TAXABLE AND NON-TAXABLE FRINGE BENEFITS - LIFE POST-TCJA

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• Background: Tax Cuts and Jobs Act (TCJA)
• Life Pre-Tax Cuts and Jobs Act (TCJA)
• Life Post-Tax Cuts and Jobs Act (TCJA)
• Excise Tax on Executive Compensation
• On the Horizon - provisions NOT in the final Law
• Q & A
BACKGROUND: TCJA
H.R. 1 – TAX CUTS AND JOBS ACT 2017

On December 22, 2017 - President Trump signed into law the Tax Cuts and Jobs Act.

- Most Sweeping update to the IRS code in almost 30 years
- Lowering rates for Individuals and businesses
- Enables U.S. corporations to become more globally competitive

✓ Became Public Law No: 115-97 on 12/22/2017
LIFE PRE – TCJA VS. LIFE POST - TCJA
PRE – TCJA VS. POST - TCJA

Commuting Benefits

**Previous Law**
- $255 per employee, per month in transportation benefits ($260/month 2018)
- $255 per employee, per month in parking expenses ($260/month 2018)
- $20 per employee, per month in biking-related expenses

**New Law**
- Parking and Mass-Transit benefits will continue to be tax exempt to employees when paid through an employer-sponsored salary reduction program
  - TCJA has eliminated the business deduction, and made such payments income to tax-exempt organizations
- Biking-related expenses
  - TCJA has eliminated the ability to exclude from income reimbursements for qualified bicycle commuting expenses. Therefore, making such reimbursements taxable
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Moving Expenses

Previous Law

- Employer can exclude qualified moving expense reimbursement from an employee’s wages for both income and employment tax purposes
- Employees could claim a deduction for qualified moving expenses

New Law

- Qualified moving expense reimbursements are no longer excluded from wages
- Employees can no longer claim a deduction for qualified moving expense
## LIFE: POST - TCJA

### Employee Business Expenses

#### Form 2106

**Department of the Treasury**  
**Internal Revenue Service**  
**2017**

**Attach to Form 1040 or Form 1040NR.**

**Go to** [www.irs.gov/Form2106](http://www.irs.gov/Form2106) **for instructions and the latest information.**

#### Part I  Employee Business Expenses and Reimbursements

**Step 1  Enter Your Expenses**

1. Vehicle expense from line 22 or line 29. (Rural mail carriers: See instructions.)
2. Parking fees, tolls, and transportation, including train, bus, etc., that **didn’t** involve overnight travel or commuting to and from work.
3. Travel expense while away from home overnight, including lodging, airplane, car rental, etc. **Don’t** include meals and entertainment.
4. Business expenses not included on lines 1 through 3. **Don’t** include meals and entertainment.
Unreimbursed Business Expenses

- The Tax Cuts and Jobs Act suspends miscellaneous itemized deductions
- Form 2106 for unreimbursed employee expenses is suspended, including:
  - Unreimbursed transportation
  - Travel
  - Business meals and entertainment
  - Subscriptions to professional journals
  - Union and professional dues
  - Professional uniforms
  - Educator expenses

- Benefits of employee reimbursements from an employer “Accountable Plan”
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Section 529 Educational Savings Plans

Previous Law

- Savings accounts can accumulate tax-free earnings and withdrawals are tax-free as long as the funds are used to pay for qualified education expenses

New Law

- TCJA has expanded the permitted use of funds to include tuition at an elementary or secondary public, private or religious school (Limitations apply)
  - TIP: Using such funds to pay for elementary/secondary does limit the time for the account to accumulate tax free earnings
  - State laws must be reviewed prior to making such distributions
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Achievement Awards

Previous Law

- Employers deduction (outside a qualified awards plan) is limited to $400 for awards of “tangible personal property”
- Employees achievement awards are excludable from an employee’s gross income

New Law

- Employers deduction and corresponding exclusion from employee’s income now excludes cash, cash-equivalents, vacations, gift coupons/certificates, meals, tickets to sporting events, securities and other similar items
- Exclusion is still allowed for the value of tangible personal property and gift certificates that allow the employee to select a gift from a range of items.
EXCISE TAX ON EXECUTIVE COMPENSATION
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- Covered Employee - new definition:
  - Any individual among the top five highest compensated employees of the organization for the year

- If an individual is a covered employee in any tax year beginning after December 31, 2016 he or she is a covered employee in all future years

- Must look back to the year before the excise tax is applicable

- Must consider whether employee was a covered employee of any predecessor

- Person is counted every year thereafter unless he/she quits, retires, or is paid < $1M.

- The organization may owe the excise tax on more than 5 individuals in later years
EXCISE TAX ON EXECUTIVE COMPENSATION

- Excise tax of 21% of the excess compensation paid over $1,000,000 for the organization’s 5 highest paid employees
  - Includes 457(f) plan payments and amounts considered compensation due to lapse of substantial risk of forfeiture
  - Includes certain separation payments
  - Includes performance based compensation and commission
  - Includes all compensation from “related persons and governmental entities”
  - Amounts paid to a covered employee in or after year of termination is subject to limit (including payments after death)
  - Excludes payments to medical professionals if they are paid for those services
  - Excludes contributions to and distributions from qualified retirement plan, section 403(b) plan or section 457(b) plan
  - Excludes excess parachute payments
EXCISE TAX ON EXECUTIVE COMPENSATION

➢ Certain existing exceptions still apply:
  ✓ Contributions to and distributions from a qualified retirement plan
  ✓ Amounts reasonably expected to be excludible from the covered employee’s gross income

➢ Tax is assessed against the organization

➢ Potential tax on parachute payments
  ➢ Parachute payment is more than three times the average compensation over the five years prior to the year of separation (base amount)
  ➢ Once parachute payment treatment is triggered, all amounts over one times the base amount are excess parachute payments, subject to tax
  ➢ Tax-exempt organization may be liable for excise tax even for those not earning above $1 million
ON THE HORIZON: PROVISIONS NOT IN THE FINAL LAW
ON THE HORIZON -
Provisions NOT in the Final Law

- **Housing benefits (sec. 119):** No limitation on exclusion for employer provided housing

- **Tuition remission (sec. 117(d)):** No repeal of tuition remission or related benefits

- **Employer-provided tuition assistance (sec. 127):** No repeal of exclusion for educational assistance programs from taxable income (up to $5,250)
QUESTIONS?
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