



February 22, 2018

The Honorable Orrin G. Hatch
Chairman
United States Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady
Chairman
House Committee on Ways and Means
1139E Longworth House Office Building
Washington, DC 20515

The Honorable Ron Wyden
Ranking Member
United States Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
Ranking Member
House Committee on Ways and Means
1139E Longworth House Office Building
Washington, DC 20515

RE: Technical Corrections Regarding [Pub. L. No. 115-97](#)

Dear Chairman Hatch, Chairman Brady, Ranking Member Wyden and Ranking Member Neal:

The American Institute of CPAs (AICPA) respectfully recommends Congress address technical corrections on various provisions under Pub. L. No. 115-97 (commonly referred to as the Tax Cuts and Jobs Act (TCJA)), which revised many sections of the Internal Revenue Code (IRC or “Code”).

We have highlighted the following preliminary areas that need technical corrections:

1. Net Operating Loss (NOL) – TCJA Section 13302

The AICPA recommends that Congress provide a technical correction to the effective date language of TCJA Sections 13302(c) and (e), and its applicability to fiscal year filers. We recommend that Congress change the statutory language to “taxable years beginning after December 31, 2017” instead of “taxable years ending after December 31, 2017.”

The current TCJA Section 13302(e)(2) statutory language provides that the changes to NOL carryforwards and carrybacks are effective for “taxable years ending after December 31, 2017,” while the conference committee provided an effective date for tax years “beginning after December 31, 2017.” The statutory language under the TCJA captures fiscal year taxpayers and prevents the carryback of losses for a full 2017 fiscal tax year. However, the language allows the carryback of losses for a full 2017 tax year for calendar year filers.

A technical correction to the wording of the effective date would provide fairness to fiscal year taxpayers that have incurred an NOL during 2017 prior to the enactment date. The current statutory language particularly hurts small fiscal year taxpayers that have little chance of leveling out income with large

The Honorable Orrin G. Hatch
The Honorable Kevin Brady
The Honorable Ron Wyden
The Honorable Richard Neal
February 22, 2018
Page 2 of 4

swings in their taxable income even though the 2017 calendar year taxpayers can continue using losses generated during the same time frame.

2. Applicable Recovery Period of Qualified Improvement Property (QIP) – TCJA Section 13204

The AICPA recommends that Congress provide a technical correction to the property class life on QIP as 15 years and the inclusion of QIP as eligible property for 100% bonus depreciation.

The conference committee provided that QIP has a 15-year life and thus is eligible for 100% bonus depreciation. However, under the TCJA, the statutory language for section 168(e)(3)(E) does not include QIP, leaving it as nonresidential real property (39 years modified accelerated cost recovery system (MACRS)) and not subject to bonus depreciation or some other class of property (e.g., a property with 15 years MACRS). According to the conference committee, QIP was intended to be 15-year property, qualifying for bonus depreciation.

3. Charitable Contribution Deduction – TCJA Section 11023

The AICPA recommends that Congress provide a technical correction for section 170(b)(1)(G)(iii) as changed by the TCJA Section 11023 for the 60% of adjusted gross income (AGI) charitable deduction limitation to function as intended. We recommend that Congress replace the statutory provision with the language below:

Notwithstanding subparagraphs (A)-(F), a taxpayer may deduct a cash contribution to an organization described in subparagraph A up to 10% of their adjusted gross income in addition to any amount allowed in the current year (or under a carryover) under this subsection. Any amount contributed to an organization under this paragraph in excess of the 10% described in the preceding sentence shall be treated as a carryover paid in each of the 5 succeeding years in order of time.

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. This reduction is the result even if one dollar of non-cash assets is donated (such as securities).

This change would confirm Congress's intent to allow for the 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.

4. Miscellaneous Technical Corrections

Under TCJA Section 11001, a technical correction is needed to increase the alternative minimum tax (AMT) exemption and phaseout for estates and trusts, similar to the new law increase of the AMT exemption and phaseout for individuals.

Under TCJA Section 13543, a technical correction is needed for taxpayers to elect out of the section 1371(f) provision which allows sourcing of a pro rata portion of distributions, from the accumulated adjustments account, following the post-termination transition period. The statute does not provide an option to elect out similar to section 1371(e)(2) for post-termination transition period distributions.

Under TCJA Section 14103, a technical correction is needed for section 965(c)(2)(A) to correctly show that the gross amount of the inclusion under section 965(c)(1) is not subject to AMT and the deduction does not fall within the definition of miscellaneous itemized deductions under section 67. We recommend replacing the stricken portion of the codified language below with “excluding from gross income an amount”:

The term “8 percent rate equivalent percentage” means, with respect to any United States shareholder for any taxable year, the percentage which would result in the amount to which such percentage applies being subject to a 8 percent rate of tax ~~determined by only taking into account a deduction~~ equal to such percentage of such amount and the highest rate of tax specified in section 11 for such taxable year. In the case of any taxable year of a United States shareholder to which section 15 applies, the highest rate of tax under section 11 before the effective date of the change in rates and the highest rate of tax under section 11 after the effective date of such change shall each be taken into account under the preceding sentence in the same proportions as the portion of such taxable year which is before and after such effective date, respectively.¹

Under TCJA Section 14103, a technical correction is needed to include AMT in the term “regular tax” in section 965(h)(6)(B). We recommend deleting the stricken portion of the codified language below and replacing it with “tax imposed by this chapter.”

The term ‘net income tax’ means the ~~regular tax liability~~ reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.²

* * * * *

¹ Section 965(c)(2)(A).

² Section 965(h)(6)(B).

The Honorable Orrin G. Hatch
The Honorable Kevin Brady
The Honorable Ron Wyden
The Honorable Richard Neal
February 22, 2018
Page 4 of 4

The AICPA is the world's largest member association representing the accounting profession with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact me at (408) 924-3508 or annette.nellen@sjsu.edu; or Ogochukwu Eke-Okoro, Lead Manager – AICPA Tax Policy & Advocacy, at (202) 434-9231, or ogo.eke-okoro@aicpa-cima.com; or Lakecia Foster, AICPA Director – Congressional & Political Affairs, at (202) 434-9208, or lakecia.foster@aicpa-cima.com.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Nellen". The signature is fluid and cursive.

Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

cc: Thomas Barthold, Chief of Staff, Joint Committee on Taxation
The Honorable David Kautter, Assistant Secretary (Tax Policy), Department of the Treasury
The Honorable David Kautter, Acting Commissioner, Internal Revenue Service