Federal Income Tax: Doctrine, Structure, and Policy

Fourth Edition

2017 Tax Act Update For Students and Teachers

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On December 22, 2017, the President signed a bill making wide-ranging amendments to the Internal Revenue Code of 1986. The bill began its way through the legislative process under the title of the Tax Cuts and Jobs Act. However, a peculiarity in U.S. Senate rules required this title to be deleted and the bill became law without an official name. Nevertheless, for convenience this update will refer to the new law as the 2017 Tax Act (2017 TA). Its public law number is P.L. 115-97. Much of the new law pertains to advanced courses. Consequently, this update will ignore those matters and focus only on portions relating to the basic income tax course.

Please do not hesitate to contact us directly with comments and questions.

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Chapter 1

TAXONOMY, HISTORY, AND THE INSTITUTIONAL STRUCTURE OF TAXATION IN THE UNITED STATES

Page 14

Generally speaking, the 2017 TA exempts the foreign-source active business income of U.S. corporations that is earned through ten-percent-or-more owned foreign corporations from regular U.S. income tax but imposes a 10% minimum tax.

Chapter 2

BASIC INCOME TAX PRINCIPLES

Page 50

The 2017 TA essentially retains present-law maximum rates on net capital gains and qualified dividends. However, a three year holding period is now required to achieve long-term capital gains treatment with respect to sales of certain partnership interests. *See* Chapter 25, this update.

Pages 58-59

Under the 2017 TA in some cases, the cost of a business or investment asset can be fully deducted (expensed) at the time of acquisition instead of being recovered through depreciation deductions spread over future years. *See* Chapter 6, this update.

Pages 63-67

The 2017 TA has increased the standard deduction to $24,000 for joint filers, $18,000 for head of household filers and $12,000 for all other individuals. These increased amounts are indexed for inflation. They are effective for tax years beginning after 2017 but do not apply to tax years beginning after 2025.

For tax years beginning after 2017 and before 2026, the 2017 TA suspends the deduction for personal exemptions, including personal exemptions for dependents.

With respect to tax years beginning after 2017 and before 2026, the 2017 TA suspends all miscellaneous itemized deductions that are subject to the IRC § 67 two percent floor, including unreimbursed employee business expenses and IRC § 212 deductions other than those covered by IRC § 62(a)(4) (related to rental and royalty income) and IRC § 62(a)(20) (related to certain litigation expenses). Thus, the two percent floor is irrelevant during the suspension period.

The 2017 TA includes a new IRC § 199A that allows a deduction for a portion of certain "pass-through income" realized by individuals, trusts, or estates. *See* Chapter 4, this update, for details. This deduction is not an itemized deduction allowable in arriving at adjusted gross income and, therefore, is not affected by the suspension of miscellaneous itemized deductions. Moreover, it is allowed to non-itemizers, i.e. it can be claimed in addition to the standard deduction.

For tax years beginning after 2017 and before 2026, the 2017 TA suspends the IRC § 68 overall limitation on itemized deductions, thus making this limitation irrelevant during the suspension period.

Page 68

The 2017 TA completely repealed the corporate AMT and increased the individual AMT's exemption amount and phaseout thresholds and also indexed them for inflation. The Tax Policy Center has estimated that these changes will cause the individual AMT's coverage to drop from $5 million taxpayers to 200,000. The corporate AMT repeal is effective for tax years beginning after 2017. The individual AMT changes are effective only for tax years beginning after 2017 and before 2026.

Chapter 4

RATES AND ALLOWANCES FOR BASIC MAINTENANCE

Page 90

The 2017 TA imposes the following rates (indexed for inflation) on individuals, estates, and trusts for tax years beginning after 2017 and before 2026:

If taxable income is:	Then income tax equals:
	Single Individuals
Not over $9, 525	10% of the 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
	Heads of Households
Not over $13,600	10% of the 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
	Married Individuals Filing Joint Returns and Surviving Spouses
Not over $19,050	10% of the 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

Married Individuals Filing Separate Returns

Not over $9,525	10% of the 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

Not over $2,550	10% of the taxable income
Over $2,550 but not over $9,150	$255 plus 24% of the excess over $19,050
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

The 2017 TA permanently replaces the IRC § 11 graduated corporate rate with a flat 21% rate. This change is effective for tax years beginning after 2017.

The 2017 TA includes a new IRC § 199A. This is an extremely complex provision the details of which are properly reserved for an advanced course. For purposes of the basic income tax course, it is sufficient to note that although IRC § 199A has restrictions and limitations that can impose constraints on its benefit, when those restrictions and limitations are avoided, this new provision allows non-corporate taxpayers to deduct 20% of the business income of "pass-throughs"—i.e. S corporations, organizations treated as partnerships, and sole proprietorships (including the business of being an independent contractor but not the business of being an employee). This deduction is not an itemized deduction allowable in arriving at adjusted gross income and, therefore, is not affected by the suspension of miscellaneous itemized deductions. Moreover, it can be claimed in addition to the standard deduction.

This provision is effective for tax years beginning after 2017 and before 2026. The 20% deduction does not represent a cost of producing income. Instead, it is merely a device to reduce the rate on eligible business income. For example, if an individual sole proprietor's marginal rate is 37%, the deduction will effectively decrease that rate to 29.6% (37% x [1-.20]). The policy significance of IRC § 199A is that it adds to a disparate array of rates applicable to ordinary business income. To be specific:

- Income earned as employee can be taxed at up to 37%.

- Business income earned as an independent contractor, sole proprietor, or through an S corporation or an entity treated as a partnership generally will not be taxed in excess of 29.6% when IRC § 199A is applicable.

- Business income earned through a C corporation will be taxed on the corporate level at 21%. In addition, when C corporation income is distributed as dividends, it bears a second tax at a maximum rate of 23.8% if the recipient shareholder is a taxable individual. But the tax rate on dividends is 0% where the shareholder is one of the many tax-exempt organizations that own corporate stock.

Pages 98-104

The 2017 TA substantially enlarges the standard deduction and suspends the personal and dependency exemptions deductions. *See* Chapter 2, this update.

Page 104

The 2017 TA increases the IRC § 24 child tax credit to $2,000 per qualifying child, raises the age ceiling from “under 17” to “under 18” and provides a $500 nonrefundable credit for qualifying dependents other than qualifying children. The phaseout threshold is raised to $500,000 for all taxpayers. These changes are effective for tax years beginning after 2017 and before 2026 except that the increase in the age ceiling expires for taxable years beginning after 2024.

Chapter 5

DEDUCTIONS FOR OFF-THE-BOTTOM PERSONAL EXPENSES

Pages 110-16

The 2017 TA repeals the IRC §§ 61(a)(8) and 71 inclusions of alimony payments in the payee spouse's income, repeals the payor's IRC § 215 deduction, and repeals the IRC § 682 alimony trust provision. The treatment of child support payments is not changed. Thus, *Gould v. Gould, see* Casebook p. 37, now governs both alimony and child support payments. There is no deduction for either by the payor and no inclusion for either by the payee. In addition, the tax treatment of the income of alimony trusts is now returned to the uncertain state described at Casebook p. 113. These changes are effective with respect to divorce or separation instruments executed after 2018. IRC § 1041 was not affected by the 2017 TA.

Pages 116-17

The 2017 TA modifies the extent to which taxes are deductible by individuals under IRC § 164. It provides that individuals may deduct all state, local, and foreign taxes that are connected with carrying on a business or investment activity. Moreover, foreign income taxes are fully deductible by individuals regardless of whether there is a connection to a business or investment activity. However, (1) all state and local income taxes paid or accrued in a given year by an individual (even if there is a business or investment connection) and (2) all other state and local taxes paid or accrued by an individual in a given year that lack a business or investment connection are only deductible to the extent that the aggregate of such taxes does not exceed $10,000 ($5,000 in the case of married taxpayers filing separately). In applying the $10,000/$5,000 cap, individuals continue to have an election to substitute state and local general sales taxes for state and local income taxes. In addition, this $10,000/$5,000 cap does not apply to corporations, and foreign real property taxes that lack a business or investment connection are nondeductible by individuals even if they fit within the $10,000/$5,000 cap. There is no change to the IRC § 275(a)(4) prohibition against deducting foreign taxes claimed as credits under IRC § 901.

The 2017 TA's changes to the deductibility of taxes are effective for tax years beginning after 2017 and before 2026. This caused residents of states with high real property taxes to seek to avoid the 10% cap by making December 2017 payments of 2018 state and local taxes on personal use real property. On December 27, 2017, the IRS issued an Advisory stating that these prepayments would be deductible only to the extent that the 2018 taxes had been formally assessed in 2017.

Pages 124-128

The 2017 TA suspended all miscellaneous itemized deductions that are subject to the IRC § 67 two percent floor. See Chapter 2, this update. This suspension includes IRC § 212(3).

Page 128

The 2017 TA provides that the 10% of AGI threshold for the medical expense deduction in IRC § 213 drops back to 7.5%. This change is generally effective for tax years beginning after 2016 and ending before 2019.

Chapter 6

VIEWING THE INCOME TAX THROUGH A CONSUMPTION TAX LENS

Page 157

The 2017 TA increases the maximum IRC § 179 expense deduction to $1 million per year and increases the phaseout threshold to $2,500,000. These amounts are indexed for inflation with regard to tax years beginning after 2018. Property that qualifies for IRC § 179 expensing is expanded to include the following improvements to nonresidential rental property: roofs, heating, ventilation and air conditioning property, fire protection and alarm systems, and security systems.

IRC § 168(k) allows so called "bonus depreciation" with respect to certain property including, but not limited to, IRC § 179 property. The IRC § 168(k) deduction is set as a percentage of the basis remaining in eligible property after reduction for any IRC § 179 deduction. *See* Reg. §1.168 (k)-1(a) (2) (iii). Thus, IRC § 168(k) is irrelevant with respect to property that can be expensed under IRC § 179. However, IRC § 168(k) applies to certain property that falls outside the scope of IRC § 179. The 2017 TA amends IRC § 168(k) to provide that for eligible property placed in service after September 27, 2017 and before 2023, 100% of its adjusted basis may be deducted (expensed) in the service commencement year. For property placed in service in 2023, the deductible amount is generally only 80% of adjusted basis and the deduction percentage generally declines by 20 percentage points each year after 2023 so that nothing is deductible under IRC § 168(k) with respect to eligible property placed in service after 2026. Deductions under amended IRC § 168(k) are available for both new and used property, apparently including used property that is sold by the owner to a third party who claims deductions under IRC § 168(k) and leases the property back to the original owner. The definition of qualified property is expanded to include film, television, and live theatrical productions placed in service after September 27, 2017, and before 2027 if at least 75% of the total compensation expended on the production is for work done in the United States. Qualified property generally excludes assets used by regulated public utilities. Qualified property includes debt-financed property. Thus, IRC § 168(k) allows expensing of assets (including used property) with respect to which interest deductions on acquisition debt are allowable. This can result in negative effective tax rates. *See* Chapter 18, this update regarding an overall limitation on the deduction of interest expense. IRC § 168(k) deductions are taken before regular IRC § 168(a) depreciation deductions.

Chapter 7

THE CAPITALIZATION PRINCIPLE IN PRACTICE

Page 173

The 2017 TA exempts from IRC § 263A any taxpayer (other than a tax shelter) has annual average gross receipts of $25 million or less for the three preceding taxable years. Starting with tax years beginning after 2018, this $25 million amount is adjusted annually for inflation.

Chapter 8

THE BASIC FRAMEWORK GOVERNING BUSINESS AND INVESTMENT DEDUCTIONS

Pages 191–97

The 2017 TA's suspension of all itemized deductions that were subject to the IRC § 67 two percent floor includes suspension of all parts of IRC § 212 with the exception of expenses covered by IRC §§ 62(a)(4), (20). Consequently, *Higgins* and other cases defining the difference between business and investment activity have heightened importance during the suspension period.

Page 203

The 2017 TA generally repeals IRC § 199 for tax years beginning after 2017.

Page 209

The 2017 TA amends IRC § 162(f) to provide a blanket prohibition against deducting "any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law." This prohibition includes reimbursement payments to governments or governmental entities for investigation and litigation costs. For these purposes, non-governmental entities that exercise certain self-regulatory powers are treated as governmental entities. This deduction prohibition seems to apply regardless of whether the government or governmental entity is domestic or foreign and it extends IRC § 162(f) beyond fines or similar penalties paid for actual violations of law. It also makes IRC § 162(f) applicable to all income tax deduction provisions, not just § 162. Amended IRC IRC § 162(f) has a number of exceptions, however:

- It does not generally apply to payments in the nature of restitution or remediation.
- It does not generally apply to payments made to come into compliance with relevant law.
- It does not apply to tax payments.
- It does not apply to payments made by reason of a court order in a suit to which no government or governmental entity was a party.

Amended IRC § 162(f) is effective with respect to amounts paid or incurred on or after December 22, 2017.

The 2017 TA amended IRC §162 by inserting a new subsection 162(q) which prohibits any deduction under any income tax provision for:

(1) Any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or
(2) Attorneys' fees related to such settlement or payment.

Note that this language is sufficiently broad to apply to a victim's attorneys' fees which would otherwise be deductible under IRC § 212. It remains to be seen whether this broad interpretation will be applied. If it is, then the relationship between IRC § 62(a)(20) and IRC § 162(q) is important. Although IRC § 212 has been generally suspended, deductions thereunder are not affected by the suspension to the extent that the deductions are covered by IRC § 62(a)(20). IRC § 162(q) is, however, a new requirement that must be satisfied in order to deduct IRC § 62(a)(20) attorneys' fees under IRC § 212.

The 2017 TA eliminates the performance-based compensation exception from IRC § 162(m).

Page 210

The 2017 TA amends the IRC §162(e) disallowance of deductions for lobbying expenses to eliminate the exception for local lobbying costs.

Chapter 9

DEFINING THE PERSONAL REALM: OF HUMAN CAPITAL

Page 223

The 2017 TA amends IRC § 529 to allow distributions of up to $10,000 per year, per student, to cover K–12 tuition expenses including tuition expenses at a religious school.

Page 225

Except for certain moving expenses of certain Armed Forces members, the 2017 TA suspends the IRC § 217 moving expense deduction for taxable years beginning after 2017 and before 2026.

Page 226

Except for certain Armed Forces members, the 2017 TA generally suspends the IRC § 132(g) exclusion for employer-provided moving expense reimbursements for tax years beginning after 2017 and before 2026.

Chapter 10

DUAL-PURPOSE OUTLAYS

Page 231

The IRC § 183(b)(2) deduction is a miscellaneous itemized deduction that is suspended by the 2017 TA with respect to tax years beginning after 2017 and before 2026. During this period, no IRC § 183(b)(2) deductions are allowable.

Page 238

For tax years beginning after 2017 and before 2026, the 2017 TA amends IRC § 165(d) to provide that for purposes of the 165(d) limitation on losses from wagering transactions, the phrase "losses from wagering transactions" includes any otherwise deductible expenses of carrying on a gambler's gambling activity.

Chapter 11

ALLOCATING COSTS BETWEEN THE INCOME-PRODUCTION AND PERSONAL REALMS

Page 250

The 2017 TA removes "computer or peripheral equipment" from inclusion in listed property.

Page 256

With respect to tax years beginning after 2017 and before 2026, the 2017 TA suspends all miscellaneous itemized deductions that are subject to the IRC § 67 two percent floor, including unreimbursed employee business expenses. Thus, employees are effectively denied travel and entertainment expense deductions during the suspension period.

Pages 268–71

The 2017 TA prohibits deductions (1) for entertainment, amusement, and recreation activities, (2) for membership dues in any business, recreation, or social club, and (3) with respect to any facility or portion thereof used in connection with any entertainment, amusement, or recreation activity. This repeals the "directly related" and "associated with" entertainment expense deductions described on Casebook page 269. The 2017 TA continues to allow employers to deduct 50% of the cost of meals consumed by employees on business travel but disallows employer deductions for providing IRC § 132(f) qualified transportation fringes and generally disallows employer deductions for covering the commuting costs of employees. For amounts incurred and paid after 2017 and before 2026, the 2017 TA extends the IRC § 274(n) 50% disallowance rule to the employer's cost of operating employer-provided eating facilities that furnish meals excludable by the employee under IRC § 132(e)(2) and the cost of any meal or beverages (including under IRC § 132(e)(1)) associated with such facilities, as well as the cost of any meals furnished for the convenience of the employer on the employer's business premises and excludable by the employee under IRC § 119(a). After 2025, no employer deduction is allowed for these meal costs.

Chapter 14

RECOVERIES FOR PERSONAL INJURY AND OTHER WINDFALL RECEIPTS

Page 324

Although IRC § 212 has been generally suspended through 2025, deductions thereunder are not affected by the suspension to the extent that the deductions are covered by IRC § 62(a)(20).

Chapter 15

GRATUITOUS TRANSFERS

Page 358

The 2017 TA amends IRC § 74(c) to provide that excludable employee achievement awards generally do not include cash, cash equivalents, services, and securities.

Chapter 16

CHARITABLE CONTRIBUTIONS

Page 367

The 2017 TA adds a new IRC § 4988 that imposes a 1.4% excise tax on the net investment income of private colleges and universities that have large endowments.

The 2017 TA adds a new IRC § 4960 that generally imposes a 21% excise tax on annual compensation payments in excess of $1 Million per year to any highly compensated employee of a tax exempt organization.

Page 371

The 2017 TA effectively removes from the 50% limit cash contributions that would otherwise be subject to that limit and places them under a new, separate 60% limit. This change expires for tax years beginning after 2027.

Page 373

Regarding Problem 2(b) on Casebook page 373, the 2017 TA amends, IRC § 170(l) to expressly deny a deduction for Jay's $1,000 "contribution."

Chapter 17

INCOME-SHIFTING STRATEGIES

Page 389

The 2017 TA amends the kiddie tax to provide that the net unearned income of a child is taxed at the steeply progressive ordinary income rates applicable to trusts under IRC § 1(e) and at the capital gains rates applicable to individuals and trusts. However, this change expires for tax years beginning after 2025.

Page 402

The 2017 TA modifies the IRC § 1(e) income tax rates applicable to trusts but leaves them steeply progressive in comparison to individual income tax rates.

Chapter 18

BORROWING, LENDING, AND INTEREST

Page 423

Effective for tax years beginning after December 31, 2017, the 2017 TA adopted a new version of IRC § 163(j) that disallows deductions each year for business interest expense in excess of the sum of (1) a business's business (not investment) interest income, (2) 30% of the business's adjusted taxable income, and (3) the business's floor plan financing interest (i.e. interest earned from financing an auto dealer's acquisition of inventory). Adjusted taxable income is taxable income with certain adjustments that generally increase taxable income but that are beyond the scope of the basic income tax course. Disallowed interest deductions are carried forward indefinitely and treated as business interest expense for purposes of applying § 163(j) in subsequent years. This interest disallowance provision applies regardless of whether the payee is foreign or domestic and regardless of the payor's form of business organization but it does not apply to either a trade or business of performing services as an employee or a business (other than a § 448(a)(3) tax shelter) whose average annual gross receipts for the three years ending with the preceding tax year do not exceed $25 million.

To illustrate, assume that USCo is the wholly owned U.S. subsidiary of ForCo, a foreign corporation, and is subject to new § 163(j). During year 1, the sum of USCo's interest income, 30 % of its adjusted taxable income, and its floor plan financing interest is $1,000 and USCo's total business interest expense is $1,500. Only $1,000 is deductible by USCo in Year 1. The remaining $500 is carried forward to Year 2 as business interest deductible in Year 2. Business interest (including the Year 1 carryforward) in excess of the Year 2 § 163(j) limitation is then carried forward as business interest to Year 3, etc., with no limitation on the number of carryforward years.

Page 426

The 2017 TA generally reduces the $1 million acquisition indebtedness limitation to $750,000 ($375,000 in the case of married taxpayers filing separately) for tax years beginning after 2017 and before 2026. The 2017 TA also entirely suspends the deduction for home equity indebtedness with respect to tax years beginning after 2017 and before 2026.

Chapter 19

CANCELLATION-OF-DEBT INCOME

Page 448

The 2017 TA expands IRC § 108(f) to include loans discharged because of the student's death or total and permanent disability but the expansion sunsets after 2025.

Chapter 22

REALIZATION OF GROSS INCOME

Page 507

The 2017 TA limits § 1031 to exchanges of real property not held primarily for sale.

Page 525

The 2017 TA provides that employees who receive certain stock pursuant to stock options may elect to defer recognition of gain for up to five years pursuant to complex rules that are outside the scope of the basic income tax course.

Chapter 23

TAX ACCOUNTING METHODS

Pages 538–39

The 2017 TA amends IRC §§ 448 and 471 to provide that if a taxpayer is (1) not a tax shelter and (2) has average annual gross receipts that do not exceed $25 million for the three preceding taxable years, that taxpayer may use the cash method and is excused from using inventory accounting. The $25 million amount is indexed for inflation. In addition, pre-existing exemptions from accrual and inventory accounting continue to be available even if the $25 million gross receipts test is not satisfied, so long as there is clear reflection of income.

Page 555

The 2017 TA adopts a new IRC § 451(b) that provides that the all events test is generally satisfied no later than when income is taken into account by the taxpayer for financial accounting purposes.

Page 566

The 2017 TA adopts a new IRC § 451(c) that codifies Rev. Proc. 2004-34.

Chapter 24

REALIZATION OF LOSS ON THE DESTRUCTION OR THEFT OF PROPERTY

PAGE 586

The 2017 TA provides that for losses incurred before 2026 in tax years beginning after 2017, a personal casualty loss is available only if it was attributable to a Presidentially declared disaster. The limitations explained at pages 586–87 of the casebook apply to such losses.

Chapter 25

CAPITAL GAINS AND LOSSES

Page 597

The 2017 TA essentially retains present-law maximum rates on net capital gains and qualified dividends. Individuals, estates, and trusts have a zero capital gains tax rate for gain that does not exceed the 15% bracket. The 2017 TA adopts a new IRC § 1061 which extends the "more than 1 year" holding period requirement of IRC §§ 1222(3), (4) to a "more than 3 year" requirement with respect to the sale or exchange of a partnership interest received as compensation for certain services typically rendered in investment banking activity, hedge fund activity, and private equity fund activity. The provision is complex and outside the scope of the basic income tax course. It was the only, and very limited, reform that the 2017 TA made to the so-called carried interest problem of certain compensatory partnership interests qualifying for capital gains treatment (instead of being treated as ordinary compensation income in whole or in part).

Page 601

The 2017 TA amends IRC § 1221(a)(3) to impose the same treatment as copyrights on the following items: (1) patents, (2) models or designs whether or not patented, and (3) secret formulas or processes. However, the 2017 TA does not repeal IRC § 1235, thus undercutting the impact of the foregoing with respect to patents.

Chapter 26

RECOVERIES OF EXPENSE ITEMS: THE EFFECT OF ANNUAL ACCOUNTING ON BASIS AND BASIS RECOVERY

Page 630

The 2017 TA (1) limits the NOL deduction to 80% of taxable income (determined without the NOL deduction), (2) generally repeals the two-year carryback, and (3) allows for an indefinite carryforward period. The amount of NOL in excess of the 80% limitation is apparently permanently unavailable.

The 2017 TA adopts a new IRC § 461(l) that imposes an overall limitation on the business losses of non-corporate taxpayers for tax years beginning after 2017 and before 2026. The limitation applies to excess business losses which are defined as the excess of the taxpayer's business deductions (including the NOL deduction) over the sum of the taxpayer's aggregate gross income plus a threshold amount of $250,000 ($500,000 for joint filers), indexed for inflation. Excess business losses are not allowed when they arise and are carried forward and treated as part of the taxpayer's NOL carryforward in subsequent years. They do not, however, change the 80% ceiling on NOL deductions. With respect to partnerships and S corporations, this limitation applies at the partner and shareholder level. The limitation applies after application of the passive loss rules.

The 2017 TA raises the $10 million ceiling on the completed-contract method exception to $15 million.

Chapter 28

DEPRECIATION

Page 702

The 2017 TA expands the availability of expensing under IRC §§ 179 and 168(k). *See* Chapter 6, this update.

Page 705

The 2017 TA removes "computer or peripheral equipment" from inclusion in "listed property."

The 2017 TA allows IRC § 179 expensing for certain improvements to nonresidential real property. *See* Chapter 6, this update.