# NEW LEGISLATION—INDIVIDUAL

<table>
<thead>
<tr>
<th>Tax Rates</th>
<th>Limit on Deduction for Home Mortgage Interest</th>
<th>2</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inflation Adjustments Based on Chained CPI</td>
<td>Limit on Deduction for State and Local Taxes</td>
<td>4</td>
<td>14</td>
</tr>
<tr>
<td>Increase in and Modification of Child Tax Credit</td>
<td>Personal Casualty Losses Related to a 2016 Major Disaster</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>Saver’s Credit for ABLE Contributions</td>
<td>Modification of Deduction for Personal Casualty Losses</td>
<td>.5</td>
<td>15</td>
</tr>
<tr>
<td>Alternative Minimum Tax Increased Exemption for Individuals</td>
<td>Limitation on Wagering Losses</td>
<td>5</td>
<td>16</td>
</tr>
<tr>
<td>Reduction in Medical Expense Deduction Floor</td>
<td>Suspension of Deduction for Moving Expenses</td>
<td>6</td>
<td>17</td>
</tr>
<tr>
<td>Repeal of Deduction for Alimony Payments</td>
<td>Extension of Rollover Period for Plan Loan Offset Amounts</td>
<td>6</td>
<td>17</td>
</tr>
<tr>
<td>Increase in Standard Deduction</td>
<td>IRA Recharactizations</td>
<td>6</td>
<td>18</td>
</tr>
<tr>
<td>Suspension of Miscellaneous Itemized Deductions</td>
<td>Increased Accrual Limit for Length-of-Service Awards</td>
<td>.6</td>
<td>18</td>
</tr>
<tr>
<td>Relief for 2016 Disaster Areas</td>
<td>ABLE Accounts and Section 529 Accounts</td>
<td>.7</td>
<td>18</td>
</tr>
<tr>
<td>Suspension of Overall Limitation on Itemized Deductions</td>
<td>Increase in Estate and Gift Tax Exemption</td>
<td>.8</td>
<td>19</td>
</tr>
<tr>
<td>Insurance Exception to Transfer for Value</td>
<td>Elimination of Affordable Care Act Individual Shared Responsibility Payment</td>
<td>.9</td>
<td>20</td>
</tr>
<tr>
<td>Student Loans Discharged Due to Death or Disability</td>
<td>Extension of Time Limit for Contesting IRS Levy</td>
<td>.9</td>
<td>20</td>
</tr>
<tr>
<td>Suspension of Exclusion for Qualified Bicycle Commuting Reimbursement</td>
<td>Due Diligence Requirements for HoH Filing Status</td>
<td>.9</td>
<td>21</td>
</tr>
<tr>
<td>Suspension of Exclusion for Qualified Moving Expense Reimbursement</td>
<td></td>
<td>.9</td>
<td></td>
</tr>
<tr>
<td>Suspension of Deduction for Personal Exemption</td>
<td></td>
<td>.10</td>
<td></td>
</tr>
</tbody>
</table>
Introduction

The Tax Cuts and Jobs Act of 2017 (TCJA), Pub. L. No. 115-97, substantially changes how tax practitioners will advise taxpayers and file 2018 tax returns. This chapter reviews changes in individual income tax laws made by the TCJA. It also includes changes to certain estate, retirement, and savings provisions. This chapter is organized numerically by Internal Revenue Code section. This chapter will be updated as additional guidance and regulations are issued.

To help the tax community track information related to the TCJA, the IRS has created a special page on IRS.gov to highlight provisions of the new law. The frequently updated page will include a “one-stop” listing of new legal guidance, news releases, frequently asked questions, and other information related to the TCJA. Tax professionals should bookmark the page and check it regularly for the latest information as the IRS works to implement changes [www.irs.gov/newsroom/tax-reform].

This publication is produced by the Land Grant University Tax Education Foundation. The Land Grant University Tax Education Foundation is pleased to provide the National Income Tax Workbook to approximately 29,000 tax practitioners in tax schools taught in 32 states. The 2018 National Income Tax Workbook will provide a comprehensive discussion of the TCJA and related guidance and regulations. Please visit our website at taxworkbook.com for more information about online courses and tax workshops near you.

Tax Rates

I.R.C. § 1; TCJA § 11001

Effective for tax years beginning after December 31, 2017, and before January 1, 2026

I.R.C. § 1(i) does not apply, and the new I.R.C. § 1(j) provides rates, procedures to adjust the rates, special rules for children with unearned income (the kiddie tax), and new capital gains tax brackets.

MFJ and Surviving Spouse Rates

<table>
<thead>
<tr>
<th>If Taxable Income Is:</th>
<th>The Tax Is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $19,050</td>
<td>10% of taxable income</td>
</tr>
<tr>
<td>Over $19,050 but not over $77,400</td>
<td>$1,905, plus 12% of the excess over $19,050</td>
</tr>
<tr>
<td>Over $77,400 but not over $165,000</td>
<td>$8,907, plus 22% of the excess over $77,400</td>
</tr>
<tr>
<td>Over $165,000 but not over $315,000</td>
<td>$28,179, plus 24% of the excess over $165,000</td>
</tr>
<tr>
<td>Over $315,000 but not over $400,000</td>
<td>$64,179, plus 32% of the excess over $315,000</td>
</tr>
<tr>
<td>Over $400,000 but not over $600,000</td>
<td>$91,379, plus 35% of the excess over $400,000</td>
</tr>
<tr>
<td>Over $600,000</td>
<td>$161,379, plus 37% of the excess over $600,000</td>
</tr>
</tbody>
</table>

HoH Rates

<table>
<thead>
<tr>
<th>If Taxable Income Is:</th>
<th>The Tax Is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $13,600</td>
<td>10% of taxable income</td>
</tr>
<tr>
<td>Over $13,600 but not over $51,800</td>
<td>$1,360, plus 12% of the excess over $13,600</td>
</tr>
<tr>
<td>Over $51,800 but not over $82,500</td>
<td>$5,944, plus 22% of the excess over $51,800</td>
</tr>
<tr>
<td>Over $82,500 but not over $157,500</td>
<td>$12,698, plus 24% of the excess over $82,500</td>
</tr>
<tr>
<td>Over $157,500 but not over $200,000</td>
<td>$30,698, plus 32% of the excess over $157,500</td>
</tr>
<tr>
<td>Over $200,000 but not over $500,000</td>
<td>$44,298, plus 35% of the excess over $200,000</td>
</tr>
<tr>
<td>Over $500,000</td>
<td>$149,298, plus 37% of the excess over $500,000</td>
</tr>
</tbody>
</table>
Adjustments to the Rates

The new tables apply without adjustment for tax years beginning after December 31, 2017, and before January 1, 2019. For tax years beginning after December 31, 2018, the IRS is directed to make cost-of-living adjustments pursuant to I.R.C. § 1(f). An increase to the minimum and maximum dollar amount for each rate bracket that is not a multiple of $50 must be rounded to the next lowest multiple of $50. For MFS taxpayers, amounts are rounded to the next-lowest multiple of $25. Adjustments do not take into account I.R.C. § 1(f)(8), which eliminates the marriage penalty in the 15% bracket and higher.

Any reference in the Internal Revenue Code to a rate of tax under I.R.C. § 1(c) is treated as a reference to the corresponding new rate bracket, except that the reference in I.R.C. § 3402(q)(1) for withholding on gambling winnings at the third-lowest rate of tax applicable under section 1(c) is treated as a reference to the fourth-lowest rate of tax under the new tax rates. This reduces the withholding on gambling winnings.
Capital Gains Tax Brackets

The capital gains tax brackets are changed to conform with the income tax rates. The 0% rate applies to adjusted net capital gain that is below the maximum zero rate amount. The maximum zero rate amount for 2018 is the following:

1. MFJ or surviving spouses: $77,200
2. MFS: $38,600
3. HoH: $51,700
4. Single: $38,600
5. Estate or trust: $2,600

The maximum 15% rate applies to adjusted net capital gain that exceeds the amount subject to the 0% rate and that is below the maximum 15% rate amount. The maximum 15% rate amount for 2018 is the following:

1. MFJ or surviving spouses: $479,000
2. MFS: $239,500
3. HoH: $452,400
4. Single: $425,800
5. Estate or trust: $12,700

In 2018, the 20% tax rate applies to adjusted net capital gain over the maximum 15% rate amount. For tax years beginning after 2018, the amounts are adjusted for inflation.

Inflation Adjustments Based on Chained CPI

I.R.C. § 1; TCJA § 11002

Generally effective for tax years beginning after 2017

The TCJA requires the use of chained CPI-U (the C-CPI-U), instead of CPI-U, in indexing the income tax brackets for inflation. The C-CPI-U, like the CPI-U, is a measure of the average change over time in prices paid by urban consumers. However, the C-CPI-U accounts for the ability of individuals to alter their consumption patterns in response to relative price changes. The C-CPI-U is a slower-growing method to calculate cost-of-living increases. The TCJA also requires the use of the C-CPI-U to index the tax parameters that are currently indexed by the CPI-U.
The child tax credit is raised to $2,000 per qualifying child. The credit begins to phase out for MFJ taxpayers with AGI greater than $400,000, and it begins to phase out for all other taxpayers with AGI greater than $200,000.

The TCJA grants a partial credit for certain other dependents. Specifically, it allows a $500 nonrefundable credit for each dependent (as defined in I.R.C. § 152) of the taxpayer other than a qualifying child under I.R.C. § 24(c). The partial credit does not apply to a resident of Canada or Mexico if that dependent is not a US citizen or a US national. A child who would be a qualifying child for the child tax credit, but does not have a social security number, is treated as a dependent and is eligible for the partial credit for dependents.

The child tax credit is refundable up to a maximum $1,400, indexed for inflation in tax years beginning after 2018. The earned income threshold for the refundable credit is decreased from $3,000 to $2,500. Thus, the credit is refundable to the extent of the lesser of $1,400 or 15% of the taxpayer’s earned income in excess of $2,500. The partial credit is not refundable.

To claim the child tax credit, the taxpayer must include the child’s social security number on the return. The number must be issued before the due date of the return. An individual taxpayer identification number (ITIN) or an adoption TIN (ATIN) will not allow the taxpayer to claim the credit (but it will allow the taxpayer to claim the $500 partial credit).

A designated beneficiary can claim the saver’s credit for contributions that the beneficiary makes to his or her ABLE account.

The TCJA increases both the exemption amount and the exemption amount phaseout thresholds for the individual alternative minimum tax (AMT). The AMT exemption amount is increased to $109,400 for MFJ (half this amount for MFS), and $70,300 for all other taxpayers (other than estates and trusts). The phaseout thresholds are increased to $1,000,000 for MFJ and $500,000 for all other taxpayers (other than estates and trusts). These amounts are indexed for inflation.
The TCJA does not increase these amounts for trusts and estates. The AICPA has suggested that Congress increase these amounts for estates and trusts as well.

**Reduction in Medical Expense Deduction Floor**

I.R.C. § 56; TCJA § 11027

Effective for any tax year beginning after December 31, 2012, and ending before January 1, 2017, for a taxpayer if such taxpayer or such taxpayer’s spouse has attained age 65 before the close of such tax year, and effective beginning after December 31, 2016, and ending before January 1, 2019, for all other taxpayers.

A taxpayer can deduct medical expenses to the extent that they exceed 7.5% of the taxpayer’s AGI. The I.R.C. § 56(b)(1)(B) rule that limits the medical expense deduction to 10% for AMT purposes does not apply to tax years beginning after December 31, 2016, and ending before January 1, 2019. For these years, this 7.5% threshold applies for purposes of the AMT and the regular tax.

**Repeal of Deduction for Alimony Payments**

I.R.C. §§ 61, 71, 215, 682; TCJA § 11051

Effective for any divorce or separation instrument that is executed after December 31, 2018, or executed on or before December 31, 2018, and modified after December 31, 2018, if the modification expressly provides that the amendments made by TCJA § 11051 apply to the modification.

The I.R.C. § 215 deduction for alimony payments is eliminated and the corresponding I.R.C. §§ 61(a)(8), 71, and 682 inclusions of alimony in gross income are eliminated. Thus, income used for alimony payments is taxed at the rates applicable to the payor spouse rather than the recipient spouse. The treatment of child support is not changed.

**Increase in Standard Deduction**

I.R.C. § 63; TCJA § 11021(a)

Effective for tax years beginning after December 31, 2017, and ending before January 1, 2026.

The standard deduction under I.R.C. § 63(c) is increased to $24,000 for MFJ and surviving spouses, $18,000 for HoH, and $12,000 for single and MFS taxpayers. For tax years beginning after 2018, the amounts are indexed for inflation.

**Suspension of Miscellaneous Itemized Deductions**

I.R.C. § 67; TCJA § 11045

Effective for tax years beginning after December 31, 2017, and before January 1, 2026.

Miscellaneous itemized deductions that are subject to the 2%-of-AGI floor are suspended.

**Observation**

Trusts and Estates

See the “Individual Issues” chapter in the 2018 National Income Tax Workbook for a further discussion of alimony and other tax issues for divorcing spouses.
Relief for 2016 Disaster Areas

I.R.C. §§ 72(t), 401, 402, 403, 408, 457; TCJA § 11028

Special rules apply to 2016 qualified disaster distributions. The term 2016 disaster area means any area that the president declared to be a major disaster area (under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act) in calendar year 2016. The term qualified 2016 disaster distribution means any distribution from an eligible retirement plan made on or after January 1, 2016, and before January 1, 2018, to an individual whose principal place of abode at any time during calendar year 2016 was in a 2016 disaster area and who has sustained an economic loss because of the events giving rise to the presidential declaration of a disaster applicable to such area. The term eligible retirement plan is defined in I.R.C. § 402(c)(8)(B).

No Early-Withdrawal Penalty

The I.R.C. § 72(t) 10% early withdrawal penalty does not apply to any qualified 2016 disaster distribution. The aggregate amount of distributions received by an individual that may be treated as qualified 2016 disaster distributions cannot exceed $100,000.

If a distribution to an individual (without regard to the $100,000 limit) would be a qualified 2016 disaster distribution, a plan will not be treated as violating any requirement of the Code merely because the plan treats the distribution as a qualified 2016 disaster distribution, unless the aggregate amount of distributions from all plans maintained by the employer (and any member of any controlled group that includes the employer) to such individual exceeds $100,000. The term controlled group means any group treated as a single employer under I.R.C. § 414(b), (c), (m), or (o).

Amount Distributed Can Be Repaid

Any individual who receives a qualified 2016 disaster distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under I.R.C. § 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16).

If a contribution is made in repayment of a qualified 2016 disaster distribution from an eligible retirement plan, other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified 2016 disaster distribution in an eligible rollover distribution [as defined in I.R.C. § 402(c)(4)] and as having transferred the amount to the eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

If a contribution is made in repayment of a qualified 2016 disaster distribution from an individual retirement plan, then, to the extent of the amount of the contribution, the qualified 2016 disaster distribution shall be treated as an eligible rollover contribution [described in I.R.C. § 408(d)(3)] and as having been transferred to the eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Income Inclusion over 3-Year Period

For any qualified 2016 disaster distribution, unless the taxpayer elects not to have this provision apply, any amount required to be included in gross income for such tax year shall be included ratably over the 3-tax-year period beginning with

Relief for 2016 Disaster Areas
the tax year of the distribution. Rules similar to the rules in I.R.C. § 408A(d)(3)(E) apply, and if the taxpayer dies before the full distribution is included in his or her income, the remaining income must be included in the year of the taxpayer’s death.

For example, if an individual received a qualified 2016 disaster distribution in 2016, that amount is included in income, generally ratably over the year of the distribution and the following 2 years, but is not subject to the 10% early withdrawal tax. If, in 2018, the amount of the qualified 2016 disaster distribution is recontributed to an eligible retirement plan, the individual may file an amended return to claim a refund of the tax attributable to the amount previously included in income. In addition, if, under the ratable inclusion provision, a portion of the distribution has not yet been included in income at the time of the contribution, the remaining amount is not includable in income.

Other Special Rules

For purposes of the following rules, a qualified 2016 disaster distribution is not treated as an eligible rollover distribution:

- I.R.C. § 401(a)(31) rules regarding direct transfers of eligible rollover distributions
- I.R.C. § 402(f) rules that require a written explanation of the direct rollover rules to recipients of distributions
- I.R.C. § 3405 rules that require withholding on eligible rollover distributions that are not directly rolled over

A qualified 2016 disaster distribution meets the limits on distributions in I.R.C. §§ 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A). Thus, a qualified 2016 disaster distribution is a permissible distribution from a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan, regardless of whether a distribution otherwise would be permissible. A plan is not treated as violating any Code requirement merely because it treats a distribution as a qualified 2016 disaster distribution, provided that the aggregate amount of such distributions from plans maintained by the employer and members of the employer’s controlled group or affiliated service group does not exceed $100,000. Thus, a plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of $100,000, taking into account distributions from plans of other employers or IRAs.

Plan Amendments

If the provisions of the TCJA involving employee retirement plans and IRAs apply to a plan or annuity contract, such plan or contract is treated as being operated in accordance with the terms of the plan (that is, as if the plan was amended to reflect the new provisions). For the amendment to be retroactive, the amendment to the plan or contract must be made on or before the last day of the first plan year beginning on or after January 1, 2018, or such later date as the IRS prescribes.

For a governmental plan [as defined in I.R.C. § 414(d)], the amendment must be made on or before the last day of the first plan year beginning on or after January 1, 2020.

For an amendment to be retroactively effective, the amendment to the plan or contract must apply retroactively and the plan or contract must be operated as if the amendment was in effect.

Cross-Reference


Suspension of Overall Limitation on Itemized Deductions

I.R.C. § 68; TCJA § 11046

Effective for tax years beginning after December 31, 2017, and before January 1, 2026

The I.R.C. § 68 overall limit on itemized deductions does not apply.
Insurance Exception to Transfer for Value

I.R.C. § 101; TCJA § 13522

(Applicable to transfers after December 31, 2017)

The exception for a transfer for value does not apply to a transfer of a life insurance contract, or any interest therein, in a reportable policy sale. A reportable policy sale means the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured apart from the acquirer’s interest in such life insurance contract. The term indirectly applies to the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract. Thus, some part of the death benefit payable under a contract that was transferred in a reportable policy sale may be included in income.

Student Loans Discharged Due to Death or Disability

I.R.C. § 108; TCJA § 11031

(Appplies to discharges after December 31, 2017, and before January 1, 2026)

An individual’s gross income does not include any amount that (but for this exclusion) would be includable in gross income because of the discharge (in whole or in part) of certain loans after December 31, 2017, and before January 1, 2026. To be excluded, the discharge must be pursuant to subsection (a) or (d) of section 437 of the Higher Education Act of 1965 or the parallel benefit under part D of title IV of that act (relating to the repayment of loan liability), pursuant to section 464(c)(1)(F) of that act, or otherwise discharged because of the death or total and permanent disability of the student.

The exclusion applies to a student loan [as defined in I.R.C. § 108(f)(2)] or a private education loan [as defined in section 140(7) of the Consumer Credit Protection Act (15 U.S.C. § 1650(7))]. Thus, loans eligible for the exclusion are loans made by the following:

1. The United States (or an instrumentality or agency thereof)
2. A state (or any political subdivision thereof)
3. Certain tax-exempt public benefit corporations that control a state, county, or municipal hospital and whose employees have been deemed to be public employees under state law
4. An educational organization that originally received the funds from which the loan was made from the United States, a state, or a tax-exempt public benefit corporation
5. Private education loans as defined in § 140(7) of the Consumer Protection Act

Suspension of Exclusion for Qualified Bicycle Commuting Reimbursement

I.R.C. § 132; TCJA § 11047

(Effective for tax years beginning after December 31, 2017, and before January 1, 2026)

The I.R.C. § 132 qualified bicycle commuting reimbursement exclusion is suspended for tax years beginning after December 31, 2017, and before January 1, 2026.

Suspension of Exclusion for Qualified Moving Expense Reimbursement

I.R.C. § 132; TCJA § 11048

(Effective for tax years beginning after December 31, 2017, and before January 1, 2026)

The I.R.C. § 132 exclusion for qualified moving expense reimbursement is suspended for tax years beginning after December 31, 2017, and before January 1, 2026. The exclusion is still allowed for a member of the US Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station.
Suspension of Deduction for Personal Exemption

I.R.C. §§ 151, 642, 3402, 6012, 6334; TCJA § 11041

Generally effective for tax years beginning after December 31, 2017, and before January 1, 2026. The IRS may administer I.R.C. § 3402 withholding rules for tax years beginning before January 1, 2019, without regard to the suspension of the personal exemption or the changes to the withholding rules.

For tax years beginning after December 31, 2017, and before January 1, 2026, the I.R.C. § 151(d) term exemption amount means zero. Thus, there is no deduction for personal exemptions. For purposes of any other provision of the Internal Revenue Code, the reduction of the exemption amount to zero is not considered in determining whether a deduction for personal exemptions is allowed or allowable, or whether a taxpayer is entitled to a deduction for personal exemptions.

Other Code Provisions

The new law clarifies that the suspension of the deduction for personal exemptions should not alter the operation of other provisions of the Internal Revenue Code that refer to a taxpayer allowed a deduction (or an individual with respect to whom a taxpayer is allowed a deduction) under section 151. Thus, for example, I.R.C. § 24(a) allows a credit against tax for each qualifying child of the taxpayer for which the taxpayer is allowed a deduction under section 151. A qualifying child is eligible for the credit even though the deduction under section 151 is zero.

For qualified disability trusts, in any year that the personal exemption amount is zero, the exemption amount is $4,150, increased for inflation in tax years beginning after 2018.

Wage Withholding Rules

The wage withholding rules are amended to reflect that taxpayers no longer claim personal exemptions. For purposes of applying the wage withholding tables or wage withholding computational procedures, the amount of wages means the amount by which the wages exceed the taxpayer’s withholding allowance, prorated to the payroll period. An employee receiving wages is entitled to a withholding allowance based on

1. whether the employee is an individual for whom a deduction is allowable with respect to another taxpayer under I.R.C. § 151;
2. if the employee is married, whether the employee’s spouse is entitled to an allowance (or would be so entitled if such spouse was an employee receiving wages) under number 1 or 4, but only if the spouse does not have in effect a withholding allowance certificate claiming the allowance;
3. the number of individuals for whom, on the basis of facts existing at the beginning of the day, there may reasonably be expected to be allowable a child tax credit under I.R.C. § 24(a) for the tax year against amounts deducted and withheld under chapter 1 in the calendar year;
4. any additional amounts that the employee elects to take into account under I.R.C. § 3402(m) additional withholding allowances, but only if the employee’s spouse does not have in effect a withholding allowance certificate making such an election;
5. the standard deduction allowable to such employee (one-half of the standard deduction in the case of an employee who is married (as determined under I.R.C. § 7703) and whose spouse is an employee receiving wages subject to withholding); and
6. whether the employee has withholding allowance certificates in effect for more than one employer.

Other code provisions are conformed by substituting “allowance” for “exemption.”

Cross-Reference

Wage Withholding

See the “Payroll and Withholding” chapter in the 2018 National Income Tax Workbook for a discussion of the new withholding tables and calculating wage withholding under the TCJA.
**Allowance Certificates**

On or before the date of the commencement of employment with an employer, the employee must give the employer a signed withholding allowance certificate relating to the withholding allowance claimed by the employee. The certificate cannot exceed the amount to which the employee is entitled.

**Change of Status**

If, on any day during the calendar year, an employee’s withholding allowance exceeds the withholding allowance to which the employee would be entitled had the employee submitted a true and accurate withholding allowance certificate to the employer on that day, the employee must give the employer a new withholding allowance certificate within 10 days. Notice 2018-14 (discussed later) suspends this requirement. If, on any day during the calendar year, an employee’s withholding allowance is greater than the withholding allowance claimed, the employee may give the employer a new withholding allowance certificate relating to the withholding allowance to which the employee is so entitled. The certificate cannot exceed the amount to which the employee is entitled on such day.

**Change of Status That Affects Next Calendar Year**

If on any day during the calendar year the withholding allowance to which the employee will be, or may reasonably be expected to be, entitled at the beginning of the employee’s next tax year is different from the allowance to which the employee is entitled on such day, the employee shall, in such cases and at such times as the IRS shall by regulations prescribe, give the employer a withholding allowance certificate relating to the withholding allowance that the employee claims for the next tax year. The certificate cannot exceed the amount to which the employee will be or may reasonably be expected to be entitled.

**Updated Withholding Tables**

Notice 1036 updates the 2018 income tax withholding tables to reflect changes made by the TCJA. Employers should begin using the 2018 withholding tables as soon as possible, but not later than February 15, 2018. They should continue to use the 2017 withholding tables until implementing the 2018 withholding tables.

Use of the new 2018 withholding guidelines will allow taxpayers to begin seeing the changes in their paychecks as early as February. The exact timing depends on when their employer can make the change and how often they are paid. It typically takes payroll providers and employers about a month to update withholding changes on their systems.

The new withholding tables are designed to minimize taxpayer burden as much as possible and will work with the Forms W-4 that workers have already filed with their employers to claim withholding allowances. The IRS emphasizes that this information is designed to work with the existing Forms W-4 that employees have already filed, and no further action by taxpayers is needed at this time. However, employees should review their withholding to make sure that it is accurate.

The IRS released a new withholding tax calculator and Form W-4 to help employees ensure withholding is accurate. Taxpayers should check their withholding status using the new 2018 Form W-4 and withholding calculator. The IRS cautions that most people are overwithheld on their taxes, meaning that more taxes are held out of their paychecks than what they owe. But some people have more complicated tax situations and face the possibility of being underwithheld. For example, people who itemize their deductions, couples with multiple jobs, or individuals with more than one job a year are encouraged to review their tax situations. The IRS will be encouraging people—particularly those with more than one income in their household—to check their withholding.

In 2019, the IRS anticipates making further changes involving withholding. The IRS will work with the business and payroll community to encourage workers to file new Forms W-4 next year and share information on changes in the new tax law that impact withholding.
NEW LEGISLATION—INDIVIDUAL

Income Tax Return Filing Requirements

I.R.C. § 6012 is amended, and for tax years beginning after December 31, 2017, and before January 1, 2026, every individual who has gross income for the tax year is required to file an income tax return except

1. an unmarried taxpayer with gross income for the tax year that does not exceed the standard deduction; or
2. a taxpayer entitled to make a joint return if
   a. the combined gross income of the taxpayer and his or her spouse for the tax year does not exceed the standard deduction for a joint return,
   b. the taxpayer and the taxpayer’s spouse have the same household as their home at the close of the tax year,
   c. the taxpayer’s spouse does not file a separate return, and
   d. the taxpayer and the taxpayer’s spouse are not claimed as a dependent by another taxpayer who has income (other than earned income) that exceeds the limited deduction for dependents in effect under I.R.C. § 63(c)(5)(A) ($1,050 for 2017).

Limit on Deduction for Home Mortgage Interest

I.R.C. § 163; TCJA § 11043

The deduction for interest on home equity indebtedness is eliminated for 2018 through 2025. Home equity indebtedness is indebtedness (other than qualified acquisition indebtedness) secured by a qualified residence. Thus, the TCJA suspends the deduction for interest paid on home equity loans and lines of credit, unless they are used to buy, build, or substantially improve a qualifying residence that secures the loan.

In IR-2018-32 (February 21, 2018), the IRS reminds taxpayers that they can often still deduct interest on a home equity loan, home equity line of credit (HELOC), or a second mortgage, if such loan is used to buy, build, or substantially improve a qualifying residence.
improve the taxpayer’s home that secures the loan. Under the new law, for example, interest on a home equity loan used to build an addition to an existing home is typically deductible, while interest on the same loan used to pay personal living expenses, such as credit card debts, car purchases, or vacations, is not.

The deduction for interest on indebtedness to acquire a qualified residence (acquisition indebtedness) is limited to $750,000 acquisition debt ($375,000 for MFS). The limit does not apply to any indebtedness incurred on or before December 15, 2017, which is subject to the $1,000,000 ($500,000 for MFS) debt limit.

In applying the $750,000 limit to any indebtedness incurred after December 15, 2017, the $750,000 limit is reduced (but not below zero) by the amount of any indebtedness incurred on or before December 15, 2017, that is treated as qualified acquisition indebtedness for the tax year.

If the taxpayer entered into a written binding contract before December 15, 2017, to close on the purchase of a principal residence before January 1, 2018, and purchases such residence before April 1, 2018, the special rule discussed earlier (for indebtedness incurred on or before December 15, 2017) applies, and indebtedness is limited to $1,000,000.

For tax years beginning after December 31, 2025, the $1,000,000/$500,000 acquisition debt limit applies, regardless of when the debt is incurred. The limitation is applied to the aggregate amount of indebtedness of the taxpayer without regard to the tax year in which the indebtedness was incurred.

Indebtedness that is incurred to refinance indebtedness is treated as incurred on the date that the original indebtedness was incurred to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness. Thus, the $1,000,000 limit applies to indebtedness incurred after December 15, 2017, to refinance qualified residence interest incurred on or before December 15, 2017, to the extent the amount of the refinancing does not exceed the amount of the refinanced indebtedness.

The $1,000,000 limit does not apply to any indebtedness after the expiration of the term of the original indebtedness or, if the principal of such original indebtedness is not amortized over its term, the expiration of the term of the first refinancing of such indebtedness (or if earlier, the date that is 30 years after the date of the first refinancing).

The I.R.C. § 108(h)(2) exclusion of income from discharge of indebtedness on a principal residence is applied without regard to these rules.

The following examples illustrate the dollar limitation on acquisition indebtedness.

Example 1.1 Deductible Home Equity Loan Interest
In January 2018, Tim Thompson took out a $500,000 mortgage to purchase a main home with a fair market value of $800,000. In February 2018, Tim took out a $250,000 home equity loan to put an addition on the main home. Both loans are secured by the main home, and the total does not exceed the cost of the home. Because the total amount of both loans does not exceed $750,000, all the interest paid on the loans is deductible. However, if Tim used the home equity loan proceeds for personal expenses, such as paying off student loans and credit cards, then the interest on the home equity loan would not be deductible.

Example 1.2 Under the $750,000 Limit
In January 2018, Tara Travis took out a $500,000 mortgage to purchase a main home. The loan is secured by the main home. In February 2018, Tara took out a $250,000 loan to purchase a vacation home. The loan is secured by the vacation home. Because the total amount of both mortgages does not exceed $750,000, all the interest paid on both loans is deductible. However, if Tara took out a $250,000 home equity loan on the main home to purchase the vacation home, then the interest on the home equity loan would not be deductible.

Example 1.3 Over the $750,000 Limit
In January 2018, Thea Torrence took out a $500,000 mortgage to purchase a main home. The loan is secured by the main home. In February 2018, Thea took out a $500,000 loan to
purchase a vacation home. The loan is secured by the vacation home. Because the total amount of both mortgages exceeds $750,000, not all the interest paid on the mortgages is deductible. A percentage of the total interest paid is deductible.

Thus, the taxpayer cannot claim an itemized deduction in 2017 for prepaid income taxes, but the taxpayer may claim an itemized deduction for prepaid property taxes.

Whether a taxpayer can deduct the prepayment of state or local real property taxes in 2017 depends on whether the taxpayer makes the payment in 2017 and the real property taxes are assessed prior to 2018. A prepayment of anticipated real property taxes that have not been assessed prior to 2018 are not deductible in 2017. The following examples illustrate these points.

**Example 1.4 Tax Assessed**

County A assesses property tax on July 1, 2017, for the period July 1, 2017, to June 30, 2018. On July 31, 2017, County A sends notices to residents notifying them of the assessment and billing the property tax in two installments with the first installment due September 30, 2017, and the second installment due January 31, 2018. Assuming the taxpayer paid the first installment in 2017, the taxpayer can pay the second installment on December 31, 2017, and can claim a deduction for this prepayment on the taxpayer’s 2017 return.

**Example 1.5 Tax Not Assessed**

County B also assesses and bills its residents for property taxes on July 1, 2017, for the period July 1, 2017, to June 30, 2018. County B intends to make the usual assessment in July 2018 for the period July 1, 2018, to June 30, 2019. However, because county residents wish to prepay their 2018–2019 property taxes in 2017, County B has revised its computer systems to accept prepayment of property taxes for the 2018–2019 tax year. The $10,000 annual limit does not apply to any foreign income, war profits, and excess profits taxes; state and local personal property taxes if those taxes are paid or accrued in carrying on a trade or business or an activity described in I.R.C. § 212 (relating to expenses for production of income). Thus, an individual taxpayer can deduct state, local, and foreign property taxes, and sales taxes that are presently deductible in computing income on Schedule C, Schedule E, or Schedule F.

Amounts paid in a tax year beginning before January 1, 2018, with respect to a state or local income tax imposed for a tax year beginning after December 31, 2017, are treated as paid on the last day of the tax year for which such tax is imposed.

The deduction for foreign real property taxes is eliminated. The aggregate deduction for state and local real property taxes; state and local personal property taxes; state and local, and foreign, income; war profits; excess profits taxes; and general sales taxes shall not exceed $10,000 ($5,000 in the case of a married individual filing a separate return) for any tax year.

The $10,000 annual limit does not apply to any foreign income, war profits, and excess profits taxes; state and local, and foreign, real property taxes; and state and local personal property taxes if those taxes are paid or accrued in carrying on a trade or business or an activity described in I.R.C. § 212 (relating to expenses for production of income). Thus, an individual taxpayer can deduct state, local, and foreign property taxes, and sales taxes that are presently deductible in computing income on Schedule C, Schedule E, or Schedule F.

The $10,000 annual limit does not apply to any foreign income, war profits, and excess profits taxes; state and local, and foreign, real property taxes; and state and local personal property taxes if those taxes are paid or accrued in carrying on a trade or business or an activity described in I.R.C. § 212 (relating to expenses for production of income). Thus, an individual taxpayer can deduct state, local, and foreign property taxes, and sales taxes that are presently deductible in computing income on Schedule C, Schedule E, or Schedule F.

Amounts paid in a tax year beginning before January 1, 2018, with respect to a state or local income tax imposed for a tax year beginning after December 31, 2017, are treated as paid on the last day of the tax year for which such tax is imposed.
Modification of Deduction for Personal Casualty Losses

I.R.C. § 165; TCJA § 11044

Effective for losses incurred in tax years beginning after December 31, 2017, and before January 1, 2026

For an individual taxpayer, a personal casualty or theft loss is allowed as a deduction only to the extent it is attributable to a federally declared disaster. However, if a taxpayer has personal casualty gains, the taxpayer can deduct a personal casualty loss not attributable to a federally declared disaster to the extent the loss does not exceed the gains.

If the taxpayer has both personal casualty gains and personal casualty losses for a tax year, the taxpayer must first reduce the personal casualty gains by the taxpayer’s casualty losses that are not attributable to a federally declared disaster. Any remaining personal casualty gains then reduce the taxpayer’s casualty losses attributable to a federally declared disaster.

Net disaster loss means the excess of qualified disaster-related personal casualty losses over personal casualty gains. A qualified disaster-related personal casualty loss is a loss described in I.R.C. § 165(c)(3) that arises in a 2016 disaster area and is attributable to the events giving rise to the presidential declaration of a disaster applicable to such area.

Personal Casualty Losses Related to a 2016 Major Disaster

I.R.C. § 165; TCJA § 11028

Generally effective for tax years beginning after December 31, 2015, and before January 1, 2018

If an individual has a net disaster loss (defined later) for any tax year beginning after December 31, 2015, and before January 1, 2018, the amount determined under I.R.C. § 165(h)(2)(A)(ii) is the sum of

- the net disaster loss, and
- so much of the excess of personal casualty losses for the tax year over personal casualty gains for that tax year (reduced by the net disaster loss) as exceeds 10% of the individual’s AGI.

Thus, a net disaster loss is not subject to the 10%-of-AGI threshold. For a net disaster loss beginning after December 15, 2015, and before January 1, 2018, the $100-per-casualty floor is increased to $500, and the standard deduction is increased by the net disaster loss (the taxpayer does not have to itemize deductions and can add the loss to the standard deduction).

Limitations

Federal disaster losses are deductible subject to the $100-per-casualty and 10%-of-AGI limitations. 2016 disaster losses are subject to a $500-per-casualty limit and are not subject to the 10%-of-AGI limitation.

Entity Level Taxes

Taxes imposed at the entity level, such as a business tax imposed on pass-through entities, that are reflected in a partner’s or S corporation shareholder’s distributive or pro rata share of income or loss on a Schedule K-1 (or similar form) will continue to reduce such partner’s or shareholder’s distributive or pro rata share of income as under present law.

Capitalizing Expenses

I.R.C. § 266 allows a taxpayer to elect to capitalize certain property taxes and carrying charges. The AICPA has asked Congress to clarify how TCJA § 11042 affects this election.
Limitation on Wagering Losses

I.R.C. § 165; TCJA § 11050

For tax years beginning after December 31, 2017, and before January 1, 2026

Under present law, losses from wagering transactions are allowed as a deduction only to the extent of gains from such wagering transactions [I.R.C. § 165(d)]. For purposes of this limit on wagering losses, the definition of the term losses from wagering transactions is expanded to include any deduction otherwise allowable under the Internal Revenue Code incurred in carrying on any wagering transaction.

The provision is intended to clarify that the gambling loss limitation applies not only to the actual costs of wagers incurred by an individual, but to other expenses incurred by the individual in connection with the conduct of that individual’s gambling activity. For example, an individual’s otherwise deductible expenses in traveling to or from a casino are subject to the section 165(d) limitation.

The TCJA thus reverses the result reached by the Tax Court in Ronald A. Mayo v. Commissioner, 136 T.C. 81 (2011). In that case, the Court held that a taxpayer’s expenses incurred in the conduct of the trade or business of gambling, other than the cost of wagers, were not limited by section 165(d), and were thus deductible under section 162(a).

Charitable Contributions

The TCJA increases the limit for certain charitable contributions, denies the deduction for college athletic event seating rights, and repeals the substantiation exception.

Increased Limit for Certain Charitable Contributions

I.R.C. § 170; TCJA § 11023

For any contribution of cash to a 50% organization, the taxpayer can deduct contributions that do not exceed 60% of the taxpayer’s contribution base (AGI without any NOL carryback) for such year. Eligible organizations are the following:

1. Churches
2. Educational organizations
3. Foundations for the benefit of state colleges or universities
4. Hospitals and medical research organizations
5. Agricultural research organizations
6. Governmental bodies
7. Publicly supported organizations
8. Certain membership and other broadly supported organizations
9. Supporting organizations
10. Certain private foundations

Cash contributions that are taken into account under the 60% limit are not taken into account for purposes of applying the 50% limit. But the 30% and 50% limits are applied for a tax year by reducing the aggregate contribution limit allowed for that year by the aggregate cash contributions allowed under the 60% limit for the year.

Observation

Technical Correction

The AICPA has asked Congress to provide a technical correction for section 170(b)(1)(G)(iii) because the current statutory language in the TCJA reduces the allowed charitable deduction if assets other than cash are donated. This reduction results in a total percentage of 50%, rather than 60%, of AGI. The requested change would confirm Congress’s intent to allow an increased 60%-of-AGI limitation, assuming the additional amount is in cash (for example, 30% appreciated securities and 30% cash). Currently, under the TCJA, the taxpayer can only receive the increased 60%-of-AGI limitation if the entire donation is in cash [AICPA Tax Division Request for Immediate Guidance Regarding Pub. L. No. 115-971].

If the aggregate amount of such cash contributions exceeds the 60% limit, the taxpayer can carry forward the excess for 5 succeeding years. The carryover is deductible if the carryover amount and the taxpayer’s cash contributions for the year do not exceed 60% of the taxpayer’s contribution base.
**IRA Recharacterizations**

I.R.C. § 408A; TCJA § 13611

**IRA Recharacterizations**

The 60% limit applies only to contributions of cash.

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**Observation**

Cash Only

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**Denial of Charitable Deduction for College Athletic Event Seating Rights**

I.R.C. § 170; TCJA § 13704

Effective for contributions made in tax years beginning after December 31, 2017

The TCJA amends I.R.C. § 170(l) to provide that no charitable deduction is allowed for a payment to an institution of higher education in exchange for which the payor receives the right to purchase tickets or seating at an athletic event.

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**Repeal of Substantiation Exception**

I.R.C. § 170; TCJA § 13705

Effective for contributions made in tax years beginning after December 31, 2016

The TCJA repeals the I.R.C. § 170(f)(8) exception that allows a return filed by a donee organization to satisfy the requirement for a contemporaneous written acknowledgment. Thus, the taxpayer must obtain a contemporaneous written acknowledgment for any contribution of $250 or more.

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**Suspension of Deduction for Moving Expenses**

I.R.C. § 217; TCJA § 11049

Effective for tax years beginning after December 31, 2017, and before January 1, 2026

The I.R.C. § 217 deduction for moving expenses is suspended for tax years beginning after December 31, 2017, and before January 1, 2026. The deduction is still allowed for a member of the US Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station.

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**Cross-Reference**

Plan Loan Offsets

See the “Retirement and Savings Issues” chapter in the 2018 National Income Tax Workbook for additional information about plan loans and plan loan offsets.

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**Extension of Rollover Period for Plan Loan Offset Amounts**

I.R.C. § 402; TCJA § 13613

Effective for plan loan offset amounts treated as distributed in tax years beginning after December 31, 2017

The period during which a qualified plan loan offset amount may be contributed to an eligible retirement plan as a rollover contribution is extended from 60 days after the date of the offset to the due date (including extensions) for filing the federal income tax return for the tax year in which the plan loan offset occurs (the tax year in which the amount is treated as distributed from the plan). A qualified plan loan offset amount is a plan loan offset amount that is treated as distributed from a qualified retirement plan, an I.R.C. § 403(b) plan, or a governmental I.R.C. § 457(b) plan solely because of the termination of the plan or the failure to meet the repayment terms of the loan because of the employee’s severance from employment.
The TCJA increases the aggregate amount of length-of-service awards that may accrue for a bona fide volunteer with respect to any year of service to $6,000 and adjusts that amount in $500 increments to reflect changes in cost of living for years after 2018. In addition, if the plan is a defined benefit plan, the limit applies to the actuarial present value of the aggregate amount of length-of-service awards accruing with respect to any year of service. Actuarial present value is calculated using reasonable actuarial assumptions and methods, assuming payment will be made under the most valuable form of payment under the plan with payment commencing at the later of the earliest age at which unreduced benefits are payable under the plan or the participant’s age at the time of the calculation.

ABLE Accounts and Section 529 Accounts

The TCJA increases contributions to ABLE accounts, allows certain rollovers from section 529 accounts to ABLE accounts, and expands eligible uses of a section 529 account.

Increased Contributions to ABLE Accounts

I.R.C. § 529A; TCJA § 11024

The TCJA increases the limit on contributions to an ABLE account for contributions made by the account’s designated beneficiary. The general limitation on contributions is equal to the annual gift tax exclusion under I.R.C. § 2503(b). The ABLE account designated beneficiary can contribute an additional amount, equal to the lesser of: (1) the compensation [as defined by I.R.C. § 219(f)(1)] includable in the beneficiary’s gross income for the tax year, or (2) the federal poverty line for a one-person household determined for the calendar year preceding the calendar year in which the tax year begins.

The term poverty line is defined by section 673 of the Community Services Block Grant Act (42 U.S.C. § 9902). For 2017, the federal poverty line...
for a one-person household was $12,060 for the 48 contiguous states and the District of Columbia.

A designated beneficiary (or a person acting on behalf of such beneficiary) must maintain adequate records to ensure that the contribution limits are met.

To be eligible for the increased contribution limits, a designated beneficiary must be an employee [including a self-employed person within the meaning of I.R.C. § 401(c)], and no contribution can be made for the tax year to

1. a defined contribution plan [within the meaning of I.R.C. § 414(i)] with respect to which the requirements of I.R.C. § 401(a) or 403(a) are met,
2. an annuity contract described in I.R.C. § 403(b), or
3. an eligible deferred compensation plan described in I.R.C. § 457(b).

Rollovers to ABLE Accounts from Section 529 Accounts
I.R.C. § 529; TCJA § 11025
Apply to distributions after December 22, 2017, and before January 1, 2026

Distributions from a qualified tuition program (a section 529 account) can be rolled over tax-free to an ABLE account. The ABLE account must be owned by the same designated beneficiary or a member of the family of the designated beneficiary of the 529 account. Member of the family includes the beneficiary’s

1. spouse;
2. child or descendant of a child;
3. brother, sister, stepbrother, or stepsister;
4. father, mother, or ancestor of either;
5. stepfather or stepmother;
6. niece or nephew;
7. aunt or uncle;
8. in-law; and
9. first cousin.

Member of the family also includes the spouse of any individual described in items 2 through 8. The rollover must be made within 60 days of the date of distribution. The rolled-over amounts count toward the overall limit on amounts that can be contributed to an ABLE account in a tax year. Any amount rolled over that exceeds this limit is included in the gross income of the distributee in a manner provided by I.R.C. § 72.

Section 529 Account Funding for Elementary and Secondary Education
I.R.C. § 529; TCJA § 11032
Apply to distributions made after December 31, 2017

For purposes of the section 529 plan rules, the definition of the term qualified higher education expense includes a reference to expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school. However, the amount of cash distributions for such expenses cannot exceed $10,000 per year.

This $10,000 limit applies on a per-student basis, rather than a per-account basis. Thus, under the provision, although an individual may be the designated beneficiary of multiple accounts, that individual may receive a maximum of $10,000 in distributions free of tax, regardless of whether the funds are distributed from multiple accounts. Any excess distributions received by the individual are treated as a distribution subject to tax under the general rules of section 529.

Cross-Reference
ABLE and Section 529 Accounts
See the “Retirement and Savings Issues” chapter in the 2018 National Income Tax Workbook for a further discussion of ABLE accounts and section 529 accounts.

Increase in Estate and Gift Tax Exemption
I.R.C. §§ 2001, 2010; TCJA § 11061
Apply to estates of decedents dying or gifts made after December 31, 2017, and before January 1, 2026
The basic exclusion amount in I.R.C. § 2010(c)(3) is changed from $5,000,000 to $10,000,000. The basic exclusion amount is indexed for inflation after 2011. For an estate of a decedent dying in calendar year 2018, the basic exclusion amount is $11,180,000.

As a conforming amendment to I.R.C. § 2001(g) (regarding computation of estate tax), the TCJA directs the IRS to prescribe regulations as may be necessary or appropriate to carry out the purposes of the section with respect to differences between the basic exclusion amount in effect (1) at the time of the decedent’s death and (2) at the time of any gifts made by the decedent.

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**Observation** Future Application

The AICPA has asked Congress to clarify that the government will not require a clawback or recovery to the 2017 exemption level. Thus, they are requesting confirmation that 2018–2025 transactions will not be subject to a gift or estate tax after 2025.

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**Elimination of Affordable Care Act Individual Shared Responsibility Payment**

I.R.C. § 5000A; TCJA § 11081

Effective for months beginning after December 31, 2018

The TCJA eliminates the individual shared responsibility payment (ISRP) after 2018, and there is no penalty for individuals who fail to maintain minimum essential coverage.

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**Extension of Time Limit for Contesting IRS Levy**

I.R.C. § 6343; TCJA § 11071

Effective for levies made after December 22, 2017; and levies made on or before December 22, 2017, provided that the 9-month period has not expired as of the date of enactment

The TCJA extends from 9 months to 2 years the period for returning the monetary proceeds from the sale of property that has been wrongfully levied upon. The TCJA also extends from 9 months to 2 years the period for bringing a civil action for wrongful levy.
Due Diligence Requirements for HoH Filing Status

I.R.C. § 6695; TCJA § 11001(b)

Effective for tax years beginning after December 31, 2017

I.R.C. § 6695(g) is amended to extend the tax return preparer due diligence requirements to a determination of eligibility to file as HoH. There is a penalty of $500 for each failure to exercise due diligence. The penalty is indexed for inflation, and it is $520 in 2018.

Cross-Reference

Due Diligence Requirements

See the “Ethics” chapter in the 2018 National Income Tax Workbook for a discussion of the due diligence requirements for the earned income tax credit, the American opportunity tax credit, the child tax credit, the additional child tax credit, and HoH filing status.