Bipartisan Budget Act of 2018

Cross References

- H.R. 1892

On February 9, 2018, the President signed into law H.R. 1892, the Bipartisan Budget Act of 2018, which extends federal funding for the government. The law also contains a number of tax provisions, including the extension of a number of provisions that had expired as of the end of 2016. These changes affect the preparation of 2017 tax returns. The following is our coverage of the new law.

Extension of Expiring Provisions

A number of tax provisions expired on December 31, 2016 and were not extended by the Tax Cuts and Jobs Act (Public Law 115-97) that was signed into law on December 22, 2017. The Bipartisan Budget Act of 2018 extends the following tax provisions for the 2017 tax year. All of these provisions now expire on December 31, 2017:

- Cancellation of qualified principal residence indebtedness exclusion (IRC §108).
- Mortgage insurance premiums deduction (IRC §163).
- Tuition and fees deduction (IRC §222).
- Indian employment credit (IRC §45A).
- Railroad track maintenance credit (IRC §45G).
- Mine rescue team training credit (IRC §45N).
- Race horse two years old or younger treated as 3-year property instead of 7-year property [IRC §168(e)(3)].
- Motor sports entertainment complexes treated as 7-year property [IRC §168(e)(3) and §168(i)(15)].
- Indian reservation property accelerated depreciation recovery periods [IRC §168(j)].
- Mine safety equipment expense election (IRC §179E).
- Special expensing rules for certain film, television, and live theatrical productions (IRC §181).
- Domestic production activities deduction for activities located in Puerto Rico (IRC §199). ***Note:*** The domestic production activities deduction for all activities was repealed by the Tax Cuts and Jobs Act for tax years beginning after December 31, 2017.
- Special rate for qualified timber gains (IRC §1201). ***Note:*** IRC section 1201 refers to AMT for C corporations which was repealed by the Tax Cuts and Jobs Act for tax years beginning after December 31, 2017.
- Empowerment zone tax incentives [IRC §1391(d)].
- American Samoa economic development credit [Public Law 109-432, section 119].
- Nonbusiness energy property credit (IRC §25C).
- Alternative motor vehicle credit for qualified fuel cell motor vehicles [IRC §30B(k)(1)].
- Alternative fuel vehicle refueling property credit (IRC §30C).
- Electric vehicle credit for highway-capable 2-wheeled vehicles (IRC §30D).

- Second generation biofuel producer credit [IRC §40(b)].
- Biodiesel and renewable diesel fuels credit (IRC §40A). ***Note:*** Excise tax incentives for biodiesel and renewable diesel fuels under IRC section 6426(c) are also extended and modified.
- Indian coal production credit [IRC §45(e)].
- Electricity production credit or investment credit in lieu of the production credit for non-wind renewable power facilities [IRC §45(d) and §48(a)].
- Energy efficient home credit (IRC §45L).
- Special depreciation allowance for second generation biofuel plant property [IRC §168(l)].
- Energy efficient commercial building property deduction (IRC §179D).
- Special rule for sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy [IRC §451(k)].
- Alternative fuels excise tax credit [IRC §6426(d) and §6426(e)].

Extensions beyond 2017. The following provisions are extended and modified as follows:
- The residential energy efficient property credit under IRC section 25D is extended through December 31, 2021 and includes qualified solar electric property expenditures, qualified solar water heating property expenditures, qualified fuel cell property expenditures, qualified small wind energy property expenditures, and qualified geothermal heat pump property expenditures.
- The energy credits and credit phase-outs under IRC section 48(a) are extended to periods ending before January 1, 2022. This provision affects solar and thermal energy property, fiber-optic solar property, qualified fuel cell property, qualified small wind energy property, qualified microturbine property, and combined heat and power system property.
- The oil spill liability trust fund financing rate under IRC section 4611 is extended through December 31, 2018.

Amended returns. Taxpayers affected by these provisions who have already filed their 2017 tax return may file an amended return to take advantage of the extension of the expiration date of these provisions.

New Form 1040SR for Seniors

The IRS is instructed to make available a new form known as Form 1040SR for use by certain individuals to file their tax returns. The form shall be as similar as practicable to Form 1040EZ, except that:
- The form shall be available only to individuals who have attained age 65 as of the close of the tax year.
- The form may be used even if income for the tax year includes Social Security benefits, distributions from qualified retirement plans, annuities, or other such deferred payment arrangements, interest and dividends, or capital gains and losses.
- The form shall be available without regard to the amount of any item of taxable income or the total amount of taxable income for the year.

The new form must be made available starting with the 2019 tax year for calendar year taxpayers.

California Wildfires

The new law also provides tax relief for victims of the 2017 wildfires that destroyed homes and businesses in California. These provisions are similar to the tax relief available for victims of Hurricanes Harvey, Irma, and Maria. The California wildfire disaster zone refers to the area in California designated as a federally declared disaster area anytime from January 1, 2017 through January 18, 2018.

Qualified wildfire distributions from retirement plans. A qualified wildfire distribution means any distribution from an eligible retirement plan made on or after October 8, 2017, and before January 1, 2019, to an individual whose principal place of abode during the period October 8, 2017 to December 31, 2017, is located in the California wildfire disaster area and who has sustained an economic loss by reason of the wildfires. Qualified wildfire distributions for any tax year are limited to $100,000 minus the aggregate amounts treated as qualified wildfire distributions for all prior tax years. The following tax provisions apply to qualified wildfire distributions:

- The 10% early withdrawal penalty under IRC section 72(t) does not apply to any qualified wildfire distribution.
- An individual who receives a qualified wildfire distribution may repay the distribution during the 3-year period beginning on the day after the date on which such distribution was received. The repayment is treated as an eligible rollover distribution that has been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution. This same rule applies if the qualified wildfire distribution is from an IRA.
- Any amount required to be included in gross income (such as the taxable amount that is not repaid within 3 years) may be included in gross income over the 3-taxable-year period beginning with the year of distribution. The taxpayer may elect to not have this provision apply.
- Qualified wildfire distributions are not subject to the mandatory withholding rules that apply to eligible rollover distributions.
- Qualified wildfire distributions are allowed from 401(k) and 403(b) plans without regard to whether the employee separated from service, attained aged 59½, or any of the other plan distribution requirements.

Re-contributions of withdrawals for home purchases. A withdrawal from a qualified retirement plan or IRA intended to be used to purchase or construct a principal residence in the California wildfire disaster area where the home was not purchased or constructed on account of the wildfires may be re-contributed back into a qualified plan. The withdrawal to purchase or construct a principal residence must have been made after March 31, 2017 and before January 15, 2018. The re-contribution must be made sometime during the period beginning on October 8, 2017 and ending on June 30, 2018. If the withdrawal and re-contribution meets these conditions, it is treated as an eligible rollover distribution that is transferred to an eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

Loans from qualified plans. In general, if a retirement plan allows for loans, the loan is not treated as a distribution if it is used by the taxpayer to purchase a main home, or

the loan is repaid within five years. The maximum amount of the loan cannot exceed the lesser of $50,000 or one-half the present value (but not less than $10,000) of the taxpayer's vested benefit under the plan. Under the new law:
- The $50,000 limit is increased to $100,000,
- The one-half of the vested benefit limit is increased to 100% of the vested benefit, and
- The repayment period is extended by 1-year if the due date of the loan occurs sometime between October 8, 2017 and December 31, 2018.

Qualified individuals for purposes of this provision are those whose principal place of abode during any portion of the period from October 8, 2017, to December 31, 2017, is located in the California wildfire disaster area who has sustained an economic loss by reason of the wildfires.

Employee Retention Credit. Eligible employers are allowed an Employee Retention Credit equal to 40% of the qualified wages paid to each eligible employee. The amount of qualified wages which may be taken into account for each employee is limited to $6,000 ($6,000 × 40% = $2,400 maximum credit per employee).

Eligible employers are those that conducted an active trade or business on October 8, 2017 in the California wildfire disaster zone. The active trade or business must be inoperable on any day after October 8, 2017 and before January 1, 2018 as a result of the disaster.

Eligible employees are those whose principal place of employment on October 8, 2017 was located in the California wildfire disaster zone. Qualified wages are those paid to eligible employees beginning on any day after October 8, 2017 on which the trade or business first became inoperable and ending on the date on which such trade or business resumes significant operations, but no later than January 1, 2018. Qualified wages include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than the principal place of employment, or performs services before significant operations have resumed.

Suspension of limitations on charitable contributions. The 50%, 30% and 20% AGI limitations for individuals making charitable contributions and the 10% income limitation for corporations making charitable contributions does not apply to qualified contributions for the relief efforts in the California wildfire disaster area. A qualified contribution must be paid during the period beginning on October 8, 2017 and ending on December 31, 2018 to a qualified charitable organization that uses the donation for disaster relief efforts. A qualified contribution is not treated as an itemized deduction for purposes of the overall limitations on itemized deductions under IRC section 68. The taxpayer must obtain a contemporaneous written acknowledgment from the charitable organization that the contribution will be used for such disaster relief efforts.

Casualty losses. If the taxpayer has a net disaster loss for the year:
- The 10% AGI limitation does not apply to the net disaster loss,
- The $100 per casualty limit is increased to $500 per casualty,
- The standard deduction is increased by the disaster loss, and
- The portion of the standard deduction increased by the disaster loss is allowed as a deduction against alternative minimum taxable income for purposes of the AMT.

A net disaster loss means the excess of qualified disaster-related personal casualty losses over personal casualty gains. Qualified disaster-related personal casualty losses are losses which arise in the California wildfire disaster area on or after October 8, 2017 which are attributable to the wildfires.

Earned income. If the earned income of a qualified individual in 2017 is less than the earned income for 2016, the taxpayer may elect to use the earned income for 2016 as the amount of earned income for 2017 for purposes of calculating:
- The refundable portion of the Child Tax Credit under IRC section 24(d), and
- The Earned Income Credit under IRC section 32.

A qualified individual means any individual whose principal place of abode during any portion of the period from October 8, 2017, to December 31, 2017 was located in the California wildfire disaster zone or the California wildfire disaster area and was displaced by reason of the wildfires.

If the taxpayer files a joint return, these rules apply if either spouse is a qualified individual and the earned income for 2016 means the sum of the earned income of each spouse for that year.

Hurricanes Harvey, Irma, and Maria

The Disaster Tax Relief and Airport and Airway Extension Act of 2017 was signed into law on September 29, 2017. This law provided tax relief for victims of Hurricanes Harvey, Irma, and Maria. Coverage of this law was included on page 1-10 of *TheTaxBook 1040 Edition/Deluxe Edition* for the 2017 tax year, and on our website under Tax Industry News, posted on 10/10/2017.

The original law defined the Hurricane Harvey and the Hurricane Irma disaster areas as the areas declared by the President before September 21, 2017 as federally declared disaster areas. The new law says it is the areas declared by the President before October 17, 2017 as federally declared disaster areas.

The September 21, 2017 date for Hurricane Maria is unchanged on the new law.

Tax Home for Purposes of the Foreign Earned Income Exclusion

The foreign earned income exclusion allows taxpayers to exclude from gross income up to $104,100 (2018 inflation adjusted amount) of foreign earned income plus up to 16% of such amount for certain foreign housing costs. A qualifying taxpayer must be a U.S. citizen who is a bona fide resident of a foreign country, or a U.S. citizen or U.S. resident who meets the 330 full day presence test in a foreign country during a 12 consecutive month period.

One of the requirements to qualify for the exclusion is that the taxpayer's tax home must be located in a foreign country. A tax home is generally defined as the taxpayer's regular place of business or duty post, regardless of the location of the family residence. However, for purposes of the foreign earned income exclusion, if the taxpayer's residence or abode is located within the United States, the taxpayer's tax home cannot be located in a foreign country. [IRC §911(d)(3)]

Effective for tax years beginning after December 31, 2017, if the taxpayer is serving in an area designated by the President as a combat zone in support of the Armed Forces of the United States, the taxpayer's tax home may be considered located in a foreign country regardless of whether or not his or her place of residence or abode is located within the United States.

Author's Comment

Wages paid by the United States are not considered foreign earned income. This tax provision applies to foreign source earned income other than military pay earned in a combat zone, which is already excluded from income under IRC section 112.

Other Provisions

The new law also contains the following provisions:

- Provides additional Hurricane Maria relief by increasing funding for Medicaid programs for Puerto Rico and the Virgin Islands.
- Modifies the credit under IRC section 45J for production from advanced nuclear power facilities.
- Extends and modifies the rum excise tax revenues to Puerto Rico and the Virgin Islands under IRC section 7652.
- Extends the waiver of the statute of limitations from one year to three years with respect to the exclusion from gross income of amounts received by wrongfully incarcerated individuals.
- Taxpayers are held harmless and allowed to re-contribute retirement plan benefits on wrongful levies. The re-contributed benefits are treated as a rollover. [IRC §6343(f)]
- Modifies the user fee requirements for installment agreements. (IRC §6159)
- The special rules for deducting attorney's fees and court costs for certain whistleblowers is expanded to include awards under the Securities Exchange Act, a state false claims act, and the Commodity Exchange Act. The law also clarifies what is considered to be included in a whistleblower award.
- Clarifies that the excise tax under IRC section 4968 based on investment income of private colleges and universities applies to educational institutions with at least 500 tuition-paying students with more than 50% of the tuition-paying students being located in the United States.
- Provides a new exception from the Private Foundation excess business holding tax under IRC section 4943 for independently operated philanthropic business holdings.
- Modifies record-keeping rules under IRC section 5555 for certain excise taxes.
- Directs the IRS to modify the regulations for hardship distributions.
- Adds Puerto Rico as an opportunity zone for purposes of IRC section 1400Z-1.
- Modifies the rules for foreign persons for purposes of Form 1099-K payment card and third party network transactions under IRC section 6050W.
- Eliminates the requirement for C corporations with assets over $1 billion to increase their 2020 tax year 3rd quarter estimated tax payment by 8%.
- Modifies the credit for carbon dioxide sequestration under IRC section 45Q.

