

EMPLOYEE BENEFITS VERSION 2018: THE YEAR AHEAD

2018 Certificate Webinar Series

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NEXT CHALLENGE. NEXT LEVEL.
NEXSEN | PRUET

TAX CUTS AND JOBS ACT (“TAX REFORM”)

H.R. 1 (December 22, 2017)

- ▶ Most provisions effective January 1, 2018
- ▶ Lots of confusion and little guidance
- ▶ Lots was proposed towards the end of 2017; not everything made the cut



9	5,918	109
8	3,478	413
2	1,293	41
8	2,487	115
8	2,384	112
1	1,429	63
6	1,203	44
	3,094	123
	2,094	75
	3,027	131
	7,115	1,391
		110
		263
		460
		243
		1,076
		32
		107
		131
		134
	368	372

PARTICIPANT LOAN ROLLOVERS

OVERVIEW

- ▶ Effective date: Taxable years beginning after December 31, 2017
- ▶ Amendment to Tax Code Section 402(c)



PARTICIPANT LOAN ROLLOVERS

SUMMARY

- ▶ Pre-TCJA – terminated employees had to rollover loan offset amount under standard rollover rules to avoid taxation of loan balance with 10% penalty – i.e., 60 days
- ▶ New law – loan default due to plan termination or severance from employment can now be indirectly rolled over by individual's tax filing deadline (plus extensions)
- ▶ Applies to 401(k), 403(b), 457(b) plans



PARTICIPANT LOAN ROLLOVERS

EMPLOYER ACTION NEEDED

- ▶ Review plan loan policy and plan provisions to determine whether changes are required to reflect this new rule
- ▶ Revise current plan provisions regarding repayment of loans in event of termination
- ▶ Consider participant education regarding this new provision
- ▶ Understand documentation and reporting of new provisions (e.g, 1099s)



EMPLOYER TAX CREDIT FOR PAID LEAVE

OVERVIEW

- ▶ Effective Date: Taxable years beginning after December 31, 2017
- ▶ New Tax Code Section 45S



EMPLOYER TAX CREDIT FOR PAID LEAVE

SUMMARY

- ▶ Employer income tax credit based on wages paid to “qualifying employees” during family & medical leave

Percent of Regular Wages Paid	Credit Available
50%	12.5%
60%	15%
75%	18.75%
80%	20%
100%	25%



EMPLOYER TAX CREDIT FOR PAID LEAVE

EMPLOYER ACTION NEEDED

- ▶ Credit applies to first 12 weeks of paid leave
- ▶ Must have a written policy
- ▶ Part-timers must be allowed to participate on pro-rata basis
- ▶ Eligible employees =
 - ▶ Employed for 1 year of more; and
 - ▶ For prior year, comp not exceeding 60% of HCE definition (so \$72,000 in 2018)



EMPLOYER TAX CREDIT FOR PAID LEAVE

EMPLOYER ACTION NEEDED

- ▶ Review current leave policy to determine whether it already qualifies
- ▶ If not – consider whether changes are worth the credit
- ▶ Coordinate with C-suite to project effect of the credit
- ▶ Coordinate with controlled group members



EMPLOYEE ACHIEVEMENT AWARDS

OVERVIEW

- ▶ Effective Date: Effective for amounts paid after December 31, 2017
- ▶ Amendments to Tax Code Sections 74 and 274



EMPLOYEE ACHIEVEMENT AWARDS

SUMMARY

- ▶ Pre-TCJA – employers could provide certain tax-free awards to employees offered as part of a length of service or safety achievement
- ▶ New provision – exclusion still applies, but definition of “tangible personal property” is codified
- ▶ Does not include cash, cash equivalents, gift cards/ certificates, vacations, meals, tickets to sporting events, etc.
- ▶ Not a change in law – but a codification of existing guidance (see Treas. Reg. 1.274-3(b))



EMPLOYEE ACHIEVEMENT AWARDS

EMPLOYER ACTION NEEDED

- ▶ Review all employee achievement award policies
- ▶ Confirm proper taxation treatment of property provided in connection with employment (e.g., gift cards)
- ▶ If awards program is not compliant – consider reducing awards so they qualify as *de minimis* fringe
- ▶ Review definition of Compensation in 401(k) plans



CHANGES TO THE AFFORDABLE CARE ACT

OVERVIEW

- ▶ New Law: Effective for months beginning after December 31, 2018
- ▶ Amendment to Tax Code Section 5000A(c)



CHANGES TO THE AFFORDABLE CARE ACT

SUMMARY

- ▶ Pre-TCJA – individuals generally must maintain “minimum essential coverage” or pay an “individual responsibility payment”
- ▶ 2017 & 2018 payment is the greater of \$695 or 2.5% of household income per adult
- ▶ New law (effective 2019) – individual mandate eliminated



CHANGES TO THE AFFORDABLE CARE ACT

EMPLOYER ACTION NEEDED

- ▶ Consider how loss of individual mandate will affect enrollment
- ▶ Limited options in Marketplace
- ▶ Review fully- and self-insured plans to consider effects of changes in enrollment from both insurer's and employer's perspectives
- ▶ Remember employer mandate and reporting obligations remain intact



SETTLEMENTS RELATED TO SEXUAL HARASSMENT/ABUSE

OVERVIEW

- ▶ Effective Date: For amounts paid or incurred after December 21, 2017
- ▶ New Tax Code Section 162(q)



SETTLEMENTS RELATED TO SEXUAL HARASSMENT/ABUSE

SUMMARY

- ▶ Prior to TCJA – settlement payments deemed deductible as ordinary and necessary business expenses
- ▶ New law - Loss of deduction for settlement payment/ attorneys' fees related to sexual harassment and/or sexual abuse – if agreement is subject to nondisclosure agreement



SETTLEMENTS RELATED TO SEXUAL HARASSMENT/ABUSE

EMPLOYER ACTION NEEDED

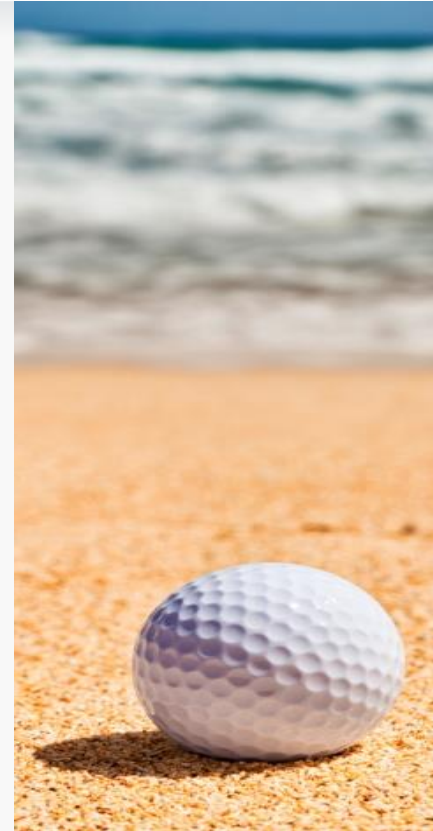
- ▶ Prevent claims in the first place!
- ▶ Revise form settlement documents to reflect new law
- ▶ Cost-benefit analysis – non-deductibility vs. public disclosure of embarrassing allegations
- ▶ Consider structuring settlements to bifurcate sexual harassment/abuse issues



REPEAL OF DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES

OVERVIEW

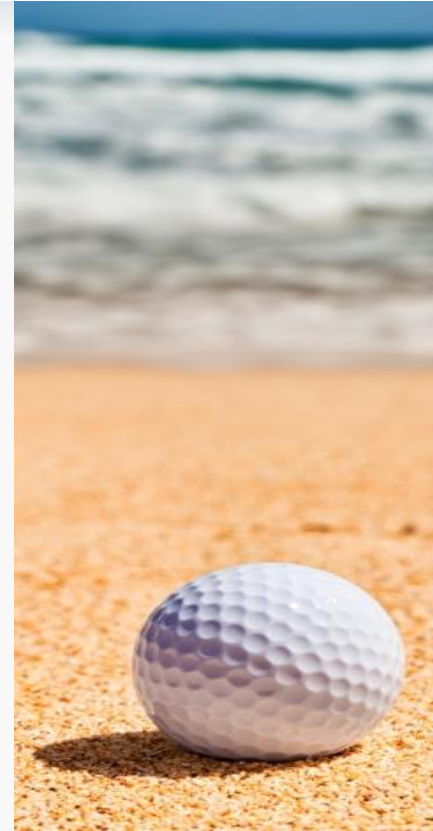
- ▶ Effective Date: For amounts paid or incurred after December 21, 2017
- ▶ Revised Tax Code Section 274(a)



REPEAL OF DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES

SUMMARY

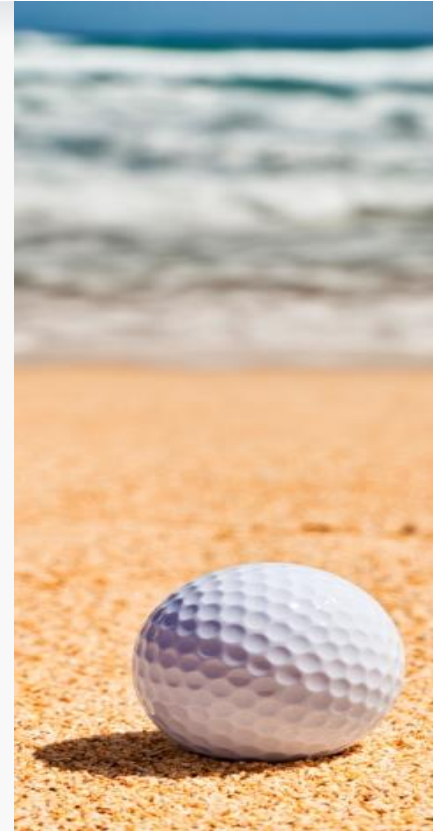
- ▶ Prior to TCJA – Employers generally could deduct 50% of expenses for entertainment costs and club membership dues. Cost of food and beverages for work purposes were deductible too – some at 50% and some at 100%.
- ▶ New law – Employers now prohibited from deducting entertainment costs and club membership dues. The cost for food and beverages for work purposes remain eligible for deduction at 50%.



REPEAL OF DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES

EXCEPTIONS TO THE EXCLUSION

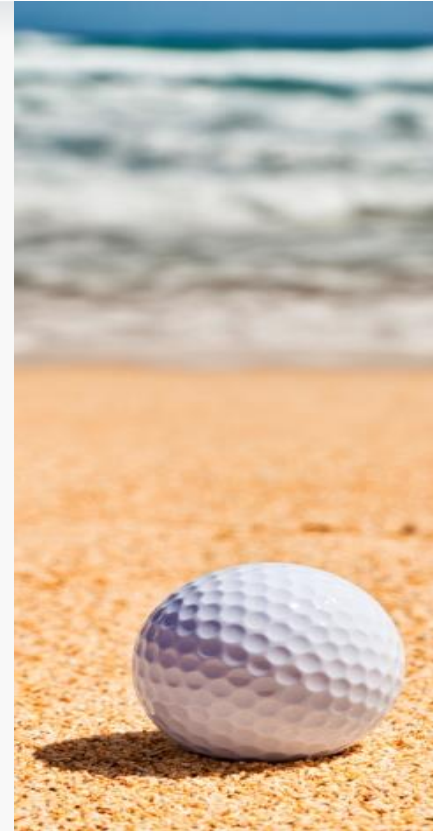
- ▶ Business meals for employees.
- ▶ Amounts treated as taxable wages to employees.
- ▶ Recreational expenses for employees (for example, holiday parties and picnics).
- ▶ Employee, stockholder, and other business meetings.
- ▶ Items made available to the general public.



REPEAL OF DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES

PLENTY OF UNCERTAINTY & CONFUSION

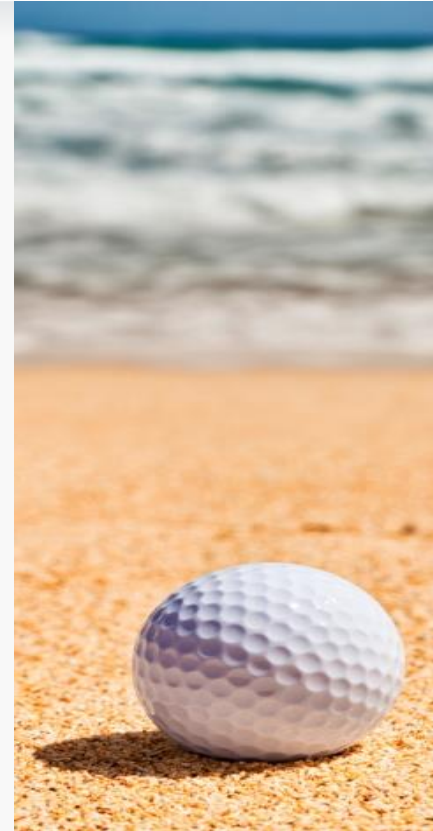
- ▶ Business meals before, during, and after entertainment events with customers/clients.
- ▶ Meals provided to restaurant and food service workers.
- ▶ Employer-provided snacks and beverage service.
- ▶ Holiday parties and other similar all employee “morale” events.
- ▶ Charitable contributions in connection with or in support of charitable event.



REPEAL OF DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES

EMPLOYER ACTION NEEDED

- ▶ Review expense policies and revise as needed to reflect changes in law.
- ▶ Consider changing policy to include cost of meals in employee pay to retain 100% deduction.
- ▶ Review employment agreements regarding entertainment costs / club dues and develop steps for tax compliance.
- ▶ Communicate with employees about any policy changes.



LIMITED DEDUCTION FOR EMPLOYER-PROVIDED MEALS

OVERVIEW

- ▶ Effective Date: For amounts paid or incurred after December 21, 2017
- ▶ Revised Tax Code Section 274(k) and (n)



LIMITED DEDUCTION FOR EMPLOYER-PROVIDED MEALS

SUMMARY

- ▶ Prior to TCJA -- Employers were entitled to a 50% deduction for expenses related to business meals that were not lavish or extravagant under the circumstances and the taxpayer (or the taxpayer's employee) was present. 100% of meals that meet the *de minimis* fringe benefit requirement.
- ▶ New law -- Retains the pre-TCJA rule as an exception to the rule disallowing deductions for disallowed business entertainment expenses to include *de minimis* fringe benefits. Good file documentation will be prudent.



LIMITED DEDUCTION FOR EMPLOYER-PROVIDED MEALS

EMPLOYER ACTION NEEDED

- ▶ Review and revise expense policies to reflect the loss of deduction.
- ▶ Consider any exceptions that may be available to continue allowed deduction.
- ▶ Consider taxation / inclusion of meals in employees' earnings to retain deduction.
- ▶ Employees continue to exclude cost of meals under same rules pre-TCJA.



MOVING EXPENSE REIMBURSEMENT EXCLUSION REPEALED (TEMPORARILY)

OVERVIEW

- ▶ Effective Date: For amounts paid or incurred after December 31, 2017 and before January 1, 2026
- ▶ Revised Tax Code Section 132(g)



MOVING EXPENSE REIMBURSEMENT EXCLUSION REPEALED (TEMPORARILY)

SUMMARY

- ▶ Prior to TCJA -- Employees could exclude from taxable income the cost of qualified moving expense received from the employer. Also, employees could deduct the unreimbursed qualified moving expenses as itemized deductions up to certain limits.
- ▶ New law -- Employees may not exclude from taxable income the cost of qualified moving expense received from the employer. Amounts received treated as supplemental wages. Employees not allowed to deduct unreimbursed moving expenses.



MOVING EXPENSE REIMBURSEMENT EXCLUSION REPEALED (TEMPORARILY)

EMPLOYER ACTION NEEDED

- ▶ Employers should review and revise moving expense policies to reflect policy adopted post-TCJA.
- ▶ Employers may consider adjusting employees' pay to "gross up" wages to keep employees whole. As an alternative, employers could pay additional taxable wages.
- ▶ Employers can still deduct moving expenses paid for or reimbursed to employees.
- ▶ Employees cannot deduct moving expenses and any reimbursements are taxable.



DISALLOWANCE OF QUALIFIED TRANSPORTATION FRINGES

OVERVIEW

- ▶ Effective Date: For amounts paid or incurred after December 31, 2017
- ▶ Revised Tax Code Section 274(a)(4)
- ▶ Note: Qualified bicycle commuting reimbursement are non-deductible effective January 1, 2026



DISALLOWANCE OF QUALIFIED TRANSPORTATION FRINGES

SUMMARY

- ▶ Prior to TCJA -- Employers could deduct the cost of qualified transportation fringe benefits, including commuter highway vehicle, transit passes, qualified parking, and qualified bicycle commuting reimbursements.
- ▶ New law -- Employers *not allowed to* deduct the cost of qualified transportation fringe benefits, including commuter highway vehicle, transit passes, and qualified parking. Qualified bicycle commuting reimbursements deductible through December 31, 2025.



DISALLOWANCE OF QUALIFIED TRANSPORTATION FRINGES

EMPLOYER ACTION NEEDED

- ▶ Employers review and revise transportation fringe benefit policies to reflect any changes made in response to tax law changes.
- ▶ Consider changes to provide for voluntary after-tax employee contributions.
- ▶ Consider replacing commuter fringe benefits with taxable wage increase or other fringe benefits that remain tax-favored.
- ▶ Employees can still exclude these benefits from taxation although the employer may not deduct.



QUESTIONS?



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