

**Law Office of  
DAVID M. HELLMAN**

---

851 Irwin St., Suite 205  
San Rafael, CA 94901-3343

Telephone: (415) 457-4411  
Facsimile: (415) 457-0356

**JANUARY 2018 NEWSLETTER**

**THE TAX CUTS AND JOBS ACT (H.R.1--115<sup>th</sup> CONGRESS)**

The President signed H.R. 1 on December 22, 2017 (date of enactment as used below). It will provide tax breaks for some individuals and businesses, and raise taxes for others. It is impossible to make blanket statements about who will benefit and who will not. There is an estimated additional deficit in United States tax revenues of about \$1,500,000,000,000 over the next ten years. This Newsletter summarizes some, but not all of the provisions of the new law, which for the most part amend the Internal Revenue Code of 1986. The law contains 185 pages compared to over 4000 pages of small type in the Internal Revenue Code, but the law changes several hundred of the Code sections.

References following the description of the various provisions in parenthesis are the section of the law followed by the section of the Internal Revenue Code of 1986 that is changed or added.

**PROVISIONS ONLY AFFECTING INDIVIDUALS**

(All provisions cover only the tax years 2018 through 2025 unless otherwise noted)

**NEW TAX BRACKETS:**

**MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES**

If taxable income is:	The tax is:
Not over \$19,050 .....	10% of taxable income.
Over \$19,050 but not over \$77,400 .....	\$1,905, plus 12% of the excess over \$19,050.
Over \$77,400 but not over \$165,000 .....	\$8,907, plus 22% of the excess over \$77,400.
Over \$165,000 but not over \$315,000 .....	\$28,179, plus 24% of the excess over \$165,000.
Over \$315,000 but not over \$400,000 .....	\$64,179, plus 32% of the excess over \$315,000.
Over \$400,000 but not over \$600,000 .....	\$91,379, plus 35% of the excess over \$400,000.
Over \$600,000 .....	\$161,379, plus 37% of the excess over \$600,000.

**HEADS OF HOUSEHOLDS**

If taxable income is:	The tax is:
Not over \$13,600 .....	10% of taxable income.
Over \$13,600 but not over \$51,800 .....	\$1,360, plus 12% of the excess over \$13,600.
Over \$51,800 but not over \$82,500 .....	\$5,944, plus 22% of the excess over \$51,800.
Over \$82,500 but not over \$157,500 .....	\$12,698, plus 24% of the excess over \$82,500.
Over \$157,500 but not over \$200,000 .....	\$30,698, plus 32% of the excess over \$157,500.
Over \$200,000 but not over \$500,000 .....	\$44,298, plus 35% of the excess over \$200,000.
Over \$500,000 .....	\$149,298, plus 37% of the excess over \$500,000.

© 2018 David M. Hellman, Sr.

**UNMARRIED INDIVIDUALS OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS**

If taxable income is:	The tax is:
Not over \$9,525 .....	10% of taxable income.
Over \$9,525 but not over \$38,700 .....	\$952.50, plus 12% of the excess over \$9,525.
Over \$38,700 but not over \$82,500 .....	\$4,453.50, plus 22% of the excess over \$38,700.
Over \$82,500 but not over \$157,500 .....	\$14,089.50, plus 24% of the excess over \$82,500.
Over \$157,500 but not over \$200,000 .....	\$32,089.50, plus 32% of the excess over \$157,500.
Over \$200,000 but not over \$500,000 .....	\$45,689.50, plus 35% of the excess over \$200,000.
Over \$500,000 .....	\$150,689.50, plus 37% of the excess over \$500,000.

**MARRIED INDIVIDUALS FILING SEPARATE RETURNS**

If taxable income is:	The tax is:
Not over \$9,525 .....	10% of taxable income.
Over \$9,525 but not over \$38,700 .....	\$952.50, plus 12% of the excess over \$9,525.
Over \$38,700 but not over \$82,500 .....	\$4,453.50, plus 22% of the excess over \$38,700.
Over \$82,500 but not over \$157,500 .....	\$14,089.50, plus 24% of the excess over \$82,500.
Over \$157,500 but not over \$200,000 .....	\$32,089.50, plus 32% of the excess over \$157,500.
Over \$200,000 but not over \$300,000 .....	\$45,689.50, plus 35% of the excess over \$200,000.
Over \$300,000 .....	\$80,689.50, plus 37% of the excess over \$300,000.

**ESTATES AND TRUSTS**

If taxable income is:	The tax is:
Not over \$2,550 .....	10% of taxable income.
Over \$2,550 but not over \$9,150 .....	\$255, plus 24% of the excess over \$2,550.
Over \$9,150 but not over \$12,500 .....	\$1,839, plus 35% of the excess over \$9,150.
Over \$12,500 .....	\$3,011.50, plus 37% of the excess over \$12,500.

(§11001/IRC §1)

**PAYROLL WITHHOLDING TABLES**

Withholding Tables will not change until the 2019 tax year.

(§11001/IRC §1)

**CHANGES TO CAPITAL GAIN RATE THRESHOLDS**

Filing Status	0% Rate	15% Rate	20% Rate
Married Filing Joint	Up to \$77,200	\$77,201 to \$479,000	Over \$479,000
Head of Household	Up to \$51,700	\$51,701 to \$452,500	Over \$452,500
Other Individuals	Up to \$38,600	\$38,601 to \$425,800	Over \$425,800
Estates & Trusts	Up to \$2,600	\$2,601 to 12,700	Over \$12,700

Starting in 2019 these amounts are increased by an inflation adjustment

(§11001/IRC §1)

**NEW STANDARD DEDUCTION AMOUNT FOR THOSE NOT ITEMIZING DEDUCTIONS**

Married Filing Jointly	\$24,000
Head of Household	\$18,000
Other Individuals	\$12,000

Starting in 2019 these amounts are increased by an inflation adjustment (§11021/IRC §63(c)(7) new)

#### ITEMIZED DEDUCTIONS ARE SUBSTANTIALLY MODIFIED

The overall limitations are eliminated (§11046/IRC §68)

State Taxes, Real Property Taxes and Personal Property Taxes are limited to an aggregate amount of \$10,000 per year (\$5,000 for Married Filing Separately). Foreign Real Property Taxes are not included in the calculation of taxes that are deductible. 2018 tax liability cannot be intentionally prepaid in 2017. (§11042/IRC §68)

No deduction is allowed for Miscellaneous Itemized Deductions which include unreimbursed employee business expenses, investment expenses, tax preparation fees, legal fees for judgments that are taxable income. (§11045/IRC §67(g) [should be (h)])

Medical Expense floor for people over 65 is kept at 7.5% of adjusted gross income for 2017 and 2018. (§11027/IRC §213(f))

The Mortgage Interest Deduction for acquisition indebtedness mortgages on newly acquired real property is limited to the interest on \$750,000 of mortgage principal (\$375,000 of mortgage principal for married filing separately). Loans that are refinanced and in place on December 15, 2017 that have not termed out and for which the principal is not increased are not affected by this provision. This applies to new mortgages incurred after Dec. 15, 2017 which are to close by Jan. 1, 2018 and do close by April 1, 2018. There is no Mortgage Interest Deduction allowed for Lines of Credit secured by the primary residence. (§11043/IRC §163(b)(3))

The maximum cash charitable contribution is increased from 50% to 60% of adjusted gross income reported on the tax return for the year of contribution. (§11023/IRC §170(b)(1))

For 2018 through 2025 Casualty Losses are limited to those in areas that are Federally Declared Disaster Areas. 2016 and 2017 losses must exceed 10% of adjusted gross income and \$500 loss. For 2016 Presidentially Declared Disaster Areas, victims can borrow from his/her retirement plan the amount that the loss exceeds \$100,000. The loan must be repaid within 3 years or it becomes a taxable distribution. (§11028/IRC §712(t) and §11044/IRC §165(h))

#### INDIVIDUAL EXEMPTIONS ARE REPEALED

Personal exemptions are not allowed as a reduction of taxable income. (§11041/IRC §151(d))

#### CHILD CREDIT INCREASED

The child care credit is increased from \$1,000 to \$2,000 per qualifying child. (§11022/IRC §24)

#### ALIMONY DEDUCTION AND INCOME ELIMINATED FOR AGREEMENTS AFTER 2018

No deduction will be allowed for alimony paid under agreements signed after 2018 or a modification after 2018 to an agreement entered into prior to 2019 that references this code section as applying to that section. Correspondingly, alimony is not income for persons receiving payments covered by agreements where payments are not deductible. (§11051/IRC §215)

### MOVING EXPENSES ARE NOT DEDUCTIBLE AND REIMBURSEMENTS ARE INCOME

Except for active duty military personnel, individuals may no longer deduct moving expenses and reimbursement of moving costs are treated as income.

(§11049/IRC §217 and §1048/IRC § 132(g))

### FEDERAL ESTATE AND GIFT TAX EXCLUSION DOUBLED

The Federal Estate Tax and Gift Tax Exclusion was increased from \$5,000,000 to \$10,000,000. With the inflation factor included, the 2018 Exclusion is \$11,200,000.

(§11061/IRC §§2010(c)(3)(C) and 2001(g))

### ELIMINATION OF SHARED RESPONSIBILITY PAYMENTS UNDER THE AFFORDABLE CARE ACT (OBAMACARE)

The Shared Responsibility Payments under the ACA, which are paid by people who do not have medical insurance coverage and are above certain payment levels, is eliminated starting in 2019. This is a permanent change.

It is estimated that this will cause 13,000,000 people to lose their health insurance because of the increased medical insurance premium costs. This is the result of having fewer people in the insurance pool that helps keep premiums lower.

(§11081/IRC §5000A(c))

## PROVISIONS AFFECTING BUSINESSES

### DEDUCTION FOR QUALIFIED BUSINESS INCOME (effective for 2018 through 2025)

These provisions apply to all businesses except C Corporations (corporations that pay their own tax liability), so it includes sole proprietors, partnerships, Limited Liability Companies, and S Corporations (corporations where income or loss is passed through to shareholders). The amount of the deduction is the sum of:

1) The lesser of: the combined net income of all qualified trades or businesses carried on by the taxpayer or 20% of the taxable income of the taxpayer in excess of any net capital gains and qualified cooperative dividends.

2) The lesser of 20% of the qualified cooperative dividends or taxable income reduced by net capital gains.

This amount cannot exceed the net taxable income of the taxpayer less net capital gains.

Included in the calculation is the greater of 50% of W-2 Wages attributable to qualified employment income or 25% of such W-2 Wages plus 2.5% of unadjusted basis of all qualified property.

For higher net income taxpayers, there is a phase-in of the amount deductible.

For taxpayers whose income is in health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, investments, investment management, trading or dealing in securities, partnership interests or commodities, that is limited to \$157,500 (\$315,000 for married filing jointly).

Although Trade or Business is not defined in this provision, generally rental real estate is considered a trade or business.

This calculation does not reduce Adjusted Gross Income, but it is a separate deduction following that calculation.

(§11011/IRC §199A (new))

#### ALTERNATIVE MINIMUM TAX IS REPEALED FOR C CORPORATIONS

The Alternative Minimum Tax is repealed for C Corporations effective for tax years beginning after December 31, 2017. There is no sunset provision in this section.

(§12001/IRC §55(a))

#### C CORPORATION TAX RATE IS REDUCED TO 21%

The tax rate for C Corporations is reduced to a flat rate of 21% for tax years beginning after December 31, 2017.

If a C Corporation has net income of \$50,000 or less and cannot take advantage of any tax advantages for business in the new law, then that Corporation will actually be paying 6% more tax than under the prior law where the rate was 15% for that amount of net income.

(§13001/IRC §11(b))

#### THE DIVIDENDS RECEIVED DEDUCTION IS REDUCED

The Dividends Received Deduction is reduced to reflect the lower corporate tax rate. The 70% rate is reduced to 50%, and the 80% rate is reduced to 65%. This is effective for tax years beginning after December 31, 2017.

(§13002/IRC §§ 243 (a)(1) & (c)(1) and 245(c)(1)(B))

#### SECTION 179 EXPENSING MAXIMUM DEDUCTION INCREASED

The maximum deduction for property acquired is increased from \$500,000 to \$1,000,000. The reduction threshold is increased from \$2,000,000 to \$2,500,000 of section 179 type property acquired during the tax year. This now includes qualified real property which are: roofs; heating, ventilation and air conditioning equipment; fire protection and alarm systems; security systems and property used for lodging.

(§13101/IRC §179(b)(1) and (2))

#### BONUS DEPRECIATION DEDUCTION RATE FOR FIRST YEAR OF OWNERSHIP IS INCREASED AND NOW COVERS USED PROPERTY

Bonus depreciation has been increased to the following percentages:

9/28/17 to 12/31/22	100%
1/1/23 to 12/31/23	80%
1/1/24 to 12/31/24	60%
1/1/25 to 12/31/25	40%
1/1/26 to 12/31/26	20%

The prior requirement that only new property could be deducted was deleted and now used property qualifies for the deduction.

(§13201/IRC §168(k))

#### LUXURY AUTO DEPRECIATION WRITE-OFFS INCREASED

1 <sup>st</sup> Year	\$10,000
2 <sup>nd</sup> Year	\$16,000
3 <sup>rd</sup> Year	\$ 9,600
4 <sup>th</sup> Year	\$ 5,760

(§13202/IRC §280F)

### COMPUTERS HAVE BEEN REMOVED FROM PERSONAL USE PROPERTY

This allows computers to be treated like other property without limitations on deduction.  
(§13202/IRC §280F)

### RESEARCH AND EXPERIMENTAL EXPENSES ARE NOW ALLOWED A FIVE YEAR AMORTIZATION

Commencing after the date of enactment, U.S. research and experimental expenses can be amortized over 5 years. Foreign research and experimental expenses must be amortized over 15 years. Upon sale or other disposition, the remaining basis in the asset continues to be amortized and is not used as an offset to the sale price in calculating the gain on the sale.  
(§132206/IRC §174)

### ACCRUAL METHOD OF REPORTING TO FOLLOW FINANCIAL STATEMENT ACCOUNTING

Financial Statement accounting under the all events test will be applied to tax treatment for that item.  
(§13221/IRC §451)

### INTEREST DEDUCTION LIMITATION

For businesses with gross revenues exceeding \$5,000,000 in a taxable year, the deduction of interest expense is limited to 30% of taxable income (not less than \$0) plus floor plan financing. The unallowed portion is carried forward.  
(§13301/IRC §163(i))

### NET OPERATING LOSS DEDUCTION LIMITED

Effective for tax years beginning after December 31, 2017, a taxpayer's net operating loss is limited to the lesser of the Net Operating Loss Carry Forward to that year, or 80% of taxable income (not less than \$0) computed without regard to the Net Operating Loss Carryforward. Net Operating Losses cannot be carried back except farmers may carry back 2 years. Net Operating Losses can be carried forward indefinitely.  
(§11012/§ 461(l))

### LIKE-KIND EXCHANGES ARE LIMITED TO REAL PROPERTY

Section 1031 has been amended to eliminate exchanges of personal property exchanges completed after December 31, 2017 unless the property disposed of is disposed of on or before December 31, 2017 or the property received by the taxpayer is received on or before December 31, 2017.  
(§13303/IRC§ 1031(a)(1))

### FRINGE BENEFITS DEDUCTIONS LIMITED

Deductions for employee fringe benefits are restricted. No entertainment reimbursement expenditures are deductible. Only 50% of meal expenses may be deducted. Transportation expense reimbursement is eliminated. After December 31, 2025, meals provided for the convenience of the employer are no longer deductible.  
(§13304/IRC §274(a) and (n))

### DOMESTIC PRODUCTION ACTIVITY DEDUCTIONS ARE REPEALED

For taxable years beginning after December 31, 2017, the Domestic Production Activity deductions are repealed.

(§13305/IRC §199)

### DENIAL OF DEDUCTION FOR FEES AND PENALTIES

Payment of fees and penalties and other amounts are not deductible except payments for restitution, to come into compliance with law, court orders, taxes due, non-governmental regulatory entity requirements.

(§13306/IRC §162(f))

### SEXUAL HARASSMENT AND ABUSE CASE PAYMENTS NOT DEDUCTIBLE

Settlements subject to nondisclosure agreements paid in settlement of sexual harassment or sexual abuse cases including attorney fees are not deductible effective as of the date of enactment.

(§13308/IRC §162)

### REPEAL OF DEDUCTIONS FOR LOCAL LOBBYING EXPENDITURES

Expenditures for local lobbying including Indian Tribal Governments are no longer deductible.

(§13098/IRC §162(e)(2) & (7))

### RECHARACTERIZATION OF CAPITAL GAINS IN CASE OF PARTNERSHIP PROFITS HELD IN CONNECTION WITH PERFORMANCE OF INVESTMENT SERVICES

The one year holding period for long-term capital gains is increased to three years for people like hedge fund managers and venture capitalists who are paid by holding investments in companies.

(§13309/IRC §§1060-1062)

### EMPLOYEE ACHIEVEMENT AWARDS ARE LIMITED

To be deductible they may no longer include cash, gift cards or other non-tangible personal property.

(§13310/IRC §274(j)(3))

### ELIMINATION OF DEDUCTION FOR LIVING EXPENSES OF MEMBERS OF CONGRESS

The prior deduction of up to \$3,000 of expenses has been eliminated.

(§13311/IRC §162(a))

### SELF-CREATED PROPERTY NO LONGER CONSIDERED A CAPITAL ASSET

This includes patents, inventions, models, designs and secret formulas. On sale they are not entitled to capital gains treatment.

(§13314/IRC §1221(a)(3))

### ORPHAN DRUG DEVELOPMENT CREDIT IS REDUCED

The credit is reduced from 50% to 25%.

(§13401/IRC §45C)

### REAL PROPERTY REHABILITATION CREDIT LIMITED TO CERTIFIED HISTORIC STRUCTURES

(§13402/IRC §47(a))

SPECIAL TREATMENT OF TAX CREDIT BONDS IS REPEALED

(§13404/IRC §§54-54AA)

TECHNICAL TERMINATION RULE FOR PARTNERSHIPS REPEALED

The rule requiring dividing a partnership tax year when there has been at least a 50% change in ownership during a 12 month period is repealed.

(§13504/IRC §708(b)(1))

LIFE SETTLEMENT TRANSACTIONS ON LIFE INSURANCE POLICIES NOW REQUIRE REPORTING BY INSURANCE COMPANIES AND PURCHASERS

(§13520/IRC §6050Y)

EXECUTIVE COMPENSATION OF TAX-EXEMPT ORGANIZATION LIMITED

The limit is \$1,000,000 or the organization is subject to an excise tax of 34% to 35% on the excess amount.

(§13602/IRC §4960 new)

QUALIFIED EQUITY GRANTS APPLY TO NEW STOCK OPTIONS OR RESTRICTED STOCK UNITS SETTLED

(§13603/IRC §83(j) new)

OTHER PROVISIONS

REPEAL OF RULE PERMITTING RECHARACTERIZATION OF ROTH IRA CONTRIBUTIONS

(§13611/IRC §408A(d)(6)(B))

EXCISE TAX ON INCOME OF PRIVATE COLLEGES AND UNIVERSITIES

1.4% tax on Net Investment Income if they have over 500 student and at least \$500,000 of assets per student. (Applies to Harvard and similarly situated schools.)

(§13701/IRC §4968 new)

NO CHARITABLE CONTRIBUTION DEDUCTION FOR AMOUNTS PAID FOR COLLEGE ATHLETIC EVENT SEATING

(§13704/IRC §170(l))

REPEAL OF SUBSTANTIATION EXCEPTION IN CASE OF CHARITABLE CONTRIBUTIONS REPORTED BY DONEE

The donor needs independent substantiation. Applies to tax years beginning after December 31, 2016.

(§13705/IRC §170(f)(8))

DEDUCTION FOR FOREIGN SOURCE PORTION OF DIVIDENDS RECEIVED BY DOMESTIC CORPORATION FROM SPECIFIED 10% OWNED FOREIGN CORPORATIONS

100% deduction for foreign source portion that is not from passive foreign investment companies. This may incentivize corporations to repatriate funds, but it does not restrict jobs from being transferred to foreign countries where labor is cheaper.(§14101/IRC §245A new)