THE
NATIONAL LAW REVIEW

Tax Cuts and Jobs Act Update: Senate Approval Moves Bill Forward

Monday, December 4, 2017

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The Senate passed a version of the Tax Cuts and Jobs Act that differs significantly from the House-passed bill but still contains several similar proposals that lower individual and business tax rates, completely revamp the international tax rules, and significantly modify many traditional deductions and credit. **With the self-imposed deadline of presenting the final bill to the President by Christmas, businesses should be aware that the proposal may move quickly through the process.**

Among the differences that will need to be resolved between the two chambers of Congress are:

- **Differences in the top individual income tax rate**
- **Differences in the way pass-through entities will be taxed, and**
- **The timing of the tax cuts**

The Senate passed the amended version of the tax reform bill 51-49 on Dec. 2. Next, the House is expected to vote in favor of a conference with the Senate on the two passed bills. **Once the conference committee has reached an agreement, both chambers must vote to pass a final bill in identical form before tax reform legislation can be signed into law by the President.**

Our prior e-alerts on the Tax Cuts and Jobs Act include:

- Senate, House Tax Reform Bills at Odds on Tax-Exempt Bonds for Nonprofit Organizations, Including Health Care
- Key Differences Between the House and Senate Bills
- Three Significant Takeaways From the Tax Cuts and Jobs Act
- House Releases Tax Bill: Talking Points and Takeaways

Permanent Reduction of the Corporate Tax Rate

The Senate bill permanently reduces the current 35 percent top corporate rate to 20 percent for tax years beginning after 2018. The one-year delay in reducing the U.S. corporate tax rate remains a significant difference from the House-passed version, which lowers the rate for tax years beginning after 2017.

Deduction for Passthrough Entities

For businesses operating as partnerships, S corporations, or sole proprietorships, the Senate bill provides a 23 percent deduction from qualified pass-through business income, up from the originally proposed 17.4 percent deduction in the Senate Finance Committee bill. In comparison, the House-passed bill provides a 25 percent top rate for qualified business income. Both bills include various limitations on the types of business income that can qualify, and place further restrictions on specified service businesses which include law firms and other professional services businesses.

Repatriation of Foreign Income

Both the House and Senate bill tax amounts held overseas. The Senate bill applies a mandatory repatriation toll tax to 14.49 percent for cash or cash equivalents and 7.49 percent for illiquid assets, up from the 10 percent and 5 percent rates for cash and illiquid assets, respectively, which were previously reported under the Senate Finance Committee version. The House bill applies a 14 percent rate on cash and cash equivalents and 7 percent on liquid assets.

Immediate Expensing for Qualified Property

Similar to the House-passed version, the Senate bill allows businesses to immediately expense the cost of qualified property acquired and placed in service after Sept. 27, 2017, and before Jan. 1, 2023. The Senate amended its previously-reported bill draft to phase down full expensing by 20 percent each year in the case of property placed in service after Dec. 31, 2022, and before Jan. 1, 2027. The definition of qualifying property differs somewhat in Senate and House bills.

Net Operating Losses for Corporations

Both the House and Senate bills include provisions for limiting the use of net operating losses to 90 percent of taxable income, however, the Senate-passed bill increases the limitation to 80 percent of taxable income after 2022.

Interest Deduction Limitation

Both the House and Senate bills include provisions for limiting the deduction for net interest expense to 30 percent of adjusted taxable income. The amount of disallowed net interest expense is determined at the level of the applicable business (i.e., partnership level). If the taxpayer files a consolidated return, this determination is made at the consolidated return filing level.

Individual and Corporate Alternative Minimum Tax

The Senate bill retains the current corporate AMT and retains individual AMT, but increases the exemption amounts and phase-out thresholds in lieu of full repeal. The House bill repeals both the individual and corporate AMT.

Individual Provisions

The Senate bill retains seven individual tax brackets but modifies the income levels for each bracket, with a top rate of 38.5 percent. The House bill provides four individual tax brackets with a top rate of 39.6 percent. Both bills would essentially double the standard deduction while eliminating or reducing various tax deductions and exclusions. Both bills repeal the deduction for state and local taxes but permit individual taxpayers to deduct up to $10,000 in state and local property taxes.

Sunset Provisions

In addition to the sunset provisions discussed above, the Senate bill would sunset nearly all individual provisions after 2025, including the passthrough deduction, in order to comply with the Senate budget reconciliation rule. The Senate bill would make permanent the corporate and international reforms.