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The Little Black Book of Billionaire Secrets

The Tax Bill Is Finalized: Who's Happy, And Who's Not?

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Neither snow nor rain nor crippling deficits nor a monumental upset in Alabama stays these Republicans from the swift completion of passing a tax bill that few understand and even fewer seem to want.

That's right; undeterred by nonpartisan proof from the Joint Committee of Taxation that the $1.5 trillion in proposed tax cuts will not "pay for themselves," and unwilling to wait for Doug Jones, the new Democratic Senator from Alabama, to take his seat and possibly jeopardize their goals, the GOP continues its spirited yet shameful sprint towards the most comprehensive overhaul of the tax law in 31 years.

WASHINGTON, DC - DECEMBER 15: House Ways and Means Chairman Kevin Brady (R-TX) discusses progress on the tax [+]

Let's review: Last month, the House of Representatives went from proposing 479 pages of legislation in the form of HR 1 -- the Tax Cuts and Jobs Act -- to passing the bill in a mere

two weeks. Not to be undone, the Senate managed to surpass the hilariously-harried pace set by its counterparts in the House, taking its version of HR 1 to a floor vote just *days* after the 429 pages of legislative text were made available.

The making of many things -- from movies to marriages to mac and cheese -- can be rushed without adverse consequences. Not so with the tax law. It's very nature - a complex morass of provisions that interact with one another in nuanced and often unanticipated ways -- requires a deliberate approach; something the Senate, in particular, refused to acknowledge. In fact, in such a hurry was the Senate to pass its bill that it asked its 100 members to vote on a piece of legislation that had been radically redesigned just hours earlier; quite famously, the "final" version of HR 1 was replete with margins full of hand-written text and multiple strikethroughs and redactions.

The results were predictably hilarious. While the bill passed by a 51-49 margin, as a result of the numerous 11th-hour negotiations, the Senate managed to make a *$289 billion mistake* in its drafting of the legislation; inadvertently killing off a tremendously popular incentive -- the research and development credit -- that it had intended to keep.

Fortunately for the Senate, its damage could be undone, because with both chambers having passed their respective versions of HR 1, the next step was to marry the bills into one final piece of legislation during the week-long conference committee that began this past Monday. During this process, in addition to hammering out a consensus for those areas where the House and Senate bills differed, clean-up could occur, allowing the Senate to save face from its quarter-trillion dollar error. That process ended yesterday, leaving us with a final piece of legislation that is now -- as much as the tax law ever is -- set in stone.

Next, the bill moves to a final vote in both the House and Senate, with the former slated to do its thing on Tuesday, and the latter to follow soon after. As a reminder, Republicans currently control 52 seats in the Senate -- at least until Jones takes his seat in early January -- and can thus only afford two defections (in the event of a 50-50 tie, Vice President Pence would cast the tie-breaking vote).

But let's be honest: "nay" votes among Republicans will be hard to come by. The startling results of last Tuesday's special Senatorial election in the deep South were a rude reminder to the GOP that no seat is safe come the 2018 mid-term elections. As a result, the party should be unified in its pursuit of a major legislative victory. Sure, some Republicans might voice their opposition to certain provisions of the bills to please their constituents, but I'm willing to bet that they'll fold faster than you can say "Marco Rubio."

Should the bill pass both chambers -- and it will --it's on to the President for signature.

While the Republicans may be all in on tax reform; it appears the public remains unconvinced. Over 52% of respondents in a recent Quinnipiac poll stated that they disapprove of the plan, citing their belief that it bestows too much benefit upon

corporations and the rich while not doing enough for the middle class. But it's important to understand that while its more than fair to criticize the GOP for the unnecessarily rapid pace of the reform process, we must also acknowledge that the party used this paset week wisely, taking steps to improve or eliminate many of the undesirable features of the existing versions of HR 1, most notably, a glaring lack of benefit for the very "middle class."

To illustrate, let's take a high-level look at the 10-year cost of the original House bill, Senate bill, and now the final, unified bill. We can see the way the total cuts have shifted throughout the process (all amounts in billions)

	House	**Senate**	**Final**
Corporate/Business Tax Changes	($846)	($697)	($653)
S Corp/Partnership/Sole Proprietorship Changes	($448)	($460)	($414)
International Tax Changes	$277	$104	$324
Estate Tax Changes	($172)	($94)	($83)
Remaining Individual Tax Changes	($224)	($348)	($629)
Total	**($1,413)**	**($1,495)**	**($1,456)**

As evidenced by the table, from the initial House bill through today, the GOP has responded to criticisms about the focus of its tax cuts by attempting to shift those cuts away from corporations and wealthy business owners and towards the lower and middle class. How effective those moves have been will depend on the ultimate distributional analysis to be produced by the Joint Committee of Taxation, but at first blush, the final bill certainly appears to be an improvement from previous iterations of HR 1.

You may have also noticed that the cost of each bill is awfully close to $1.5 trillion over ten years. This is no accident; the Republicans are using the streamlined "budget reconciliation process," which allows them to pass the vote in the Senate with a simple majority -- rather than the standard 60 votes -- but ONLY IF the total tax cuts don't exceed $1.5 trillion over the 10-year budget window. And because both the House and Senate bills came in at a cost of damn near $1.5 trillion, it naturally means that any maneuverings that occurred over the past week as the two bills were married together had to be zero-sum game; a tax cut to one place was required to be offset with a tax increase elsewhere. In other words, for every person that is happy about a change, there is going to be someone who is not quite so thrilled.

Let's take a look at where we stand now, and get an idea of who's happy and who's not.

Individual Ordinary Income Tax Rates

Current Law

Ordinary income -- items like salaries, interest income, and business income -- is subject to a seven-bracket progressive system. Those rates are 10%, 15%, 25%, 28%, 33%, 35% and a top rate of 39.6%.

Proposed Law

The final bill preserves the seven-bracket structure, but reduces most of the tax rates, including the top rate from 39.6% to 37%.

Here are the current and new rates for single taxpayers:

Income Level	Current Rate	Proposed New Rate
$0 - $9,525	10%	10%
$9,525 - $38,700	15%	12%
$38,700-$82,500	25%	22%
$82.500 - $93,700	25%	24%
$93,700-$157,500	28%	24%
$157,500-$195,450	28%	32%
$195,450 - $200,000	33%	32%
$200,000 - $424,950	33%	35%
$424,950-$426,700	35%	35%
$426,700 - $500,000	39.6%	35%
> $500,000	39.6%	37%

And here are the rates for married taxpayers filing jointly:

Income Level	Current Rate	Proposed New Rate
$0 - $19,050	10%	10%
$19,050-$77,400	15%	12%
$77,400-$156,150	25%	22%
$156,150-$165,000	28%	22%

$165,000-$237,950	28%	24%
$237,950-$315,000	33%	24%
$315,000-$400,000	33%	32%
$400,000-$424,950	33%	35%
$424,950-$480,050	35%	35%
$480,050-$600,000	39.6%	35%
> $600,000	39.6%	37%

Who's Happy?

Nearly everyone. As you can see in the charts above, almost all taxpayers get a reduction in their marginal rate. Most excited about the changes, however, will be those earning more than $500,000 (if single, $600,000 if married filing jointly), who under current law are paying 39.6% on their last dollar of income, but will now top out at 37%. Another benefit for high earners? The final bill abandons the House bill's promise to "claw back" as much as $24,000 in tax savings from those earning over $1,000,000 (if single; $1,200,000 if married).

The willingness of the conference committee to use what little tax revenue was available to reduce the top rate to 37% reflects the largely disingenuous nature of the GOP tax plan. President Trump and Treasury Secretary Steven Mnuchin have repeatedly promised that the bill would confer no net benefit on the richest 1%, yet despite these claims -- and even after multiple analysis of the House and Senate versions revealed that the wealthiest taxpayers were the biggest beneficiaries of both bills -- Republican leaders still saw fit to further reduce the top rate. With previous little revenue available in the zero-sum game of tax reform, this was a cut that could have gone directly to the middle class if that were the true intent of the plan.

Who's Not So Happy?

Let's start by addressing the biggest problem with the final bill: like the Senate bill, in order to fit the total cuts within the $1.5 trillion budget (while also not increasing deficits beyond the ten-year budget window), the GOP had to employ some, shall we say...gimmicks. Namely, EVERY. SINGLE. INDIVIDUAL. TAX CHANGE in the final bill is slated to expire on December 31, 2025, save for the elimination of the individual insurance mandate and changes to the way the brackets are adjusted for inflation. Meanwhile, all of the corporate and business cuts are permanent.

As a result, most angry about this bill are the Democrats, because even if they regain control of the White House, House and Senate by 2024, they will find themselves in an

unenviable position: staring at billions in expiring tax cuts that they may not be in favor of, but will nonetheless face tremendous political pressure to extend because of the impact on the middle class.

On a more granular level, there are other taxpayers who won't be happy about the changing tax rates. Because of where the brackets fall, some middle-class taxpayers will experience an increase in marginal rate relative to current law. As evidenced below, single filers earning between $157,000 and $195,000 will pay a top rate of 32%, as opposed to 28% under current law. Those taxpayers should be aided, however, by the lower rates and expanded brackets further down the income scale.

If you're married and earn between $600,000 and $1,000,000, you're not sure how to feel right now, because while your rate will be 2.6% lower than under current law (37% compared to 39.6%), under the previous version of the House and Senate bills, the top rate wasn't going to kick in for a married couple until income hit $1,000,000. Thus, married taxpayers who earn between $600,000 and $1,000,000 were teased with the prospect of a 35% rate, but now find themselves back at 37%. Still an improvement, but not what it once was.

Interestingly, this increase in rate on high-earners is caused by a rarely-seen Republican willingness to enact a "marriage penalty" as part of their tax bracket structure; as you'll see, the top rate of 37% starts at $500,000 for single taxpayers, but at only $600,000 for married taxpayers filing jointly. Under the previous version of both the House and Senate bills, the threshold for the top rate would have been exactly double ($1,000,000) the threshold for single taxpayers ($500,000).

Long-Term Capital Gains/Qualified Dividends Rates

Current Law

Under current law, those in the 10% and 15% brackets generally pay a 0% tax on qualified dividends and gain from the sale of capital assets held longer than one year (things like corporate stock or your home). Above those income limits, taxpayers pay at a 15% rate until income reaches the start of the 39.6% bracket ($420,000 if single, $480,000 if married). For those in that top bracket, the rate on capital gains and dividends is 20%.

Proposed Law

The final bill leaves the preferential rates on capital gains and dividends unchanged, not just from previous versions of the House and Senate bills, but also from current law.

Here are the rates for single taxpayers:

Income	Current Rate	Proposed New Rate
$0 - $38,700	0%	0%
$38,700-$424,950	15%	15%
$424,950-$426,700	15%	20%
>$426,700	20%	20%

And here are the rates for married taxpayers filing jointly:

Income	Current Rate	Proposed New Rate
$0 - $77,400	0%	0%
$77,400-$480,050	15%	15%
> $480,050	20%	20%

Who's Happy

Tax advisors. With no change in capital gains and dividend rates, it eliminates the need to scramble at year end to potentially accelerate or defer sales in pursuit of a better rate.

Who's Not So Happy

The highest earners might have held out hope that the top rate of 20% would be aligned with the new, higher income levels for the top bracket on ordinary income ($500,000/$600,000), but it was not to be. Also, don't forget, because Obamacare remains in place, so does the 3.8% "net investment income tax" on high earners, making the true top preferential rate 23.8%.

Standard Deduction

Current Law

All taxpayers are entitled to deduct the greater of:

1. The "standard deduction," or

2. The sum of itemized deductions.

Under current law, the standard deduction is $6,350 for single taxpayers and $12,700 for

married taxpayers.

Proposed Law

The final bill increases the standard deduction to $12,000 for single taxpayers and $24,000 for those married filing jointly.

Who's Happy?

Low-income taxpayers. By doubling the standard deduction, the bill creates a larger "zero percent" bracket, effectively removing many from the tax rolls. To illustrate, under current law, a married couple with no children would be entitled to a $12,700 standard deduction and two personal exemptions of $4,100 each, for total deductions of $20,900. This means that the couple would have to earn more than $20,900 before it could conceivably generate a tax bill.

Under the new law, however, that same couple would be entitled to a standard deduction of $24,000. Thus, despite the loss of personal exemptions (more on that next), the couple would now have to earn more than $24,000 before they can owe tax, an increase in their 0% bracket of $3,100.

In addition, this is a move that undeniably adds simplicity to the law. By doubling the standard deduction, nearly 27 million more taxpayers will claim the standard rather than itemize in 2018, negating the need to keep records of things like charitable contributions or medical expenses.

Who's Not So Happy

Tax preparation firms that specialize in preparing off-the-street tax returns for individuals could find themselves crunched for business, as more of those individuals-- now claiming the standard deduction -- start feeling confident enough to prepare their own returns.

Personal Exemptions

Current Law

Each taxpayers is entitled to a $4,100 deduction for oneself, one's spouse, and any dependents.

Proposed law

Personal exemptions would be eliminated. To soften the blow a bit, however, the Child Tax Credit -- which is generally available for any child under the age of 17 -- will be

increased from $1,000 to $2,000, and the refundable amount of the credit increased from $1,100 to $1,400. In addition, a new $500 credit will be allowable for non-child dependents, such as an elderly parent. And finally, the income limits at which a taxpayer starts to lose the two credits will be increased from $75,000 to $200,000 for single taxpayers and from $110,000 to $400,000 for married taxpayers.

Who's Happy?

The last-minute increase in the refundable portion of the Child Tax Credit was a victory for those taxpayers with income so low, they do not generate a tax liability. Under previous versions of both the House and Senate bills, while the Child Tax Credit was increased in each, the refundable portion of the credit was not. Thus, a taxpayer with no liability would not be harmed by the new credit, but they wouldn't be helped either.

Who's Not So Happy

For starters, those who consider a refundable credit a form of welfare, and trust me, there are more than a few. But in addition, those earning more than $200,000 (if single, $400,000 if married) aren't thrilled, because they:

1. Lose their personal exemptions, and
2. Earn too much to claim the enhanced credits.

For these taxpayers, there may well be no tax cut at all under the new bill, as the confluence of lost personal exemptions, no Child Tax Credits, and the elimination of many itemized deductions may simply prove too much for the lower rates to overcome. This is precisely why previous distributional estimates of both the House and Senate plans revealed that approximately 10-15% of "upper middle-class" taxpayers will pay *more tax* in 2018 than they would have under current law.

It's worth noting, the income limits in the final bill are a compromise between the House's proposed phase-out thresholds ($115,000/$230,000) and those pitched by the Senate ($250,000/$500,000). As you can see, there was a glimmer of hope when the Senate bill was drafted that those earning up to $500,000 could claim the credit, but with that amount reduced to $400,000 in the final bill (for a married couple, $200,000 for a single taxpayers), those earning between $400,000 and $500,000 will lose out, and be more likely to experience an increase.

Rate on Business Income of Sole-Proprietors, S Corporation Shareholders, and Partners in a Partnership

Current Law

Taxpayers may operate a business in their individual capacity -- as a sole proprietorship -- or through a partnership or S corporation. The latter two business types do not pay tax at the business level; rather, the income of the business is allocated among the owners, who pay the corresponding tax on their individual returns. As a result, the individual owners are at the mercy of their respective individual rates, which as stated above, rise as high as 39.6 under current law%.

Proposed Law

The foundation of both the House and Senate bills -- regardless of how the plans were sold to the public -- has always been the drop in the corporate tax rate from 35% to something as close as possible to 20%. But if you reduce the corporate rate without a corresponding incentive being given to partners, shareholders and sole proprietors, those business types would suddenly become disadvantaged relative to their corporate brethren. As a result, both the House and Senate sought to give a tax break to these business owners, though they went about it in very different ways.

In the conference committee, the Senate approach won out. As a result, sole proprietors, S corporation shareholders, and partners in a partnership will be entitled to a deduction equal to 20% of their allocable share of business income.

As was the case in the Senate bill, however, the deduction comes with numerous caveats:

- Generally, the deduction cannot exceed 50% of your share of the W-2 wages paid by the business.
- Alternatively, the limitation can be computed as 25% of your share of the W-2 wages paid by the business, PLUS 2.5% of the unadjusted basis (the original purchase price) of property used in the production of income.
- The W-2 limitations do not apply if you earn less than $157,500 (if single; $315,000 if married filing jointly).
- Certain "personal service businesses" -- i.e., accountants, doctors, lawyers, etc... -- are not eligible for the deduction, unless their taxable income is less than $157,500 (if single; $315,000) if married.

In its simplest form, it works like this:

A is a 30% owner of a manufacturing S corporation. His share of income in 2018 is $700,000, and his share of the W-2 wages of the S corporation are $200,000. A is entitled to a deduction equal to the LESSER OF:

1. *20% of $700,000, or $140,000, or*

2. *50% of his share of the W-2 wages of the S corporation, or $100,000.*

Thus, A can take a deduction of $100,000 on his return.

It's important to note, the committee report makes clear that the deduction will be taken on the top of Page 2 of Form 1040, rather than on Page 1, where it would reduce adjusted gross income and potentially cause the taxpayer to lose or gain other benefits.

Who's Happy?

President Trump.

Hear me out: under the previous version of the Senate bill, the deduction was limited to 50% of wages paid by the business, with no alternative limitation. This would prove detrimental to most owners of rental properties, because rental businesses generally do not pay much in the way of W-2 wages. As a result, a deduction may not have been available to many large landlords.

To illustrate, assume A holds a large commercial building that he purchased seven years in an LLC he co-owns with two individuals. His share of the purchase price of the building was $5 million, and his share of the annual rental income is $1 million. The LLC pays no W-2 wages; rather, it pays a fee to a management company. Under the previous Senate bill, no deduction would be available to A against the $1 million of income because of the wage limitation.

The final bill, however, adds a new wrinkle: the ability to take the 20% deduction up to 25% of W-2 wages PLUS 2.5% of the original cost of business property.

Using the same facts as above, under the final bill, A is entitled to a deduction equal to the LESSER of:

1. *20% of qualified income, or $200,000 ($1 million * 20%)*
2. *25% of W-2 wages ($0) plus 2.5% of A's share of the unadjusted basis of the building (2.5% * $5,000,000) = $125,000*

Thus, ~~the President~~ A suddenly gets a deduction of $125,000 that would not have been available under the previous Senate bill. Coincidence?

Also ecstatic are engineers and architects, who, for reasons I can't fathom, were removed from the definition of a "personal service business," and are thus entitled to the deduction regardless of their income level (subject to the aforementioned W-2 limitations).

Lastly, the other big winners are those who owns business interests through a trust. In

previous versions of the House and Senate bills, trusts were not eligible for the 20% deduction. The final bill reverses that stance.

Who's Not So Happy?

Accountants, lawyers, and doctors...again. Not only are these types of businesses generally precluded from generating the 20% deduction, but under the Senate bill, an exception existed where even these business owners could claim the deduction provided their taxable income was less than $250,000 (if single, $500,000 if married). The final bill, however, reduces the income levels for this personal service business exception to $157,500 (if single, $315,000 if married). As in the Senate bill, the low-income exception phases out over the span of $50,000 of income ($100,000 if married).

This means that any lawyer, doctor, or accountant earning more than $415,000 (if married, $207,500 if single), loses out on the 20% deduction entirely. This result was necessary to prevent potential abuses; for example, where a law firm instructs its associates to pool together and form an LLC, and rather than pay the associates wages for their efforts, the firm would pay amounts into the LLC, with that income then allocated among the associates in the same manner the wages would have been. The advantage, of course, is that the associates wages would have been taxed at ordinary rates, but the pass-through income is eligible for the 20% deduction. Under the previous Senate bill, that would have been the case until the taxable income of the associates hit the $250,000/$500,000 thresholds. With those thresholds now reduced to $157,500/$315,000, these opportunities to game the system are minimized.

Itemized Deductions

Current Law

As stated above, each taxpayer is entitled to deduct the greater of: 1. a "standard deduction," or 2. the sum of itemized deductions. Here's a look at the some of the more popular itemized deductions, and their fate under the final GOP bill:

Proposed Law

	Current Law	**Proposed Law**
Medical Expenses	yes; subject to a floor equal to 10% of adjusted gross income	yes; subject to a 7.5% floor for 2017 and 2018; 10% thereafter
Property Taxes	yes	up to $10,000 when combined with SALT deduction

State and Local Tax Deduction (SALT)	yes	up to $10,000 when combined with property tax deduction
Mortgage interest deduction	on up to $1M of acquisition debt, $100,000 of home equity debt, and up to 2 homes	on up to $750,000 of acquisition debt, no home equity debt
Other miscellaneous itemized deductions	allowed for tax preparation fees, unreimbursed employee expenses, investment advisory fees, etc...limited to 2% of adjusted gross income	Eliminated

Who's Happy?

Those who need around-the-clock medical care or who live in an assisted living facility. The House bill would have eliminated the deduction for medical expenses, meaning many elderly taxpayers would have gotten whipsawed: forced to withdraw taxable retirement income to pay for their care, but with no corresponding tax deduction. The reversal in the final bill spares some unjust results.

Residents of California will also be happy. Well, maybe "happy" isn't the right word, but until today, it looked like *all* deductions for state and local income tax would be disallowed, with a maximum $10,000 deduction permitted strictly for *property taxes*. The final bill, however, allows a taxpayer to deduct a combination of income *and* real property taxes, up to a total of $10,000. While this won't help those who reside in New York or New Jersey -- where real estate taxes are nearly as high as income taxes, meaning those residents would have hit the $10,000 limit on property taxes alone -- it helps those in California, where property taxes are relatively low compared to income taxes. Those taxpayers can now "fill in the gap" between their property taxes and the $10,000 limitation with a portion of their considerable income taxes.

Who's Not So Happy

Tax planners. Why? When word came down that the deduction for state and local income taxes would be eliminated -- or at the very least, greatly limited -- every advisor worth his salt considered recommending to clients to not only prepay estimated 4th quarter 2017 taxes by the end of this month, but also the entirety of the taxpayer's anticipated 2018 liability. That way, the client could get the deduction before it was gone.

The final bill eliminates this opportunity, however, by explicitly denying the ability to prepay 2018 taxes in 2017. It appears, however, that the language would preclude you from prepaying only *income taxes,* and not *property taxes*.

And of course, if you live in New York or New Jersey, you're chances of being among the

10% to 15% of taxpayers who experience an immediate tax increase are much higher than elsewhere in the country. Sure, you get a lower rate on your income, but if you earn more than $200,000 (if single, $400,000 if married), you also:

- lose your personal exemptions,
- are not eligible for the enhanced Child Tax Credit,
- lose your state and local income and property tax deductions in excess of $10,000
- are not eligible for the 20% pass-through deduction discussed above if you are in a personal service business

Net those items together, and many accountants, lawyers, and doctors living in high-tax states will be paying more in 2018 than they would have under current law.

Alimony Deductions

Current Law:

Alimony is deductible by the payor, and includible in income of the payee.

Proposed Law

For divorce or separation instruments executed *after December 31, 2018*, alimony will no longer be deductible by the payor, nor will it be includible in income of the payee.

Who's Happy?

Anyone who is finalizing a divorce in 2018 and who will be the one *paying* alimony.

Who's Not So Happy?

Anyone who is finalizing a divorce in 2018 and who will be the one *receiving* alimony. You may want to try and work things out...at least until 2019.

Education Incentives

Current Law

Under current law, a taxpayer who pays tuition to a college or university may be eligible for a Lifetime Learning Credit, a Hope Credit, or an American Opportunity Tax Credit, depending on the facts and circumstances. In addition, the following education incentives are sprinkled throughout the Code:

- Employers may pay up to $5,250 on behalf of an employee to obtain work-related education without the payment being included in the taxable income of the employee.
- PhD candidates may receive tax-free tuition waivers.
- Dependents of college or university employees may also receive tax-free tuition waivers
- A deduction is permitted for student loan interest of up to $2,500.
- K-12 teachers may deduct up to $250 of their out-of-pocket supplies.

Proposed Law

The final bill preserves all of the education incentives under current law. This is noteworthy because the House bill would have eliminated ever single one of them, causing many to accuse the House of declaring war on higher education.

Who's Happy?

Anyone who likes to learn.

Who's Not so Happy?

I can't imagine, but I'm sure there's someone.

Exclusion on Sale of Primary Residence

Current Law

A taxpayer who sells his home may exclude up to $250,000 of gain ($500,000 if married filing jointly), provided the taxpayer has owned and used the home as his primary residence for two of the previous five years.

Proposed Law

The final bill retains the current law. This is welcome news to many, because both the House and Senate bills would have extended the ownership and use requirements to five out of eight years, with the House also eliminating the exclusion for high-income taxpayers.

Who's Happy?

Realtors. And the entire middle class: this is a great step forward for the tax bill, as this is

the type of incentive that middle class taxpayers rely on to upgrade their living situations without the imposition of tax.

Who's Not So Happy?

Once again, there shouldn't be anyone. This exclusion has universal appeal.

Estate Taxes

Current Law

When you die, each taxpayer is entitled to an exemption of nearly $5.5 million, which translates to an $11 million exemption for married couples, before an estate tax is imposed.

Proposed Law

The final bill would immediately double the estate tax exemption to $11 million for single taxpayers ($22 million for a married couple).

Who's Happy?

Anyone who is is happy about being able to continue to deduct medical expenses and to continue to exclude education incentives or gain on the sale of a home. Why? Because as we said earlier, the conference committee was a zero-sum game. Any tax breaks that were added back in had to be offset by additional tax revenue. The House would have fully repealed the estate tax after five years; by keeping it, the GOP was able to save much-needed revenue to pay for the additional benefits.

Who's Not So Happy?

Anyone who was planning to die starting in 2023. Under the House bill, there would have been no estate tax from that year on; now, all you'll have to help out is the doubled exemption.

Alternative Minimum Tax

Current Law

Each taxpayer must compute their liability twice: once under the regular rules, and then a second time under the "alternative minimum tax" rules. The taxpayer must then pay the higher of the two taxes.

Proposed Law

The AMT is retained, but with a much higher exemption amount ($109,400 for married taxpayers as compared to $84,500 under current law).

Who's Happy?

No one. Absolutely no one. The AMT is a menace and must be stopped. But to be fair, it does raise some revenue that helps pay for other tax breaks.

Who's Not So Happy?

Anyone who prepares tax returns for a living.

Individual Insurance Mandate

Current Law

Any individual who doesn't maintain "minimum essential health care coverage" during the year must pay a penalty of $695 to the IRS (1/2 that amount if under 18).

Proposed Law

The final bill would fully repeal the individual mandate effective January 1, 2019.

Who's Happy?

Everyone who doesn't want to carry insurance. Apparently, the elimination of the penalty will create 13 million of them.

Who's Not So Happy?

Everyone who will continue to carry insurance, and experience higher premiums as a result of the mass exodus of young, healthy insureds as a result of the eliminated penalty.

Corporate Tax Rate

Current Law

Under current law, the top corporate rate is 35%.

Proposed Law

The final bill would drop the corporate rate to 21%.

Who's Happy?

Individuals. The corporate rate was slated to go to 20%; by increasing it to 21%, the government saves nearly $120 billion over ten years that were used for individual cuts.

Oh, and of course, corporations are thrilled. The drop in rate from 35% to 21% puts $1.3 *trillion* into the bank accounts of corporations over the next decade.

Who's Not So Happy?

Corporations. Hey, a 21% rate is great....but it ain't 20%.

Other Business Changes:

	Current Law	**Final Bill**
Availability of cash method for C corporations	avg receipts < $5M	avg receipts < $25M
Availability of cash method for taxpayers with inventory	limited to Rev. Proc. 2001- 10 and Rev. Proc. 2002-28	avg receipts < $25M
Exclusion from Section 263A	limited to resellers with avg. receipts < $10M	avg receipts < $25M
Section 179 limitation	$510,000	$1,000,000
100% expensing	n/a	through 2022, then phase down over five years
Interest expense deduction	unlimited	limited to 30% of adjusted taxable income if avg receipts > $25M
Net operating losses	carry back 2 years, forward 20	no carry backs, carry forwards limited to 80% of taxable income
Section 199 deduction	allowed for domestic production	eliminated

Who's Happy?

The biggest incentive on the business side is the ability to immediately expense the cost of new and used assets with a life of 20 years or shorter. This "100% expensing" will greatly simplify the current law, while spurring economic growth. Beginning in 2023, the percentage of the purchase price of an asset that is immediately deductible will be phased out annually, from 80% to 60% to 40% to 20% before disappearing in 2027.

Who's Not So Happy?

The Senate bill had proposed reducing the depreciable lives of nonresidental real property (39 years) and residential real property (27.5 years) to 25 years, but this was abandoned in the final bill. That would have provided a tremendous boost to real estate developers.

The big loser, however, will be corporations with large carryover losses, as those losses may now only offset 80% of taxable income. This is a move that raises $200 million of revenue to be used towards individual tax cuts.

Summary

The die is cast. The law cannot change between now and the House and Senate votes, so what is presented above, in all likelihood, will be the rules we're contending with in 2018 and beyond. I am eager to see an updated distributional analysis, as it will be interesting to quantify whether the combination of new middle-class changes (eliminating the changes to the home sale exclusion, keeping the medical expense deduction, increasing the Child Tax Credit, etc...) will result in larger relative tax cuts for those taxpayers, or if the reduction in the top rate from 39.6% to 37% will heap even larger benefits on the richest 1% than was already the case.

In any event, it is now hunting season for taxpayers and their advisors. After all, the breakneck speed with which the GOP pursued tax reform may well result in a political victory for the party, but it will also undoubtedly leave behind a bevy of loopholes that can be gamed by savvy taxpayers and their high-priced advisors.

Which, ironically, is the one thing true tax reform is meant to prevent.

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