
- The following discussion on proposed tax legislation is just that.
- It is PROPOSED and has NOT BEEN ENACTED.
- Indeed, after this seminar you probably will see major changes to the tax proposals that we are going to discuss.
- The following discussion was described by the authors as a “framework” for what is termed as “tax reform” and was manifested in the recently introduced House tax bill.
This “framework” of this House bill is described as a “template” for the various committees that deal with tax issues and “encourages” bi-partisan support.

It was released on September 27, 2017 and is entitled “Unified Framework For Fixing Our Broken Tax Code” with the subsequent tax bill introduced into the House of Representatives reflecting many of its concepts.

The three principal groups working on the tax proposals are the President, House Ways and Means Committee, and Senate Committee on Finance although other members of Congress will probably introduce their own legislation.
The Future? – Provisions – Continued

- Indeed, other tax proposals have been proposed by members of both the Senate and House.
- Some of them are somewhat shocking.
- Our discussion will be restricted to the framework and the resulting introduction of the tax bill in the House as well as a couple of related proposals to the framework.
- I will not include many of these separate proposals.
- The House bill which was released on November 2 is estimated to cost $1.51 trillion over the next decade.
The Future? – Provisions – Continued

- The contents of these slides are an overview of many common provisions and are not all inclusive.
- They are being discussed for general informational purposes.
- One can be expected to change rapidly as amendments have already been offered and will be offered.
The Future? – Main Provisions Framework

Provisions – The House Tax Bill

1. Raising the standard deduction – proposals include raising the standard deduction to $12,000 for single filers and $24,000 for joint returns while eliminating personal exemptions including the elimination of head-of-household filing status.

- The additional standard deductions for the elderly and blind are eliminated.
- The personal exemption is eliminated.
- The effect is that families larger than three exemptions will lose a net deduction that may or may not be offset with a lower tax rate.

- Presumably, the elimination of the head-of-household filing status will result in taxpayers who file under that status now will now have to file as single.

- The effect of the larger standard deductions is to create a “zero tax bracket” on the first $24,000 earned by a married couple and $12,000 earned by a single taxpayer.
2. The consolidation of the number of tax brackets to three with the top rate reduced to 35% from 39.6% with a retention of a fourth bracket.

- The new brackets are 12%, 25%, and 35% with the retention of the 39.6% tax bracket for upper level taxpayers.

- The tax brackets are:
  I. Taxable income up to $90,000 – 12%.
  II. $90,000 up to $260,000 – 25%.

III. $260,000 up to $1 million – 35%.
IV. $1 million and above – 39.6%.

- Higher income taxpayers would have the 12% bottom rate in their calculation “phased out.”
- The tax brackets were scheduled in the bill to be indexed to inflation immediately.
- However, one day (November 3) after the tax bill was introduced, the House revised the bill downward by immediately imposing a special “chained CPI” which is a new, lower inflation calculation than the original CPI in the bill.
- This new, lower rate is to start immediately instead of the original 2023 date in the bill.
This specially designed lower, inflation calculation will result in more income to be taxed at higher rates much earlier.

The effect of this special index is to reduce the taxpayers’ overall tax savings by $89 billion over a decade.

3. No repeal through this framework or tax bill of the net investment income tax of 3.8% and additional Medicare surcharge of .09% which Congress backed off in the final bill repealing the Affordable Care Act.
4. The framework provides that capital gains, interest, and dividends would no longer enjoy their special tax rates.

- However, the House bill is silent on these rates.
- Potentially, under the framework, capital gains would be revert to the old rules of years ago with 50% of the net capital gains included as ordinary income.
- In situations where taxpayers had the majority of their income from capital gains and paid no income tax whatsoever or with a much lower income tax due to the existing capital gains rate would, potentially, find themselves paying higher taxes under the inclusion of 50% of the capital gains as ordinary income.

5. Allows the continued deduction of charitable contributions.
6. Limits mortgage interest to $500,000 down from the current $1 million.
7. Allows a maximum deduction of $10,000 of real estate taxes.

8. Eliminates deductions for moving expenses and student loan interest.
9. Eliminates all other itemized deductions such as:
   - Medical expenses.
   - Unreimbursed employee expenses.
   - State and local sales and income taxes.
   - Tax preparation fees.
   - Other itemized deductions.
10. The bill would not make any changes to the ability to contribute to the maximum amount allowed currently to a 401(k) that is tax free nor would it make any changes to the current provisions regarding IRAs.

11. The child care credit would increase to $1,600 from the current amount of $1,000 for a child under 17.

- An additional $300 credit for each parent would be allowed as part of a consolidated family tax credit provision.

12. Retains the earned income tax credit.
   - This retention is a certainty in order to pass any tax legislation that affects a reduction in taxation of businesses.
   - Despite heavy pressure on the IRS and massive changes in procedures and strict oversight by the IRS, the earned income credit, additional child credit, and education credits remain one of the largest areas of systemic fraud.

13. Repeals, in total, both the individual and corporate alternative minimum tax.

14. Create a special tax rate capping out at 25% for the pass through of income from sole proprietorships, partnerships, and S corporations.

- Congress is charged with adopting proposals to avoid the re-characterization of personal income into business income.

- The potential for re-characterization would be a big problem.
- Certain activities such as professional service corporations (e.g., physicians, accountants, engineers, etc.) would be excluded from this special rate provision.
- The attempt to implement this special tax rate for flow through entities triggered massive complications when Kansas enacted a similar statute exempting pass through entities from state taxation.

- The number of flow through entities in that state increased by 200% and the state was alleged to have lost $472 million before repeal efforts were made.
- Discussion is being made to implement a phase-out of the special rate at a certain higher level of income or setting a certain threshold amount at which the income would revert back to being taxed at the individual rates.

- In response to this discussion, the House is initially proposing a special election for pass-through business owners.
- This election would required that the partners, S corporation shareholders, and sole proprietors to choose between one of the following options:
  1. Categorize 70% of their income as wages, thus, this amount would be taxed at the new individual tax rates, and 30% of the income as business income taxable at the 25% rate OR
II. Calculate a ratio of their wage income to business income based upon the level of their capital investment.

- Did someone say something originally about this tax bill was going to simplify the law and related calculations???
- You can expect a considerable discussion on this proposal as the potential for abuse will undoubtedly result in massive issues.
- The pass-through tax calculation has been called a “touchy issue.”
15. Reduction of the corporate tax rate to 20%.

> Initially, this lower corporate rate was to be phased in over a five year period but opposition arose which resulted in it being immediately implemented.

Warning: A large growth industry will no doubt raise its head giving advice that the a partnership or a S corporation should now be a C corporation due to possible difference in rates between the corporate flat amount and the special pass through rate. This is narrow sighted to say the least because of the restrictions in a C format such as....

16. Setting a 10% – 12% tax rate on global/overseas earnings from the current 35% rate.

- This reduced rate was one of the principal goals of the tax writers.
- It is believed that by setting this much lower tax rate that several trillion dollars of cash that is held by US corporations overseas can now be repatriated and used in this country.

17. Tax credits given to the wind and solar industries were restored.
   - Includes fuel cell energy properties.
   - These credits were left out of the 2015 budget deal.
   - The 10% tax credit for the solar and geothermal industries would expire at the end of 2027.
   - Condition of allowance would be that wind, solar, and energy properties will have to prove continuous activity from the time construction begins until their completed.
   - The bill does propose to reduce the wind energy’s production tax credit by one-third.

- The changes to the wind credit could face opposition in the Senate from its defenders.
- Extends a $6 billion tax credit for the nuclear industry that would, primarily, benefit Southern Co.’s Vogtle project in Georgia which is undergoing massive construction and related delays.
- Without this extension, the credit would have gone unused before the 2021 deadline.

19. The proposed framework provides for the retention of the research credit.
20. Eliminates the $7,500 per vehicle tax credit for electric automobiles.
21. Eliminates the adoption tax credit.
22. Eliminates the tax credits for employer provided child care, disability access expenditures, and drug development and testing for rare diseases.

23. Eliminates the rehabilitation tax credit for historical buildings.
25. Eliminates the tax credit for marginal wells in the oil and gas industry.
26. Eliminates the tax credit for enhanced oil recovery in the oil and gas industry.
   ➢ This credit results when the industry pumps carbon dioxide or water in depleted or aging wells to force more oil out of them.

- The bill preserves the oil and gas industry’s deductions for intangible drilling costs.
- The bill preserves the oil and gas industry’s special accounting rule to allow them to inventory oil and other products at the LIFO (last-in – first-out) valuation of the most recent price.

27. Eliminates the tax exempt nature of bonds utilized to renovate, construct, etc. sports arenas, stadiums and the like beginning in 2018.

28. 529 accounts will now be allowed to be used for K–12 private school tuition.

- The bill allows for a pregnant mother to set up a 529 account for an unborn child which is defined by the tax bill to mean a “child in utero.”

29. Alimony deductions will be eliminated but alimony payments will still be taxable.

30. Employer paid tuition will be taxable as additional income to the employee/student.

31. Changes the sale of residence rules to allow the exclusion of gain to only one time every five years and phase-out the exclusion as the taxpayer’s income exceeds $500,000.

32. Eliminates the prohibition on churches, mosques, synagogues, etc. from engaging in political activities.

33. The so-called “carried interest,” which is the portion of an equity fund’s profit paid to investment managers retains its much lower tax rate.

34. Imposes a 1.4% tax on university endowments where the endowment totals average over $100,000 per student at that institution.

- Aimed at wealthy university endowments to force them to spend down their endowed amounts toward the economic support of the university and students.

35. The proposed bill, would double the estate tax exemption of $5.49 million but would leave gift taxes in place.

➢ The estate and generation skipping taxes would be phased out over a six year period with the total elimination at the end of six years.

➢ There are no changes proposed to the taxation of trusts in the House bill.

36. Does not restore the deduction of up to $4,000 a year for tuition and related expenses.

37. Eliminates the Hope scholarship and Lifetime Learning education credits.

38. Maintain the American Opportunity Tax Credit and adds to it a fifth year with a credit of $1,250 with a maximum refund of $500 of that credit.
39. Student loan borrowers who die or become permanently disabled and have their student loans discharged would not have the amount of the discharged income taxed.

- Currently, the permanently disabled student borrower is taxed upon the discharge and the amount of the discharged debt is included as income to the decedent student loan borrower’s estate.

- There are controversial provisions in one bill that may keep it from passing or take a substantial time to pass.
- The House and Senate provisions are very different and, as discussed before, will be time consuming to come up with any final bill that will pass both houses and obtain the signature of the president.
- A hoard of lobbyists have descended upon Congress.
- We could have a scaled down version with promises to revisit the effort next year.
- Who knows?????

- Shortly after the House bill was introduced, the President began a push to include a repeal of the individual health insurance mandate provisions to be included in the legislation.
- This repeal proposal was not included in the House bill.
A related, separate, proposal includes allowing the IRS “statutory authority to increase the oversight of paid tax return preparers” either through the proposed budget or the tax overhaul.

It is estimated that this proposal will generate $259 million increase in revenue in the next ten years.
Exactly how this oversight, if passed, will be finally defined remains to be seen but it entails overturning court decisions in the last several years that reversed IRS authority to do so.

The tax proposals include by some members of the House, in the budget, will grant the IRS more authority to address what are termed “correctable errors.”

These “errors” are defined as:

1. Instances where the information provided by the taxpayer does not match the information the IRS has access to and
2. The taxpayer has claimed a deduction or credit that has exceeded the statutory period for allowance of that deduction or credit and
3. Instances where the taxpayer had failed to include with the return the required documentation.

- How this increased authority will be defined is yet to be determined.
T.D. 9791 – Excepted Benefits – Pg. 478

- Defines excepted benefits for purposes of the Affordable Care Act.
- Applies to short-term, travel, and supplemental health insurance.
- The length of this type of insurance is a duration of less than 3 month.
- Also, requires a prominent display of the qualifications not in the insurance policy.
The adage that the “devil is in the details” certainly applies to the passage of this act!

It was passed in early December before any of us knew of the many “strings” that are attached to this law.

Initially, this law was greeted with praise but wait until we finish our discussion before you make a decision on how beneficial this law is to your clients versus the many requirements and compliance issues.
Effective for years beginning after December 31, 2016 but years before this date were granted similar relief in accordance with this law by IRS Notice 2015–17 and confirmed by this legislation.

Eliminates the $100 per day excise tax penalty for Health Reimbursement Arrangements if:
1. It is nondiscriminatory and, thus, provided to all employees and
2. Applies to small employers and
3. It is funded solely by an eligible employer and employees may not make salary reduction contributions to the plan and
4. The total amount of payments and reimbursements for any year do not exceed $4,950 for a single person or $10,000 for a family of the employee.
21st Century Cures Act – Definition of a Qualified Health Reimbursement Arrangement – Continued – Pgs. 478 & 479

- An eligible employer is any employer that employs 50 or fewer employees and, thus, is not an applicable large employer.
- An eligible employee means any employee of an eligible employer, except, the employer may exclude employees who:
  1. Have not completed 90 days of service and
  2. Have not attained the age of 25 and
  3. Part-time and seasonal workers and
  4. Employees covered by a collective bargain agreement and
5. Certain nonresident aliens.

Once again, this legislation is retroactive in that extends protection from the $100 day excise tax to years before the December 31, 2016 implementation date.
Notice 2015–14 stated that until additional guidance was provided by the Internal Revenue Service, that 2% shareholder health arrangements were exempt from the prior notice that such plans failed to meet the required market reforms under the Affordable Care Act and subject to the $100 per day excise tax assessment.

Since no guidance has been issued, such plans continue to be exempt.
Provides the details of what an employer is to provide in writing to an employee regarding the employer’s Qualified Small Employer Health Reimbursement Arrangement.

Must be provided no later than 90 days before the beginning of the year (or to a new employee at the time the employee is first eligible).

See page 480.

Penalty for failure to provide notice is $50 per employee.
Proof of Coverage – Continued – Pg. 481

If the employer provides this reimbursement plan then:
1. The employee will receive a form 1095–B from the employer.
2. If the employee had minimum essential coverage during the year, the amount of permitted benefit available will be shown on form W–2 in box 12 with the code FF.
3. If the employee did not have minimum essential coverage then the reimbursements are taxable.
4. The employee will receive a notice from the employer prior to the beginning of the year stating the employee’s permitted benefit and:

- Contain language that the employee should provide the permitted benefit amount in any application for advanced premium tax credit.
- Contain language that if the employee is not covered under minimum essential coverage for any month, the employee may be subject to the penalty for not having minimum essential coverage and such reimbursements are taxable.
Finally, the employee under a qualified reimbursement plan must submit proof to the employer that he or she has minimum essential coverage and the employer should retain this proof.

Do you see what I mean???

In reality, the compliance forces us to consider going back and just including such amounts as wages in this manner.....
Effective January 1, 2017.
This notice extends the period for an employer that provides a qualified small employer health reimbursement arrangement to furnish a written notice to its eligible employees regarding the plan. The period is extended from March 13, 2017 to at least 90 days of additional guidance regarding the contents of the notice.
Relief is granted for failure to furnish the written notice until further guidance is issued.
Final regulations are issued.
The regulations under Section 385 establish a threshold for documentation requirements that ordinarily must be satisfied for certain related-party interests in a corporation to be treated as indebtedness and, accordingly, treat as stock certain related-party interests that otherwise would be treated as indebtedness.
These are important regulations because...
The IRS has finalized the regulations without material changes allowing eligible small organizations to use a streamlined process to apply for tax-exempt status.
Partnerships – Disguised Sales – Pg. 486

T.D. 9787

- Effective after October 5, 2016 any transactions which all transfers occur on or after January 3, 2017.

- Provides guidance on partnership disguised sale purposes.
T.D. 9788

- Effective after October 5, 2016 any transactions which all transfers occur on or after January 3, 2017.
- Provides guidance on partnership allocation of liabilities for purposes of disguised sales.
The IRS has finally given guidance on the provisions of recent legislation that allow small businesses to offset the research and development credit to offset payroll taxes.

Here are the provisions:
1. A taxpayer must make an election on form 6765 and attach it to the tax return for the year it is elected.
2. The taxpayer must be in business for not more than 5 years and could not have gross receipts prior to 2012.
3. Applies essentially to new startup businesses.
4. The business must have gross receipts of less than $5 million.
5. The business may obtain the offset before actually filing their form 941 by reducing their payroll deposits for the quarter.
Depreciation Changes – PATH Act – Pgs. 487 & 488

Revenue Procedure 2017–33

- The revenue procedure provides guidance on depreciation and section 179 elections changed by the PATH Act.

- For years after December 31, 2015 the Section 179 limitation amounts and carryover rules apply to qualified property placed in service by the taxpayer during that tax year if the taxpayer chooses to make an election under Section 179(f).
For tax years after 2014, a taxpayer may make a section 179 election with respect to any section 179 property without IRS consent by filing an amended federal tax return for the tax year in which the taxpayer placed the section 179 property in service.

- This is a key provision of the law.
- Treasury and IRS intend to amend the regulations.
For years after 2015, the taxpayer may claim section 179 expensing election on air conditioning and heating units if they qualify as Section 1245 property.

Components of central air conditioning or heating systems do not qualify unless they meet the definition of qualified real property.
Additional first year depreciation – the rules for qualifying for additional first year depreciation are similar to the rules before the enactment of the PATH Act.

One difference is that qualified property includes property that is qualified improvement property instead of qualified leasehold property.
Special Rules for Certain Plant Bearing Fruits and Nuts:

- Taxpayer must make an election for specified plants that were planted or grafted by the taxpayer during the tax year.
- It must be made on a timely tax return in the year the taxpayer plants or grafts the plant.
- Once the election is made, the taxpayer may claim additional first year depreciation.
Once the election is made, it cannot be revoked without the consent of the IRS.
Revenue Procedure 2017-28

The revenue procedure sets forth procedures to obtain employee consent for an employer’s claim for credit or refund of overpaid FICA taxes.
The Internal Revenue Service will not disregard a QTIP election if the executor made the portability election.
In reality, this was an experimental program by the IRS.

It required that a creditor issue a form 1099-C representing the amount of unpaid and discharged debt when the debtor has not made a payment on the debt for 36 months.

The IRS and Treasury determined that the rule created confusion and did not provide real compliance information.

My experience has been....
The Department of Education’s discharge of student loans to attend American Career Institutes does not create cancellation of indebtedness income.
These pages contain various regulations and announcements concerning withholding and reporting by partnerships, financial institutions, etc.

They reflect the IRS’s emphasis on identifying and taxing foreign income and sources.

Of note, FinCEN Notice 2016–1 extends the Report of Foreign Bank and Financial Account (FBAR) reporting for individuals with signature authority over but on financial interest in one or more foreign financial accounts extending the filing due date to April 15, 2018.
For years beginning after December 31, 2016, the threshold/floor for the deduction of medical expenses for taxpayers who are 65 or older increases to 10% of adjusted gross income.
These regulations are proposed and reflect a change in the IRS’s position regarding the category of taxpayers permitted to claim the childless earned income credit.

The regulations are proposed and as such are for informational purposes as the IRS will generally not follow a proposed regulation prior to it becoming final.
T.D. 9785

- Effective after September 2, 2016.
- Final regulations amend existing tax laws to define a spouse to mean two individuals lawfully married to each other.
Appeals Fact Sheet: Changes to Case Transfer and Conference Procedures

- Effective October 3, 2016.
- The Fact Sheet stated that letters issued by Appeals Division erroneously suggested that a taxpayer needs to request an in-person conference to take full advantage of the appeals process.
- This misconception resulted in taxpayer requesting a face to face conference when they could hold a telephone conference.
The purpose of this clarification was in line with the Appeals Division’s efforts to promote other type of conferences including a program just initiated that will allow taxpayers to have a virtual appeals conference right from their or the representative’s office.
Revenue Procedure 2017–25

- This revenue procedure makes permanent its fast track settlement program.
- This program is a blessing to the practitioner as it gives him or her a tool to combat agent’s who are taking positions that are unreasonable, not factual, etc. and helps to move along the audit.
- The program in some ways keeps the agent from taking an arbitrary position and not doing their research, etc. as they are under pressure to close as many cases as possible as soon as possible.
Fast Track Settlement – Continued – Not In Book

- They also seemed to hate the program because it keeps their audit open and adds age to it.
- The program has many advantages to it.
- It was effective March 20, 2017.
- It is available to anyone who is under an audit by the Small Business/Self-Employed Division who have at least one open year and have at least one unresolved factual or legal issue that is in dispute.
Fast Track Settlement – Continued – Not In Book

- Cases that are accepted by the SB/SE fast track settlement program are heard by an Appeals conferee/officer “trained in dispute resolution.”
- The program involves at least one conference among the parties which is officially termed a Fast Track Settlement session.
- Taxpayers can have either an authorized representative in the session, represent themselves, or both.
- Here are some of the requirements, rules, and specifications:
1. The purpose of the program is to resolve issues that are disputed as to their factual and/or legal basis while the case is still under the SB/SE examination division.

2. The intention is that the process will be completed within 60 days after the taxpayer’s/representative’s request for consideration for the program is accepted.

➢ We will see about that due to IRS lack of resources which means....
3. The program still guarantees that the taxpayer may request an Appeals hearing and that right is not forfeited by participation in the program.

4. The Fast Track Settlement session may be initiated any time once an issue is fully developed which means that the agent has to complete and obtain answers to all referrals, valuations, opinions, etc.

➢ This is an advantage to the representative because....
Fast Track Settlement – Continued – Not In Book

5. The taxpayer, the taxpayer’s representative, the revenue agent, or the agent’s group manager may suggest participation in the program.

➢ Very rarely, if at all, will the agent or his or her group manager suggest the program because...

➢ The representative and taxpayer should note that he or she must raise the issue of participation in the program and formally request it BEFORE the issuance of the agent’s formal report (i.e., form 4549, form 4549–A, form 4605, etc.).
Fast Track Settlement – Not In Book – Continued

6. The IRS and taxpayer must consent to participate in the program.
   - It is crucial to note hesitation, refusal, etc. by the agent or his or her manager to consent to the program because........
   - It must be explained to them that this is the right of the taxpayer and they must explain why the taxpayer is being denied his or her right to participate in the program.

7. Form 14017 – Application for Fast Track Settlement must be completed.
The application form must contain what are termed “properly documented work papers supporting the examiner’s position” and include the taxpayer’s response.

Here is where the IRS must do their work and develop the issue before even giving it consideration by Appeals and here is where they do not....

8. The application and attached work papers, taxpayer’s response, etc. must be submitted to the group manager who makes the determination whether the case qualifies.
Fast Track Settlement – Not In Book – Continued

- Note: If the manager refuses to submit the package (usually because they do not want to extend the time the case is open under audit) be certain to obtain in writing if possible the reasons for his or her refusal.
- Do not push them to submit it as the clock is ticking on them and not you.

9. If a case is not accepted for the program by Appeals, it is returned to the SB/SE group manager and agent with an explanation of why it was not accepted and the alternative case resolution opportunities for the taxpayer.
Fast Track Settlement – Not In Book – Continued

10. A decision not to accept a case for the Fast Track Settlement is not subject to an appeal or judicial review, thus, it is final at that point.
11. The parties can withdraw their participation in the program at any time.
   ➢ If participation is withdrawn before the Session, the taxpayer is still eligible for post–Appeals mediation.
12. The following cases are not eligible for the program:
Lack of cooperation during the audit.
- It is critical that you and/or your client gave full cooperation during the audit and that are not any instances of failure to cooperate.
- Do not give the examiner and his or her manager a reason to disqualify you from the program which is in their advantage to do so.
II. Correspondence audits which are the type performed by the Service Centers.
III. TEFRA partnership cases.
IV. Collection cases.
V. Cases that have been identified as containing issues for litigation or already docketed in court.
VI. Frivolous tax issues and arguments.
VII. Issues as to competent authority.
13. Unresolved issues can be considered during the traditional Appeals process but are not eligible for post-Appeals mediation.

- An in-depth reading of the revenue procedure will explain the nature of the program, the issuance and form of the Fast Track Sessions report, raising new issues during the session (be careful here!) and how the settlements are accepted or rejected by either party.
This notice extends the eligibility rule waiver for 1 year to any tax year beginning before January 1, 2017 for taxpayers making certain automatic changes to use the final tangible property regulations.