GROOM LAW GROUP

December 19, 2017

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

Provision	Current Law	House Version	Senate Version	Conference Report
Retirement Provisions				
Modification of Non-Discrimination Rules	If an employer closes a DB plan to new participants and maintains a DC plan for participants "closed out" of the DB plan, the DB plan will sometimes fail the nondiscrimination tests by virtue of the composition of the closed class. In that case, the benefits, rights, and features provided under the DB plan may also fail the nondiscrimination tests. DB plans must also satisfy certain minimum participation requirements with respect to the number of employees receiving benefits under the plan. If an employer ceases all future accruals to a DB plan for all participants, the employer often will permit additional "make-whole" contributions to its DC plan in order to account for participants' anticipated DB plan benefits. However, DC plans will sometimes fail the nondiscrimination tests in this scenario.	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 DC plans where make-whole contributions are provided to compensate participants when DB accruals are reduced or eliminated. Effective on the date of enactment (with an election to apply to plan years beginning after 2013). (Section 1506)	No provision.	No change to current law.

Provision	Current Law	House Version	Senate Version	Conference Report
Special Relief for 2016 Disaster Victims	Distributions from DC plans, 403(b) plans, and IRAs are generally included in income for the year distributed. Additionally, such distributions received before age 59-½ are subject to a 10% early withdrawal tax.	No provision.	Provides special relief for disaster victims resident in any area with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act during calendar year 2016. A qualified 2016 disaster distribution is a distribution from an eligible retirement plan on or after January 1, 2016 through December 31, 2017 to an individual whose principal place of abode at any time during 2016 was in a disaster area and sustained an economic loss by reason of events giving rise to a Presidential disaster declaration. A qualified 2016 disaster distribution of up to $100,000 from a qualified retirement plan, section 403(b) plan or IRA is eligible for an exception to the 10% early withdrawal tax and may be recontributed to an eligible retirement plan (and be treated like a direct rollover) within 3 years of the distribution. Any income attributable to such a distribution will be included in income ratably over 3 years unless the taxpayer elects not to have that rule apply. Such a distribution is a permissible distribution from a qualified retirement plan, 403(b) plan or governmental 457(b) plan, regardless of whether there is a distributable event. Special plan amendment rules apply. Effective on the date of enactment. (Section 11029)	Provides special relief for disaster victims resident in any area with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act during calendar year 2016. A qualified 2016 disaster distribution is a distribution from an eligible retirement plan on or after January 1, 2016 through December 31, 2017 to an individual whose principal place of abode at any time during 2016 was in a disaster area and sustained an economic loss by reason of events giving rise to a Presidential disaster declaration. A qualified 2016 disaster distribution of up to $100,000 from a qualified retirement plan, section 403(b) plan or IRA is eligible for an exception to the 10% early withdrawal tax and may be recontributed to an eligible retirement plan (and be treated like a direct rollover) within 3 years of the distribution. Any income attributable to such a distribution will be included in income ratably over 3 years unless the taxpayer elects not to have that rule apply. Such a distribution is a permissible distribution from a qualified retirement plan, 403(b) plan or governmental 457(b) plan, regardless of whether there is a distributable event. Special plan amendment rules apply. Effective on the date of enactment. (Section 11028)

Provision	Current Law	House Version	Senate Version	Conference Report
Extended Rollover Period for Plan Loans	If an individual takes out a plan loan and later fails to make timely payments due to separation from service, the unpaid loan balance is treated as a plan distribution. That distribution amount may be rolled over to another retirement plan or an IRA, tax-free, so long as the individual does so within 60 days.	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) by permitting 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)	Generally the same as House bill, except applies to loan offset amounts treated as distributed solely by reason of plan termination or the failure to meet the loan repayment terms because of the participant's severance from employment. (Section 13613)	Extends the deadline to avoid having a plan loan be treated as a taxable distribution for loan offset amounts treated as distributed solely by reason of plan termination or the failure to meet the loan repayment terms because of the participant's severance from employment by permitting 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 13613)
IRA Conversions/ Recharacterizations	Individuals who make a contribution to an IRA (traditional or Roth) may recharacterize the contribution as a contribution to the other type of IRA. Individuals may similarly recharacterize a conversion of a traditional IRA to a Roth IRA.	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 13611)	Modifies provision in House and Senate bills to repeal only the ability of individuals to recharacterize a conversion contribution to a Roth IRA. Effective for taxable years beginning after 2017. (Section 13611)
Length of Service Plan Awards	The maximum amount for the exception to Code section 457 for a length of service award plan providing awards to bona fide volunteers is $3,000.	No provision.	Raises the maximum amount for a length of service award plan to $6,000 and indexes that amount going forward. Effective for taxable years beginning after 2017. (Section 13612)	Raises the maximum amount for a length of service award plan to $6,000 and indexes that amount going forward. Effective for taxable years beginning after 2017. (Section 13612)

Provision	Current Law	House Version	Senate Version	Conference Report
Minimum Age for In-Service Distributions from Retirement Plans	Individuals generally may not receive in-service distributions from a DB plan until they reach age 62. For in-service distributions from governmental 457(b) plans, individuals must reach age 70-½.	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)	No provision.	No change to current law.
Hardship Distributions	Under 401(k) and 403(b) plans, individuals may receive distributions in certain instances, including cases of severe financial hardship. Relevant IRS regulations require that in order to take a hardship distribution, individuals must cease contributing to their retirement accounts for at least six months after receiving the hardship distribution. Under 401(k) plans, only the amount of elective deferrals (and not earnings) may be distributed on account of hardship. Additionally, QNECs, QMACs, and post-1/1/1989 earnings may not be distributed on account of hardship. Employees must effectively take out any available plan loan before receiving a hardship distribution.	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)	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. (Section 11033)	No change to current law.

Provision	Current Law	House Version	Senate Version	Conference Report
Application of UBIT to State and Local Governmental Plans	Organizations exempt from taxation under section 501(a) generally must pay tax on any unrelated trade or business income ("UBIT"). Historically, many governmental plans have taken the position that since income of the plans is exempt from tax through application of section 115, which provides an income exclusion for entities that perform an essential government function, such plan is also not subject to UBIT.	Amends Code section 511 to provide that an organization or trust exempt from taxation under Code section 501(a) (such as a 401(a) plan trust) will not be exempt from UBIT solely because the organization 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)	No provision.	No change to current law.
Use of Chained CPI-U for Indexing Dollar Thresholds Applicable to IRAs	The Internal Revenue Code includes a series of inflation adjustment provisions that are utilized with respect to various federal tax provisions to adjust dollar-based thresholds (such as income limits) to reflect ongoing inflation. Under current law, this inflation adjustment is generally based on the DOL-issued CPI-U. CPI-U is currently utilized for purposes of adjusting the maximum contribution limits for purposes of traditional and Roth IRAs and income thresholds for traditional IRAs.	Replaces the use of CPI-U as the inflation adjustment with what is commonly referred to as "Chained-CPI-U." Because of the slightly different focus of Chained-CPI-U to standard CPI-U, use of Chained-CPI-U should be expected to result in relatively reduced inflation adjustments when compared to standard CPIU-U.	Replaces the use of CPI-U as the inflation adjustment with what is commonly referred to as "Chained-CPI-U." Because of the slightly different focus of Chained-CPI-U to standard CPI-U, use of Chained-CPI-U should be expected to result in relatively reduced inflation adjustments when compared to standard CPIU-U.	Replaces the use of CPI-U as the inflation adjustment with what is commonly referred to as "Chained-CPI-U." Because of the slightly different focus of Chained-CPI-U to standard CPI-U, use of Chained-CPI-U should be expected to result in relatively reduced inflation adjustments when compared to standard CPIU-U. In light of the above, it should be expected that statutory maximum contribution and income thresholds applicable to IRAs would increase at a slower rate than if CPI-U continued apply.

Provision	Current Law	House Version	Senate Version	Conference Report
Executive Compensation/NQDC Provisions				
Deductibility of Excessive Employee Remuneration	Employers may deduct up to $1 million per year per executive for compensation paid or accrued to certain top executives at certain publicly traded companies. Certain types of compensation are excluded from determining whether the $1 million limit has been reached, including performance-based compensation and commissions. Under IRS guidance, executives covered by the $1 million limit are generally the principal executive officer and the other three most highly compensated officers, other than the principal financial officer, as of the last day of the employer's taxable year. If an individual ceases to be a covered employee, his or her compensation is not subject to the deduction limit in subsequent tax years. Thus, compensation deferred until after termination of employment often is not subject to the deduction limit. Likewise, compensation is not subject to the deduction limit if the limit is paid to the covered employee's beneficiary.	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. 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. An individual serving in such capacity at any time during the employer's taxable year is a covered employee, even if he or she is not serving in such capacity as of the last day of the taxable year. 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. Extends the applicability of section 162(m) to include all domestic publicly traded corporations and all foreign companies publicly traded through ADRs. Effective for taxable years beginning after 2017 without a grandfather or transition rule. (Section 3801)	Same as House bill, but includes a transition rule under which the changes would not apply to compensation pursuant to a written binding contract in effect on November 2, 2017 and which was not modified in any material aspect on or after that date. (Section 13601)	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. 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. An individual serving in such capacity at any time during the employer's taxable year is a covered employee, even if he or she is not serving in such capacity as of the last day of the taxable year. 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. Extends the applicability of section 162(m) to include all domestic publicly traded corporations and all foreign companies publicly traded through ADRs. Effective for taxable years beginning after 2017, but includes a transition rule under which the changes do not apply to compensation provided pursuant to a written binding contract which was in effect on November 2, 2017 and which was not modified in any material aspect on or after that date. The scope of the transition relief appears to be very narrow. (Section 13601)

Provision	Current Law	House Version	Senate Version	Conference Report
Excise Tax on Excessive Employee Remuneration for Tax-Exempt Organizations	The $1 million limit for deductibility of executive compensation paid to top executives at public companies generally does not apply to tax-exempt organizations. Additionally, tax-exempt organizations are generally not subject to the deductibility limit on golden parachute payments made to top executives or to any excise taxes on compensation over $1 million.	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 ("HCEs"), 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 taxable 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, except compensation is treated as paid when there is no substantial risk of forfeiture of the rights to such compensation, and compensation includes amounts required to be included in income under Code section 457(f). (Section 13602)	Imposes on a tax-exempt employer a 21% excise tax (the new corporate tax rate) on compensation in excess of $1 million paid to any of its top five most HCEs, 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 21% excise tax rules would continue to apply in subsequent taxable years, even if he or she is no longer in the top-paid group. Compensation is treated as paid when there is no substantial risk of forfeiture as defined in 457(f)(3)(B). Compensation includes amounts required to be included in gross income under section 457(f). Payments to employees who are not HCEs within the meaning of 414(q) are exempt from the definition of parachute payments. Payments attributable to medical services of certain qualified medical professionals are exempt from the definitions of compensation subject to the $1 million limit and parachute payments. Effective for tax years beginning after 2017. (Section 13602)

Provision	Current Law	House Version	Senate Version	Conference Report
Qualified Equity Grants	If an employer transfers employer stock to an employee as compensation, the employee generally must recognize income in the taxable year in which the employee's right to the stock is transferable or is not subject to a substantial risk of forfeiture. Special rules apply in the case of nonqualified stock options, incentive stock options and employee stock purchase plans. Compensation (including restricted stock unit (RSU)) awards, paid under a nonqualified deferred compensation plan is subject to the requirements of Code section 409A, unless an exemption applies.	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 are met. The company must have a written plan under which at least 80% 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% and employer notice requirements. (Section 3803)	Same as House bill, except that the controlled group rules under Code section 414(b) apply in determining controlled group status. (Section 13603)	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 are met. The company must have a written plan under which at least 80% 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. Clarifies the application of the 80% rule, the application to ESPPs and 1% owners, and the exception from Code section 409A. Effective for taxable years beginning after 2017, with reasonable good faith compliance transition rules for the application of the 80% and employer notice requirements. (Section 13603)

Provision	Current Law	House Version	Senate Version	Conference Report
Increase in Excise Tax Rate on Stock Compensation of Insiders in an Expatriated Corporation	There is a 15% excise tax on stock-based compensation paid to certain officers, directors and 10% owners upon certain transactions that result in an expatriated corporation.	No provision.	Increases the excise tax on stock compensation held by insiders of an expatriated corporation from 15% to 20%. Effective for corporations first becoming expatriated corporations after the date of enactment. (Section 13604)	Increases the excise tax on stock compensation held by insiders of an expatriated corporation from 15% to 20%. Effective for corporations first becoming expatriated corporations after the date of enactment. (Section 13604)
Fringe Benefit Provisions				
Transportation Benefits	Employers may generally deduct expenses for certain employer-provided fringe benefits, including qualified transportation fringe benefits.	No provision.	Repeals deduction for any qualified transportation fringe benefit. Employers may not deduct any expense incurred in providing, paying, or reimbursing employee commuting expenses except as necessary to ensure employee safety. Effective for amounts paid or incurred beginning after 2017. (Section 13304)	Repeals deduction for any qualified transportation fringe benefit. Employers may not deduct any expense incurred in providing, paying, or reimbursing employee commuting expenses except as necessary to ensure employee safety. Effective for amounts paid or incurred beginning after 2017. (Section 13304)
Qualified Moving Expense Reimbursements	Employees may exclude employer-provided moving expense reimbursements from gross income and wages for employment tax purposes.	Repeals exclusion for employer-provided qualified moving expense reimbursements, 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. Effective for taxable years beginning after 2017. (Section 1310)	Same as House Bill, but provision sunsets after 2025. (Section 11049)	Repeals exclusion for employer-provided qualified moving expense reimbursements, 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. Effective for taxable years beginning after 2017 and before 2026 (provision sunsets after 2025). (Section 11048)

Provision	Current Law	House Version	Senate Version	Conference Report
Qualified Bicycle Commuting Reimbursement	Qualified bicycle commuting reimbursements of up to $20 per month are excludible from an employee's gross income.	No provision.	Repeals exclusion for qualified bicycle reimbursements. Effective for taxable years beginning after 2017 and before 2026 (sunsets after 2025). (Section 11048)	Repeals exclusion for qualified bicycle reimbursements. Effective for taxable years beginning after 2017 and before 2026 (provision sunsets after 2025). (Section 11047)
Employer-Provided Child Care Credit	Employers may claim a credit for certain qualified employer-provided child care expenses.	Repeals employer-provided child care credit. Effective for taxable years beginning after 2017. (Section 3402)	No provision.	No change to current law.
Employee Achievement Awards	Employers may deduct the cost of employee achievement awards up to a certain amount. Such awards are also excludible from an employee's gross income and wages for employment tax purposes. An employee achievement award is an item of tangible personal property given to an employee in recognition of either length of service or safety achievement and presented as part of a meaningful presentation.	Repeals employer deduction limitation and exclusion from employee income and wages for employee achievement awards. Effective for taxable years beginning after 2017. (Section 1403)	Adds a definition of "tangible personal property" that may be considered a deductible employee achievement award under which tangible personal property shall not include cash, cash equivalents, gift cards, gift coupons or gift certificates (other than arrangements conferring only the right to select and receive tangible personal property from a limited array of such items pre-selected or pre-approved by the employer), or vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items. Effective for amounts paid or incurred after 2017. (Section 13310)	Adds a definition of "tangible personal property" that may be considered a deductible employee achievement award under which tangible personal property shall not include cash, cash equivalents, gift cards, gift coupons or gift certificates (other than arrangements conferring only the right to select and receive tangible personal property from a limited array of such items pre-selected or pre-approved by the employer), or vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items. Effective for amounts paid or incurred after 2017. (Section 13310)

Provision	Current Law	House Version	Senate Version	Conference Report
Deduction for Entertainment, Amusement, Recreation Expenses	Taxpayers may deduct expenses for entertainment, amusement, recreational activities, and membership dues with respect to any club organized for business, pleasure, recreation or any other social purpose, but only if the expenses directly relate to the active conduct of the taxpayer's trade or business. The deduction is generally limited to 50% of otherwise deductible expenses. Employers may generally deduct expenses for certain employer-provided fringe benefits, including qualified transportation fringe benefits, on-premises athletic facilities, and de minimis fringe benefits. Employers may generally deduct only 50% of otherwise deductible food and beverage 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% 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 facility used in connection with any of the above items. Taxpayers may still deduct 50% of otherwise deductible food and beverage expenses (*e.g.*, meals consumed by employees on work travel). For amounts incurred and paid after December 31, 2017 and until December 31, 2025, expands 50% limitation to employer expenses associated with providing meals to employees through an on-premises eating facility that meets requirements for *de minimis* fringes and for the convenience of the employer. Effective for amounts paid or incurred beginning after 2017. Repeals deduction for meals provided through an on-premises eating facility for the convenience of the employer. Effective for taxable years beginning after 2025. (Section 13304)	Repeals deduction for entertainment, amusement, recreational activities, membership dues relating to a business, pleasure, recreation or other social purpose, or any facility used in connection with any of the above items. Taxpayers may still deduct 50% of otherwise deductible food and beverage expenses (*e.g.*, meals consumed by employees on work travel). For amounts incurred and paid after December 31, 2017 and until December 31, 2025, expands 50% limitation to employer expenses associated with providing food and beverages to employees through an on-premises eating facility that meets requirements for *de minimis* fringes and for the convenience of the employer. Effective for amounts paid or incurred beginning after 2017. Repeals deduction for meals provided through an on-premises eating facility for the convenience of the employer. Effective for taxable years beginning after 2025. (Section 13304)
Adoption Assistance Programs	Employees may exclude adoption expenses paid or reimbursed by an employer pursuant to an adoption assistance program.	Repeals exclusion for adoption assistance programs. Effective for taxable years beginning after 2017. (Section 1406)	No provision.	No change to current law.

Provision	Current Law	House Version	Senate Version	Conference Report
Employer-Provided Housing	Employees may exclude from gross income and wages for employment tax purposes the value of housing provided to an employee, spouse, or dependent by an employer for the convenience of the employer, but only if the employee is required to accept the lodging on the business premises of the employer as a condition of employment.	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)	No provision.	No change to current law.
Dependent Care Assistance Programs	Employees may exclude up to $5,000 annually for employer-provided dependent care assistance from gross income and wages for employment tax purposes.	Repeals exclusion for employer-provided dependent care assistance programs. Effective for taxable years beginning after 2022. (Section 1404)	No provision.	No change to current law.
Health and Welfare Provisions				
Individual Shared Responsibility Provision of PPACA ("Individual Mandate")	Under the Affordable Care Act, individuals must obtain minimum essential health coverage or be subject to a penalty for failure to maintain the coverage.	No provision.	Reduces the penalty for not purchasing creditable insurance coverage to zero. Effective beginning in 2019. (Section 11081)	Reduces the penalty for not purchasing creditable insurance coverage to zero. Effective beginning in 2019. (Section 11081)
Medical Expense Deduction	An individual taxpayer may deduct unreimbursed medical expenses that exceed 10% of the taxpayer's adjusted gross income (AGI).	Repeals the existing deduction in its entirety beginning in 2018.	Retains the medical expense deduction. For the 2017 and 2018 tax years, the deduction threshold would be reduced from 10% to 7.5% of AGI. For 2019 and beyond, the threshold would return to 10%.	Retains the medical expense deduction. For the 2017 and 2018 tax years, the deduction threshold would be reduced from 10% to 7.5% of AGI. For 2019 and beyond, the threshold would return to 10%.
Archer MSAs	Contributions to an Archer MSA are deductible by an individual if made by an individual and are excludible by an employer if made by the employer.	Repeals the deduction and exclusion for contributions to Archer MSAs. (Section 1311)	No provision.	No change to current law.

Provision	Current Law	House Version	Senate Version	Conference Report
Use of Chained CPI-U for Indexing Dollar Thresholds Applicable to Health FSAs, HSAs, and the 40% Excise Tax under Code section 4980I (the "Cadillac Tax")	The Internal Revenue Code includes a series of inflation adjustment provisions that are utilized with respect to various federal tax provisions to adjust dollar-based thresholds (such as income limits) to reflect ongoing inflation. Under current law, this inflation adjustment is generally based on the DOL-issued CPI-U. CPI-U is currently utilized for purposes of adjusting the maximum contribution limits for purposes of Health Savings Accounts ("HSAs") as well as Health Flexible Spending Accounts ("FSAs"). Additionally, CPI-U is used for purposes of adjusting the dollar thresholds for purposes of the 40% excise tax under IRC section 4980I (i.e., the "Cadillac Tax").	Replaces the use of CPI-U as the inflation adjustment with what is commonly referred to as "Chained-CPI-U." Because of the slightly different focus of Chained-CPI-U to standard CPI-U, use of Chained-CPI-U should be expected to result in relatively reduced inflation adjustments when compared to standard CPIU-U.	Replaces the use of CPI-U as the inflation adjustment with what is commonly referred to as "Chained-CPI-U." Because of the slightly different focus of Chained-CPI-U to standard CPI-U, use of Chained-CPI-U should be expected to result in relatively reduced inflation adjustments when compared to standard CPIU-U.	Replaces the use of CPI-U as the inflation adjustment with what is commonly referred to as "Chained-CPI-U." Because of the slightly different focus of Chained-CPI-U to standard CPI-U, use of Chained-CPI-U should be expected to result in relatively reduced inflation adjustments when compared to standard CPIU-U. In light of the above, it should be expected that statutory maximum contribution limits applicable to HSAs and FSAs would increase at a slower rate than if CPI-U continued apply. The same should be true for purposes of indexing the dollar thresholds for coverage that triggers the 40% excise tax under Code section 4980I (i.e., the "Cadillac Tax").

Provision	Current Law	House Version	Senate Version	Conference Report
Employer Credit for Paid Family and Medical Leave	Under present law, employers may not claim a credit for compensation paid to employees on family and medical leave.	No provision.	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 or mandated by a state or local government is not taken into account. A "qualifying employee" is an employee who has been employed by the employer for one year or more, and who for the preceding year, had compensation not in excess of 60% of the compensation threshold for HCEs ($120,000 for 2018). 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). The maximum amount of family and medical leave that may be taken into account with respect to any employee for any taxable year is 12 weeks. Effective for wages paid for taxable years beginning after 2017 (provision sunsets after 2019). (Section 13403)	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 or mandated by a state or local government is not taken into account. A "qualifying employee" is an employee who has been employed by the employer for one year or more, and who for the preceding year, had compensation not in excess of 60% of the compensation threshold for HCEs ($120,000 for 2018). 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). The maximum amount of family and medical leave that may be taken into account with respect to any employee for any taxable year is 12 weeks. Effective for wages paid for taxable years beginning after 2017 (provision sunsets after 2019). (Section 13403)

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.

© 2017 Groom Law Group, Chartered • 1701 Pennsylvania Ave NW • Washington, DC 20006. All rights reserved.