

Committee on Ways and Means Releases Tax and Oversight Bill  
Nov 28, 2018

## Client Alert

*Brownstein Client Alert*, November 28, 2018

On Nov. 26, 2018, the Committee on Ways and Means released the tax and oversight package. The bill includes:

- Technical Corrections
  - Related to the Tax Cuts and Jobs Act (P.L.115-97)
  - Other Technical Corrections
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- Disaster Tax Relief
- Taxpayer First Act of 2018
- American Innovation Act of 2018
- Tax Extenders
- The Retirement, Savings, and Other Tax Relief Act of 2018

### **Technical Corrections**

The bill includes several technical corrections to the Tax Cuts and Jobs Act (P.L.115-97) (“TCJA”). The bill would clarify that:

1. the new carryforward rules apply to net operating losses (“NOLs”) in tax years beginning after Dec. 31, 2017—the statute currently states that it affects tax years ending after Dec. 31, 2017;
2. qualified improvement property is 15-year property;
3. that only the taxpayer that makes a settlement payment for sexual harassment is prevented from deducting attorney’s fees;
4. that tax overpayments related to the installment payments for the deemed repatriation tax should be refunded to taxpayers rather than applied to future installment payments; and
5. that regulation investment company (“RIC”) shareholders receiving distributions from a real estate investment trust (“REIT”) are eligible for the section 199A deduction on those distributions.

Other technical corrections also include that: (1) veterans “shall not” fail to be treated as a specified group in reference to the low-income housing credit; and (2) qualified residential rental projects will not fail to meet the public use requirement solely because of occupancy restrictions or preferences.

### **Tax Relief for Natural Disasters**

The bill includes tax relief for victims of Hurricane Florence, Hurricane Michael, Typhoon Mangkhut, Typhoon Yutu, the California wildfires, Hawaii’s volcanic eruption, earthquakes, and other severe storms. The special disaster-related rules allow victims to use withdrawals from retirement plans for storm relief without penalty. Other relief provisions include temporary suspension of limits on charitable contributions, an employee retention credit, and special rules for qualified disaster-related personal casualty losses.

### **IRS Reform**

The bill includes the Taxpayer First Act of 2018, originally introduced by Rep. Lynn Jenkins (R-SD) of the Ways and Means Committee earlier this year. The purpose of the bill is to refocus on taxpayer service by creating an independent dispute appeals process and guaranteeing taxpayers access to information during

dispute resolution. The bill also would require the IRS submit to Congress both a proposal on improving customer service and a guide to restructuring the agency.

**American Innovation**

The American Innovation Act of 2018, originally introduced by Rep. Vern Buchanan (R-FL) of the Ways and Means Committee earlier this year, includes: (1) simplification and expansion of the deduction for startup and organizational expenditures; and (2) the preservation of startup net operating losses and tax credits after an ownership change.

**Tax Extenders**

Following the enactment of the TCJA, Senate Finance Chairman Orrin Hatch (R-UT) introduced the Tax Extender Act of 2017, which would have extended expired tax provisions (“tax extenders”) not included in the TCJA for two years. The bill was not enacted, but extenders were addressed at the beginning of 2018 in the Bipartisan Budget Act of 2018 (P.L. 115-123), which only retroactively renewed the tax extenders for 2017.

In the bill released on Nov. 26, Chairman Brady extended most of the tax extenders that expired in 2017. The chart below outlines the differences between the Tax Extender Act of 2017 and Chairman Brady’s bill.

**Families and Individuals**

<b>Provision</b>	<b>Tax Extender Act of 2017 (S.2256)</b>	<b>Extenders Bill</b>
Exclusion from gross income of discharge of qualified	Jan. 1, 2019	Jan. 1, 2019
Mortgage insurance premiums treated as qualified residence interests	Dec. 31, 2018	Dec. 31, 2018
Above-the-line deduction for qualified tuition and related expenses	Dec. 31, 2018	Dec. 31, 2018

**Incentives for Growth, Jobs, Investment and Innovation**

<b>Provision</b>	<b>Tax Extender Act of 2017 (S.2256)</b>	<b>Extenders Bill</b>
Indian employment tax credit	Dec. 31, 2018	Dec. 31, 2018
Railroad track maintenance credit	Jan. 1, 2019	Made permanent
Mine rescue team training credit	Dec. 31, 2018	Dec. 31, 2018
Qualified zone academy bonds	Dec. 31, 2017	Not Included

Classification of certain race horses as three-year property	Jan. 1, 2019	Jan. 1, 2019
Seven-year recovery period for motorsports entertainment complexes	Dec. 31, 2018	Dec. 31, 2018
Accelerated depreciation for business property on an Indian reservation	Dec. 31, 2018	Dec. 31, 2018
Election to expense mine safety equipment	Dec. 31, 2018	Dec. 31, 2018
Special expensing rules for certain productions	Dec. 31, 2017	Dec. 31, 2018
Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico	Jan. 1, 2018	Not Included
Special rule relating to qualified timber gain	Dec. 31, 2017	Not Included
Empowerment zone tax incentives	Dec. 31, 2018	Dec. 31, 2018
Temporary increase in limit to cover over of rum excise taxes to Puerto Rico and the Virgin Islands	Jan. 1, 2019	Not Included
American Samoa economic development credit	Jan. 1, 2019	Jan. 1, 2019

**Incentives for Energy Production and Conservation**

<b>Provision</b>	<b>Tax Extender Act of 2017 (S.2256)</b>	<b>Extenders Bill</b>
Credit for nonbusiness energy property	Dec. 31, 2018	Dec. 31, 2018
Credit for new qualified fuel cell motor vehicles	Dec. 31, 2018	Dec. 31, 2018
Credit for alternative fuel vehicle refueling property	Dec. 31, 2018	Dec. 31, 2018

Credit for two-wheeled plug-in electric vehicles	Jan. 1, 2019	Jan. 1, 2019
Second generation biofuel producer credit	Jan. 1, 2019	Jan. 1, 2019
Biodiesel and renewable diesel	Dec. 31, 2018	Extension and phaseout by Dec. 31, 2024
Production credit for Indian coal facilities	Jan. 1, 2018	Not Included
Credits with respect to facilities producing energy from certain renewable resources	Jan. 1, 2019	Jan. 1, 2018
Credit for energy-efficient new homes	Dec. 31, 2018	Dec. 31, 2018
Special allowance for second generation biofuel plant property	Jan. 1, 2019	Jan. 1, 2019
Energy-efficient commercial buildings deduction	Dec. 31, 2018	Dec. 31, 2018
Special rule for sales or dispositions to implement FERC or state electric restructuring policy for qualified electric utilities	Jan. 1, 2019	Jan. 1, 2019
Excise tax credits relating to alternative fuels	Dec. 31, 2018	Dec. 31, 2018
Oil spill liability trust fund financing rate	Dec. 31, 2018	Dec. 31, 2019
Extension and modification of credit for residential energy property	Dec. 31, 2021	Not Included
Extension and phaseout of energy credit	Jan. 1, 2022	Not Included
Black lung liability trust fund excise tax	Not Included	Dec. 31, 2019

**Retirement and Savings Enhancements**

The bill also included numerous provisions related to retirement and savings. Several recent bills have focused on these areas. This chart compares the provisions of the following:

- The House Retirement Enhancement and Savings Act of 2018 (H.R. 5282)
- The Senate Retirement Enhancement and Savings Act of 2018 (S. 2526)
- The House Family Savings Act of 2018 (H.R. 6757 as reported)
- The House Family Savings Act of 2018 (H.R. 6757 as passed the House)
- The Retirement and Savings Provisions of the Brady House Amendment (Released Nov. 26, 2018)

<b>Key</b>
Identical or near-identical section in all three House bills, Senate bill and Brady House Amendment
Section is only in H.R. 5282 and S. 2526
Section is only in H.R. 5282 and S. 2526 and Brady House Amendment
Section is only in H.R. 6757 as reported and H.R. 6757 as passed in the House
Section is only in H.R. 6757 as reported, H.R. 6757 as passed in the House and Brady House Amendment
Section in H.R. 5282, S. 2526, H.R. 6757 as passed in the House and Brady House Amendment
Section is only in H.R. 6757 as reported in the House
Section is only in H.R. 6757 as passed in the House
Section is only in Brady House Amendment

<b>Provision</b>	<b>H.R. 5282</b>	<b>S. 2526</b>	<b>H.R. 6757 as reported</b>	<b>H.R. 6757 as passed House</b>	<b>Brady House Amendment 11/2018</b>

<b>EXPANDING AND PRESERVING RETIREMENT SAVINGS</b>					
Multiple employer plans	Sec. 101	Sec. 101	Sec. 101	Sec. 101	Sec. 301
Pooled employer and multiple employer plan reporting	Sec. 102	Sec. 102	Sec. 101	Sec. 101	Sec. 301
Removal of 10 percent cap from automatic enrollment safe harbor after first plan year	Sec. 103	Sec. 103			
Increase in 10 percent cap for automatic enrollment safe harbor after first plan year					Sec. 309
Rules relating to election of safe harbor 401(k) status	Sec. 104	Sec. 104	Sec. 102	Sec. 102	Sec. 302
Increase in credit limitation for small employer pension plan startup costs	Sec. 105	Sec. 105			Sec. 310
Small employer automatic enrollment credit	Sec. 106	Sec. 106			Sec. 311 (similar)
Certain taxable non-tuition fellowship and stipend payments treated as compensation for IRA purposes	Sec. 107	Sec. 107	Sec. 103	Sec. 103	Sec. 303
Repeal of maximum age for traditional for IRA contributions	Sec. 108	Sec. 108	Sec. 104	Sec. 104	Sec. 304
Expansion of IRA ownership of S corporation bank stock	Sec. 109	Sec. 109			
Qualified employer plans prohibited from making loans through credit cards and other similar arrangements	Sec. 110	Sec. 110	Sec. 105	Sec. 105	Sec. 305
Portability of lifetime income options	Sec. 111	Sec. 111	Sec. 106	Sec. 106	Sec. 306
Treatment of custodial accounts on termination of section 403(b) plans	Sec. 112	Sec. 112	Sec. 107	Sec. 107	Sec. 307 (Accomplished through Treasury guidance)
Clarification of retirement income account rules relating to church-controlled organizations	Sec. 113	Sec. 113	Sec. 108	Sec. 108	Sec. 308

Exemption from required minimum distribution rules for individuals with certain account balances			Sec. 109	Sec. 109	Sec. 312
Clarification of treatment of certain retirement plan contributions picked up by governmental employers for new or existing employees			Sec. 110	Sec. 110	
Elective deferrals by members of the Ready Reserve of a reserve component of the Armed Forces			Sec. 111	Sec. 111	Sec. 313

Provision	H.R. 5282	S. 2526	H.R. 6757 as reported	H.R. 6757 as passed house	Brady House Amendment 11/2018
<b>ADMINISTRATIVE IMPROVEMENTS</b>					
Plan adopted by filing due date for year may be treated as in effect at close of year	Sec. 201	Sec. 201	Sec. 201	Sec. 201	Sec. 321
Combined annual report for group of plans	Sec. 202	Sec. 202			
Disclosure regarding lifetime income	Sec. 203	Sec. 203			Sec. 324
Fiduciary safe harbor for selection of lifetime income provider	Sec. 204	Sec. 204		Sec. 203	Sec. 323
Modification of nondiscrimination rules to protect older, longer service participants	Sec. 205	Sec. 205	Sec. 202	Sec. 202	Sec. 322
Modification of PBGC premiums for CSEC	Sec. 206	Sec. 206			Sec. 325
Study of appropriate PBGC premiums			Sec. 203		

Provision			H.R. 6757 as reported	H.R. 6757 as passed House	Brady House Amendment 11/2018
<b>OTHER SAVINGS PROVISIONS</b>					
Universal Saving Accounts			Sec. 301	Sec. 301	

Expansion of Section 529 plans			Sec. 302	Sec. 302	
Section 529 Unborn Child provision				Sec. 302	
Penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoption			Sec. 303	Sec. 303	Sec. 331

<b>Provision</b>				<b>H.R. 6757 as passed House</b>	
<b>BUDGETARY EFFECTS</b>					
Budgetary Effects				Sec. 401	

<b>Provision</b>	<b>H.R. 5282</b>	<b>S. 2526</b>			
<b>BENEFITS RELATING TO UNITED STATES TAX COURT</b>					
Thrifting Savings Plan contributions for judges in the Federal Employees Retirement System	Sec. 301	Sec. 301			
Change in vesting period for survivor annuities and waiver of vesting period in the event of assassination	Sec. 302	Sec. 302			
Coordination of retirement and survivor annuity with the Federal Employees Retirement System	Sec. 303	Sec. 303			
Limit on teaching compensation of retired judges	Sec. 304	Sec. 304			
General provisions relating to magistrate judges of the Tax Court	Sec. 305	Sec. 305			
Life insurance for magistrate judges of the tax court age 65 or older	Sec. 306	Sec. 306			
Retirement and annuity program	Sec. 307	Sec. 307			
Provisions for recall	Sec. 308	Sec. 308			



Provision	H.R. 5282	S.2526			
<b>OTHER BENEFITS</b>					
Benefits provided to volunteer firefighters and emergency medical responders	Sec. 401	Sec. 401			

Provision	H.R. 5282	S.2526			
<b>REVENUE PROVISIONS</b>					
Modification of required distribution rules for pension plans	Sec. 501	Sec. 501			
Increase in penalty for failure to file	Sec. 502	Sec. 502			
Increased penalties for failure to file retirement plan returns	Sec. 503	Sec. 503			
Increased information sharing to administer excise taxes	Sec. 504	Sec. 504			
Pension variable rate premium payment acceleration	Sec. 505	Sec. 505			

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