Tax Cuts and Jobs Act:
What Business Owners Need to Know

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How TCJA Impacts Businesses

- Lower corporate and business tax rates – 21%
- Owners of pass-through entities get 20% deduction
- New definition of "small business" – under $25 million
- AMT repealed for business
- DPAD repealed
- Limitation on deduction of interest expense
- Limitation on net operating losses

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How TCJA Impacts Businesses…

- **Corporate tax rate 21%**
  - Flat rate and applies to personal service corporations.
  - Fiscal year taxpayers will have a blended rate

- **AMT repealed**
  - Unused minimum tax credit
    - May be used to offset regular tax liability for any tax year.
    - A portion of the credit is refundable in 2018 through 2021.

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How TCJA Impacts Businesses…

- **Limitation on Deduction of Business Interest ##**
  - Deduction of business interest limited to 30% of adjusted taxable income
  - Does not apply to taxpayers that are considered "small businesses"
  - Average gross receipts of $25 million or less (adjusted for inflation)
  - Adjusted for depreciation and amortization for tax years beginning before 1-1-2022
  - Aggregation rules apply/common control (sec 1563)
    - Parent-subsidiary. 80% of total combined voting power all classes of stock
    - Brother-sister. 2 or corps w/ 5 fewer owners with 50% voting stock

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- **Limitation on Net Operating Losses (NOLs)**
  - For tax years after 2017, <u>not</u> allowed to carry back losses.
  - NOL carryforward now indefinite
  - NOL limited to 80% of taxable income
    - This only applies to NOLs incurred after 12/31/17, prior NOLs not limited.
  - Fiscal year filer 2017/2018 special rules
    - May not carryback NOL but not subject to the limitation.
  - <u>No</u> small business exemption to this rule

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- **Like-Kind Exchanges (sec 1031)**
  - Only applies to real estate transactions.

- **Domestic Production Activities Deduction (DPAD) repealed**

- **Research and Experimental Expenditures**
  - Expenditures paid or accrued after 2021 must be amortized over 5 years.
  - Amortization is 15 year for foreign research.
  - Change of accounting method filing not required
  - No change to R&D credits

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How TCJA Impacts Businesses…

- **"Small Business" Definition Created ##**
  - $25 million or less in gross receipts
    - Averaged over the past 3 years & not a tax shelter
  - On a per entity basis (tax filing)
  - Allows the following
    - Expanded use of cash basis method,
    - Use of inventories,
    - Not required to apply UNICAP rules
  - Personal services corps, no limitation to use of cash basis if,
    - Cash method clearly reflects income and not tax shelter
  - Partnership w/C-corp partners no longer required to be accrual if under $25 million

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- **Employer Credit for Paid Family & Medical Leave**
  - Eligible employers entitled to claim a credit of 12.5% of wages paid to employee during any period there the employee is on leave under FMLA provided that the rate of pay is 50% of the wages normally paid.

- **Employee Achievement Award**
  - Non-tangible personal property prohibited as an achievement award.
  - That includes cash, cash equivalents, gift cards, gift coupons, and gift certificates.

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- **Bonus Depreciation/Section 179 Expensing**
  - Now 100% bonus for assets placed in service after 9/27/17 and before 1/1/2023. Assets do not have to be new.
    - Sec 179 limitation increased to $1M for 2018 and beyond. Investment limitation $2.5M.
  - Definition of qualified improvement property expanded to include roofs, HVAC, fire protection, alarm systems, & security systems.

- **Employer Paid Moving Expenses**
  - Exclusion form income for moving expenses suspended for tax years 2018-2025.
  - Amount will be considered compensation.
  - Exception for US armed Forces on active duty who move pursuant to military order.

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- **Meals & Entertainment**
  - No deduction for entertainment starting in 2018
  - Meals limited to 50% in call cases but w/ a few exceptions
  - Meals for convenience of employer 50% deductible starting in 2018, non-deductible in 2026

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Deductibility of Meals & Entertainment

	2017 Expenses (Old Rules)	2018 Expenses (New Rules)
Office Holiday Parties	100% deductible	100% deductible
Entertaining Clients	50% deductible	No deduction for entertainment expenses
	Event tickets, 50% deductible for face value of ticket; anything above face value is non-deductible	
	Tickets to qualified charitable events are 100% deductible	
Business Meals under IRC Sec. 274(k) and (n)	Not extravagant and taxpayer is present with business purpose with substantiation 50% deductible	Not extravagant and taxpayer is present with business purpose and substantiation 50% deductible
Business Meals e.g. Employee Travel Meals	50% deductible	50% deductible
Meals Provided for Convenience Of Employer	100% deductible provided they are excludible from employees' gross income as de minimis fringe benefits; otherwise, 50% deductible	50% deductible (nondeductible after 2025)

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- **The Tax Cuts and Jobs Act provides some complex new rules for pass-through entities, which include:**
  - *S Corporations*
  - *LLCs*
  - *Partnerships*
  - *Sole Proprietorships*

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How TCJA Impacts Businesses…

- **Qualified Business Income Deduction (Pass-through Deduction)**
  - Pass-through entities including sole proprietorships may deduct up to 20% of qualified business income
  - Qualified trade or business deductible amount is generally the lesser of-
    - 20% of the taxpayers qualified business income from the trade or business; **or**
    - A W-2 wage/qualified property limit which is the greater of-
      - a. 50% of the W-2 wages of the trade or business; **or**
      - b. Sum of 25% of W-2 wages plus 2.5% of the unadjusted basis immediately after acquisition of all "qualified property" of the trade or business.
- Limitations apply if particular thresholds are exceeded or if the trade or business is a specified service business. *More on this later.*

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How TCJA Impacts Smaller Businesses

Overview

Effective for the 2018 tax year, most business taxpayers who meet a $25 million average annual gross receipts test:

- will be able to use the cash method of accounting,
- will not be required to apply the inventory or uniform capitalization (UNICAP) rules,
- and will not be required to use the percentage of completion method for small construction contracts.

An entity meets the gross receipts test for a tax year if its average annual gross receipts for the preceding tax years do not exceed $25 million. This is indexed for inflation.

Note: This does not apply to tax shelters.

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Cash Basis
Under the new law, businesses may elect to use the cash basis if they meet the $25 million gross receipts test. Taxpayers may make a change in accounting method by using Form 3115.

UNICAP
Small businesses may qualify for an exception to the UNICAP rules for personal property purchased for resale if the business meets the gross receipts of $25 million or less for the preceding three tax years.

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Inventories

The TCJA allows inventory to be treated as "non-incidental materials and supplies" rather than current treatment, which also includes work in process, labor and overhead. This will allow manufacturers to keep only the cost of raw materials on the balance sheets. *(This treatment is supported by Rev Proc 2002-28 and Sec 1.162-3 and Sec 471.)*

Certain small businesses do not need to account for inventories and can use the cash method. Small businesses qualify for this exception if they have average annual gross receipts of $25 million or less. A business that meets the $25 million test can use a method of accounting for inventory that:

- treats inventory as non-incidental materials & supplies or
- conforms to the business's financial accounting treatment of inventories Code Sec 471(c)(1)(B)

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Small Construction Contracts

The required use of the percentage of completion method and most of the cost allocation rules for long-term contracts do not apply to small construction contracts, home construction contracts, and residential construction contracts. A small construction contract is any contract for the construction or improvement of real property that:

(1) is expected to be completed within the two-year period beginning on the commencement date of the contract, and

(2) is performed by a taxpayer whose average annual gross receipts for the three tax years preceding the tax year in which the contract is entered into do not exceed $25 million (Code Sec. 460(e)(1)).

In addition to the percentage of completion method, taxpayers can report income from small construction contracts under the completed contract method, the exempt-contract percentage of completion method, or any other permissible method

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Change of Accounting Method

If a taxpayer changes its method of accounting based on the above, then:

- the change is treated as initiated by the taxpayer and made with the IRS's consent;
- and the change is made on a cut-off basis for all similarly classified contracts entered into on or after the year of change
- Form 3115 is filed.

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Notes

- Under the old law, partnerships with C corp partners were required to use the accrual method. Under the new law, these organizations can now qualify to use the cash basis provided they meet the $25 million test.
- Qualified personal service corps are allowed to use the cash method without regard to whether they meet the $25 million gross receipts test, so long as the use of such method clearly reflects income.
- Tax shelters are not allowed to use the cash method even if they meet the gross receipts test. They do not qualify as small businesses that can avoid the UNICAP rules or to avoid using inventory.
- The $25 million amount will be adjusted for inflation beginning with the 2019 tax year.

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The Pass-Through Deduction…

Overall limitation for deductibility of the 20% pass-through deduction

- There is a general limitation where the 20% pass-through deduction cannot;
  - Exceed the taxpayers taxable income less taxpayers net capital gain, **or**
    - Exceed 20% of the taxpayers taxable income over the sum of the taxpayers net capital gain, **or**
    - Exceed the taxpayers combined qualified business income
      - Combined qualified business income equals-
        - The sum of the deductible amounts determined for each qualified trade or business plus
        - 20% of the taxpayers aggregated qualified REIT dividends and qualified publicly traded partnership income.

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The Pass-Through Deduction…

Other Provisions

- If qualified income is a loss, the loss is carried over to the next tax year. Any deduction allowed the next tax year is reduced by 20% of any carryover qualified business loss.
  - Ex. Second year qualified income times 20% less the carryover loss times 20%.
  - The net adjustment is not calculated on the gross figures, rather on the net after 20% is calculated.
  - Care will be needed for those with multiple flow through entities.
- Qualified items of income, gain, loss, deductions does <u>not</u> include the following;
  - Capital gains/losses
  - Dividends/interest
  - Annuity payments
  - Foreign currency gains/losses

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The Pass-Through Deduction…

- Qualified business income does <u>not</u> include;
  - Reasonable compensation paid to the taxpayer
  - Guaranteed payments to a partner for services rendered

- Qualified property (2.5% provision)
  - Is depreciable tangible property held by and available for use in the qualified trade or business at the close of the tax year and is used during the year to produce qualified business income.
  - Unadjusted basis immediately after acquisition.
  - Depreciable period begins on the date the taxpayer first places the property in service.
  - Depreciable period ends on the later of;
    - 10 years after the placed-in-service date or
    - The last day of the last full year in the recovery period that would apply under MACRS (ADS disregarded).

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The Pass-Through Deduction…

- The calculations during the phase in/out are complicated and not included in this overview.

Noteworthy Items

- The 20% deduction does apply to rental real estate (2.5% of unadjusted assets)
- The 20% deduction limitations are based on taxable income and <u>not</u> adjusted gross income.
- It is not known if the IRS will enforce a guaranteed payment for partners who provide services to a partnership. Sec 707(c)
- Provisions apply to estates and trusts as well as agricultural or horticultural cooperatives.

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How TCJA Impacts Individuals

Overview

In an effort to simplify individual income taxes, a number of deductions were modified or eliminated as part of the Tax Cuts and Jobs Act. The changes to the individual taxes are to sunset in 2026 and revert back to the tax laws in place in 2017.

New income tax rates & brackets

For tax years 2018 through 2025, seven tax rates apply for individuals: 10%, 12%, 22%, 24%, 32%, 35% and 37%.

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How TCJA Impacts Individuals…

Standard deduction increased

For tax years 2018 through 2025, the standard deduction is increased to $24,000 for married individuals filing a joint return, $18,000 for head-of-household filers, and $12,000 for all other taxpayers.

Personal exemptions suspended

For tax years 2018 through 2025, the deduction for personal exemptions is effectively suspended because the statutory exemption amount is reduced to zero.

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Deduction for personal casualty & theft losses suspended

For tax years 2018 through 2025, the personal casualty and theft loss deduction is suspended, except for personal casualty losses incurred in a federally-declared disaster. Special rules apply where a taxpayer has personal casualty gains.

Gambling loss limitation modified

For tax years 2018 through 2025, the limitation on wagering losses under Code Sec. 165(d) is modified to provide that *all* deductions for expenses incurred in carrying out wagering transactions, and not just gambling losses, are limited to the extent of gambling winnings.

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How TCJA Impacts Individuals…

Child tax credit increased; partial credit for non-child dependents

For tax years 2018 through 2025, the child tax credit is increased to $2,000. The income levels at which the credit phases out are increased to $400,000 for married taxpayers filing jointly ($200,000 for all other taxpayers) (not indexed for inflation). The amount of the credit that is refundable is increased to $1,400 per qualifying child, and this amount is indexed for inflation, up to the base $2,000 base credit amount.

State and local tax (SALT) deduction limited

For tax years 2018 through 2025, a taxpayer may claim an itemized deduction of up to $10,000 ($5,000 for married taxpayers filing separately.) This includes personal property taxes, real estate taxes, and state and local income taxes or sales tax in lieu of income taxes. Foreign real property taxes may not be deducted. Taxpayer may still claim a deduction for foreign income taxes subject to the $10,000/$5,000 limit.

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How TCJA Impacts Individuals…

Mortgage interest deduction limited

For tax years 2018 through 2025, the deduction for home mortgage interest is limited to interest on up to $750,000 ($375,000 for married taxpayers filing separately) of acquisition indebtedness and the deduction for interest on home equity indebtedness is suspended. The new lower limit doesn't apply to existing indebtedness incurred before Dec. 15, 2017.

The pre-Act acquisition indebtedness limitations continue to apply to taxpayers who refinance existing qualified residence indebtedness that was incurred before Dec. 15, 2017, provided the resulting indebtedness doesn't exceed the amount of the refinanced indebtedness.

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How TCJA Impacts Individuals…

Medical expense deduction threshold temporarily reduced

For tax years beginning after Dec. 31, 2016 and ending before Jan. 1, 2019, the threshold on medical expense deductions is reduced to 7.5% of adjusted gross income (AGI) for all taxpayers.

Individual charitable contribution deduction limitation increased

For contributions made in tax years 2018 through 2025, the 50% limitation under (Code Sec. 170(b)) for an individual's cash contributions to public charities and certain private foundations is increased to 60%. Contributions exceeding the 60% limitation are generally allowed to be carried forward and deducted for up to five years, subject to the later year's ceiling.

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How TCJA Impacts Individuals…

No deduction for amounts paid for college athletic seating rights

For contributions made in tax years beginning after Dec. 31, 2017, no charitable deduction is allowed for any payment to an institution of higher education in exchange for which the payor receives the right to purchase tickets or seating at an athletic event.

Alimony deduction by payor/inclusion by payee suspended

For any divorce or separation agreement executed after Dec. 31, 2018 (or executed on or before Dec. 31, 2018 but modified later if the modification expressly provides that the Act rules apply), alimony and separate maintenance payments are not deductible by the payor spouse and are not included in the income of the payee spouse.

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How TCJA Impacts Individuals…

Overall limitation ("Pease" limitation) on itemized deductions suspended

For tax years 2018 through 2025, the "Pease limitation" on overall itemized deductions (also referred to as the "3%/80% rule) is suspended.

Qualified bicycle commuting exclusion suspended

For tax years 2018 through 2025, the exclusion from gross income and wages for qualified bicycle commuting reimbursements is suspended.

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Exclusion for moving expense reimbursements suspended

For tax years 2018 through 2025, the exclusion for qualified moving expense reimbursements is suspended, except for members of the Armed Forces on active duty (and their spouses and dependents) who move pursuant to a military order and incident to a permanent change of station.

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Repeal of ACA individual mandate

Under pre-Act law, the Affordable Care Act (also called the ACA or Obamacare) required individuals who were not covered by a health plan that provided at least minimum essential coverage to pay a "shared responsibility payment" (also referred to as a penalty) with their federal tax return, for any month the individual did not have minimum essential coverage. This provision is commonly known as the "Individual Mandate."

The Act permanently repeals the Individual Mandate by providing that **starting in the 2019 tax year**, the amount of the individual shared responsibility payment is reduced to zero.

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How TCJA Impacts Individuals…

Individual AMT retained, with higher AMT exemption amounts

For tax years 2018 through 2025, the Act increases the amount of an individuals alternative minimum taxable income (AMTI) that is exempt from AMT-the "AMT exemption" amounts-as follows:

- Joint returns and surviving spouses, $109,400;
- Single taxpayers, $70,300;
- Marrieds filing separately, $54,700.

The above AMT exemption amounts are reduced (not below zero) to an amount equal to 25% of the amount by which the individual's AMTI exceeds a phase-out amount, increased as follows:

- Joint returns and surviving spouses, $1 million.
- All other taxpayers (other than estates and trusts), $500,000.

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How TCJA Impacts Individuals…

Student loan discharged on death or disability

For discharges of indebtedness in tax years 2018 through 2025, certain student loans that are discharged on account of death or total and permanent disability of the student are excluded from gross income.

Estate and gift tax retained, with increased exemption amount

For estates of decedents dying and gifts made in tax years 2018 through 2025, the Act doubles the base estate and gift tax exemption amount from $5 million to $10 million for single taxpayers. The $10 million amount is indexed for inflation occurring after 2011 and is expected to be approximately $11.2 million in 2018 ($22.4 million per married couple).

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How TCJA Impacts Individuals…

Distributions from qualified tuition programs

Section 529 qualified tuition plans are modified to allow the plans to distribute no more than $10,000 in tuition expenses incurred during the tax year for designated beneficiaries enrolled at a public, private, or religious elementary or secondary school. The $10,000 limitation is per-student and not per account.

Miscellaneous itemized deductions suspended

For tax years 2018 through 2025, the deduction for miscellaneous itemized deductions that are subject to the 2%-of-AGI floor is suspended.

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Miscellaneous Itemized Deductions

Deductions suspended until 2026

- Unreimbursed Employee Expenses:
  - Equipment
  - Travel & lodging expenses
  - Vehicle travel & related expenses
  - Training expenses
  - Meals & entertainment
  - Office in home
  - Insurance; liability, malpractice
  - Tools & supplies
  - Work clothes
  - Professional dues/associations/ memberships
  - Union Dues
  - License & regulatory fees
  - Job search/hunting expenses
  - Education expenses (improve skills in current employment)

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Miscellaneous Itemized Deductions…

- Investment fees and expenses (broker)
- Trustee administration fees for IRA
- Safe deposit box rental
- Hobby expenses
- Tax preparation fees and tax advice
- Indirect deductions from pass-through entities

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Miscellaneous Itemized Deductions…

Expected major impact for the following taxpayers

- *Outside sales.* They will no longer be able to deduct business miles, travel expenses, or meals and entertainment. These can be quite significant from year to year.
- *Construction.* Those in construction often have travel expenses going from job site to job site, work clothing, tools, and significant union dues. Those would all be non-deductible.
- *Job hunters.* Those seeking employment often have expenses related to travel, resume services, business coaching, and education to enhance skills. This has all been eliminated.
- *Owners of non-retirement brokerage accounts.* Some taxpayers pay a fee to have their investments managed. That fee is based on the amount of assets under management. It can be 1-2% of the value of the investments each year. Those fees are no longer deductible.

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ANY FINAL QUESTIONS?

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