), in light of the Tax Cuts and Jobs Act (Public Law 115-97 (Dec. 22, 2017)), which made amendments to §§ 67 and 217 of the Internal Revenue Code. This notice updates Notice 2018-03	• Thus, no deduction for tax prep fees (unless relate to Sch C, E or F), investment expenses, hobby expenses, unreimbursed employee business expense, and others). • Preparers should allocate tax prep/planning billing between Schedule C, E, F and the rest to

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					providing current information as to the optional 2018 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes." Also see IR-2018-127 (5/25/18). IRS guidance on application to estates and non-grantor trusts – Notice 2018-61 (7/13/18) "announces that the Treasury Department and the IRS intend to issue regulations providing clarification of the effect of section 67(g), enacted on December 22, 2017, by [the TCJA], on the deductibility of certain expenses described in section 67(b) and (e) that are incurred by estates and non-grantor trusts. These regulations will clarify that estates and non-grantor trusts may continue to deduct each expense that is described in section 67(e)(1) or is allowable under section 642(b), 651 or 661, in determining the estate or non-grantor trust's adjusted gross income for all	enable clients to get some tax benefit of this expense. See Rev. Rul. 92-29. • Note: There will still be a Form 2106, Employee Business Expense form for 2019, but of limited use. The form states at the top: "for use only by Armed Forces reservists, qualified performing artists, fee-basis state or local government officials, and employees with impairment-related work expenses." Also see instructions.

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					taxable years, even while the application of section 67(a) is suspended pursuant to section 67(g)." IRS website on the effect of the repeal on state legislators – "Under prior law, state legislators could deduct travel expenses while away from their district on legislative days if their residence was more than 50 miles from the state capitol. This deduction was one of several miscellaneous itemized deductions that taxpayers could claim on Form 1040, Schedule A. The TCJA suspended this and other miscellaneous itemized deductions for taxable years 2018 through 2025. Beginning Jan. 1, 2018, state legislators' travel expenses will not be deductible."	
15.	Increase taxable income limit for cash contributions from 50% to 60%[10]	11023	T	tyba 12/31/17 and before 1/1/26		• Query: Did Congress literally mean cash or also check and credit card?

[10] Note that a technical correction is likely needed to meet the intended effect of this change. See AICPA letter of 2/22/18 - https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20180222-aicpa-on-tcja-technical-corrections.pdf.

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	[note – despite reference to taxable income, the §170 limitations apply to a "contribution base" of AGI]					• Technical correction needed. See AICPA letter of 2/22/18. • June 2018 report by American Enterprise Institute finds that the TCJA change will likely reduce charitable giving by individuals by 4% or about $17 billion in 2018.
16.	Repeal limit on overall itemized deduction	11046	T	tyba 12/31/17		
17.	Repeal exclusion for employer-provided bicycle commuter fringe benefit (§132(f))	11047	T	tyba 12/31/17		• It is not clear why Congress removed bicycle benefits from the §132(f) definition of qualified transportation fringe benefits for 2018 through 2025 while the other 3 types of qualified transportation fringe benefits remain. Thus, if an employer continues to provide the bicycle benefit for 2018 through 2025, it is taxable to the employee and deductible to the employer. In contrast, the transit and parking benefits of §132(f) continue to be tax-exempt to the employee and now, not deductible to the employer (assuming the monthly benefit to the employee is at or below

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						$260/month for 2018 and $265/month for 2019)..
18.	Repeal exclusion for employer-provided qualified moving expense reimbursements (other than members of the Armed Forces on active duty) [§132(a)(6) and §132(g)]	11048	T	tyba 12/31/17	Notice 2018-75 (9/21/18) "provides that reimbursements an employer pays to an employee in 2018 for qualified moving expenses incurred in a prior year are not subject to federal income or employment taxes. The same is true if the employer pays a moving company in 2018 for qualified moving services provided to an employee prior to 2018." Also see IR-2018-190 (9/21/18). IRS Tax Reform Tax Tip 2018-192 (12/12/18) summarizes the change.	• While the moving reimbursement is taxable, it is still a good deal to the employee compared to covering the entire cost out of pocket (rather than only paying the tax on the employer's reimbursement of the moving costs). • Notice 2018-75 clarifies that if the move occurred before 2018 but wasn't reimbursed until after 2017, it falls under old law (excluded by the employee under §132).
19.	Repeal of deduction for moving expenses (other than members of the Armed Forces) [§217]	11049	T	tyba 12/31/17	See above.	Form 2106 continues to exist for Armed Forces to report moving expense and a few other individual items such as expenses of performing artists with AGI of $16,000 of less (62(a)(2)(B) and (b)). It will be of limited application due to TCJA changes. See instructions to the 2018 Form 2106.
20.	Limitation on wagering losses (related expenses not deductible if, along	11050	T	tyba 12/31/17		

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	with losses, exceed winnings)					
21.	Repeal of special rule permitting recharacterization of Roth conversions (§408A(d)(6)(B))	13611	P	tyba 12/31/17	IRS FAQs Also see Pub 590-A.	• The IRS FAQs clarify the effective date for a Roth IRA conversion made in 2017, is 10/15/18 (extended due date for the 2017 return). • The House Report explaining "present law" for IRAs notes that income levels may prevent some individuals from contributing to a Roth IRA. Footnote 268 to this explanation though appears to sanction "backdoor" Roth IRAs. It states: "Although an individual with AGI exceeding certain limits is not permitted to make a contribution directly to a Roth IRA, the individual can make a contribution to a traditional IRA and convert the traditional IRA to a Roth IRA."
22.	Change length of service awards for public safety volunteers (§457(e)(11)(B))	13612	P	tyba 12/31/17		
23.	Extended rollover period for certain plan loan offsets (§402(c))	13613	P	tyba 12/31/17	Notice 2018-74 (9/18/18) – Per the IRS: "Notice 2018-74 modifies the two safe harbor explanations in Notice 2014-74, 2014-50 I.R.B.	

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					937, that may be used to satisfy the requirement under § 402(f) of the Internal Revenue Code that certain information be provided to recipients of eligible rollover distributions. The safe harbor explanations as modified by this notice take into consideration certain legislative changes and recent guidance, including changes related to qualified plan loan offsets (as defined in section 13613 of the Tax Cuts and Jobs Act of 2017, P.L. 115-97) and guidance issued on self-certification of eligibility for a waiver of the deadline for completing a rollover (described in Rev. Proc. 2016-47, 2016-37 I.R.B. 346), and include other clarifying changes."	
24.	Double Estate, Gift, and GST Tax Exemption Amount (§2001 & §2010)	11061	T	tyba 12/31/17	IRS website on "what's new" for estate and gift tax. Prop. Regs (REG-106706-18 (11/23/18)) were issued to address the TCJA requirement for the IRS to address issues that arise when the increase gift and estate tax exclusion drops after 2025	Per Rev. Proc. 2018-18, the unified credit for 2018 is $11,180,000. Per Rev. Proc. 2018-57, the unified credit for 2019 is $11,400,000. IRS FAQs including this example:

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					("clawback" issue). Per IR-2018-229 (11/20/18): "The Treasury Department and the IRS issued proposed regulations which implement changes made by the 2017 Tax Cuts and Jobs Act (TCJA). As a result, individuals planning to make large gifts between 2018 and 2025 can do so without concern that they will lose the tax benefit of the higher exclusion level once it decreases after 2025." … "To address concerns that an estate tax could apply to gifts exempt from gift tax by the increased BEA, the proposed regulations provide a special rule that allows the estate to compute its estate tax credit using the higher of the BEA applicable to gifts made during life or the BEA applicable on the date of death."	"Before 2018, A had never made a taxable gift. In 2018 when the BEA is $11.18 million, A makes a taxable gift of $9 million. A uses $9 million of the available BEA to reduce the gift tax to zero. A dies in 2026. Even if the BEA is lower that year, A's estate can still base its estate tax calculation on the higher $9 million of BEA that was used in 2018. "
25.	Increase the Individual AMT Exemption Amounts and Phase-out Thresholds (§55)	12003	T	tyba 12/31/17		• Rev. Proc. 2018-18 – exemption amounts are: o MFJ $109,400 o MFS $54,700 o Unmarried $70,300

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						o Estate/trust $24,600 • Phase-out of exemption starts at: o MFJ $1,000,000 o Unmarried $500,000 o MFS $500,000 o Estate/trust $81,900* • 28% rate starts at: o MFS $95,550 o Others $191,100 *Rev. Proc. 2018-18 listed this amount as $500,000 but IRS later changed it in Rev. Proc. 2018-22 to $81,900. Possibly a technical correction is needed here.
26.	Reduce ACA Individual Shared Responsibility Payment Amount to Zero (§5000A)	11081	P	Months beginning after 12/31/18		
27.	Allow for increased contributions to ABLE accounts; allow Saver's Credit for ABLE contributions (§529A)	11024	T	tyba 12/31/17	IR-2018-139 (6/15/18) Notice 2018-62 (8/3/18) – Per the IRS: Proposed regs will be issued "providing clarification regarding the new rules increasing the contribution limits to ABLE accounts from certain designated beneficiaries. In addition to the annual gift tax exclusion, a designated beneficiary who works	

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					may also contribute up to the lesser of these amounts: (1) the designated beneficiary's compensation for the tax year, or (2) the poverty line for a one-person household in the state in which the designated beneficiary lives. An employed designated beneficiary is not eligible for the increased contribution limit for the taxable year if any contribution is made on behalf of the employee to a 401(a) defined contribution plan or 403(a) annuity contract, a 403(b) annuity contract, or a 457(b) eligible deferred compensation plan."	
28.	Allow rollovers from 529 accounts to ABLE accounts	11025	T	tyba 12/31/17	Notice 2018-58 – see below at #32. IRS Tax Tip 2018-136 (8/30/18) – Tax reform and ABLE accounts and more. IR-2018-239 (12/4/18) – reminders about benefits of ABLE accounts.	
29.	Extend time limit for contesting IRS levy (IRC §6343(b) and §6532(c))	11071	P	Levies final after 12/22/17	IR-2018-126 (5/25/18) with overview and link to relevant IRS publications.	

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					Tax Reform Tax Tip 2018-123 (8/9/18); includes links to information on levies and collection rights.	
30.	Treatment of certain individuals performing services in the Sinai Peninsula of Egypt	11026	T	Retroactive to 6/9/2015	IR-2018-95 (4/13/18) Pub 3, Armed Forces' Tax Guide	Amended returns may be needed.
31.	Treatment of student loans discharged on account of death or disability (§108)	11031	T	Discharges after 12/31/17		
32.	Allow 529 withdrawals up to $10,000 for primary and secondary education	11032	P	Distributions made after 12/31/17	Notice 2018-58 - "Treasury and the IRS intend to issue regulations providing clarification regarding (1) the special rules for contributions of refunded qualified higher education expenses to a qualified tuition program [PATH Act change]; (2) the new rules permitting a rollover from a qualified tuition program to an ABLE account under IRC § 529A: and (3) the new rules treating certain elementary or secondary school expenses as qualified higher education expenses." Prior to issuance, taxpayers may rely on rules in	

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					sections III, IV, and V of Notice 2018-58. Also see IR-2018-156 (7/30/18).	
33.	Retirement plan and casualty loss relief for any area with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Relief and Emergency Assistance Act during 2016	11028	P	Various, generally retroactive for 2016 disasters		
34.	Repeal of deduction for alimony payments and generally corresponding inclusion in income	11051	P	Divorce or separate instruments executed after 12/31/2018	Notice 2018-37 (4/13/18) – IRS to issue regs on application of effective date regarding trust income payable to former spouse.	
BUSINESS						
IRS Fact Sheet 2018-17 (Oct 2018) summarizing change for businesses. IRS TCJA: A comparison for businesses – tables comparing Pre-TCJA and TCJA rules relevant for businesses IRS Pub 5318, What's New for Your Business IRS Tax Reform Tax Tip 2018-169 (10/31/18) – How tax reform affects farmers and ranchers + "What's new for farmers in 2018?"						

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35.	Repeal of Alternative Minimum Tax on Corporations (§§53, 55-59)	12001 12002	P	tyba 12/31/17 + provisions to allow use of minimum tax credit carryover by 2022	Notice 2018-38 on how blended rate of §15 applies. IR-2018-99 (4/16/18) – blended rate rule of §15 applies Per IRS: For tyba 12/31/17, "refund payments and credit elect and refund offset transactions due to refundable minimum tax credits under section 53(e) will not be subject to sequestration." [per IRS website updated 1/14/19]	• See Notice 2018-38 for example of how §15 applies to repeal of AMT. • Also see IRS website on effect of sequestration on MTC for corps.
36.	21 Percent Corporate Tax Rate (§11) + change in dividends received deduction percentage	13001 13002	P	tyba 12/1/17; IRC §15 applies to fiscal year C corps	Notice 2018-38 on how blended rate of §15 applies. IRS website on 2017 fiscal year filers and blended corporate rate. IR-2018-99 (4/16/18) – blended rate rule of §15 applies. IRS Tax Reform Tax Tip 2018-179 (11/20/18) – Some S corporations may want to convert to C corporations.	• §243(a)(1) 70% changed to 50% • §243(c)(1) 80% changed to 65% and 70% changed to 50% • And more … (see §§243, 245, 246 and 246A changes) + international changes • Rationale – reduction in corporate tax rate. • A July 2018 research paper from the IMF predicts that other countries will see a decrease in tax revenues of 1.6% to 5.2% on average due to profit shifting to the U.S., increased investment in the U.S. and "policy spillovers" where other countries make law changes in

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						response to the U.S. corporate changes (such as lowering their corporate rate). [Tax Spillovers from US Corporate Income Tax Reform, 7/13/18]
37.	Increase section 179 expensing to $1 million with a phaseout range beginning at $2.5 million and expand definition of qualified property	13101	P	Property placed in service in tyba 12/31/17	FS-2018-9 (April 2018) Rev. Proc. 2019-08 (12/21/18) provides guidance on elections, eligibility, optional depreciation table for residential rental property, and more, regarding the TCJA depreciation changes including §179, the change in ADS from 40 to 30 years for residential rental property, and more. Also see IR-2018-257 (12/21/18).	• Expensing increased from $500,000 to $1,000,000 with phasedown starting at $2.5 million; eligible property expanded
38.	Simplified accounting for small business (small means average annual gross receipts in prior 3-year period of $25 million or less (but not a tax shelter);[11] no need to use accrual, account for inventory, use §263A or use percentage of	13102	P	Generally tyba 12/31/17	Rev. Proc. 2018-40 (8/3/18) explains how eligible small businesses change from accrual to cash (§448) and/or to no longer use unicap (§263A) or to not account for inventory as such (§471(c)) or for certain construction contracts (§460(e)) for the tyba 12/31/17. An abbreviated Form 3115 is allowed, and it is ok to report all TCJA small	• New definition of small is at §448 and only looks at average gross receipts of prior 3-year period, rather than any prior 3-year period. This definition is also used in §263A, §471(c) and §460(e). • Definition of "tax shelter" at §448(d)(3) is now more important. While §448 does not apply to S corporations or a

[11] For track changes version of §448, see http://www.sjsu.edu/people/annette.nellen/448_AmendedByPL115-97.pdf.

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	completion for certain construction contracts). §448 §263A(i) §471(c) §460(e)				business changes on a single Form 3115 (other than the construction contract one). Rev. Proc. 2018-40 modifies Rev. Proc. 2018-31 and references Rev. Proc. 2015-13 that covers the general rules on method changes. Rev. Proc. 2018-40 reminds filers of Rev. Proc. 2015-13, §6.03(1)(b) on concurrent changes. The details of each change including the §481(a) adjustment must be separately shown on the Form 3115 (and picked up separately as required for positive (4 year spread) and negative (report all in year of change) §481(a) adjustments. For the inventory changes under §471(c), the IRS notes that automatic change consent under Rev. Proc. 2018-40 and 2018-31 "is not a determination by the Commissioner that the proposed inventory method of accounting is permissible, and does not create any presumption that the proposed method is a permissible method of accounting under a provision of the Code. The	partnership without a C corp partner, it will if that entity meets the definition of a tax shelter. That definition includes an entity that is a syndicate meaning that over 35% of losses during the tax year are allocable to limited partners or limited entrepreneurs (§1256(e)(3)(B)). See the full definition of "tax shelter" at §448(d)(3). • Also, the rules under §448(c)(2) and 1.448-1T(f)(2)(ii) on aggregation of gross receipts is more important now (relevant to more businesses). The new favorable methods for small business all note: "In the case of any taxpayer which is not a corporation or a partnership, the gross receipts test of section 448(c) shall be applied in the same manner as if each trade or business of such taxpayer were a corporation or partnership." Committee report footnotes 656, 659 and 660 each state: "In the case of a sole proprietorship, the $25 million gross receipts test is applied as if the sole

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					director will ascertain whether the proposed method is permissible under the Code." The IRS is seeking comments on "how 'books and records of the taxpayer prepared in accordance with the taxpayer's accounting procedures' should be interpreted in §471(c)(1)(B)." Designated accounting method change numbers (DCN): Accrual to cash = 233 Unicap = 234 Inventory = 235 Certain construction contracts = 236 (Note: This change is required to be reported using the cut-off method (no §481(a) adjustment)). Also see IR-2018-160 (8/3/18).	proprietorship is a corporation or partnership." More guidance is needed to know exactly how this works. But in the meantime, the existing aggregation rules of 1.448-1T and their reference to sections 52(a), 52(b), 414(m) and 414(o) and the regulations under these provisions must be reviewed. That is, in many cases, to measure gross receipts, you don't look just at that entity, but must also consider the gross receipts of other entities, such as where the entity is part of a brother-sister group; that group might consist of corporations, partnerships and/or sole proprietorships. • Rev. Proc. 2018-40 obsoletes Rev. Procs. 2001-10 and 2002-28 because they are no longer needed. These were the procedures that allowed certain businesses with inventory to use the cash method. Rev. Proc. 2001-10 applied to taxpayer with average annual gross receipts in the prior 3 years of $1 million or less. These

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						taxpayers could use the cash method and treat inventory as non-incidental supplies. While not highlighted in Rev. Proc. 2018-40, if these taxpayers do not have an applicable financial statement (§451(b)), they can change to the §471(c) treatment of following their books and records per their accounting procedures. Rev. Proc. 2001-10 and Rev. Proc. 2002-28 explain how to account for inventory as non-incidental supplies (it is considered used when a customer buys it). Hopefully this is something the IRS will include in the guidance they have promised to explain the new favorable methods beyond the change process explained in Rev. Proc. 2018-40. • Footnote 465 to the JCT's Bluebook states that because the statute allows taxpayers to treat inventory as non-incidental materials and supplies, the de minimis safe harbor election of 1.263(a)-1(f) applies. Under this election, paying for the

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						inventory is enough to allow for a deduction (even if not sold by year end), assuming the relevant dollar amount is satisfied ($2,500 per invoice or item if the taxpayer has no AFS) and the same treatment is used in the AFS or books and records. The JCT footnote says the dollar threshold is $500 but Notice 2015-82 increased it to $2,500 for taxpayers that do not have an AFS. NOTE: The IRS has previously stated that the de minimis safe harbor election does not apply to inventory that was allowed to be treated as non-incidental supplies.[12] The IRS plans to issue guidance under the new methods for small business so let's see if they agree with the JCT. The JCT footnote might not be too relevant though because if a taxpayer has an AFS, the election won't help because the AFS would not be expensing

[12] Per this IRS website (at 1/1/19): "Inventory that you are accounting for as non-incidental materials and supplies under Revenue Procedure 2001-10 or Revenue Procedure 2002-28 are still characterized as inventory and not subject to the de minimis safe harbor election."

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						inventory. If a taxpayer doesn't have an AFS, they are likely to adopt the §471(c) option of treating inventory per their books and records following their accounting procedures, rather than treat as non-incidental supplies. But, if the IRS agrees with footnote 465, it would make the non-incidental supplies approach more attractive.
39.	Extension, expansion, and phase down of bonus depreciation (§168(k))	13201	T		FS-2018-9 (April 2018) – note it includes some errors such as stating that qualified improvement property has a 15-year life (need a technical correction for this to be true). Or, can the IRS "accept" congressional intent on 15 years (unlikely, but odd that IRS would say 15 years on its fact sheet)? (not likely) Notice 2018-30 modifies §338 and §1374 approaches for determining recognized built-in gains or losses under §382(h), to provide that hypothetical cost recovery deductions allowable had a §338 election been made or asset purchased at FMV are determined	• Technical correction needed for 15-year life on qualified improvement property. See AICPA letter of 2/22/18. • Instructions to 2017 and 2018 Form 4562 should also be helpful. The 100% bonus depreciation applies for eligible assets acquired and placed in service after 9/27/17.

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					without regard to bonus depreciation §168(k). Proposed regs (REG-104397-18 (8/8/18)) + IR-2018-159 (8/3/18). Form 4562 and instructions – 2017 and 2018. Pub 946, How To Depreciate Property, updated 2/28/18. IRS Tax Reform Tax Tip 2018-170 (11/1/18) – Depreciation changes for farmers. IRS IR-2018-223 (11/15/18) – Small business and bonus and §179 expensing change summary. IRS Tax Reform Tax Tip 2018-177 (11/15/18) - §280F changes summary.	
40.	Limit net interest deductions to 30 percent of adjusted taxable income, carryforward of denied deduction (§163(j))[13]	13301	P	Effective for tax years beginning after 12/31/2017	Notice 2018-28 (4/2/18) (also see IR-2018-82 (4/2/18)) – interim guidance and request for comments by 5/31/18. Prop regs (REG-106089-18 (12/28/18)) of 439 pages (double-spaced) (121 pages in the Federal	• Notice 2018-28 explains how corporation deals with interest expense carried forward under prior version of §163(j) and the new version. Also explains how the limitation applies to consolidated groups, and more.

[13] See track changes version of §163 at http://www.sjsu.edu/people/annette.nellen/163_AmendedByPL115-97.pdf.

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					Register). Also see IR-2018-233 (11/26/18). Rev. Proc. 2018-59 (11/26/18) – "safe harbor that allows taxpayers to treat certain infrastructure trades or businesses as real property trades or businesses solely for purposes of qualifying as an electing real property trade or business under §163(j)(7)(B)." Form 8990 –form + instructions	
41.	Modify treatment of S corporation conversions into C corporations (§481(d), §1371(f))	13543	P	12/22/17	Rev. Proc. 2018-44 (8/22/18) – "modifies Rev. Proc. 2018-31 to provide that an eligible terminated S corporation, as defined in §481(d)(2), that is required to change from the overall cash method to an overall accrual method of accounting as a result of a revocation of its S corporation election, and that makes this method change for the C corporation's first taxable year after such revocation, takes into account the resulting § 481(a) adjustment ratably during the six-year period beginning with the year of change. This revenue procedure also provides that an	

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					eligible terminated S corporation that is permitted to continue to use the cash method after the revocation of its S corporation election and that changes to an overall accrual method for the C corporation's first taxable year after such revocation, may take into account the resulting § 481(a) adjustment ratably during the six-year period beginning with the year of change." IRS Tax Reform Tax Tip 2018-179 (11/20/18) – Some S corporations may want to convert to C corporations.	
42.	Modifications to depreciation limitations on luxury automobiles and personal use property (§280F)	13202	P	property placed in service after 12/31/17	FS-2018-9 (April 2018) Rev. Proc. 2018-25 – §280F amounts for 2018.	
43.	Modifications of treatment of certain farm property (§168)	13203 13205	P	property placed in service after 12/31/17	FS-2018-9 (April 2018) Rev. Proc. 2019-08 (12/21/18) provides guidance on elections, eligibility, optional depreciation table for residential rental property, and more, regarding the TCJA depreciation changes including §179, the change in ADS from 40 to 30 years for residential rental	Per the committee report: "The provision shortens the recovery period from 7 to 5 years for any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) used in a farming business, the original use of which commences with the taxpayer and

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					property, and more. Also see IR-2018-257 (12/21/18).	is placed in service after December 31, 2017. The provision also repeals the required use of the 150-percent declining balance method for property used in a farming business (*i.e.*, for 3-, 5-, 7-, and 10-year property). The 150-percent declining balance method will continue 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." Note that the change from 7 years to 5 years doesn't apply to used property.
44.	Modification of net operating loss deduction (§172). For most taxpayers, there is no more carryback but there is unlimited carryforward. When used in a future year, the NOL can't reduce taxable income for that year by more than 80%.	13302	P	NOL limitation – losses arising in tyba 12/31/17 NOL carryover – NOLs arising in ty ending	IR-2018-254 (12/19/18) – the IRS points out that it has a website summarizing NOL changes.	• Technical correction needed for dates in statute to match those in committee reports. See AICPA letter of 2/22/18. o 8/16/18 letter from SFC Republicans to Treasury asking them to consider the intent in drafting guidance. NOTE: This letter can't override the statute.

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				after 12/31/17[14]		
45.	Like-kind exchanges limited to real property (§1031)	13303	P	Exchanges completed after 12/31/17. Exception applies if property is disposed of on or before 12/31/17, or property received on or before 12/31/17.		• For exchange of real property, such as a building, need to consider any personal property in the building that will not qualify if also exchanged.
46.	Applicable recovery period for real property (§168)	13204	P	Property placed in service after 12/31/17.	Rev. Proc. 2019-08 (12/21/18) provides guidance on elections, eligibility, optional depreciation table for residential rental property, and more, regarding the TCJA depreciation changes including §179, the change in ADS from 40 to 30 years for residential rental property, and more. Also see IR-2018-257 (12/21/18).	• Conference report says 15-year recovery period for "qualified improvement property" but Code does not (technical corrections legislation needed to fix this). o 8/16/18 letter from SFC Republicans to Treasury asking them to consider the intent in drafting guidance. NOTE: This letter can't override the statute.

[14] Note: A technical correction is needed for the effective dates as committee report does not tie to statutory language. See AICPA letter of 2/22/18 - https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20180222-aicpa-on-tcja-technical-corrections.pdf

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						• ADS recovery period for residential rental property changed from 40 to 30 years. • Maintains the 39 and 27.5 year life for nonresidential real and residential rental property, respectively. • Real property trade or business electing out of §163(j) interest limitation must use ADS for nonresidential real property, residential rental property and qualified improvement property.
47.	Amortization of research and experimental expenditures (rather than expensing) starting for tyba 12/31/21 (§174)	13206	P	Starting for tyba 12/31/21		• 5-year amortization using mid-year convention; 15 years for research conducted outside of the U.S. • Conforming changes to §41 and §280C. • Change made on cut-off basis (no §481(a) adjustment). • *Observation*: Likely added as a revenue raiser ($120 billion over ten years) intended to be deferred or repealed before the effective date.
48.	Expensing of certain costs of replacing citrus plants	13207	T	amounts paid or incurred	Rev. Proc. 2018-35 (6/19/18) "provides a new automatic method change for certain taxpayers to change their method of accounting	

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	lost by reason of a casualty (§263A(d))			after 12/22/17	from applying section 263A to citrus plant replanting costs to not applying section 263A to those costs, pursuant to section 263A(d)(2)(C). Section 263A(d)(2)(C) provides that section 263A does not apply to certain costs that are paid or incurred by certain taxpayers for replanting citrus plants after the loss or damage of citrus plants. This revenue procedure modifies Rev. Proc. 2018-31 to provide procedures for obtaining automatic consent of the Commissioner."	
49.	Repeal of deduction for income attributable to domestic production activities (§199)	13305	P	tyba 12/31/17	LB&I Division Memo of 11/21/18 on a new "campaign to evaluate claims filed for additional Domestic Production Activity Deduction (DPAD) under IRC § 199 to address compliance risk associated with the repeal of the DPAD."	In explaining the effective date of the repeal of §199, the JCT Bluebook (p. 191) states that "any item taken into account in determining the qualified production activities income of the taxpayer under former section 199 cannot be taken into account in determining the combined qualified business income amount of the taxpayer under section 199A. For example, assume that an individual holds an interest in a fiscal-year partnership or S corporation, the taxable year of which began before January 1,

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						2018, and ends within or with the individual's first taxable year beginning after December 31, 2017 (*e.g.*, the individual's 2018 calendar taxable year). The individual's share of any item from the partnership or S corporation that constitutes qualified business income, qualified REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income and that is taken into account in determining taxable income for the individual's 2018 taxable year is eligible for the section 199A deduction. However, the individual's share of any item from the partnership or S corporation that would otherwise be taken into account in determining qualified production activities income for the individual's 2018 taxable year is not eligible for the former section 199 deduction, as former section 199 is repealed for taxable years beginning after December 31, 2017." The Technical Corrections bill that Rep. Brady released on the last day of the 115th Congress includes the JCT item as a technical correction.

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						The Bluebook appears to conflict with (1) LB&I memo on §199, (2) IRS forms and instructions, such as form 8903.
50.	Limitation on deduction by employers of expenses for fringe benefits: (§274)[15] a. Meals and entertainment expenses, including meals for the convenience of the employer	13304	P	Generally, to amounts paid or incurred after 12/31/17.	Notice 2018-76 (10/3/18) – "provides transitional guidance on the deductibility of expenses for certain business meals under §274. Section 274 was amended by the Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 13304, 131 Stat. 2054, 2123 (2017) (the Act). As amended by the Act, § 274 generally disallows a deduction for expenses with respect to entertainment, amusement, or recreation. However, the Act does not specifically address the deductibility of expenses for business meals." The notice provides guidance that can be relied upon prior to the issuance of proposed regs. The IRS is seeking comments by 12/2/18. "Under this notice, taxpayers may deduct 50 percent of an otherwise	• See AICPA comment letter of 4/2/18 seeking guidance on meals, transportation, advertising related activities, and more, along with examples of meals versus entertainment. • IR-2018-195 gets at the gist of Notice 2018-76 that provides examples and explains that client meals are not necessarily disallowed entertainment. Per the IR: "Food and beverages that are provided during entertainment events will not be considered entertainment if purchased separately from the event." The JCT Bluebook conflicts with Notice 2018-76. It states (page 189): "When a meal is included in an activity or event with a client that primarily constitutes entertainment, the provision disallows the deduction for the entire activity or

[15] To see how changes affect IRC 274, see track changes at http://www.sjsu.edu/people/annette.nellen/274_AmendedByPL115-97.pdf.

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					allowable business meal expense if: 1. The expense is an ordinary and necessary expense under § 162(a) paid or incurred during the taxable year in carrying on any trade or business; 2. The expense is not lavish or extravagant under the circumstances; 3. The taxpayer, or an employee of the taxpayer, is present at the furnishing of the food or beverages; 4. The food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and 5. In the case of food and beverages provided during or at an entertainment activity, the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more	event including the meal.[959] For example, food or beverages consumed during a theatre or sporting event would be nondeductible under this rule because the activity or event is primarily entertainment." FN 959: "An objective test like that under Treas. Reg. sec. 1.274–2(b)(1)(ii) (which under prior law applies to determine whether an activity is of a type generally considered to constitute entertainment) should apply to determine whether an event or activity primarily constitutes entertainment." Note: Notice 2018-76 represents "transitional guidance" which can be relied on until yet to be released proposed regulations are finalized. The JCT Bluebook also confirms that client meals are deductible. Per text at page 189: "taxpayers may still deduct 50 percent of certain business-related food and beverage expenses. A taxpayer may still generally deduct 50 percent of the

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					bills, invoices, or receipts. The entertainment disallowance rule may not be circumvented through inflating the amount charged for food and beverages." The notice includes 3 examples. Also see IR-2018-195 (10/3/18).	food or beverage expenses associated with operating its trade or business (e.g., meals consumed by employees on work travel). A taxpayer may also continue to deduct 50 percent of the properly substantiated food or beverage expenses associated with a meal that is considered a business meal with a client, provided the business meal is not lavish or extravagant.[958]" Fn 958: "See section 274(k), which was not amended by Pub. L. No. 115–97." Schedule M-1 was not changed to highlight these new disallowances.
51.	Limitation on deduction by employers of expenses for fringe benefits: (§274)[16] Repeal deduction for qualified transportation fringes (QTF), including commuting except as	13304	P	Generally, to amounts paid or incurred after 12/31/17.	• Pub 15-B, Employer's Tax Guide to Fringe Benefits, updated for 2018. "Tip" notes no deduction for qualified transportation benefits whether provided directly by employer, through a bona fide reimbursement arrangement, or through a compensation	• See AICPA comment letter of 4/2/18 seeking guidance on meals, transportation, advertising related activities, and more, along with examples of meals versus entertainment. • Employers may stop offering newly taxable transportation

[16] To see how changes affect IRC 274, see track changes at http://www.sjsu.edu/people/annette.nellen/274_AmendedByPL115-97.pdf.

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	necessary for employee's safety.				reduction agreement. (page 21). Also see tip on meals on page 17. • Notice 2018-99 (12/10/18) provides interim guidance for 2018 on determining an employer's non-deductible parking expense if this QTF is offered. If parking is acquired from a third party, use that cost. For a parking area(s) owned or leased by the taxpayer, a reasonable method of splitting employee and other parking is allowed. The IRS provides a 4-step approach that is deemed to be a reasonable method. Under this 4-step approach, first determine the percent of spaces reserved for employees. The expenses attributed to this percent of the parking costs are not deductible by the employer. Next, for the balance of the spaces, the employer determines the primary purpose – customers or employees. Primary means	benefits or add them to employee wages. Note regarding Notice 2018-99: The Technical Corrections bill introduced by Rep. Brady (pages 30-31) on the last day of the 115th Congress states that depreciation is to be considered a parking expense. Notice 2018-99 provides "interim guidance" which can be relied on until regulations are issued. Schedule M-1 on book/tax adjustments was not updated to reflect the new M-1 adjustment for disallowance of a deduction for QTF benefits.

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					over 50%. If over 50% of the spaces are for customers, there are no other disallowed parking expenses. If the primary purpose is employee parking, the employer next (step 3) allocates a portion of the costs of these spaces to any that are reserved for customer use (this amount is deductible). The, step 4, any reasonable method is used to allocate expenses of the remainder of the spaces between deductible customer use and non-deductible employee use based on normal business hours. Employers have until 3/31/19 to change the number of spaces reserved for employees, if desired, with such change treated as made 1/1/18. Depreciation is not considered a parking expense. Several examples are provided. • Also see IR-2018-247 (12/10/18)	

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52.	Limitation on deduction by employers of expenses for fringe benefits: c. Clarification of tangible personal property deductible as employee achievement award (§274(j))[17]	13310	P	Generally, to amounts paid or incurred after 12/31/17.	Tax Reform Tax Tip 2018-190 (12/10/18) – tips on the employee achievement award change.	•
53.	Eliminate deduction for member of Congress living expenses (§162)	13311	P	tyba 12/22/17		
54.	UBTI increased by amount of certain fringe benefit expenses for which deduction is disallowed including qualified transportation fringe (QTF) benefits and on-premises athletic facilities.	13703	P	Amounts paid or incurred after 12/31/17	• Notice 2018-99 (12/10/18) provides interim guidance for 2018 on determining an entity's expense for parking offered to employees as a QTF. For parking acquired rom a third party, use that as the cost. For parking area owned or leased by the taxpayer, a reasonable method is allowed. The notice provides a 4-step approach that is deemed to be a reasonable method. Under this approach, first determine the percent of spaces reserved for employees. The expenses attributed to this percent of the parking costs is UBTI. Next,	• Note that in some cities, including the San Francisco Bay Area and Washington, DC, employers of a certain size must offer transit benefits to employees. These benefits are now subject to UBTI if it meets the definition of a qualified transportation fringe (see §512(a)(7) and §132(f)). Also applies to any on-premises athletic facility as defined at §132(j)(4)(B). • Employers may stop offering newly taxable transportation benefits or add them to employee wages.

[17] To see how changes affect IRC 274, see track changes at http://www.sjsu.edu/people/annette.nellen/274_AmendedByPL115-97.pdf.

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					for the balance of the spaces, the employer determines the primary purpose – customers or employees. Primary means over 50%. If over 50% of the spaces are for customers, there are no other UBTI. If the primary purpose is employee parking, the employer next (step 3) allocates a portion of the costs of these spaces to any that are reserved for customer use (this amount is not UBTI). Step 4 - any reasonable method is used to allocate expenses of the remainder of the spaces between non-UBTI customer use and UBIT employee use based on normal business hours. Employers have until 3/31/19 to change the number of spaces reserved for employees, if desired, with such change treated as made 1/1/18. • If the UBTI from the parking QTF along with gross income from other unrelated trades or businesses is $1,000 or less,	

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					the entity is not required to file a Form 990-T for the year. • Several examples are provided. • Notice 2018-100 (12/10/18) provides "estimated tax penalty relief in 2018 to tax-exempt organizations that offer these benefits and were not required to file a Form 990-T last filing season. [for underpayment of estimated income tax payments required to be made on or before 12/17/18.] Additionally, some tax-exempt organizations will not exceed the $1,000 threshold below which an organization is not required to file a Form 990-T or pay the unrelated business income tax." [IR-2018-247] "To claim the waiver under this notice, the tax-exempt organization must write "Notice 2018-100" on the top of its Form 990-T." [Notice 2018-100] Also see IR-2018-247 (12/10/18)	
55.	Repeal of rollover of publicly traded securities	13313	P	Sales after 12/31/17		

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	gain into specialized small business investment companies (IRC §1044)					
56.	Certain self-created property not treated as a capital asset (but retains §1235)	13314	P	Sales after 12/31/17		
57.	Certain special rules for taxable year of inclusion (in general) §451(b)[18]	13221	P	tyba 12/31/17	Notice 2018-35 – transitional guidance for Rev. Proc. 2004-34 in light of it mostly being codified at revised 451(c). Taxpayers may continue to rely on Rev. Proc.	New §451(b)(3) defines applicable financial statement." Footnotes 872[19] and 874[20] of the Senate report (House bill had no

[18] See track changes version of §451 at http://www.sjsu.edu/people/annette.nellen/451_as_AmendedByHR1_115th.pdf.

[19] Footnote 872: "The provision does not revise the rules associated with when an item is realized for Federal income tax purposes and, accordingly, does not require the recognition of income in situations where the Federal income tax realization event has not yet occurred. For example, the provision does not require the recharacterization of a transaction from sale to lease, or vice versa, to conform to how the transaction is reported in the taxpayer's applicable financial statement. Similarly, the provision does not require the recognition of gain or loss from securities that are marked to market for financial reporting purposes if the gain or loss from such investments is not realized for Federal income tax purposes until such time that the taxpayer sells or otherwise disposes of the investment. As a further example, income from investments in corporations or partnerships that are accounted for under the equity method for financial reporting purposes will not result in the recognition of income for Federal income tax purposes until such time that the Federal income tax realization even has occurred (*e.g.*, when the taxpayer receives a dividend from the corporation in which it owns less than a controlling interest or when the taxpayer receives its allocable share of income, deductions, gains, and losses on its Schedule K-1 from the partnership)."

[20] Footnote 874: "The Committee intends that the provision apply to items of gross income for which the timing of income inclusion is determined using the all events test under present law. Under the provision, an accrual method taxpayer with an applicable financial statement will include an item in income under section 451 upon the earlier of when the all events test is met or when the taxpayer includes such item in revenue in an applicable financial statement. For example, under the provision, any unbilled receivables for partially performed services must be recognized to the extent the amounts are taken into income for financial statement purposes. However, accrual method taxpayers without an applicable or other specified financial statement will continue to determine income inclusion under the all events test, unless an exception permits deferral or exclusion. See sec. 451(a) and Treas. Reg. sec. 1.451-1(a). The Committee intends that the financial statement conformity requirement added to section 451 not be construed as preventing the use of special methods of accounting provided elsewhere in the Code, other than part V of subchapter P (special rules for bonds and other debt instruments) excluding items of gross income in connection with a mortgage servicing contract. For example, it does not preclude the use of the installment method under section 453 or the use of long-term contract methods under section 460. See Treas. Reg. sec. 1.446-1(c)(1)(iii)."

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	[Generally, accrual method taxpayers report income no later than is done on their applicable financial statement or such other financial statement specified by the IRS. Exceptions exist including for special methods such as the installment method.]				2004-34 until additional guidance is issued. The IRS also seeks particular comments for this guidance; due by 5/14/18. Rev. Proc. 2018-29 – automatic method changes for taxpayers early adopting FASB ASC 606. Also requests comments on future guidance related to changes under new §451(b) and (c) for accrual method taxpayers. Notice 2018-80 (9/27/18) – "announces that the Treasury Department and the IRS intend to issue proposed regulations providing that market discount is not includible in income under section 451(b), as added by section 13221 of the TCJA. Section 451(b) provides that the all events test is met with respect to an item of gross income no later than when the taxpayer takes that item of gross income into account as revenue for financial accounting purposes in an 'applicable financial statement.'"	provision), will be relevant to IRS guidance on this new provision.
58.	Certain special rules for taxable year of inclusion (related to original issue discount and other similar items) §451(c)	13221	P	tyba 12/31/17		Footnote 880 of Senate report (House bill had no provision), states: "the provision is intended to override any deferral method provided by Treasury Regulation section 1.451-5 for advance payments received for goods." In the preamble to REG-104872-18 (10/15/18) to repeal Reg. 1.451-5, the IRS also notes: "Removing §1.451–5 also will ensure that the new deferral rules of section 451(c) apply uniformly and consistently to all taxpayers as well as simplify tax administration." Note: Rev. Proc. 2004-34 and 451(c) are not identical. We'll see in future

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					REG-104872-18 (10/15/18) – propose to repeal Reg. 1.451-5 on advance payments for goods in light of the addition of 451(c) and footnote 880 in the committee report suggesting the regulation is no longer needed (see text of fn 880 in column to the right). Rev. Proc. 2018-60 (12/7/18) modifies Rev. Proc. 2018-31 to provide automatic and streamlined method change procedures for accrual method taxpayer conforming to the new income timing rule of §451(b).	IRS guidance if the IRS keeps some of the taxpayer favorable provisions of Rev. Proc. 2004-34 such as being able to use that deferral method even if the taxpayer does not have an applicable financial statement.
59.	Modification of credit for clinical testing expenses for certain drugs for rare diseases or conditions (§45C)	13401	P	tyba 12/31/17		
60.	Modify rehabilitation credit to provide 20 percent historic credit ratably over 5 years, repeal credit for pre-1936 property (§47)	13402	P	Amounts paid or incurred after 12/31/17; see transition rule.	IRS Tax Reform Tax Tip 2018-161 (10/17/18)	
61.	Provide a tax credit to certain employers who	13403	T	Generally, to amounts	IRS FAQs	• Involves numerous terms and limitations.

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
	provide family and medical leave (§45S)			paid or incurred after 12/31/17; available for two years	IRS Tax Reform Tax Tip 2018-69 (5/4/18) IRS Tax Reform Tax Tip 2018-149 (9/25/18) Tax Reform Tax Tip 2018-183 (11/28/18) Notice 2018-71 (9/24/18) "provides guidance on the employer credit for paid family and medical leave under Code section 45S. The credit may be claimed by eligible employers and is equal to a percentage of wages paid to qualifying employees while they are on family and medical leave. The credit generally is effective only for wages paid in taxable years of the employer beginning after December 31, 2017, and before January 1, 2020. The notice provides guidance on issues arising under section 45S, including the requirements an employer must satisfy to be an eligible employer, the types of leave that are family and medical leave under section 45S, the minimum paid leave requirements, the calculation of	• Exists for two years unless renewed. • Notice 2018-71 is a set of Q&As on various aspects of this new temporary credit. It notes that a written policy must exist. Given that the guidance was issued well after the start of 2018, Q&A6 provides some relief where leave was given prior to having the written plan in place. The 34 Q&As are effective as of 9/24/18 and applicable to wages paid in tax years beginning after 12/31/17 and before 1/1/20. • The credit is claimed using Form 8994, Employer Credit for Paid Family and Medical Leave (+ instructions), and Form 3800, General Business Credit (+ instructions).

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
					the credit, and the impact of state-mandated leave on the availability and calculation of the credit." Also see IR-2018-191 (9/24/18). Form 8994, Employer Credit for Paid Family and Medical Leave [instructions].	
62.	Limitation on deduction for FDIC premiums (§162)	13531	P	tyba 12/31/17		
63.	Repeal of advance refunding bonds	13532	P	Bonds issued after 12/31/17		
64.	Repeal of tax credit bonds	13404	P	Bonds issued after 12/31/17	Rev. Proc. 2018-26 Notice 2018-15 – new clean renewable energy bonds Information on IRS website.	
65.	Modification of limitation on excessive employee remuneration, with transition rule (§162(m))	13601	P	tyba 12/31/17; binding contract exception for those in effect on 11/2/17 and not materially	Notice 2018-68 (8/21/18) – "provides initial guidance on the application of § 162(m), as amended by [TCJA]. Section 162(m)(1) generally limits the allowable deduction for a taxable year for remuneration by any publicly held corporation paid with respect to a covered employee. The Act made	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
				modified thereafter	significant amendments to §162(m), and also provided a transition rule applicable to certain outstanding arrangements (commonly referred to as the grandfather rule). The notice provides guidance on the amended rules for identifying covered employees and the operation of the grandfather rule."	
66.	21-percent excise tax on excess tax-exempt organization executive compensation (certain exceptions provided to non-highly compensated employees, and for certain medical services) (new §4960)	13602	P	tyba 12/31/17	Notice 2019-09 – interim guidance; 92 pages long.	• Tax is imposed on employer. • Applies to top five highest paid employees for the year or any "covered employee" for a prior tax year beginning after 2016, if paid over $1 million. • Numerous special definitions and rules including for golden parachute payments. • Issue as to whether applies to public university (see Aprill article of 12/26/17), although highly compensated coach might be paid by a 501(c) organization.
67.	Treatment of qualified equity grants (IRC §83(i), 3401, 6051)	13603	P	Generally applies to stock attributable	Notice 2018-97 (12/7/18) and IR-2018-246 (12/7/18). Summary per IRS: "provides guidance to taxpayers on (1) application of	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
				to options exercised, or restricted stock units settled, after 12/31/17	requirement in §83(i)(2)(C)(i)(II) that grants be made to 80% of employer's employees, (2) application of income tax withholding to deferred income related to qualified stock, and (3) manner in which an employer may opt out of permitting employees to elect deferred tax treatment even if the requirements under §83(i) are otherwise met. Section 83 generally provides for federal tax treatment of property transferred in connection with performance of services. Section 83(i) allows certain employees to elect to defer income that would otherwise be included under § 83(a) upon the exercise of a stock option or settlement of a stock-settled restricted stock unit. Income subject to such an election may be deferred for up to 5 years, subject to certain limitations."	
68.	Increase the excise tax on stock compensation in an inversion from 15 percent to 20 percent	13604	P			

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
69.	Net operating losses of life insurance companies	13511	P			
70.	Repeal of small life insurance company deduction	13512	P			
71.	Adjustment for change in computing reserves	13513	P		Method change guidance: Per the IRS (12/13/18): "Revenue Procedure 2019-10 modifies Revenue Procedure 2018-31 to provide procedures for an insurance company to obtain automatic consent of the Commissioner to change its method of accounting to comply with section 807(f), as amended by section 13513 of the TCJA. This revenue procedure also modifies Revenue Ruling 94-74 and Revenue Ruling 2002-6."	
72.	Repeal of special rule for distributions to shareholders from pre-1984 policyholders surplus account	13514	P			
73.	Modification of proration rules for property and casualty insurance companies		P			
74.	Repeal of special estimated tax payments	13516	P			

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
	(for insurance companies)					
75.	Computation of life insurance reserves	13517	P			
76.	Modification of rules for life insurance proration	13515	P			
77.	Capitalization of certain policy acquisition expenses		P			
78.	Tax reporting for certain life insurance contract transactions (new IRC §6050Y)	13520	P	Generally after 12/31/17	Notice 2018-41 (4/26/18) – reporting not required until final regs issued. Additional time to report will be given. IR-2018-104 (4/26/18) Draft Form 1099-LS, Reportable Life Insurance Sale (8/9/18)	Addresses what is often called "life settlement sales" of insurance policies to third parties. TCJA reverses the reporting called for in Rev. Rul. 2009-13. With the TCJA, "in determining the basis of a life insurance or annuity contract, no adjustment is made for mortality, expense, or other reasonable charges incurred under the contract (known as 'cost of insurance')."
79.	Clarification of tax basis of life insurance contracts (§1016(a)(1))	13521	P	Transactions entered into after 8/25/09		See above. The 8/25/09 effective date ties to the effective date of Rev. Rul. 2009-13. Per the committee report: "Under the provision, the reporting requirement is effective for reportable policy sales occurring after December 31, 2017, and reportable death benefits paid after

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
						December 31, 2017. The clarification of the basis rules for life insurance and annuity contracts is effective for transactions entered into after August 25, 2009. The modification of exception to the transfer for value rules is effective for transfers occurring after December 31, 2017."
80.	Exception to transfer for valuable consideration rules (modification to §101(a))	13522	P	Transfers after 12/31/17		
81.	Modification of property and casualty insurance company discounting rules	13523	P	tyba 12/31/17		
82.	Tax gain on the sale of a partnership interest on look-thru basis (§864(c) and §1446)	13501	P	Effectively connected change (§864(c)) effective to sales, exchanges, and dispositions on or after 11/27/17.	Notice 2018-08 provides temporary relief for disposition of certain publicly traded p/s interests. Notice 2018-29 (4/2/18) (also see IR-2018-81 (4/2/18)) – preliminary guidance and request for comments. REG-113604-18 (12/27/18).	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
				Withholding changes to §1446 effective for sales, exchanges, and dispositions after 12/31/17.		
83.	Expand the definition of substantial built-in loss for purposes of partnership loss transfers (§743)	13502	P	tyba 12/31/17		
84.	Charitable contributions and foreign taxes taken into account in determining limitation on allowance of partner's share of loss	13503	P	tyba 12/31/17		
85.	Repeal of technical termination of partnerships (§708)	13504	P	Partnership tax years beginning after 12/31/17		
86.	Excise tax of 1.4% based on the net investment income of private	13701	P	tyba 12/31/17	[P.L. 115-123 (2/9/18), Sec. 41109, adds "tuition-paying" to modify student. This was in the original	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
	colleges and universities with endowment per student of at least $500,000 (new §4968)				TCJA but removed at the last minute under the Byrd rules.] Notice 2018-55 (6/8/18) – proposed regs will be issued including covering calculation of net investment income for purposes of the tax. The regs will include how gain or loss on a property disposition affects NII. Per the notice: "Similar to the rules found in section 4940(c), the Treasury Department and the IRS intend to propose regulations stating that, in the case of property held by an applicable educational institution on December 31, 2017, and continuously thereafter to the date of its disposition, basis of such property for determining gain shall be deemed to be not less than the fair market value of such property on December 31, 2017, plus or minus all adjustments after December 31, 2017, and before the date of disposition consistent with the regulations under section 4940(c). In addition, for purposes of determining loss, basis rules that	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
					are consistent with the regulations under section 4940(c) will apply." Also see IR-2018-134 (6/8/18).	
87.	Unrelated business taxable income separately computed generally for each trade or business activity (IRC 512)	13702	P	Generally tyba 12/31/17	Notice 2018-67 (8/21/18) – "solicits comments regarding the application of new § 512(a)(6), which was added by section 13702 of [TCJA]. Section 512(a)(6) requires an organization subject to the unrelated business income tax under §511 with more than one unrelated trade or business to calculate unrelated business taxable income ("UBTI") separately with respect to each trade or business. The notice requests comments [by 12/3/18] on various topics, including possible methods for separating trades or businesses and the treatment of activities in the nature of investments and income from fringe benefits required to be included in UBTI under §512(a)(7) for purposes of §512(a)(6). The notice also sets forth interim and transition rules under §512(a)(6) with respect to aggregating gross income and	• Guidance needed on how to define separate businesses. • 4/17/18, IRS asked for one year delay in effective date because by time guidance is issued, will be difficult to go back to 1/1/18 to calculate. [letters to IRS and Congress]

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
					directly connected deductions of certain activities in the nature of investments." For tyba 12/31/17, entities may rely on methods provided in the notice. They "may rely on a reasonable, good-faith interpretation of §§511 through 514 taking into account all the facts and circumstances when determining whether an exempt org has more than one unrelated trade or business for purposes of §512(a)(6)."	
88.	Charitable deduction not allowed for amounts paid in exchange for college athletic event seating rights	13704	P	tyba 12/31/17		• Prior to the law change, 80% of such a contribution was deductible.
89.	Repeal substantiation exception for charitable contributions reported by donee organization (§170(f)(8)(D) repealed)	13705	P	tyba 12/31/16		• Note: This does NOT repeal the contemporaneous written acknowledgement requirement for all donations of $250 or more. It just removes the ability of the IRS to issue regulations to provide an alternative reporting approach by the donee.
90.	Modify tax treatment of Alaska Native	13821	P	tyba 12/31/16	IR-2018-16 (1/30/18)	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
	Corporations and Settlement Trusts [IRC §6039H, new §139G and §247]				CCA 201822026 (6/1/18) – Q&As on the tax	
91.	Expansion of qualifying beneficiaries of an electing small business trust, and modify charitable contribution deduction for electing small business trusts (IRC 1361 and 641)	13541 13542	P	1/1/18 Tyba 12/31/17		
92.	Craft beverage modernization and tax reform (§263A(f) and excise tax rates	13801 13802 13803 13804 13805 13806 13807 13808	T	§263A(f) change applies to interest costs paid or accrued beginning after 12/31/17, but does not apply after 12/31/19		
93.	Exempt amounts paid for aircraft management services from the excise taxes imposed on transportation by air [§4261(e)]	13822	P	Amounts paid after 12/22/17	Information on IRS website.	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
94.	Create qualified opportunity zones assisting areas in need and providing investors in the Qualified Opportunity Funds gain deferral and possibly partial exclusion (IRC 1400Z-1 and -2)	13823	T	12/22/17	IRS FAQs – explains how to become certified as a Qualified Opportunity Fund and how to claim the benefits. Information from Treasury Dept. Rev. Proc. 2018-16 – procedure for designating a population census tract as a Qualified Opportunity Zone. Notice 2018-48 (6/20/18) – lists the population census tracts designated by Treasury as qualified opportunity zones. Rev. Rul. 2018-29 (10/19/18) – "guidance for taxpayers on the "original use" requirement for land purchased after 2017 in qualified opportunity zones." Form 8996, *Qualified Opportunity Fund* [instructions] – used by investment vehicles to self-certify as QOFs. Form 8949, Sales and other Dispositions of Capital Assets, is used to make the election to defer the gain. Prop regs (REG-115420-18 (10/29/18)) explain what gains	Committee report states there is no gain deferral for any sale or exchange made after 12/31/26 and no exclusion for investments in qualified opportunity zones made after 12/31/26. Favorable provision as it applies to short-term and long-term capital gains provided the reinvestment is within 180 days of the realization date. Allows for deferral of gain as well as partial exclusion if held requisite time periods. "Big Stock Windfall? New Rule Defers Taxes With Real Estate Windfall," *Wall Street Journal*, 10/2/18; gain deferral applies to more than only stock.

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
					qualify for deferral, qualified opportunity funds, and more. Also see IR-2018-206 (10/19/18). Tax Reform Tax Tip 2018-191 (12/11/18) includes a brief summary.	
95.	Deny deduction for settlements subject to a nondisclosure agreement paid in connection with sexual harassment (new §162(q))	13307	P	Amounts paid or incurred after 12/22/17	Information on IRS website.	• Statute is broadly worded and appears to also deny deduction for legal fees of victim if there is an NDA. Section 162(q) says "no deduction shall be allowed under this chapter." So even though victim would not necessarily be deducting under 162, the reference is to "this chapter." Note though that §62(a)(20) limits the deduction for attorney fees for many types of lawsuits of individuals. o 8/16/18 letter from SFC Republicans to Treasury asking them to consider the intent in drafting guidance was not to deny a deduction for victims. NOTE: This letter can't override the statute.
96.	Expand provision relating to the non-deductibility	13306	P	Amounts paid or incurred on	Notice 2018-23 (3/27/18) – IRS to issue proposed regs and request comments by 5/18/18. Request	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
	of fines and penalties (§162(f) and new §6050X)			or after 12/22/17	also published in the Federal Register on 9/4/18 with comments due by 11/5/18.	
97.	Repeal of deduction for local lobbying expenses (§162(e))	13308	P	Amounts paid or incurred after 12/22/17		
98.	Revision of treatment of contributions to capital (IRC §118)	13312	P	Contributions after 12/22/17		
99.	Recharacterization of certain gains on property held for fewer than 3 years in the case of partnership profits interest held in connection with performance of investment services [carried interest provision – adds IRC §1061]	13309	P	Tyba 12/31/17	Notice 2018-18 (3/1/18) – IRS to issue regs and they will include that "that the term "applicable partnership interest" for purposes of section 1061 includes a partnership interest directly or indirectly held by an S corporation." IR-2018-37 (3/1/18)	
INTERNATIONAL						
Helpful reports: • Congressional Research Service, *Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97)*, 5/1/18						
100.	Establishment of Participation Exemption System for Taxation of Foreign Income	14101 14102 14103	P	tyba 12/31/17	IR-2018-131 (6/4/18) – penalty and filing relief via three new FAQs.	• Often, FAQs continue to be updated or modified. So it is important to check the latest version before following them.

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
	1. Deduction for foreign-source portion of dividends received by domestic corporations from specified 10-percent owned foreign corporations [new §245A and other changes] 2. Special rules relating to sales or transfers involving specified 10-percent owned foreign corporations [new §91 and other changes] 3. Treatment of deferred foreign income upon transition to participation exemption system of taxation and mandatory inclusion at two-tier rate (8% rate for illiquid assets, 15.5% rate for liquid assets) [§956 and others] IRC §91 (new), §245A (new),				Pub 5292, How to Calculate Section 965 Amounts and Elections Available to Taxpayers, for 2017 returns. Notice 2018-26 (4/2/18) – guidance on the transition tax on foreign earnings. Also see IR-2018-79 (4/2/18). FAQs on the transition tax and reporting it on2017 returns. Also see IR-2018-53 (3/13/18). PMTA 2018-16 (8/2/18) – explanation of why IRS cannot issue a refund if an overpayment of tax was applied to the transition tax. 8/16/18 – National Taxpayer Advocate blog post asking IRS for relief on the application of regular tax overpayments to the 965 liability. Rev. Proc. 2018-17 (2/13/18) and IR-2018-25 (2/13/18) on accounting period change procedures related to the transition tax. Per the IRS, the Rev. Proc. "prevents changes to the annual accounting periods of	Also, FAQs are not binding guidance, but often it is the only information available. If you use one, it is a good idea to print it to keep in the file because there is not guarantee the FAQ will still be posted when you need it again. • FAQ 14 as added 4/13/18 states that an overpayment of regular tax or the transition tax will not result in a refund. Instead, the excess is applied to future payments of the transition tax, apparently under the theory that electing to pay this tax over 8 years is similar to an installment payment because the tax is technically due for 2017. See AICPA comment letter of 4/19/18 on this issue.

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	§246, §367, §904, §956, §961(d) (new), §964(e)(4) (new), §965, §1248(j) (new)				certain foreign corporations in 2017 under either the existing automatic or general procedures if such change could result in the avoidance, reduction, or delay of the transition tax." Also see Prop. Reg. 1.965-4(c). Notice 2018-13 (1/19/18) (31 pages) and IR-2018-09 (1/19/18) with guidance on the transition tax. Notice 2018-07 (22 pages) and IR-2017-212 (12/29/17) with guidance under §965 to determine the amount includible in gross income. Proposed regulations (REG-104226-18; 8/9/18) and IR-2018-158 (8/1/18). RICS – Rev. Proc. 2018-47 (9/6/18) "provides excise tax relief for certain regulated investment companies that have inclusions under §951(a)(1) by reason of §965 for the excise tax year ended on Dec. 31, 2017." Notice 2018-78 (10/1/18) – Per IRS: "The notice of proposed	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
					rulemaking providing rules under section 965 published in the Federal Register on August 9, 2018 [REG-104226-18 (8/9/18)], provided, among other things, for a basis election to be made by United States shareholders in certain circumstances. It also provided rules concerning the determination of the aggregate foreign cash position of a United States shareholder that is a member of a consolidated group, which were inconsistent with the more taxpayer-favorable rule announced in Notice 2018-07. This Notice 2018-78 announces that the due date for the basis election that would otherwise be required to be made before the final regulations are published will be extended to 90 days after the publication of the final regulations. Further, elections made in the interim will be revocable. The notice also announces that the rules concerning the determination of the aggregate foreign cash position will be revised to be	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
					consistent with Notice 2018-07. Finally, Notice 2018-78 provides a postponement for taxpayers affected by Hurricane Florence to make elections, and file transfer agreements, related to section 965." Also see REG-104226-18 (10/10/18). Prop regs – REG-114540-18 (11/5/18) - "reducing the amount determined under section 956 for certain domestic corporations that own (or are treated as owning) stock in controlled foreign corporations (CFCs)." Also see IR-2018-210 (10/31/18). Notice 2019-01 (12/14/18) Per the IRS: "the Treasury Department and the IRS intend to issue regulations addressing certain issues arising from the enactment of the Tax Cuts and Jobs Act, Pub. L. 115-97 (2017) on December 22, 2017, with respect to foreign corporations with previously taxed earnings and profits ("PTEP"). The notice describes regulations that the Treasury Department intend to	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
					issue including (i) rules relating to the maintenance of PTEP in annual accounts and within certain groups; (ii) rules relating to the ordering of PTEP upon distribution and reclassification; and (iii) rules relating to the adjustment required when an income inclusion exceeds the earnings and profits of a foreign corporation. It is anticipated that the regulations announced in the notice will apply to taxable years of U.S. shareholders ending after the date of release of the notice and to taxable years of foreign corporations ending with or within such taxable years."	
101.	Rules Related to Passive and Mobile Income 1. Current year inclusion of global intangible low-taxed income by United States shareholders [GILTI, new §951A] 2. Deduction for foreign-derived intangible income and global	14201 14202	P		Prop Regs on GILTI – IR-2018-186 (9/13/18) – REG-104390-18 (10/10/18). Form 8992, U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI). REITs – "Revenue Procedure 2018-48 provides guidance for real estate investment trusts regarding the treatment of certain foreign income inclusions, including inclusions under section 951A, for	

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
	intangible low-taxed income [new §250] §1, §59A (new), §163, §250 (new), §267A (new), §367, §482, §882, §936, §951A, §960(d)				purposes of the 95 percent gross income qualification test of section 856(c)(2).” Proposed regulations on FTC after TCJA - REG-105600-18 + IR-2018-235 (11/28/18). Prop regs on Certain Hybrid Arrangements - REG–104352–18 (12/28/18).	
102.	Other Modifications of Subpart F Provisions 1. Elimination of inclusion of foreign base company oil related income 2. Repeal of inclusion based on withdrawal of previously excluded subpart F income from qualified investment 3. Modification of stock attribution rules for determining status as a controlled foreign corporation [repeal of §958(b)(4)] 4. Modification of definition of United States shareholder	14211 14212 14213 14214 14215	P			• See AICPA letter of 3/13/18 requesting relief from unintended consequences caused by repeal of §958(b)(4). • See “Unintended Tax Glitch Could Hit Multinationals, Private Equity,” by Allyson Versprille, BloombertBNA, 7/5/18

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	5. Elimination of requirement that corporation must be controlled for 30 days before subpart F inclusions apply §951, §954, §955					
103.	Prevention of Base Erosion 1. Limitation on income shifting through intangible property transfers 2. Certain related party amounts paid or accrued in hybrid transactions or with hybrid entities (§267A (new)) 3. Shareholders of surrogate foreign corporations not eligible for reduced rate on dividends §936, §367(d)(2)(D), §482, §267A (new), §1(h)	14221 14222 14223	P			

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments
104.	Modifications Related to Foreign Tax Credit System 1. Repeal of section 902 indirect foreign tax credits; determination of section 960 credit on current year basis 2. Separate foreign tax credit limitation basket for foreign branch income 3. Source of income from sales of inventory determined solely on basis of production activities 4. Election to increase percentage of domestic taxable income offset by overall domestic loss treated as foreign source §902, §960, §78, §904, §863(b),	14301 14302 14303 14304	P			
105.	Inbound Provisions 1. Base erosion and anti-abuse tax (new §59A) §59A (new), §6038A	14401	P		Proposed regulations (REG-104259-18; 12/21/18). Also see IR-2018-250 (12/13/18) which notes that these rules "primarily affect corporate taxpayers with gross receipts	

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					averaging more than $500 million over a three-year period who make deductible payments to foreign related parties." Form 8991, Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts - draft	
106.	Other Provisions 1. Restriction on insurance business exception to passive foreign investment company rules 2. Repeal of fair market value method of interest expense apportionment §1297, §864(e)	14501 14502	P			

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Tax rates for 2018

Corporations 21%

Individuals:

TABLE 1 - Section 1(a) - Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:	*The Tax Is*:
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

TABLE 2 - Section 1(b) – Heads of Households

If Taxable Income Is:	*The Tax Is*:
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

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments

TABLE 3 - Section 1(c) – Unmarried Individuals (other than Surviving Spouses and Heads of Households)

If Taxable Income Is:	*The Tax Is*:
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

TABLE 4 - Section 1(d) – Married Individuals Filing Separate Returns

If Taxable Income Is:	*The Tax Is*:
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

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments

TABLE 5 - Section 1(e) – Estates and Trusts

If Taxable Income Is:	*The Tax Is:*
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

Table 2.–Adjusted Net Capital Gain Maximum Rates for 2018

Filing Status and Rate Start Amount (Taxable Income)					Rate
Married Individuals Filing Joint Returns and Surviving Spouses	Heads of Households	Single Individuals	Married Individuals Filing Separate Returns	Estates and Trust	
$0	$0	$0	$0	$0	0%
$77,200	$51,700	$38,600	$38,600	$2,600	15%
$479,000	$452,400	$425,800	$239,500	$12,700	20%

#	P.L. 115-97 Provision	Act Section	T or P	Effective Date	IRS Guidance	Comments

Adjusted Net Capital Gain Rates for 2019

Filing Status and Rate Start Amount (taxable income)					Rate
MFJ	HH	Single	MFS	Estates/ Trusts	
$0	$0	$0	$0	$0	0%
$78,750	$52,750	$39,375	$39,375	$2,650	15%
$488,850	$461,700	$434,550	$244,425	$12,950	20%

2019 Tax Tables are in Rev. Proc. 2018-57 - https://www.irs.gov/pub/irs-drop/rp-18-57.pdf.