GROOM LAW GROUP

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Tax Reform: Comparison of House and Senate Versions of the Tax Cuts and Jobs Act (H.R. 1)

	House Version (as passed by the House)	**Senate Version (as reported out of the Finance Committee)**
Retirement Provisions		
IRA Conversions/ Recharacterizations	Repeals ability of individuals to recharacterize a contribution to one type of IRA (traditional or Roth) to the other type of IRA, and to recharacterize a conversion of a traditional IRA to a Roth IRA. Effective for taxable years beginning after 2017. (Section 1501)	Same as House bill. (Section 13612)
Minimum Age for In-Service Distributions from Retirement Plans	Lowers the age for in-service distributions from a DB pension plan or governmental 457(b) plan to age 59-½. Effective for plan years beginning after 2017. (Section 1502)	None
Hardship Distributions	Directs IRS to issue regulations permitting individuals who have taken a hardship distribution to continue contributing to their retirement accounts. Extends hardship distributions to amounts not previously permitted: QNECs, QMACs, and post-1/1/1989 earnings (which would include safe harbor plan contributions). Eliminates the requirement to take out plan loans prior to a hardship distribution. Effective for plan years beginning after 2017. (Sections 1503 and 1504)	None
Modification of Non-Discrimination Rules	Provides relief for certain soft-frozen defined benefit for benefits, rights, and features nondiscrimination testing and 401(a)(26) minimum participation requirements for such plans. Relief available to defined contribution plans where make-whole contributions are provided to compensate participants when	None

	defined benefit accruals are reduced or eliminated. Effective on the date of enactment (with an election to apply to plan years beginning after 2013). (Section 1506)	
Extended Rollover Period for Plan Loans	Extends the deadline to avoid having a plan loan be treated as a taxable distribution for individuals who fail to meet the repayment terms of the loan because of their separation from service (or in the event of plan termination). Permits employees to roll over the loan balance to an IRA/plan by the due date for filing their tax return (including extensions). Effective for taxable years beginning after 2017. (Section 1505)	Same as House bill. (Section 13614)
Conformity of 401(k), 403(b), 457(b) Contribution Limits	None	Applies a single, aggregate limit to contributions for an employee in a governmental section 457(b) plan and elective deferrals for the same employee under a section 401(k) plan or a 403(b) plan of the same employer. Repeals special rules allowing additional elective deferrals and catch-up contributions under section 403(b) plans and governmental section 457(b) plans. Repeals the special rule allowing employer contributions to section 403(b) plans for up to 5 years after termination of employment. Revises application of the section 415(c) limit on aggregate contributions to a qualified defined contribution (DC) plan or a section 403(b) plan (lesser of $55,000 (for 2018) and the employee's compensation) so that a single aggregate limit applies to contributions for an employee to any DC plan, 403(b) plan, and governmental 457(b) plan of the same employer (including any members of the controlled group or affiliated service group). Effective for plan years and taxable years beginning after 2017. (Section 13611)
Application of UBIT to	Amends Code section 511 to provide that an organization or trust	None

State and Local Governmental Plans	exempt from taxation under Code section 501(a) (such as a 401(a) plan trust) will not be exempt from UBIT solely because it excludes amounts from gross income under another Code provision, thereby making state and local governmental plans subject to UBIT regardless of the provisions of Code section 115 (or any other Code section under which a plan may claim tax-exemption). Effective for taxable years beginning after 2017. (Section 5001)	
Recontribution of Incorrect IRS Levies on Retirement Accounts	None	In the case of wrongful or premature levies where amounts are withdrawn by an individual from an IRA or employer-sponsored retirement plan and then returned by the IRS, allows individual to contribute the returned amount and any interest thereon either to the original IRA or employer plan, if permissible (e.g., under the plan terms), without regard to normal contribution and rollover limits. Effective for amounts paid after 2017. (Section 11072)
Special Relief for Mississippi River Delta Flooding	None	Provides special relief for Mississippi River Delta flooding victims, including an exception to the 10-percent early withdrawal tax in the case of a qualified Mississippi River Delta flooding distribution from a qualified retirement plan, section 403(b) plan or IRA. Also allows for such a distribution without having a distributable event from a qualified retirement plan, 403(b) plan or governmental 457(b) plan, for income attributable to such a distribution to be included in income ratably over 3 years, and for such amount to be recontributed to an eligible retirement plan and be treated like a rollover within 3 years of the distribution. Effective on the date of enactment. (Section 11029)
Executive Compensation/NQDC Provisions		
Deductibility of Excessive Employee Remuneration	Expands the definition of compensation for purposes of the $1 million deduction limit on compensation paid to top executives at publicly traded companies by eliminating the performance-based compensation and commission exceptions.	Same as House bill, but includes a transition rule under which the changes would not apply to compensation under a written binding contract in effect on November 2, 2017 and which was not modified after that date in any material aspect. (Section 13601)

	Realigns coverage of the limit with the SEC disclosure rules to include compensation paid to the company's principal financial officer in addition to the principal executive officer and other three most highly paid executives. If an individual is a covered employee for any tax year commencing after 2016, his or her compensation would remain subject to the deduction limit in subsequent tax years, even if he or she is no longer a covered employee or the amounts are paid to a beneficiary. Effective for tax years beginning after 2017 without a grandfather or transition rule. (Section 3801)	
Excise Tax on Excessive Employee Remuneration for Tax-Exempt Organizations	Imposes on a tax-exempt employer a 20% excise tax on compensation in excess of $1 million paid to any of its top five most highly compensated employees, as well as on golden parachute payments contingent on separation from employment paid to a covered employee in excess of three times his prior average annual compensation. If an individual is a covered employee for any tax year commencing after 2016, the 20% excise tax rules would continue to apply in subsequent tax years, even if he or she is no longer in the top-paid group. Effective for tax years beginning after 2017 without a grandfather or transition period. (Section 3802)	Same as House bill. (Section 13602)
Increase in Excise Tax on Stock Compensation in an Inversion	None	Increases the excise tax on stock compensation in an inversion from 15 percent to 20 percent. Effective for corporations first becoming expatriated corporations after the date of enactment. (Section 13604)
Qualified Equity Grants	Allows private companies to offer rank and file employees the opportunity to defer income tax inclusion on compensatory stock options or RSUs for up to 5 years, provided certain requirements	Same as House bill. (Section 13603)

	are met. The company must have a written plan under which at least 80 percent of all employees providing services to the company in the U.S. are granted qualified stock under the provision. This special deferral rule is not available to 1% owners, current or former CEOs and CFOs (including their family members), or certain highly compensated officers. Effective for taxable years beginning after 2017, with reasonable good faith compliance transition rules for the application of the 80-percent and employer notice requirements. (Section 3803)	
Fringe Benefit Provisions		
Deduction for Entertainment, Amusement, Recreation Expenses	Disallows deduction for entertainment, amusement, recreational activities, qualified transportation fringe benefits, on-premises athletic facilities, de minimis fringe benefits that are primarily personal in nature and involving services not directly related to the employer's trade or business, and membership dues relating to a business, pleasure, recreation or other social purpose, even if the expenses are directly related to the active conduct of the taxpayer's trade or business. Employers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business (*e.g.*, meals consumed by employees on work travel). For all individuals, there is an exception to the general entertainment expense disallowance rule for expenses treated as compensation or includible in income only to the extent of the amount of expenses treated as compensation or includible in income. Effective for amounts paid or incurred after 2017. (Section 3307)	Similar to the House Bill. Repeals deduction for entertainment, amusement, recreational activities, membership dues relating to a business, pleasure, recreation or other social purpose, or any qualified transportation fringe and, except as necessary to ensure employee safety, any expense for providing employee commuting expenses. Taxpayers may still deduct 50% of food and beverage expenses associated with operating a trade or business (*e.g.*, meals consumed by employees on work travel). Effective for amounts paid or incurred beginning after 2017. Repeals deduction for meals provided for the convenience of the employer on or near the employer's premises. Effective for taxable years beginning after 2025. (Section 13304)
Qualified Bicycle Commuting	None	Repeals exclusion for qualified bicycle reimbursements.

Reimbursement		Effective for taxable years beginning after 2017, but sunsets after 2025. (Section 11048)
Employee Achievement Awards	Repeals exclusion for employee achievement awards. Effective for taxable years beginning after 2017. (Section 1403)	None
Employer-Provided Child Care Credit	Repeals employer-provided child care credit. Effective for taxable years beginning after 2017. (Section 3402)	None
Dependent Care Assistance Programs	Repeals exclusion for employer-provided dependent care assistance programs. Effective for taxable years beginning after 2022. (Section 1404)	None
Qualified Moving Expense Reimbursements	Repeals exclusion for employer-provided qualified moving expense reimbursements. Effective for taxable years beginning after 2017. (Section 1310)	Same as House Bill, but provides an exception for members of the U.S. Armed Forces on active duty who move pursuant to a military order and incident to a permanent change of station, and provision sunsets after 2025. (Section 11049)
Adoption Assistance Programs	Repeals exclusion for adoption assistance programs. Effective for taxable years beginning after 2017. (Section 1406)	None
Employer-Provided Housing	Limits the exclusion for housing provided for the convenience of the employer to $50,000 ($25,000 for married individuals filing separately), with the exclusion limited to one residence. The exclusion would phase-out for highly compensated individuals earning above $120,000. Effective for taxable years beginning after 2017. (Section 1401)	None
Health and Welfare Provisions		
Individual Shared Responsibility Provision of PPACA ("Individual Mandate")	None	Reduces the penalty for not purchasing creditable insurance coverage to zero. Effective beginning in 2019. (Section 11081)
Employer Credit for Paid Family and Medical Leave	None	For 2018 and 2019, creates a new general business tax credit for employers that pay employees on family and medical leave. An employer must allow all qualifying full-time employees not less than two weeks of annual paid family and medical leave (and a

		commensurate amount of leave on a pro rata basis for less-than-full-time employees). The leave program must provide for at least 50% of the wages normally paid to an employee. Vacation leave, personal leave, or other medical or sick leave would not be considered family and medical leave, and leave paid for by a State or local government is not taken into account. The credit would be equal to 12.5% of the amount of wages paid, increased by 0.25% for each percentage point by which the rate of payment exceeds 50% (but not to exceed 25% of the wages paid). Effective for wages paid beginning after 2017. (Section 13404)
Archer MSAs	Repeals the deduction and exclusion for contributions to Archer MSAs. (Section 3307)	None